



# THE SUPREME COURT

**S:AP:IE:2019:000013**

**O'Donnell C.J.  
Irvine P.  
Baker J.**

**BETWEEN/**

**PAT FITZPATRICK**

**AND**

**MICHAEL FLANNERY**

**APPELLANTS**

**-AND-**

**MINISTER FOR AGRICULTURE, FOOD AND THE MARINE AND**

**THE SEA FISHERIES PROTECTION AUTHORITY**

**RESPONDENTS**

**Ruling of the Court delivered on the 13<sup>th</sup> of July 2022.**

1. For the reasons set out in its judgment delivered on the 31<sup>st</sup> day of July 2020, [2020] IESC 50, the Court determined to make a request for a preliminary ruling pursuant to Article 267 of the Treaty of the Functioning of the European Union which was accepted by the Court of Justice of the European Union and in which judgment was delivered on 10 February 2022, Case C-564/20.
2. As appears therefrom, the reference for preliminary ruling concerned the provisions of Article 33(2)(a) and Article 34 of Council Regulation (EC) No. 1224/2009 (as amended)

generally known as the Common Fisheries Regulations. The appeal from the decision of Ní Raifeartaigh J. [2018] IEHC 77 was the appeal of the appellants from a decision made by the Minister for Agriculture Food and the Marine (“the Minister”) and the Sea Fisheries Protection Authority (“SFPA”) to prohibit the fishing of *nephrops norvegicus* in the fishing area FU16 located on the Porcupine Bank off the west coast of Ireland. The dispute concerned the entitlement of the SFPA, as the Single Control Authority for Ireland, to recalculate the yield of a fishing trip based on the premise that time spent in a certain area was a better indicator of the location of catches than the data recorded in electronic fishing log books. This decision to recalculate the yield arose from the doubts of the SFPA as to the veracity and accuracy in the data concerning *nephrops* in FU16 in the electronic fishing logbook held by the masters of the relevant vessels.

3. The challenge of the appellants was to the new allocation of catches made by the Authority. The appellants claimed that the methodology used by the Authority, and the consequential closure order made by the Minister on 2 November 2017 in respect of the fishery, were unlawful.

4. The High Court judgment of Ní Raifeartaigh J. dismissed the application for judicial review and the question referred by this Court concerned the legal basis for the methodology, referred to as the “time spent” methodology, used for the calculation on which the closure order was based.

5. The question of EU law that arose concerned the interpretation of the terms “data” and “information” in Regulation 1224/2009, and in particular whether the SFPA is limited when making notifications to the Commission, pursuant to Article 33(2)(a) and Article 34 of that Regulation, to sending it the information contained in the fishing logs, or whether it may instead employ a different, reasonable and scientifically based method to analyse the data recorded with the aim of obtaining what it regarded as more accurate figures.

6. In its judgment delivered 31 July 2019, this Court summarised the appeal as follows (in para. 79):

“The appellants do not challenge the trial judge’s findings of fact, save for what they describe as certain mixed findings of fact and law as identified in their notice of appeal. They say that the trial judge correctly identified the essential issue in the case as relating to the methodology used by the Authority to report the exploitation of fishing outtake for *Nephrops* in FU16 which led to the closure of that area in the latter part of 2017. The appellants challenge the learned trial judge’s finding (at para. 58) that the methodology used by the second respondent and relied upon by the Minister was valid, and the specific finding that the proper interpretation of the term “data” and “information” in the provisions of Articles 14, 15 and 34 of the Control Regulation was not intended as a term of art which was to be restricted in the manner contended for but rather that the term should be defined in a manner guaranteeing its effectiveness having regard to the fundamental objectives of the CFP (para. 69 above). They have confirmed that they are not pursuing the issue concerning the alleged breach of fair procedures on appeal.”

7. This Court referred two questions for a preliminary ruling as follows:

(I) Is the Single Control Authority in a Member State, in notifying and certifying to the European Commission under Article 33(2)(a) and Article 34 of [Regulation No 1224/2009], limited to notifying the data as to catch in a particular fishing ground logged by fishers under Articles 14 and 15 of that Regulation when the Single Control Authority for good reason believes the logs data to be grossly unreliable or is entitled to employ reasonable, scientifically valid methods to treat and certify the logged data so as to

achieve more accurate outtake figures for notification to the European Commission; and

(II) Where the Authority is so satisfied, based on reasonable grounds, can it lawfully utilise other data flows such as fishing licences, fishing authorisations, vessel monitoring system data, landing declarations, sales notes and transport documents?

8. In its judgment, at para 46, the CJEU answered that the Authority was not limited and was competent to avail of a methodology such as the “time spent” methodology, to process data in order to ensure the accuracy of the catch figures that it notifies to the Commission.

9. The question now arises as to the correct order to be made in the appeal.

10. Witness submissions have been received from the first named respondent and the second named respondent, but none were proffered by the appellants.

11. The first named respondent submits that, in the light of the answers to the questions referred to the CJEU, that the appellants are not entitled to the reliefs claimed against the first named respondent, noting that insofar as an issue was raised in the proceedings regarding whether the applicants had *locus standi*, that this was determined in the written judgment of the Court on 31 July 2019.

12. The second named respondent seeks a similar relief and seeks also an order that its costs of the appeal be awarded against the appellants.

### **Decision**

13. As this Court identified, only two issues remained to be resolved in respect of which clarification from the CJEU was sought. The answer to these questions unequivocally points to the conclusion that the trial judge (at para. 58 of her judgment) was correct in determining that the methodology used by the respondents was valid and that the words “data” and

“information” in Articles 14, 15 and 34 of the relevant Regulations must be interpreted in a manner that insured their effectiveness in the light of the objectives of the Common Fisheries Policy.

**14.** In the circumstances the appeal must fail, and it follows that an order be made that the appeal be dismissed.

**15.** As to costs, the first named respondent has not sought his costs against the appellants, but in the light of the result of the appeal, whether under Order 99 of the Rules of the Superior Courts, or Section 169(1) of the of the Legal Services Act 2015, the Court sees no reason to depart from the normal position that costs follow the event.

**16.** Costs therefore should be awarded in favour of the second named respondents against the appellants jointly and severally to be adjudicated in default of agreement.