JUDGMENT OF THE COURT (Third Chamber)

9 October 2014 ([\*](http://curia.europa.eu/juris/document/document.jsf?text=&docid=158429&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1397509" \l "Footnote*))

(Reference for a preliminary ruling — External relations — Fisheries Partnership Agreement between the European Community and the Kingdom of Morocco — Exclusion of any possibility for Community vessels to carry out fishing activities in Moroccan fishing zones on the basis of a licence issued by the Moroccan authorities without the intervention of the competent European Union authorities)

In Case C‑565/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Hovrätten för Västra Sverige (Sweden), made by decision of 31 October 2013, received at the Court on 4 November 2013, in the criminal proceedings against

**Ove Ahlström,**

**Lennart Kjellberg,**

**Fiskeri Ganthi AB,**

**Fiskeri Nordic AB,**

THE COURT (Third Chamber),

composed of M. Ilešič, President of the Chamber, A. Ó Caoimh, C. Toader, E. Jarašiūnas (Rapporteur) and C.G. Fernlund, Judges,

Advocate General: N. Jääskinen,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

–        Mr Ahlström and Mr Kjellberg, by E. Bergenhem, advokat,

–        the European Commission, by A. Bouquet and C. Tufvesson, acting as Agents,

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

gives the following

**Judgment**

1        This request for a preliminary ruling concerns the interpretation of the Fisheries Partnership Agreement between the European Community and the Kingdom of Morocco, approved on behalf of the Community by Council Regulation (EC) No 764/2006 of 22 May 2006 (OJ 2006 L 141, p. 1) (‘the Fisheries Agreement’).

2        The request has been made in the context of criminal proceedings instituted against Mr Ahlström and Mr Kjellberg and against Fiskeri Ganthi AB (‘Fiskeri Ganthi’) and Fiskeri Nordic AB (‘Fiskeri Nordic’), who are accused of having carried out unauthorised fishing activities in Moroccan fishing zones between April 2007 and May 2008 inclusive.

**Legal context**

*The Fisheries Agreement*

3        In the fourth citation in the preamble to the Fisheries Agreement, the contracting parties stated that they were determined to cooperate, in their mutual interest, in promoting the introduction of responsible fisheries to ensure the long-term conservation and sustainable exploitation of marine living resources, in particular by implementing a control system covering fishing activities as a whole, in order to ensure the effectiveness of the measures for the development and conservation of fishery resources. In the seventh citation in that preamble, the contracting parties also expressed their desire to establish terms and conditions governing the fishing activities of Community vessels in Moroccan fishing zones and Community support for the introduction of responsible fishing in those fishing zones.

4        The purpose of the Fisheries Agreement is defined in Article 1 thereof in the following terms:

‘This Agreement establishes the principles, rules and procedures governing:

–        economic, financial, technical and scientific cooperation in the fisheries sector with a view to introducing responsible fishing in Moroccan fishing zones to guarantee the conservation and sustainable exploitation of fisheries resources and develop the Moroccan fisheries sector,

–        the conditions governing access by Community fishing vessels to Moroccan fishing zones,

–        the arrangements for policing fisheries in Moroccan waters with a view to ensuring that the above rules and conditions are complied with, the measures for the conservation and management of fish stocks are effective, and illegal, undeclared or unregulated fishing is prevented,

–        partnerships between companies aimed at developing, in the common interest, economic activities in the fisheries sector and related activities.’

5        Under Article 2(d) of the Fisheries Agreement, the term ‘Community vessel’ is defined, for the purposes of that agreement, as ‘a fishing vessel flying the flag of a Member State of the Community and registered in the Community’.

6        Article 6 of the Fisheries Agreement, entitled ‘Conditions governing fishing activities’, provides in its paragraphs 1 and 2:

‘1.      Community vessels may fish in Moroccan fishing zones only if they are in possession of a fishing licence issued under this Agreement. The exercise of fishing activities by Community vessels shall be subject to the holding of a licence issued by the competent Moroccan authorities at the request of the competent Community authorities.

2.      For fishing categories not covered by the Protocol [setting out the fishing opportunities and financial contribution provided for in the Fisheries Agreement (“the Protocol”)], licences may be granted to Community vessels by the Moroccan authorities. However, and within the spirit of partnership established by this Agreement, the granting of these licences remains dependent on a favourable opinion from the European Commission. The procedure for obtaining a fishing licence for a vessel, the taxes applicable and the method of payment to be used by shipowners shall be laid down by mutual agreement.’

7        Under the title ‘Financial contribution’, Article 7 of the Fisheries Agreement provides in its paragraph 1 as follows:

‘The Community shall grant Morocco a financial contribution in accordance with the terms and conditions laid down in the Protocol and Annexes [to the Fisheries Agreement]. This contribution shall be composed of two related elements, namely:

(a)      a financial contribution for access by Community vessels to Moroccan fishing zones, without prejudice to the fees due by Community vessels for the licence fee;

(b)      Community financial support for introducing a national fisheries policy based on responsible fishing and on the sustainable exploitation of fisheries resources in Moroccan waters.’

*EU law*

8        Council Regulation (EC) No 3317/94 of 22 December 1994 laying down general provisions concerning the authorisation of fishing in the waters of a third country under a fisheries agreement (OJ 1994 L 350, p. 13), in force at the time of the facts of the dispute in the main proceedings, stated, in the second recital in its preamble, that, ‘in order to ensure the effective and transparent management of fishing activities carried on by Community vessels under fishing agreements between the Community and third countries, it is necessary that each Member State should act to authorise those of its fishing vessels which have obtained a third-country fishing licence to carry on such activities and … fishing in third-country waters without such a licence must be prohibited in order that the Community’s commitments vis-à-vis third countries may be honoured’.

9        Article 1 of that regulation provided:

‘1.      This Regulation lays down general provisions concerning fishing by Community fishing vessels in the waters of a third country under a fisheries agreement between the Community and that country, where such activities are made subject to the requirement of a fishing licence from that third country.

2.      Only Community fishing vessels with a valid fisheries-agreement fishing permit may carry on their fishing activities in the waters of a third country under a fisheries agreement between the Community and that country.’

10      According to Article 2 of Regulation No 3317/94, the term ‘fisheries-agreement fishing permit’ was to be understood as a fishing authorisation granted to a Community fishing vessel by the flag Member State under a fisheries agreement between the Community and a third country, which, as a supplement to the fishing licence, enables that vessel to carry on fishing activities in the fishing zone of that third country.

11      Article 3 of Regulation No 3317/94 provided:

‘The flag Member State shall grant and manage the fisheries-agreement fishing permits for fishing vessels flying its flag in accordance with the conditions laid down in this Regulation.’

12      Under Article 5 of Regulation No 3317/94:

‘1.      The flag Member State shall send the Commission all applications for the issue to vessels flying its flag of third-country fishing licences to carry on fishing activities under the fishing possibilities granted to the Community pursuant to a fisheries agreement with a third country. It shall ensure that the applications comply with the terms of the agreement and with Community rules.

2.      The Commission shall examine the applications from each Member State in the light of the fishing possibilities allocated to it pursuant to Community provisions and any conditions laid down in the fisheries agreement applicable to Community vessels. The Commission shall, no later than 10 working days from the date on which the Member State’s application was received, or within the time-limits laid down by the fisheries agreement, send to the third country concerned the applications for the issue of a third-country fishing licence to Community vessels wishing to carry on their fishing activities in its waters. Should the examination of an application by the Commission reveal that it does not meet the conditions laid down in this paragraph, the Commission shall immediately inform the Member State concerned that it cannot transmit all or part of the said application to the third country concerned, giving its reasons.

3.      The Commission shall immediately inform the flag Member State of the fact that the third country concerned has granted a fishing licence to carry on fishing activities or of the third country’s decision not to grant such a licence. In the latter case, the Commission shall carry out the relevant checks in consultation with the flag Member State and the third country concerned.’

*Swedish law*

13      The referring court states that, according to Paragraphs 19 to 23 of the Law on fisheries (fiskelagen, SFS 1993, No 787), the Swedish Government or the authority which it designates, namely the Fiskeriverket (National Board of Fisheries) at the time of the facts of the main proceedings, is to adopt regulatory measures concerning fishing activities. Paragraph 24 of that law states that regulatory measures adopted on the basis of those Paragraphs 19 to 23 are to apply to sea-fishing activities carried out by Swedish vessels outside Sweden’s economic zone, in international waters and in other waters in which fishing activities are carried out on the basis of international agreements.

14      Pursuant to Paragraph 40 of the Law on fisheries, anyone who disregards, deliberately or recklessly, the regulatory measures adopted on the basis of Paragraph 19, the first subparagraph of Paragraph 20 or Paragraphs 21 to 23 of that law is liable to a fine or imprisonment for up to one year. Anyone who, intentionally or through serious negligence, breaches the European Union regulations relating to the Common Fisheries Policy, in particular by engaging in illegal fishing, is liable to the same penalty. Should an offence under that Paragraph 40 be deemed serious, the perpetrator faces a prison sentence of up to two years.

15      The regulatory provisions of the Fiskeriverket concerning access and control of fishing zones (Fiskeriverkets föreskrifter om resurstillträde och kontroll på fiskets område, FIFS 2004, No 25; the ‘Fiskeriverket regulatory provisions’), as they were in force at the time of the facts of the main proceedings, and the scope of which extends, according to Chapter 1, Paragraph 1, thereof, to Regulation No 3317/94, provide, in Chapter 3, Paragraph 1, thereof:

‘Vessels of a length equal to or longer than five metres may be used for professional sea-fishing activities on condition that they hold an authorisation issued by the Fiskeriverket for that purpose.’

16      Chapter 4 of the Fiskeriverket regulatory provisions, entitled ‘Supplementary fishing authorisation …’, is worded as follows:

‘*Fishing under a fisheries agreement between the [European Community] and a third State*

*Paragraph 1*

Applications for such a third-country fishing licence and applications for a “fisheries-agreement fishing permit” referred to in Regulation … No 3317/94 must be lodged with the Fiskeriverket.

A fishing permit shall be issued by the vessel’s being added to the basic list.

*Paragraph 2*

The conditions for the grant of a permit under Paragraph 1 shall be as follows:

1.      When entering the zone of a third country, an entry report shall be made via Stockholm Radio to the competent authorities of that country. The report must include the vessel’s external identification number, name and radio call sign. When leaving the zone, the vessel must make a departure report via the same radio station.

2.      The Fiskeriverket shall determine the number of vessels holding a specific permit which may be present at the same time in the zones of third countries.

3.      The regulatory provisions that third-country authorities may need to adopt must be complied with.

4.      The Fiskeriverket may set further conditions.

*Fishing activities carried out on the basis of specific agreements for fishing in the waters of third countries, on the quotas of another country and in international waters outside the fishing zone or economic zone*

*Paragraph 3*

Fishing activities of a Swedish fishing vessel holding a professional fishing permit in a third country’s waters in a situation other than that referred to in Paragraph 1, on the quotas of another country or in international waters outside the fishing zone or economic zone, shall be permitted only on the basis of a special permit issued by the Fiskeriverket.’

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

17      It is apparent from the decision making the reference that Mr Ahlström, who is the legal representative of Fiskeri Ganthi, owner of the vessel *Aldo*, and Mr Kjellberg, who is the legal representative of Fiskeri Nordic, owner of the vessel *Nordic IV*, are being prosecuted, under Paragraphs 24 and 40 of the Law on fisheries, and Chapter 3, Paragraph 1, and Chapter 4, Paragraph 3, of the Fiskeriverket regulatory provisions, for having, over the period between April 2007 and May 2008 inclusive, intentionally or through serious negligence, carried out professional fishing activities off the coast of Western Sahara with those vessels registered in the Swedish vessels register, although they did not possess and hold on board the necessary permits issued by the Fiskeriverket, namely the general professional fishing permits and the specific permits for fishing in the waters in question in accordance with the Fisheries Agreement.

18      In the alternative, the Kammaråklagaren (public prosecutor) has based those prosecutions on Paragraph 40 of the Law on fisheries, on Article 3 of Commission Regulation (EC) No 1281/2005 of 3 August 2005 on the management of fishing licences and the minimal information to be contained therein (OJ 2005 L 203, p. 3), and on Article 22(1)(a) of Council Regulation (EC) No 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), in conjunction with Article 6 of the Fisheries Agreement.

19      In support of the abovementioned prosecutions, the Kammaråklagaren contended, inter alia, that those vessels, the crew of which was made up of Swedish and Moroccan fishermen, carried out on an ongoing basis trawl fishing, generating a total income amounting to at least 14 million Swedish crowns (SEK) in 2007 and SEK 6 million in 2008. He classified the offences as serious by reason of the fact that they were committed in a systematic manner over a protracted period of time, that they involved a particularly important activity and that the catches were of a significant value.

20      Mr Ahlström and Mr Kjellberg deny the facts of which they are accused and contest their criminal liability. They claim that the fishing vessels *Aldo* and *Nordic IV* were leased, by a charter arrangement known as a ‘bareboat’ charter, to the Moroccan company Atlas Pelagic, which has its own fishing rights in Moroccan territorial waters as well as fishing rights of other Moroccan persons. As part of its activity, that company leased the two vessels and used them itself. According to Mr Ahlström and Mr Kjellberg, the authorisation of the Swedish authorities or of any other European authority was not required for carrying out that activity, since the Fiskeriverket regulatory provisions do not apply to leasing activities undertaken by Fiskeri Ganthi and Fiskeri Nordic. No breach of EU law was committed, they argue, since Article 6(1) of the Fisheries Agreement, in the same way as that agreement as a whole, does not apply to the facts of the main proceedings.

21      In the view of the Hovrätten för Västra Sverige (Court of Appeal for Western Sweden), before which an appeal has been brought against a judgment of the Göteborgs tingsrätt (District Court, Gothenburg), it is unclear whether EU law and the Fisheries Agreement exclude fishing activities by Community vessels in Moroccan waters without the authorisation of the European Union or of one of its Member States.

22      The referring court essentially takes the view that Article 6(2) of the Fisheries Agreement could be interpreted as meaning that there is such an exclusion. However, it notes that, according to certain authors, that provision would allow an interpretation to the effect that a Community vessel may carry out fishing under a private licence issued by a third country. It adds that, in the main proceedings, it is argued that the competent Moroccan authorities were of the view that the fishing activities of the two vessels in question were carried out in accordance with the Fishing Agreement and that they had issued the authorisations necessary for that purpose.

23      It was in those circumstances that the Hovrätten för Västra Sverige decided to stay the proceedings and to refer to the Court the following questions for a preliminary ruling:

‘(1)      Can Article 6(1) of the [Fisheries Agreement] be regarded as an exclusionary provision in the sense that it excludes the possibility for Community vessels to carry out fishing activities in Moroccan fishing zones on the basis of licences issued exclusively by the competent Moroccan authorities to Moroccan owners of fishing quotas?

(2)      Can Article 6(1) of the [Fisheries Agreement] be regarded as an exclusionary provision in the sense that it excludes the possibility of leasing Community vessels to Moroccan companies, by a “bareboat” charter arrangement (in accordance with the standard “Barecon 2001” BIMCO standard Bareboat Charter form), so that they can carry out fishing activities in Moroccan fishing zones on the basis of licences issued exclusively by the competent Moroccan authorities to Moroccan owners of fishing quotas?

(3)      Would the answer to Question 2 be different if the lessor also provides the Moroccan company with expertise in the form of administration and crewing as well as technical assistance?

(4)       Does the [Fisheries Agreement] provide that the Kingdom of Morocco is to develop and perform that agreement in tandem with its own national pelagic fishing industry to the south of the 29th parallel north? If that is the case, does that agreement grant the Kingdom of Morocco the right to lease fishing vessels flying the flag of a Member State of the [European Union] or to issue licences directly to those vessels for its own national fishing activities, without the [European Union’s] authorisation?’

**Consideration of the questions referred for a preliminary ruling**

24      By its questions, which should be examined together, the referring court is essentially asking whether the Fisheries Agreement, in particular Article 6 thereof, must be interpreted as excluding any possibility for Community vessels to carry out fishing activities in Moroccan fishing zones on the basis of a licence issued by the Moroccan authorities without the intervention of the competent European Union authorities.

25      The referring court seeks guidance, in particular, on the question whether the Fisheries Agreement excludes the possibility, for the purpose of carrying out fishing activities in those fishing zones, of leasing a Community vessel, by a ‘bareboat’ charter arrangement, to a Moroccan company which holds only a licence issued by the competent Moroccan authorities to Moroccan owners of fishing quotas. The referring court is also unsure whether the same applies in the case where the lessor also provides that company with expertise and technical assistance.

26      It should be noted that the parties to the Fisheries Agreement gave expression, in the preamble to that agreement, to their desire to establish terms and conditions governing the fishing activities of Community vessels in Moroccan fishing zones. The purpose of that agreement, as defined in Article 1 thereof, is to establish the principles, rules and procedures covering, inter alia, the conditions governing access by those vessels to the fishing zones referred to. Since the agreement does not provide for any exception to those conditions, all Community vessels — which, according to Article 2(d) of the Fisheries Agreement, are vessels flying the flag of a Member State of the Community and registered in the Community — that wish to carry out fishing activities in those zones are consequently subject to that agreement.

27      Thus, Article 6 of the Fisheries Agreement, concerning the conditions governing fishing activities, provides, in paragraph 1 thereof, that Community vessels may fish in Moroccan fishing zones only if they are in possession of a fishing licence issued under that Fisheries Agreement.

28      According to the actual wording of that provision, the exercise of fishing activities by Community vessels in Moroccan fishing zones is subject to the holding of a licence issued by the competent authorities of the Kingdom of Morocco at the request of the competent European Union authorities. Article 6(2) of the Fisheries Agreement, moreover, provides that licences may be granted to Community vessels by the Moroccan authorities for categories of fishing not covered by the protocol, but that, within the spirit of partnership established by the Fisheries Agreement, the granting of such licences ‘remains dependent on a favourable opinion from the European Commission’.

29      It follows that an intervention of the competent European Union authorities is always required in order for a Community vessel to be authorised to carry out fishing activities in Moroccan fishing zones and, consequently, that such a vessel cannot carry out such activities in those zones under a licence issued by the competent Moroccan authorities in the absence of such intervention.

30      In this regard, it should be noted that Regulation No 3317/94 established, in its Article 5, the procedure to be followed by the flag Member State and the Commission for obtaining fishing licences issued by third countries with a view to carrying on fishing activities under the possibilities for fishing granted to the Community pursuant to a fisheries agreement by tasking the Commission with conducting an examination of the applications for obtaining licences before transmitting them to the third country in question. That regulation, as is apparent from the second recital in its preamble and from Articles 1(2), 2 and 3, also made the possibility for Community vessels to carry out fishing activities in the waters of a third country under a fisheries agreement between the Community and that third country subject to an authorisation to fish granted by the flag Member State.

31      It must also be stated that granting Community vessels the possibility of accessing Moroccan fishing zones in order to carry out fishing activities there by dispensing with the intervention of the competent European Union authorities would run contrary to the objective of the Fisheries Agreement, which seeks, as is apparent from its preamble and from Articles 1 and 3, to introduce responsible fishing in those fishing zones in order to ensure the long-term conservation and sustainable exploitation of fisheries resources, in particular by implementing a control system covering fishing activities as a whole, in order to ensure the effectiveness of the measures for the conservation and management of those resources. Such a possibility might be liable to increase access by Community vessels to those fishing zones and to intensify their exploitation of those resources there, and that without the control of the competent European Union authorities.

32      Likewise, access by Community vessels to Moroccan fishing zones outside of the scope of the Fisheries Agreement would not be in keeping with the basis and purpose of the financial contribution granted by the European Union to the Kingdom of Morocco pursuant to Article 7 of that agreement, which consists, according to that article, of providing financial compensation for access by Community vessels to Moroccan fishing zones and of providing financial support for introducing a national fisheries policy based on responsible fishing and on the sustainable exploitation of fisheries resources in Moroccan waters.

33      Consequently, it cannot be accepted that Community vessels should be able to access Moroccan fishing zones in order to carry out fishing activities there through the conclusion, for that purpose, of a ‘bareboat’ charter arrangement with a Moroccan company holding a licence issued by the Moroccan authorities to Moroccan owners of fishing quotas or by using any other legal instrument in order to access those fishing zones for the purpose of carrying out such activities there outside the scope of the Fisheries Agreement and, consequently, without the intervention of the competent European Union authorities.

34      In view of all of the foregoing considerations, the answer to the questions submitted is that the Fisheries Agreement, in particular Article 6 thereof, must be interpreted as excluding any possibility for Community vessels to carry out fishing activities in Moroccan fishing zones on the basis of a licence issued by the Moroccan authorities without the intervention of the competent European Union authorities.

**Costs**

35      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:

**The Fisheries Partnership Agreement between the European Community and the Kingdom of Morocco, approved on behalf of the Community by Council Regulation (EC) No 764/2006 of 22 May 2006, in particular Article 6 of that agreement, must be interpreted as excluding any possibility for Community vessels to carry out fishing activities in Moroccan fishing zones on the basis of a licence issued by the Moroccan authorities without the intervention of the competent European Union authorities.**

[Signatures]