



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 12.09.2001
COM(2001) 467 final

Proposal for a

COUNCIL DECISION

on the conclusion of the Agreement in the form of an exchange of letters concerning the provisional application of the Protocol setting out the fishing opportunities and financial contribution provided for in the Agreement between the European Economic Community and the Republic of Cape Verde on fishing off the coast of Cape Verde for the period from 1 July 2001 to 30 June 2004

(presented by the Commission)

EXPLANATORY MEMORANDUM

The Protocol to the Fisheries Agreement between the European Community and the Republic of Cape Verde expired on 5 September 2000. A new Protocol was initialled by both parties on 7 June 2001 fixing the technical and financial conditions governing the fishing activities of Community vessels in Cape Verdean waters during the period 1 July 2001 to 30 June 2004.

The Commission proposes, on this basis, that the Council adopt by Decision the draft Agreement in the form of an exchange of letters concerning the provisional application of the new Protocol pending its definitive entry into force.

A proposal for a Regulation on the conclusion of the new Protocol is the subject of a separate procedure.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 300(2) thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) The Community and the Republic of Cape Verde have held negotiations to determine the amendments or additions to be made to the Agreement on fishing off the coast of Cape Verde.
- (2) As a result of those negotiations, a new Protocol was initialled on 7 June 2001.
- (3) Under this Protocol, Community fishermen enjoy fishing opportunities in the waters falling within the sovereignty or jurisdiction of the Republic of Cape Verde for the period from 1 July 2001 to 30 June 2004.
- (4) It is essential that the said Protocol be approved as quickly as possible. For this reason, the two parties initialled an Agreement in the form of an exchange of letters providing for the provisional application of the initialled Protocol from 1 July 2001. That Agreement should be approved, pending a final decision to be taken on the basis of Article 37 of the Treaty.
- (5) The method for allocating the fishing opportunities among the Member States should be defined,

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement in the form of an exchange of letters concerning the provisional application of the Protocol setting out the fishing opportunities and financial contribution provided for in the Agreement between the European Economic Community and the Republic of Cape Verde on fishing off the coast of Cape Verde for the period from 1 July 2001 to 30 June 2004 is hereby approved on behalf of the Community.

The texts of the Agreement in the form of an exchange of letters and of the Protocol are attached to this Decision.

Article 2

The Agreement referred to in Article 1 shall be provisionally applicable by the European Community from 1 July 2001.

Article 3

The fishing opportunities set out in the Protocol shall be allocated among the Member States as follows:

| | | |
|-------------------------------|-----------|--------------------------------------------------------------------------------------------------|
| - tuna seiners: | France: | 19 vessels |
| | Spain: | 18 vessels |
| - pole-and-line tuna vessels: | France: | 6 vessels |
| | Spain: | 10 vessels |
| | Portugal: | 2 vessels |
| - surface longliners: | Spain: | 52 vessels |
| | Portugal: | 10 vessels |
| - bottom longliners: | Portugal: | 630 GRT per month, averaged over the year, with no more than four vessels fishing simultaneously |

If licence applications from these Member States do not cover all the fishing opportunities fixed by the Protocol, the Commission may consider licence applications from any other Member State.

Article 4

The President of the Council is hereby authorised to designate the persons empowered to sign the Agreement in the form of an exchange of letters in order to bind the Community.

Done at Brussels,

*For the Council
The President*

PROTOCOL

setting out the fishing opportunities and financial contribution provided for in the Agreement between the European Economic Community and the Republic of Cape Verde on fishing off the coast of Cape Verde for the period from 1 July 2001 to 30 June 2004

Article 1

For a period of three years from 1 July 2001, the fishing opportunities granted under Article 2 of the Agreement shall be as follows:

- a) highly migratory species:
 - freezer tuna seiners: 37 vessels,
 - pole-and-line tuna vessels: 18 vessels,
 - surface longliners: 62 vessels,
- b) other species:
 - bottom longliners: 630 GRT per month, averaged over the year, with no more than four vessels fishing simultaneously

Article 2

1. For the period referred to in Article 1, the financial contribution referred to in Article 7 of the Agreement shall be EUR 680 000 per year, including EUR 400 000 in financial compensation and EUR 280 000 for the measures referred to in Article 3 of this Protocol.

For tuna fishing, this financial contribution shall cover a catch of 7 000 tonnes a year in Cape Verdean waters. If the annual amount of tuna caught by Community vessels in Cape Verdean waters exceeds this quantity, the above-mentioned compensation shall be increased proportionally.

2. The financial compensation shall be payable no later than 31 January 2002 for the first year and no later than 30 June 2002 and 30 June 2003 for the subsequent years. The use to which this compensation is put shall be the sole responsibility of the Cape Verdean authorities.
3. The financial compensation shall be paid into an account opened in the name of the Public Treasury with a financial institution or any other body designated by the Cape Verdean authorities.

Article 3

The measures set out below shall be financed from the financial contribution provided for in Article 2(1), up to an amount of EUR 280 000 per year, broken down as follows:

1. EUR 50 000 for scientific or technical programmes to promote better understanding of fisheries resources in the exclusive economic zone of Cape Verde;
2. EUR 20 000 for awards for study and practical training in the various scientific, technical and economic disciplines relating to fisheries;
3. EUR 30 000 towards covering the costs of participation in training courses or international meetings concerning fisheries;
4. EUR 180 000 towards financing programmes to develop quality control for fishery products and fisheries monitoring and surveillance.

The measures and the annual amounts allocated thereto shall be decided on by the Ministry responsible for fisheries in Cape Verde, which shall inform the Commission of the European Communities thereof.

The annual amounts shall be made available to the bodies concerned no later than 31 January 2002 for the first year and no later than 30 June 2002 and 30 June 2003 for the following years and paid into the bank accounts specified by the Ministry responsible for fisheries in Cape Verde according to the schedule for their use.

The Ministry responsible for fisheries shall transmit an annual report on the implementation of these measures and the results achieved to the Delegation of the Commission of the European Communities in Cape Verde, not later than three months after the anniversary date of the Protocol. The Commission of the European Communities may request additional information on these results from the Ministry responsible for fisheries and may, where appropriate, review the payments concerned in the light of the actual implementation of the various measures, after consulting the Cape Verdean authorities in the Joint Committee provided for in Article 9 of the Agreement.

Article 4

Should the Community not make the payments referred to in Articles 2 and 3, application of this Protocol may be suspended.

Article 5

1. Should a fundamental change in circumstances prevent fishing in Cape Verde's exclusive economic zone, the European Community may suspend payment of the financial contribution following prior consultation, if possible, between the two Parties.
2. Payment of the financial contribution shall recommence once the situation returns to normal and following consultation between the two Parties confirming that the situation is likely to allow a return to normal fishing activities.

Article 6

The Annex to the Agreement between the European Economic Community and the Republic of Cape Verde on fishing off the coast of Cape Verde is hereby repealed and replaced by the Annex to this Protocol.

Article 7

This Protocol with its Annex shall enter into force on the date on which the Parties notify each other of the completion of the procedures necessary for that purpose.

It shall apply from 1 July 2001.

ANNEX

Conditions for fishing by Community vessels in Cape Verde's fishing zone

1. Application for and issue of licences

- 1.1. The Community authorities shall present to the Ministry responsible for fisheries in Cape Verde, via the Delegation of the Commission of the European Communities in Cape Verde, an application for each vessel wishing to fish under the Agreement, at least 15 days before the date of commencement of the period of validity requested.

The applications shall be made on the forms provided for that purpose by the Ministry responsible for fisheries in Cape Verde, a specimen of which is attached hereto (Appendix 1).

- 1.2. Licence applications shall be accompanied by proof of payment of the fee for the period of the licence's validity. Payment shall be made into an account opened with a financial institution or any other body designated by the Cape Verdean authorities.

The fees shall include all national and local charges except for port taxes and service charges.

- 1.3. Licences for all vessels shall be issued by the Ministry responsible for fisheries in Cape Verde within 15 days following receipt of proof of payment as laid down in point 2, to the shipowners or their representatives via the Delegation of the Commission of the European Communities in Cape Verde.

- 1.4. Licences shall be issued for specific vessels and shall not be transferable. However, at the request of the Commission of the European Communities, a vessel's licence may, and, in cases of *force majeure*, shall be replaced by a new licence for another vessel of a similar type. The owner of the first vessel shall return the cancelled licence to the Ministry responsible for fisheries in Cape Verde via the Delegation of the Commission of the European Communities in Cape Verde.

The new licence shall indicate:

- the date of issue,
- the fact that it replaces the licence of the previous vessel for the remaining period of validity.

In this case, no fee as laid down in Article 4(2) of the Agreement shall be due for the remaining period of validity.

- 1.5. Licences must be kept on board at all times. However, on receipt of notification of payment of the advance sent to the Cape Verdean authorities by the Commission of the European Communities, the vessel shall be entered on a list of vessels authorised to fish, which shall be sent to the Cape Verdean authorities responsible for fisheries inspection. A copy of the said licence may be obtained by fax pending arrival of the licence itself; that copy shall be kept on board.

1.6. Before the Protocol enters into force, the Ministry responsible for fisheries in Cape Verde shall give notice of the arrangements for paying the fee, including information on bank accounts and the currencies to be used.

2. Provisions applicable to licences for tuna vessels and surface longliners

2.1. Licences shall be valid for a period of one year. They shall be renewable.

2.2. The fee shall be EUR 25 per tonne caught within Cape Verde's fishing zone.

2.3. Licences shall be issued after payment to the Ministry responsible for fisheries in Cape Verde of a lump sum of EUR 2 850 per year for each tuna seiner (of which EUR 100 will go towards financing the observer programme), EUR 400 per year for each pole-and-line tuna vessel and EUR 2 100 per year for each surface longliner (of which EUR 100 will go towards financing the observer programme), equivalent to the fees payable for a catch of:

- 110 tonnes of tuna per year in the case of tuna seiners,
- 16 tonnes of tuna per year in the case of pole-and-line tuna vessels,
- 80 tonnes of fish per year in the case of surface longliners.

2.4. The captain must keep a fishing log as shown in Appendix 2 for each fishing period spent in Cape Verde's fishing zone.

Within a month of the end of each quarter, logs shall be sent via the Delegation of the Commission of the European Communities for processing to the Institut de Recherche pour le Développement (IRD), the Instituto Español de Oceanografía (IEO), the Instituto Português de Investigaç o Mar tima (IPIMAR) and the Instituto Nacional de Desenvolvimento das Pescas (INDP) of Cape Verde. In the case of the INDP, these data may also be sent by electronic mail or fax (fax No +238-32 13 70 or +238-32 16 12).

The Member States shall forward the catch data validated by the scientific institutes to the Commission of the European Communities in accordance with the Community rules. On the basis of this information, the Commission shall draw up a statement of fees due for the fishing year and send it to the Ministry responsible for fisheries in Cape Verde.

Shipowners shall be notified by the Commission of the European Communities of this statement by the end of April at the latest and shall have 30 days in which to meet their financial obligations. If the amount of the final statement is less than the amount of the lump-sum advance payment, the balance shall not be reimbursable to the shipowner.

3. Provisions applicable to licences for other vessels

In the case of bottom longliners, licences shall be valid for three, six or twelve months. The annual fee shall be fixed according to GRT, at the rate of EUR 168 per GRT, in proportion to the duration of the licence.

4. Statement of catch

- 4.1. For tuna seiners, pole-and-line tuna vessels and surface longliners, a fishing log shall be kept in accordance with point 2.4.
- 4.2. Bottom longliners shall be required to notify the Ministry responsible for fisheries in Cape Verde of their catches using the standard form set out in Appendix 3 via the Delegation of the Commission of the European Communities in Cape Verde. These catch statements shall be monthly and must be communicated at least once every three months.
- 4.3. Forms must be completed legibly and signed by the captains of all vessels with a licence, even where they have made no catches in Cape Verde's waters.
- 4.4. Should these provisions not be adhered to, the Cape Verdean authorities reserve the right to apply, inter alia, one or both of the following penalties:
 - suspension of the licence of the offending vessel,
 - imposition of a fine.

In such cases, the Delegation of the Commission of the European Communities in Cape Verde shall be informed without delay.

5. Landings

Community tuna vessels shall, wherever possible, contribute towards supplying the Cape Verde tuna canning factories in accordance with their fishing effort in the zone on the basis of current prices on the international markets. Payment shall be made in convertible currency.

The Community fleet of surface longliners fishing in Cape Verde's exclusive economic zone shall land for transshipment at least 5% of their catches taken in that zone in a Cape Verdean port.

6. Signing on seamen

- 6.1. Owners of tuna vessels and surface longliners shall employ Cape Verdean nationals, subject to the following conditions and limits:
 - for the fleet of tuna seiners, at least six Cape Verdean seamen shall be signed on during the tuna-fishing season in Cape Verde's fishing zone,
 - for the fleet of pole-and-line tuna vessels, at least three Cape Verdean seamen shall be signed on during the tuna-fishing season in Cape Verde's fishing zone. No vessel shall be required to sign on more than one seaman,
 - for the fleet of surface longliners, at least four Cape Verdean seamen shall be signed on during the fishing season in Cape Verde's fishing zone. No vessel shall be required to sign on more than one seaman.

6.2. The wages of these seamen shall be fixed before the licences are issued, by mutual agreement between the shipowners or their representatives and the Cape Verdean authorities; the wages shall be paid by the shipowners and must include the seamen's social security contributions (including life, accident and health insurance). Shipowners or their representatives shall send a copy of the labour contract to the Ministry responsible for fisheries in Cape Verde.

6.3. Shipowners shall be required to pay a lump sum equivalent to the wages of any seamen not signed on.

This sum shall be used for training seamen in Cape Verde and shall be paid into the account specified by the Cape Verdean authorities.

6.4. Shipowners or their representatives shall notify the Ministry responsible for fisheries in Cape Verde of the list of Cape Verdean seamen signed on by Community vessels during the current fishing season, with details of their registration as crew members and the vessels concerned.

7. Observers on board

Before issuing licences, the Ministry responsible for fisheries in Cape Verde shall notify shipowners or their representatives of the vessels on board which they must take an observer.

The time spent on board by observers shall be fixed by the Cape Verdean authorities but, as a rule, it shall not exceed the time required to carry out their duties. While on board, observers shall:

- observe the fishing activities of the vessels,
- perform biological sampling in the context of scientific programmes,
- note the fishing gear used,
- verify the catch data for Cape Verde's zone recorded in the logbook.

While on board, observers:

- shall take all appropriate steps to ensure that the conditions under which they are taken on board and their presence on board do not interrupt or hamper fishing activities,
- must respect the material and equipment on board and the confidentiality of all documents belonging to the said vessel,
- shall draft an activity report, which shall be transmitted to the competent Cape Verdean authorities.

The terms of observers' embarkation shall be agreed between shipowners or their representatives and the Cape Verdean authorities.

Observers shall be taken on board at a port chosen by the shipowner at the beginning of the first voyage in Cape Verdean waters after notification of the list of designated ships.

Within two weeks and giving ten days' notice, the shipowners concerned shall make known at which Cape Verdean ports and on what dates they intend to take observers on board.

Where observers are taken on board in a foreign port, their travel costs shall be borne by the shipowner. Should a vessel with an observer on board leave the Cape Verde fishing zone, all measures must be taken to ensure the observer's return to Cape Verde as soon as possible at the shipowner's expense.

If the observer is not present at the time and place agreed and during the twelve hours following the time agreed, shipowners shall be automatically absolved of their obligation to take the observer on board.

The salary and social contributions of the observer shall be borne by the competent Cape Verdean authorities.

8. Fishing zones

Community vessels may carry out fishing activities in the following zones:

- beyond 12 nautical miles from the base lines for tuna seiners and surface longliners,
- beyond six nautical miles from the base lines for pole-and-line tuna vessels,
- beyond six nautical miles from the base lines for bottom longliners,
- from the base lines for fishing for live bait.

9. Authorised mesh size

The minimum mesh size authorised for the trawl body (mesh fully extended) shall be:

- 16 mm for live bait fishing.

In the case of tuna, the international standards recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) shall apply.

10. Entering and leaving the zone, radio communications

Within three hours of entering or leaving the zone and every week during their fishing activities in Cape Verde's waters, vessels shall be required to communicate their position and the volume of the catch on board direct to the Cape Verdean authorities preferably by fax or, failing that, by radio in the case of vessels not equipped with fax.

The Cape Verdean authorities shall notify the fax number and radio frequency on issue of the licence.

A copy of the fax messages or of the record of radio communications shall be kept by the Cape Verdean authorities and the shipowners until both parties have approved the final statement of fees referred to in point 2.

Any vessel caught fishing without having notified the Cape Verdean authorities of its presence shall be considered an unlicensed vessel.

11. Port facilities and use of supplies and services

Where prices and quality are equal, Community vessels shall give preference to the supplies and services they require made available in Cape Verde.

12. Boarding and application of penalties

1. The Delegation of the Commission of the European Communities in Cape Verde shall be notified within 48 hours of any boarding of or application of penalties to a fishing vessel flying the flag of a Member State of the Community and operating under this Agreement in Cape Verde's fishing zone. A brief report of the circumstances and reasons leading to the boarding or application of penalties shall be submitted within 72 hours.
2. A meeting shall be held within 24 hours of receipt of the above-mentioned information between the Delegation of the Commission of the European Communities in Cape Verde, the Ministry responsible for fisheries in Cape Verde and the inspection authorities, possibly attended by a representative of the Member State concerned, at which the parties shall exchange any relevant documentation and information helping to clarify the circumstances of the established facts. Shipowners or their representatives shall be informed of the outcome of the meeting and of any measures resulting from the boarding.

Any vessel boarded following a fisheries infringement shall be released upon payment of a security, to be fixed in the light of the costs occasioned by the boarding and the amount of fines and compensation to which those responsible for the infringement are liable.

Appendix 1

MINISTRY FOR FISHERIES

Application for a licence for foreign industrial fishing vessels:

1. Name of shipowner:
2. Address of shipowner:
3. Name of shipowner's representative or local agent:
4. Address of shipowner's representative or local agent:
5. Captain:
6. Name of vessel:
7. Registration No:
8. Date and place of construction:
9. Flag country:
10. Port of registration:
11. Port of fitting out:
12. Overall length:
13. Width of vessel:
14. Gross registered tonnage:
15. Net tonnage:
16. Hold capacity:
17. Cold storage and freezing capacity:
18. Engine type and horse power:
19. Fishing gear:
20. Number of crew:
21. Communications equipment:
22. Call sign:
23. Identification markings:
24. Fishing operations to be carried out:
25. Place for landing catch:
26. Fishing zones:
27. Species to be caught:
28. Period of validity:
29. Special conditions:
30. Other activities of the applicant in Cape Verde:

Opinion of the Directorate-General for Fisheries

Comments of the Ministry for Fisheries, Agriculture and Rural Affairs:

Appendix 3

INFORMATION ON CATCHES RESULTING FROM INDUSTRIAL FISHING

1. Name and registration number of vessel:
2. Nationality:
3. Type of vessel:
(i.e. for fresh fish, tuna, etc.)
4. Name of the captain or master:
5. Fishing licence issued by:
Period of validity:
6. Type of fishing:
7. Date of leaving port:
Date of entering port:
8. Number of sets:

| Date: | Fishing zone | Species caught | Tonnes |
|-------|--------------|----------------|--------|
|-------|--------------|----------------|--------|

Port of landing

I the undersigned, master of the vessel cited above, or his representative, hereby declare that the information given above is correct, as witnessed by the observer of the Government.

Witnessed by the observer of the Government Master (signature).

ANNEX

Agreement in the form of an exchange of letters concerning the provisional application of the Protocol setting out the fishing opportunities and financial contribution provided for in the Agreement between the European Economic Community and the Republic of Cape Verde on fishing off the coast of Cape Verde for the period from 1 July 2001 to 30 June 2004

A. Letter from the Government of Cape Verde

Sir,

With reference to the Protocol initialled on 7 June 2001 setting out the fishing opportunities and financial contribution for the period from 1 July 2001 to 30 June 2004, I have the honour to inform you that the Government of Cape Verde is prepared to apply the Protocol on a provisional basis with effect from 1 July 2001, pending its entry into force in accordance with Article 7 of the said Protocol, provided the European Community is disposed to do the same.

This is on the understanding that the first instalment of the financial compensation specified in Article 2 of the Protocol is paid by 31 January 2002.

I should be obliged if you would confirm the European Community's agreement to such provisional application.

Please accept, Sir, the assurance of my highest consideration.

On behalf of the Government of Cape Verde

B. Letter from the European Community

Sir,

I have the honour to acknowledge receipt of your letter of today's date, which reads as follows:

“With reference to the Protocol initialled on 7 June 2001 setting out the fishing opportunities and financial contribution for the period from 1 July 2001 to 30 June 2004, I have the honour to inform you that the Government of Cape Verde is prepared to apply the Protocol on a provisional basis with effect from 1 July 2001, pending its entry into force in accordance with Article 7 of the said Protocol, provided the European Community is disposed to do the same.

This is on the understanding that the first instalment of the financial compensation specified in Article 2 of the Protocol is paid by 31 January 2002.”

I have the honour to confirm the European Community's agreement to such provisional application.

Please accept, Sir, the assurance of my highest consideration.

On behalf of the Council of the European Union