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Proposal for a

COUNCIL DECISION

On the approval, on behalf of the European Union, of the Declaration on the granting of fishing opportunities in EU waters to fishing vessels flying the flag of the Bolivarian Republic of Venezuela in the exclusive economic zone off the coast of French Guiana

EXPLANATORY MEMORANDUM

Fishing vessels flying the flag of Venezuela have been authorised to operate in the exclusive economic zone (EEZ) of the French overseas department of Guiana for several decades. Council Regulation (EC) No 1006/2008 of 29 September 2008 (Fishing Authorisation Regulation)¹, and in particular Article 21 thereof, presupposes the existence of an international fisheries agreement when granting fishing authorisations to third-country vessels within EU waters. The EU has not concluded such an international fisheries agreement with Venezuela.

However, in view of the economic and social importance of these fishing activities, and as the Council and the Commission considered their discontinuation inappropriate, a different practice has been followed, whereby access for Venezuelan fishing vessels operating in EU waters off the coast of the French department of Guiana has been provided in the form of a Council Declaration which, in accordance with the case-law of the International Court of Justice, has legal effects under international law.

This international instrument is not confined to the mere granting of fishing opportunities to foreign vessels but is rather designed to furnish an international basis for making access subject to a quid pro quo (e.g. the requirement to land a certain proportion of the catches into French Guiana) and for imposing an array of conservation and control measures upon the vessels in question (e.g. specific fishing gear, log-book and observer coverage requirements). In this mechanism, it is the TAC and Quota Regulation that provides in its Annex for a certain number of fishing authorisations to be granted to Venezuelan vessels operating in French Guiana waters.

By its judgement of 26 November 2014 on the joined cases C-103/12 and C-165/12 (European Parliament and the Commission v. Council), the Court of Justice annulled Council Decision 2012/19/EU of 16 December 2011 on the Declaration on the granting of fishing opportunities in EU waters to Venezuelan fishing vessels in the exclusive economic zone off the coast of French Guiana: the Court of Justice clearly confirmed that decisions relating to the conclusion of external fisheries agreements fall fully within the scope of Article 43(2) TFEU (in conjunction with the applicable procedure of Article 218 TFEU, i.e. Article 218(6)a(v) for the decisions on the conclusion) and rejected the position that such decisions could fall within the scope of Article 43(3) TFEU.

The Court of Justice maintained the effects of the Council Decision until the entry into force, within a reasonable period of time after the date of the judgement, of a new decision to be adopted on an appropriate legal basis. Hence, the present proposal.

The proposal does not have budgetary implications.

¹ OJ L 286, 29.10.2008, p. 33.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43 paragraph 2 in conjunction with Article 218, paragraph 6 a) v) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament,

Whereas:

- (1) Subject to their compliance with the applicable legally binding Union acts on the conservation and management of fishery resources, fishing vessels flying the flag of the Bolivarian Republic of Venezuela (hereinafter “Venezuela”) have operated in EU waters in the exclusive economic zone off the coast of French Guiana for many decades.
- (2) The processing industry based in the French Guiana depends on the landings from those fishing vessels and therefore the continuity of those operations should be ensured.
- (3) On 16 December 2011 the Council adopted Council Decision 2012/19/EU on the Declaration on the granting of fishing opportunities in EU waters to Venezuelan fishing vessels in the exclusive economic zone off the coast of French Guiana² which was annulled by the judgement of the Court of Justice of 26 November 2014³ which its effects maintained for a reasonable time. In order to ensure the continuity of the access following the judgement of the Court it is necessary that the Council re-adopts a Decision on the declaration addressed to Venezuela confirming its readiness to issue fishing authorisations to a limited number of fishing vessels flying the flag of Venezuela on the condition that they comply with the applicable legally binding Union acts, and, as the Declaration had already been notified, there is no need to notify again,

HAS ADOPTED THIS DECISION:

Article 1

The Declaration addressed to the Bolivarian Republic of Venezuela by the European Union on the granting of fishing opportunities in EU waters to fishing vessels flying the flag of the Bolivarian Republic of Venezuela in the exclusive economic zone off the coast of the French Guiana (hereinafter “the Declaration”) is hereby approved on behalf of the European Union.

The text of the Declaration is attached to this Decision.

² OJ L 6, 10.1.2012, p. 8.

³ Joined cases C-103 and 165/12, European Parliament and Commission v. Council.

Article 2

This Decision shall enter into force on the third day following that of its publication in the Official Journal of the European Union.

Done at Brussels,

For the Council
The President