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EUROPEAN COMMISSION

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2010/0392 (NLE)

Proposal for a

COUNCIL DECISION

on access by fishing vessels flying the flag of the Bolivarian Republic of Venezuela to the exclusive economic zone off the coast of the French department of Guyana

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

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

In view of the economic and social importance of these fishing activities, the Council and the Commission nonetheless considered a sudden discontinuation inappropriate. Council Regulation (EU) No 53/2010 of 14 January 2010 (TAC and Quota Regulation 2010)² therefore still provides in Annex VIII for a certain number of fishing authorisations to be granted to Venezuelan vessels operating in French Guyana waters. At the same time, the Council and Commission stated that the situation concerning landings of Venezuelan vessels in the ports of French Guyana had to be regularised before 31 December 2010 and that licences to Venezuelan vessels would otherwise not be renewed beyond that date.³

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

A call for expressions of interest in exploiting this fishery, which the French authorities directed at all EU member states at the end of June 2010, has not met with any response from EU vessel operators. Venezuelan operators, by contrast, have expressed their interest in continuing their activities in French Guyana. The landing and processing of catches from these vessels at ports in French Guyana contributes significantly to the livelihood of the local population and to the supply of fisheries products to the local industry.

As for environmental impacts, the resources exploited by these vessels are not endangered by over-exploitation at present according to the available scientific reports. Nevertheless, it appears necessary to establish a mechanism so the Council can fix annually the fishing opportunities that can be made available to Venezuelan vessels with a view to avoid overexploitation.

3. LEGAL ELEMENTS OF THE PROPOSAL

The authorisation of the Venezuelan vessels has hitherto not implied any obligations on the Venezuelan side towards the European Union, apart from those applicable to the fishing operators on the due respect of the fishing rules applicable in EU waters and an obligation to land part of the catches in the ports of Guyana. Under these circumstances, and given the

¹ OJ L 286, 29.10.2008, p. 33.

² OJ L 21, 26.01.2010, p. 1.

³ Council Doc. 5032/10, 12.01.2010, at no. 23.

limited scope of the fishery in question, a fully-fledged fisheries agreement between Venezuela and the EU appears as disproportionate.

Instead, the proposed unilateral declaration by the Council of the European Union, with the consent of the European Parliament, serves a purpose similar to that of a fisheries agreement by consenting to the granting of fishing authorisations to Venezuelan vessels. It may be noted that the International Court of Justice, in the Nuclear Tests Case⁴, has stated that a unilateral statement of a subject of international law may, in certain circumstances, create international rights and obligations for the parties concerned and can thus be associated to international treaties.

4. BUDGETARY IMPLICATION

The proposal does not have budgetary implications.

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Nuclear Tests (New Zealand v. France), Judgment, I.C.J. Reports 1974, p. 457, at para. 46.

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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 in conjunction with Article 218, paragraph 6 a) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament,

Whereas:

- (1) Subject to the system of conservation and management of fishery resources established by the European Union, fishing vessels flying the flag of the Bolivarian Republic of Venezuela have operated in the exclusive economic zone off the coast of the French department of Guyana for many decades.
- (2) The processing industry based in the French department of Guyana depends on the landings from those vessels.
- (3) The continuity of these operations should be ensured by providing an international access title for the third-country vessels in question with the proviso that they shall operate in compliance with restrictions under applicable Union law designed to conserve fish stocks in the zone in question and to secure the supplies of the affected processing industry.

HAS ADOPTED THIS DECISION:

Article 1

The Statement on the access of fishing vessels flying the flag of the Bolivarian Republic of Venezuela to the exclusive economic zone off the coast of the French department of Guyana is hereby approved on behalf of the European Union.

The text of the Statement is attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to notify this Statement to the Bolivarian Republic of Venezuela.

Done at [...],

*For the Council
The President*

ANNEX

Statement of consent

on access by fishing vessels flying the flag of the Bolivarian Republic of Venezuela to the exclusive economic zone off the coast of the French department of Guyana

1. Subject to the conditions set out below, a limited number of fishing vessels flying the flag of the Bolivarian Republic of Venezuela shall be authorised to fish in the part of the exclusive economic zone off the coast of the French department of Guyana that lies more than 12 nautical miles from the base lines.
2. Authorised fishing vessels flying the flag of the Bolivarian Republic of Venezuela shall, when fishing in the area referred to in paragraph 1, comply with relevant European Union law pertaining to the conservation and management of fish stocks and with all European Union rules and regulations governing fishing activities in that area.
3. More particularly, authorised fishing vessels flying the flag of the Bolivarian Republic of Venezuela shall comply with any relevant European Union rules or regulations specifying *inter alia* the fish stocks that may be targeted, the maximum number of authorised fishing vessels and the proportion of catches to be landed into ports in French Guyana.
4. Without prejudice to the withdrawal of authorisations of individual fishing vessels flying the flag of the Bolivarian Republic of Venezuela on grounds of failures to comply with relevant rules and regulations, this specific access regime may be terminated at any time by way of unilateral statement on behalf of the European Union.