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Advocate General's Opinion in Case C-330/22 | Friends of the Irish Environment (Total allowable catch above zero)

Overfishing: according to Advocate General Ćapeta, the Common Fisheries Policy Basic Regulation requires the Council to fix fishing limits at sustainable levels from the year 2020

Accordingly, the Advocate General proposes that the Court declare invalid parts of a Council regulation setting fishing limits for certain stocks below sustainable levels

Every year, the Council sets fishing quotas for European Union waters. [4] In that exercise, the Council must abide by scientific advice. **For the year 2020, the scientific advice** issued by the International Council for the Exploration of the Sea **showed that the quotas for cod, whiting and plaice, among others, should be set at zero.** Otherwise, the reproduction rate of those stocks would be impaired, with fishing becoming unsustainable in the long-term.

Despite that advice, in its regulation setting fishing quotas for the year 2020 (2020 Regulation),¹ **the Council decided to set fishing quotas for cod, whiting and plaice, among others, at levels above zero when those stocks are caught as inevitable 'by-catch' during fishing operations that actually 'target' other stocks.**

Ireland implemented those fishing quotas for its waters on the basis of that regulation. **Friends of the Irish Environment, an environmental NGO, brought proceedings in Ireland against those national measures, indirectly challenging the validity of the Council's 2020 Regulation.** Its principal claim is that setting quotas for the named stock above zero, despite the contrary scientific advice, runs counter the basic EU regulation on the common fisheries policy (CFP Basic Regulation).²

In today's Opinion, **Advocate General Tamara Ćapeta** explains that, generally, **the CFP Basic Regulation permits the Council to balance the competing ideals of sustainability with economic and social objectives** when it adopts annual fishing quotas.

However, the EU legislature designated the year 2020 as the point in time by which commercial fishing for all stocks in Union waters must be carried out at sustainable levels. For the achievement of that particular objective, the EU legislature left no discretion to the Council to take account of socio-economic concerns. Accordingly, by setting a firm deadline to fish sustainably in Union waters by 2020, **the EU legislature aimed to**

¹ Council Regulation (EU) 2020/123 of 27 January 2020 fixing for 2020 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 L 25, 30.1.2020, p. 1) ('the 2020 Regulation').

² 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 L 354, 28.12.2013, p. 22) (CFP Basic Regulation').

prevent the Council from putting short-term economic interests before the overarching long-term goal of fishing at sustainable levels.

Given that that decision to require sustainable fishing quotas applies to all types of catch, **the Council was not able to distinguish between 'target catch' and 'by-catch' when setting fishing limits for the year 2020** for the fish stocks at issue.

In her Opinion, the Advocate General also explains that **that legislative choice of requiring sustainable fishing quotas by 2020 was not changed by the Western Waters Regulation.**³

Accordingly, **by setting fishing levels above zero for the year 2020** for certain fish stocks despite those levels having been advised to be unsustainable, **the Council exceeded the discretion granted to it** by the EU legislature. [63] **The Court should therefore declare the Council's regulation partially invalid** in so far as it sets fishing limits for the stocks at issue in the waters around Ireland for the year 2020 above zero.

However, given that the Council's regulation expired at the end of the year 2020, **the Advocate General proposes to limit the temporal effects** of the declaration of invalidity. The contrary would risk having serious repercussions on a large number of legal relations entered into in good faith.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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

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³ Regulation (EU) 2019/472 of the European Parliament and of the Council of 19 March 2019 establishing a multiannual plan for stocks fished in the Western Waters and adjacent waters, and for fisheries exploiting those stocks, amending Regulations (EU) 2016/1139 and (EU) 2018/973, and repealing Council Regulations (EC) No 811/2004, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007 and (EC) No 1300/2008 (OJ 2019 L 83, p. 1) ('the Western Waters Regulation').