

Confirmation by the Republic of Austria of the declarations made by the European Community upon ratification of the Agreement for the implementing of the provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the conservation and management of straddling fish stock

The Republic of Austria hereby confirms the declarations made by the European Community upon ratification of the Agreement for the implementing of the provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the conservation and management of straddling fish stock, which read as follows:

A.

Declaration concerning the competence of the European Community with regard to matters governed by the Agreement on the implementation of the provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the conservation and management of straddling fish stocks and highly migratory fish stocks

(Declaration made pursuant to Article 47 of the Agreement)

1. Article 47(1) of the Agreement on the implementation of the provisions of the United Nations Convention on the Law of the Sea relating to the conservation and management of straddling fish stocks and highly migratory fish stocks provides that in cases where an international organisation referred to in Annex IX, Article 1, of the Convention does not have competence over all the matters governed by the Agreement, Annex IX of the Convention (with the exception of Article 2, first sentence, and Article 3(1)) shall apply mutatis mutandis to participation by such international organisation in the Agreement.

2. The current members of the Community are the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Finland, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland.

3. The Agreement on the implementation of the provisions of the United Nations Convention on the Law of the Sea relating to the conservation and management of straddling fish stocks and highly migratory fish stocks shall apply, with regard to the competences transferred to the European Community, to the territories in which the Treaty establishing the European Community is applied and under the conditions laid down in that Treaty, in particular Article 227 thereof.

4. This declaration is not applicable in the case of the territories of the Member States in which the said Treaty does not apply and is without prejudice to such acts or positions as may be adopted under the Agreement by the Member States concerned on behalf of and in the interests of those territories.

I. MATTERS FOR WHICH THE COMMUNITY HAS EXCLUSIVE COMPETENCE

5. The Community points out that its Member States have transferred competence to it with regard to the conservation and management of living marine resources. Hence, in this field, it is for the Community to adopt the relevant rules and regulations (which the Member States enforce) and within its competence to enter into external undertakings with third States or competent organisations. This competence applies in regard of waters under national fisheries jurisdiction and to the high seas.

6. The Community enjoys the regulatory competence granted under international law to the flag State of a vessel to determine the conservation and management measures for marine fisheries resources applicable to vessels flying the flag of Member States and to ensure that Member States adopt provisions allowing for the implementation of the said measures.

7. Nevertheless, measures applicable in respect of masters and other officers of fishing vessels, for example refusal, withdrawal or suspension of authorisations to serve as such, are within the competence of the Member States in accordance with their national legislation.

Measures relating to the exercise of jurisdiction by the flag State over its vessels on the high seas, in particular provisions such as those related to the taking and relinquishing of control of fishing vessels by States other than the flag State, international cooperation in respect of enforcement and the recovery of the control of their vessels, are within the competence of the Member States in compliance with Community law.

II. MATTERS FOR WHICH BOTH THE COMMUNITY AND ITS MEMBER STATES HAVE COMPETENCE

8. The Community shares competence with its Member States on the following matters governed by this Agreement: requirements of developing States, scientific research, port-State measures and measures adopted in respect of non-members of regional fisheries organisations and non-Parties to the Agreement.

The following provisions of the Agreement apply both to the Community and to its Member States:

- general provisions: (Articles 1, 4 and 34 to 50),
- dispute settlement: (Part VIII).

B.

Interpretative declarations

1. The European Community and its Member States understand that the terms 'geographical particularities', 'specific characteristics of the sub-region or region', 'socioeconomic geographical and environmental factors', 'natural characteristics of that sea' or any other similar terms employed in reference to a geographical region do not prejudice the rights and duties of States under international law.

2. The European Community and its Member States understand that no provision of this Agreement may be interpreted in such a way as to conflict with the principle of freedom of the high seas, recognised by international law.

3. The European Community and its Member States understand that the term 'States whose nationals fish on the high seas' shall not provide any new grounds for jurisdiction based on the nationality of persons involved in fishing on the high seas rather than on the principle of flag State jurisdiction.

4. The Agreement does not grant any State the right to maintain or apply unilateral measures during the transitional period as referred to in Article 21(3). Thereafter, if no agreement has been reached, States shall act only in accordance with the provisions provided for in Articles 21 and 22 of the Agreement.

5. Regarding the application of Article 21, the European Community and its Member States understand that, when a flag State declares that it intends to exercise its authority, in accordance with the provisions in Article 19, over a fishing vessel flying its flag, the authorities of the inspecting State shall not purport to exercise any further authority under the provisions of Article 21 over such a vessel. Any dispute related to this issue shall be settled in accordance with the procedures provided for in Part VIII of the Agreement. No State may invoke this type of dispute to remain in control of a vessel which does not fly its flag. In addition, the European Community and its Member States consider that the word 'unlawful' in Article 21(18) of the Agreement should be interpreted in the light of the whole Agreement, and in particular, Articles 4 and 35 thereof.

6. The European Community and its Member States reiterate that all States shall refrain in their relations from the threat or use of force in accordance with general principles of international law, the United Nations Charter and the United Nations Convention on the Law of the Sea.

In addition, the European Community and its Member States underline that the use of force as referred to in Article 22 constitutes an exceptional measure which must be based on the strictest compliance with the principle of proportionality and that any abuse thereof shall imply the international liability of the inspecting State. Any case of non-compliance shall be resolved by peaceful means and in accordance with the applicable dispute-settlement procedures.

Furthermore, the European Community and its Member States consider that the relevant terms and conditions for boarding and inspection should be further elaborated in accordance with the relevant principles of international law in the framework of the appropriate regional and subregional fisheries management organisations and arrangements.

7. The European Community and its Member States understand that in the application of the provisions of Article 21(6), (7) and (8), the flag State may rely on the requirements of its legal system under which the prosecuting authorities enjoy a discretion to decide whether or not to prosecute in the light of all the facts of a case. Decisions of the flag State based on such requirements shall not be interpreted as failure to respond or to take action.