



Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

13 June 2018*

(Reference for a preliminary ruling — Common Fisheries Policy — Regulation (EU) No 1380/2013 — Article 11 — Conservation of marine biological resources — Protection of the environment — Conservation of natural habitats and of wild fauna and flora — Exclusive competence of the European Union)

In Case C-683/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Verwaltungsgericht Köln (Administrative Court Cologne, Germany), made by decision of 29 November 2016, received at the Court on 27 December 2016, in the proceedings

Deutscher Naturschutzring — Dachverband der deutschen Natur- und Umweltschutzverbände eV

v

Bundesrepublik Deutschland,

THE COURT (Third Chamber),

composed of L. Bay Larsen, President of the Chamber, J. Malenovský (Rapporteur), M. Safjan, D. Šváby and M. Vilaras, Judges,

Advocate General: N. Wahl,

Registrar: M. Aleksejev, Administrator,

having regard to the written procedure and further to the hearing on 22 November 2017,

after considering the observations submitted on behalf of:

- the Deutscher Naturschutzring — Dachverband der deutschen Natur- und Umweltschutzverbände eV, by R. Nebelsieck and K. Fock, Rechtsanwälte,
- the Bundesamt für Naturschutz, by W. Ewer, Rechtsanwalt,
- the German Government, by T. Henze, acting as Agent,
- the Spanish Government, by S. Jiménez García, acting as Agent,
- the Polish Government, by B. Majczyna, acting as Agent,

* Language of the case: German.

- the Portuguese Government, by L. Inez Fernandes and M. Figueiredo, acting as Agents,
- the European Commission, by F. Moro and M. Morales Puerta, and by B. Bertelmann, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 25 January 2018,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 11 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).
- 2 The reference has been made in proceedings between the Deutscher Naturschutzring — Dachverband der deutschen Natur- und Umweltschutzverbände eV (German Nature Conservation Federation — Umbrella organisation of the German nature and environmental protection associations, ‘the Naturschutzring’) and the Bundesamt für Naturschutz (German Federal Agency for Nature Conservation) concerning the latter’s decision to refuse an application by the Naturschutzring seeking the prohibition on fishing using fishing gear that touches the seabed and fixed nets in the marine areas known as ‘Sylter Außenriff’, ‘Pommersche Bucht mit Oderbank’ and ‘Pommersche Bucht’.

Legal context

International law

- 3 The United Nations Convention on the Law of the Sea, signed at Montego Bay on 10 December 1982 (‘the Montego Bay Convention’) came into force on 16 November 1994. It was approved on behalf of the European Community by Council Decision 98/392/EC of 23 March 1998 (OJ 1998 L 179, p. 1).
- 4 Article 91(1) of the Montego Bay Convention, entitled ‘Nationality of Ships’, is worded as follows:

‘... Ships have the nationality of the State whose flag they are entitled to fly. There must exist a genuine link between the State and the ship.’
- 5 Article 94 of that convention, entitled ‘Duties of the flag State’, states:

‘1. Every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.

2. In particular every State shall:

(a) maintain a register of ships containing the names and particulars of ships flying its flag, except those which are excluded from generally accepted international regulations on account of their small size;

...’

European Union law

Regulation No 1380/2013

- 6 Recital 25 of Regulation No 1380/2013 states:

‘Directive 2009/147/EC of the European Parliament and of the Council [of 30 November 2009 on the conservation of wild birds (OJ 2010 L 20, p. 7)], Council Directive 92/43/EEC [of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7)] and Directive 2008/56/EC [of the European Parliament and of the Council of 17 June 2008 establishing a framework for Community action in the field of marine environmental policy (‘Marine Strategy Framework Directive’) (OJ 2008 L 164, p. 19)] impose certain obligations on Member States as regards special protection areas, special areas of conservation and marine protected areas, respectively. Such measures might require the adoption of measures falling under the [Common Fisheries Policy]. It is, therefore, appropriate to authorise Member States to adopt, in the waters under their sovereignty or jurisdiction, such conservation measures that are necessary to comply with their obligations under those Union acts where such measures do not affect the fisheries interests of other Member States. Where such measures might affect fisheries interests of other Member States, the power to adopt such measures should be granted to the Commission and recourse should be had to regional cooperation among the Member States concerned.’

- 7 Article 4 of that regulation, entitled ‘Definitions’, provides in paragraph 1(20):

‘For the purpose of this Regulation, the following definitions shall apply:...

(20) “technical measure” means a measure that regulates the composition of catches by species and size and the impacts on components of the ecosystems resulting from fishing activities by establishing conditions for the use and structure of fishing gear and restrictions on access to fishing areas.’

- 8 Article 6(1) of that regulation, entitled ‘General provisions’, states:

‘For the purpose of achieving the objectives of the [Common Fisheries Policy] in respect of the conservation and sustainable exploitation of marine biological resources as set out in Article 2, the Union shall adopt conservation measures as set out in Article 7.’

- 9 Article 7 of that regulation, entitled ‘Types of conservation measures’, states:

‘1. Measures for the conservation and sustainable exploitation of marine biological resources may include, inter alia, the following:

...

(i) measures necessary for compliance with obligations under Union environmental legislation adopted pursuant to Article 11;

(j) technical measures as referred to in paragraph 2.

2. Technical measures may include, inter alia, the following:

...

(c) limitations or prohibitions on the use of certain fishing gears, and on fishing activities, in certain areas or periods;

...

(e) specific measures to minimise the negative impact of fishing activities on marine biodiversity and marine ecosystems, including measures to avoid and reduce, as far as possible, unwanted catches.'

- 10 Article 11 of Regulation No 1380/2013, entitled, 'Conservation measures necessary for compliance with obligations under Union environmental legislation', provides in subparagraphs 1 and 2:

'1. Member States are empowered to adopt conservation measures not affecting fishing vessels of other Member States that are applicable to waters under their sovereignty or jurisdiction and that are necessary for the purpose of complying with their obligations under Article 13(4) of Directive 2008/56/EC, Article 4 of Directive 2009/147/EC or Article 6 of Directive 92/43/EEC, provided that those measures are compatible with the objectives set out in Article 2 of this Regulation, meet the objectives of the relevant Union legislation that they intend to implement, and are at least as stringent as measures under Union law.

2. Where a Member State ("the initiating Member State") considers that measures need to be adopted for the purpose of complying with the obligations referred to in paragraph 1 and other Member States have a direct management interest in the fishery to be affected by such measures, the Commission shall be empowered to adopt such measures, upon request, by means of delegated acts in accordance with Article 46. For this purpose, Article 18(1) to (4) and (6) shall apply *mutatis mutandis*.'

- 11 Article 18(1) of that regulation, entitled 'Regional cooperation on conservation measures', provides:

'Where the Commission has been granted powers ... in cases provided for in Article 11 ..., to adopt measures by means of delegated or implementing acts in respect of a Union conservation measure applying to a relevant geographical area, Member States having a direct management interest affected by those measures may, within a deadline to be stipulated in the relevant conservation measure and/or multiannual plan, agree to submit joint recommendations for achieving the objectives of the relevant Union conservation measures, the multiannual plans or the specific discard plans. ...'

Directive 92/43

- 12 The 15th recital in Directive 92/43, as amended by Council Directive 2006/105/EC of 20 November 2006 (OJ 2006 L 363, p. 368), states:

'... a general system of protection is required for certain species of flora and fauna to complement [Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (OJ 1979 L 103, p. 1)]; ... provision should be made for management measures for certain species, if their conservation status so warrants, including the prohibition of certain means of capture or killing, whilst providing for the possibility of derogations on certain conditions'.

- 13 Article 3(1), first subparagraph, of that directive provides:

'A coherent European ecological network of special areas of conservation shall be set up under the title Natura 2000. This network, composed of sites hosting the natural habitat types listed in Annex I and habitats of the species listed in Annex II, shall enable the natural habitat types and the species' habitats concerned to be maintained or, where appropriate, restored at a favourable conservation status in their natural range.'

14 Under Article 4(4) of the directive:

‘Once a site of Community importance has been adopted in accordance with the procedure laid down in paragraph 2, the Member State concerned shall designate that site as a special area of conservation as soon as possible and within six years at most, establishing priorities in the light of the importance of the sites for the maintenance or restoration, at a favourable conservation status, of a natural habitat type in Annex I or a species in Annex II and for the coherence of Natura 2000, and in the light of the threats of degradation or destruction to which those sites are exposed.’

15 Article 6(2) of the directive provides:

‘Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive.’

Directive 2004/35

16 Article 1 of Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (OJ 2004 L 143, p. 56), entitled ‘Subject matter’, provides:

‘The purpose of this Directive is to establish a framework of environmental liability based on the “polluter-pays” principle, to prevent and remedy environmental damage.’

Directive 79/409

17 Article 3(2) of Directive 79/409 provides:

‘The preservation, maintenance and re-establishment of biotopes and habitats shall include primarily the following measures:

(a) creation of protected areas’.

The dispute in the main proceedings and the questions referred for a preliminary ruling

18 On 15 September 2005, the Bundesministerium für Umwelt, Naturschutz und nukleare Sicherheit (Federal Ministry for the Environment, Nature Conservation and Nuclear Safety, Germany) adopted, in accordance with Article 3(2)(a) of Directive 79/409, the Verordnung über die Festsetzung des Naturschutzgebietes ‘Pommersche Bucht’ (Law establishing the nature conservation area ‘Pommersche Bucht’ (BGBl. 2005 I, p. 2778). That law provides that, in that conservation area situated in the Baltic Sea, any act which may lead to the destruction, deterioration, alteration or permanent disturbance of the nature reserve is to be prohibited. However, commercial sea fishing was expressly excluded from that prohibition.

19 On 12 November 2007, the Commission adopted Decision 2008/23/EC adopting, pursuant to Directive 92/43, a first updated list of sites of Community importance for the Atlantic biogeographical region (OJ 2008 L 12, p. 1), pursuant to which the ‘Sylter Außenriff’, situated in the North Sea, was added to that list.

- 20 On 13 November 2007, the Commission adopted Decision 2008/25/EC adopting, pursuant to Directive 92/43, a first updated list of sites of Community importance for the Continental biogeographical region (OJ 2008 L 12, p. 383), pursuant to which the ‘Pommersche Bucht mit Oderbank’, situated in the Baltic Sea, was added to that list.
- 21 To date, the Federal Republic of Germany has not designated these areas as special areas of conservation pursuant to Article 4(4) of Directive 92/43 and has not adopted any conservation measures.
- 22 The three areas concerned are all in waters in the German exclusive economic zone. Sea fishing in that area uses fishing gear that touches the seabed and fixed nets which affect reefs and sand banks and also leads to the by-catch of harbour porpoises and seabirds.
- 23 On 30 July 2014, the Naturschutzing submitted an application to the Federal Agency for Nature Conservation seeking the prohibition of sea fishing techniques using fishing gear that touches the seabed and fixed nets in the ‘Sylter Außenriff’, ‘Pommersche Bucht mit Oderbank’ and ‘Pommersche Bucht’ areas, on the ground that the use of those techniques was incompatible with Article 6(2) of Directive 92/43. Moreover, that prohibition is a necessary preventive and remedial measure within the meaning of Article 2(10) and (11) of Directive 2004/35 that, in accordance with Article 5(3), Article 6(2) and Article 12 thereof, the competent authorities are required to take.
- 24 By decision of 29 October 2014 of the Federal Agency for Nature Conservation, the Naturschutzing’s application was dismissed. That decision was confirmed by a decision of the Federal Agency for Nature Conservation of 19 December 2014.
- 25 The Naturschutzing brought an appeal against that decision before the Verwaltungsgericht Köln (Administrative Court, Cologne, Germany).
- 26 In its defence, the Federal Agency for Nature Conservation submits that, for reasons of competence, it cannot adopt the measures sought by the Naturschutzing, since, in accordance with Article 3(1)(d) TFEU, that competence belongs exclusively to the EU. It is true that Article 11 of Regulation No 1380/2013 empowers the Member States to adopt certain conservation measures but, since such measures may affect the fishing vessels of other Member States, in accordance with that article, those measures may only be taken by the Commission.
- 27 Taking the view that the action can be founded only if the Federal Republic of Germany and not the Commission may adopt the measures requested by the applicant, the Verwaltungsgericht Köln (Administrative Court, Cologne) decided to stay its proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) Is Article 11 of Regulation [No 1380/2013] to be interpreted as precluding measures of a Member State in respect of waters under its sovereignty or jurisdiction which are necessary in order to meet the obligations of a Member State under Article 6 of [Directive 92/43], which have effects on the fishing vessels of other Member States, and which imposes a total prohibition on commercial sea fishing using fishing gear that touches the seabed and fixed nets (“trammel and gillnets”) in Natura 2000 sites?

In particular:

- (a) Is Article 11 of Regulation [No 1380/2013] to be interpreted as meaning that the concept of “conservation measures” includes the prohibition of the fishing techniques listed in Question 1?
- (b) Is Article 11 of Regulation [No 1380/2013] to be interpreted as meaning that the concept of “fishing vessels of other Member States” also includes fishing vessels of another Member State which sail under the flag of the Federal Republic of Germany?

- (c) Is Article 11 of Regulation[No 1380/2013] to be interpreted as meaning that such measures adopted by a Member State which merely promote the objectives listed in that Union legislation also fall within the concept of “meet[ing] the objectives of the relevant Union legislation”?
- (2) Is Article 11 of Regulation[No 1380/2013] to be interpreted as precluding measures adopted by a Member State in respect of waters under its sovereignty or jurisdiction which are necessary in order to meet its obligations under Directive[2004/35] with regard to the prevention and remedying of environmental damage?
- (3) If as Question 1 and Question 2 are to be answered, either individually or cumulatively, in the negative, does the exclusive competence of the European Union in the field of conservation of marine biological resources under the Common Fisheries Policy pursuant to Article 3(1)(d) TFEU preclude the adoption of the aforementioned measures by the Member State?

Consideration of the questions referred

The first question

Admissibility

- 28 The Federal Agency for Nature Conservation submits that Question 1 is inadmissible on the ground that it refers to Article 11(1) of Regulation No 1380/2013, whereas only Article 11(2) et seq. thereof is applicable to measures such as those mentioned by the referring court.
- 29 In that regard, it should be recalled that, according to settled case-law, questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 12 October 2010 *Rosenblatt*, C-45/09, EU:C:2010:601, paragraph 33 and the case-law cited).
- 30 In the present case, the arguments set out by the Federal Agency for Nature Conservation do not seek to establish that the interpretation requested of EU law bears no relation to the actual facts of the main action or its purpose, that the problem raised is hypothetical, or that the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it, but set out a position with respect to the interpretation of the various paragraphs of Article 11 of Regulation No 1380/2013 that the Court is asked to adopt.
- 31 Therefore, in those circumstances, there is no need to declare the first question referred inadmissible.

Substance

- 32 By Question 1, the referring court asks whether Article 11 of Regulation No 1380/2013 is to be interpreted as precluding measures adopted by a Member State in respect of waters under its sovereignty or jurisdiction which are necessary in order to meet the obligations of a Member State

under Article 6 of Directive 92/43 which have effects on the fishing vessels of other Member States and which totally prohibit commercial sea fishing using fishing gear that touches the seabed and fixed nets in Natura 2000 sites.

- 33 As a preliminary point, it must be recalled that, under Article 11(1) of Regulation No 1380/2013, Member States are empowered to adopt conservation measures not affecting fishing vessels of other Member States that are applicable to waters under their sovereignty or jurisdiction and that are necessary for the purpose of complying with their obligations under Article 13(4) of Directive 2008/56, Article 4 of Directive 2009/147 or Article 6 of Directive 92/43, provided that those measures are compatible with the objectives set out in Article 2 of thereof, meet the objectives of the relevant Union legislation that they intend to implement, and are at least as stringent as measures under Union law.
- 34 First of all, as regards the obligations imposed on the Member States by Article 6 of Directive 92/43, which are the obligations that the adoption of the measures mentioned by the referring court are intended to meet, it follows from the wording of Article 6 that those obligations consist, for Member States, in taking ‘appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive’.
- 35 Given that the referring court frames its question by stating that the measures at issue in the main proceedings are intended to meet the obligations deriving from that provision, there is no need for the Court to give a ruling in that regard.
- 36 Next, the referring court states that its question concerns ‘inter alia’ the interpretation of three concepts used in Article 11(1) of Regulation No 1380/2013: first, ‘conservation measures’, second, ‘measures [which] meet the objectives of the relevant Union legislation’ and, third, ‘fishing vessels of other Member States’. Therefore, the Court must clarify each of those concepts.
- 37 First, as regards the concept of ‘conservation measures’, it must be held that the words used in Article 11 of that regulation do not help to determine the scope of that concept. However, for the purposes of interpreting Article 11(1), account must be taken not only of the wording of that provision, but also its context and the objective it pursues (see, to that effect, judgment of 5 April 2011, *Société fiduciaire nationale d’expertise comptable*, C-119/09, EU:C:2011:208, paragraph 25).
- 38 The context of which Article 11(1) of Regulation No 1380/2013 forms part is characterised by the fact that the conservation measures set out in Article 7(1) of that regulation includes the technical measures mentioned in Article 7(2) thereof, among which are ‘measures concerning the limitations or prohibitions on the use of certain fishing gears, and on fishing activities, in certain areas or periods’.
- 39 Having regard to that definition, measures such as those mentioned by the referring court, which consist in prohibiting, in EU waters, fishing methods using gear that touches the sea bed and fixed nets, may constitute conservation measures within the meaning of Article 7(2)(c) of Regulation No 1380/2013 and thus fall within Article 11(1) thereof.
- 40 The objective pursued by Article 11(1) supports that finding.
- 41 It is clear from recital 25 and the wording of Article 11(1) of Regulation No 1380/2013 itself that the underlying aim of that provision is to empower Member States to adopt conservation measures not affecting fishing vessels of other Member States that are necessary for the purpose of complying with their obligations, in particular, under Article 6 of Directive 92/43.

- 42 Among the measures that a Member State may adopt in order to comply with its obligations under Article 6 are, as stated in the 15th recital of Directive 92/43, the prohibition, in order to protect certain species, on certain means of capture or killing, in particular, of marine fauna.
- 43 It is true that the Naturschutzring and the Portuguese Government submit that the concept of ‘conservation measures’ refers only to measures which pursue an objective relating to the Common Fisheries Policy, whereas the conservation measures mentioned have a broader scope because they were adopted with the aim of protecting the environment.
- 44 However, as the Advocate General noted, in point 23 of his Opinion, the fact that measures prohibiting certain fishing gear and techniques also affect species other than those subject to fishing is not enough to exclude those measures from the scope of that policy.
- 45 The contrary argument does not hold up to the examination of the wording and scheme of Articles 7 and 11 of Regulation No 1380/2013, the validity of which is not challenged. Those articles do not contain any exclusion regarding the adoption of measures limiting authorised fishing methods in order to protect the environment. To the contrary, Article 7(1)(d) and (2)(c) thereof expressly envisage the adoption of conservation measures which aim to encourage fishing methods with a low impact on the marine ecosystem and, more broadly, the adoption of specific measures intended to reduce to the minimum the negative impact of fishing on marine biodiversity and marine ecosystems.
- 46 Second, with regard to the concept of ‘measures necessary for compliance with obligations under the relevant EU law’ it is true that, *prima facie*, the use of the verb ‘meet’ could be understood as expressing the obligation, for the measures referred to, to achieve by themselves the objective pursued by the relevant legislation.
- 47 However, it must be observed that, in accordance with Article 3(1) of Directive 92/43, the coherent European ecological network of special areas of conservation provided for by that directive, referred to by the national court as ‘Natura 2000 sites’, aims to enable the maintenance or, where appropriate, the restoration to a favourable conservation status of natural habitat types and species’ habitats in their natural range.
- 48 Having regard to the nature of that objective and to the fact that those habitats are part of complex ecosystems, a specific conservation measure can, in general, only contribute, together with other measures, to the achievement of those objectives, without being sufficient itself to do so. Therefore, to interpret Article 11(1) of Regulation No 1380/2013 as authorising only the adoption of measures which considered separately are sufficient to achieve that objective would deprive that provision of its effectiveness.
- 49 Furthermore, it must be stated more generally that, according to settled case-law, in order to satisfy the proportionality test, a measure must be capable of contributing to the objective pursued and not necessarily of attaining it by itself (see, by analogy, judgment of 21 December 2016, *AGET Iraklis*, C-201/15, EU:C:2016:972, paragraph 92).
- 50 Accordingly, the concept of ‘meet[ing] the objectives of the relevant Union legislation’ must be understood as meaning that it includes measures adopted by a Member State which merely encourage the attainment of the objectives set out in the relevant EU legislation.
- 51 Measures, such as those mentioned by the referring court, which completely prohibit commercial sea fishing using gear which touches the sea bed and fixed nets encourages the maintenance or, where appropriate, the restoration of types of natural habitats and the habitats of maritime species present in the areas concerned and, therefore, are covered by Article 11(1) of Regulation No 1380/2013.

- 52 Third, as far as concerns the concept of ‘fishing vessels of other Member States’, the wording of Article 11(1) of Regulation No 1380/2013 does not contain any indication as to the factors constituting that concept.
- 53 However, it follows from Article 91(1) and Article 94(1) of the Montego Bay Convention that the EU is obliged to respect that ships have the nationality of the State whose flag they are entitled to fly and that every State is to effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.
- 54 It follows that the concept of ‘fishing vessels of other Member States’ used in Article 11(1) of Regulation No 1380/2013, must be understood as referring exclusively to ships flying the flag of a Member State other than that exercising its sovereignty or jurisdiction over the area concerned and which are subject, on that basis, to the jurisdiction and effective control of the Member State whose flag they fly.
- 55 Insofar as the referring court itself finds, as is clear from the wording of its question, that the measures that it mentions affect those vessels, those measures cannot satisfy the requirements of Article 11(1) of Regulation No 1380/2013 and, therefore, cannot be adopted unilaterally, on that basis, by a Member State.
- 56 It is clear from all of the foregoing considerations that Article 11(1) of Regulation No 1380/2013 must be interpreted as meaning that it precludes a Member State from adopting, with respect to the waters under their sovereignty or jurisdiction, the measures which are necessary in order for it to meet its obligations under Article 6 of Directive 92/43 and which completely prohibit, in Natura 2000 sites, using commercial fishing gear which touches the sea bed and fixed nets, since such measures affect fishing vessels flying the flag of other Member States.

The second question

- 57 By its second question, the referring court asks whether Article 11 of Regulation No 1380/2013 must be interpreted as meaning that it precludes the adoption by a Member State of measures, such as those at issue in the main proceedings, with respect to the waters under their sovereignty or jurisdiction, which are necessary in order for it to meet its obligations arising from Directive 2004/35.
- 58 In that connection, it follows from Article 11(1) of Regulation No 1380/2013 that the authorisation laid down by that provision is limited to measures which are necessary to the Member States in order to comply with the obligations laid down by three specific provisions of EU environmental legislation, namely Article 13(4) of Directive 2008/56, Article 4 of Directive 2009/147 and Article 6 of Directive 92/43.
- 59 Therefore, Article 11(1) of Regulation No 1380/2013 does not mention Directive 2004/35, and its wording does not contain any indication from which it may be inferred that the list of provisions of EU law to which that provision refers is not exhaustive.
- 60 Furthermore, since Article 11(1) introduces an exception to the general rule, laid down in Article 6 of Regulation No 1380/2013, according to which the competence to adopt conservation measures is for the EU, its provisions must be interpreted strictly (see, to that effect, judgment of 11 June 2015, *Zh. And O*, C-554/13, EU:C:2015:377, paragraph 42).
- 61 Therefore, if the legislature had wanted to provide for authorisation for the adoption of conservation measures necessary for a Member State to meet its obligations deriving from Directive 2004/35, it would have expressly stated that.

- 62 It follows that Article 11(1) of Regulation No 1380/2013 must be interpreted as meaning that it precludes the adoption, by a Member State, of measures such as those at issue in the main proceedings, with respect to the waters under its sovereignty or its jurisdiction, which are necessary in order for it to meet its obligations deriving from Directive 2004/35.

The third question

- 63 Since the third question was put only in the event that the answer to the first and/or second question would be in the negative, there is no need to answer.

Costs

- 64 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

1. **Article 11 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 must be interpreted as meaning that it precludes a Member State from adopting, with respect to the waters under their sovereignty or jurisdiction, the measures which are necessary in order for it to meet its obligations under Article 6 of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora and which completely prohibit, in Natura 2000 areas, commercial fishing using gear which touches the sea bed and fixed nets, since such measures affect fishing vessels flying the flag of other Member States.**
2. **Article 11(1) of Regulation No 1380/2013 must be interpreted as meaning that it precludes the adoption, by a Member State, of measures such as those at issue in the main proceedings, with respect to the waters under its sovereignty or its jurisdiction, which are necessary in order for it to meet its obligations deriving from Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage.**

[Signatures]