



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 3.11.1999
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99/0228 (CNS)

Proposal for a

COUNCIL REGULATION

on the conclusion of the Protocol setting out for the period 1 June 1999 to 31 May 2002 the fishing opportunities and the financial contribution provided for in the Agreement between the European Community and the Government of the Democratic Republic of São Tomé e Príncipe on fishing off the coast of São Tomé e Príncipe

(presented by the Commission)

EXPLANATORY MEMORANDUM

The Protocol to the Fisheries Agreement between the European Community and São Tomé e Príncipe expired on 31.5.1999. A new Protocol fixing the technical and financial conditions governing the fishing activities of Community vessels in the waters of São Tomé e Príncipe during the period 1.6.1999 to 31.5.2002 was initialled by both parties on 31.5.1999 .

The Commission proposes, on this basis, that the Council adopt by Regulation the conclusion of the new Protocol.

A draft Council Decision on the provisional application of the new Protocol, pending its definitive entry into force, is subject to 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 37, in conjunction with Article 300(2) and the first subparagraph of Article 300(3) thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the European Parliament²,

Whereas :

- (1) In accordance with the Agreement between the European Community and the Government of the Democratic Republic of São Tomé e Príncipe on fishing off the coast of São Tomé e Príncipe³, the two parties have held negotiations with a view to determining the amendments or additions to be made to the Agreement at the end of the period of application of the Protocol;
- (2) As a result of those negotiations, a new Protocol setting out the fishing rights and financial compensation provided for in the above-mentioned Agreement for the period from 1 June 1999 to 31 May 2002 was initialled on 31 May 1999;
- (3) It is in the Community's interest to approve the Protocol covered by this Regulation;
- (4) The method for allocating the fishing opportunities among the Member States should be defined on the basis of the traditional allocation of fishing opportunities under the Fisheries Agreement,

¹ OJ C

² Opinion delivered on (not yet published in the Official Journal).

³ OJ L 54, 25.2.1984, p. 1.

HAS ADOPTED THIS REGULATION:

Article 1

The Protocol setting out the fishing opportunities and the financial contribution provided for in the Agreement between the European Community and the Government of the Democratic Republic of São Tomé e Príncipe on fishing off the coast of São Tomé e Príncipe for the period 1 June 1999 to 31 May 2002 is hereby approved on behalf of the Community.

The text of the Protocol is attached to this Regulation.

Article 2

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

- freezer tuna seiners: France 18, Spain 18
- pole-and-line tuna vessels: France 7
- surface longliners: Spain 28, Portugal 5.

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

Article 3

The President of the Council is hereby authorised to designate the persons empowered to sign the Protocol in order to bind the Community.

Article 4

This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Council
The President

PROTOCOL

SETTING OUT, FOR THE PERIOD 1 JUNE 1999 TO 31 MAY 2002, THE FISHING OPPORTUNITIES AND THE FINANCIAL CONTRIBUTION PROVIDED FOR BY THE AGREEMENT BETWEEN THE EUROPEAN COMMUNITY AND THE GOVERNMENT OF THE DEMOCRATIC REPUBLIC OF SÃO TOMÉ E PRÍNCIPE ON FISHING OFF THE COAST OF SÃO TOMÉ E PRÍNCIPE

Article 1

From 1 June 1999 and for a period of three years, fishing rights pursuant to Article 2 of the Agreement shall be as follows:

- | | |
|-------------------------------|------------|
| - freezer tuna seiners: | 36 vessels |
| - pole-and-line tuna vessels: | 7 vessels |
| - surface longliners: | 33 vessels |

Article 2

1. The financial compensation referred to in Article 6 of the Agreement shall be EUR 318 750 per year, payable not later than 31 October 1999 for the first instalment and not later than 31 May 2000 and 31 May 2001 for the other two instalments.
2. That amount shall cover an annual catch of 8 500 tonnes in São Tomé e Príncipe waters. If the average catch each year under this Protocol by Community vessels in São Tomé e Príncipe waters exceeds this quantity, the amount of the financial compensation shall be increased by EUR 50 per additional tonne.
3. The use to which this compensation is put shall be the sole responsibility of the Government of the Democratic Republic of São Tomé e Príncipe. It shall be paid into an account with the National Bank of São Tomé e Príncipe.

Article 3

During the period covered by the Protocol, the Community shall contribute an additional EUR 956 250 to financing the measures described below, allocated as follows:

- (1) EUR 286 875 for scientific and technical programmes to promote better understanding of fisheries and living resources in the São Tomé e Príncipe fishing zone,

- (2) stepping up surveillance, inspection and checks in the fishing zones: EUR 286 875,
- (3) institutional support to the administrative department responsible for fisheries: EUR 114 750,
- (4) study grants and practical training courses in the various scientific, technical and economic fields linked to fishing; São Tomé e Príncipe's contributions to international fisheries organisations and expenses of São Tomé e Príncipe delegates participating in international meetings concerning fisheries: EUR 191 250,
- (5) aid for small-scale fishing: EUR 76 500

These measures shall be decided by mutual agreement between the competent authorities of São Tomé e Príncipe and the European Commission.

The amounts indicated will be paid into the bank accounts designated by the Government of São Tomé e Príncipe.

The São Tomé e Príncipe Ministry responsible for fisheries shall transmit an annual report on the implementation of these measures and the results achieved to the Delegation of the European Commission in São Tomé e Príncipe. The Commission reserves the right to request additional information on these results from the Ministry responsible for fisheries and to review the payments concerned in the light of the actual implementation of the measures.

Article 4

Should the Community fail to make the payments provided for in Articles 2 and 3, the application of this Protocol may be suspended.

Article 5

The Annex to the Agreement between the European Community and the Government of the Democratic Republic of São Tomé e Príncipe on fishing off the coast of São Tomé e Príncipe is hereby repealed and replaced by the Annex to this Protocol.

Article 6

This Protocol shall enter into force on the date of its signing.

It shall apply from 1 June 1999.

ANNEX

CONDITIONS GOVERNING FISHING BY COMMUNITY VESSELS IN THE SÃO TOMÉ E PRÍNCIPE FISHING ZONE

1. APPLICATION FOR AND ISSUE OF LICENCES

The procedure for applications for, and issue of, the licences referred to in Article 4 of the Agreement shall be as follows:

The relevant Community authorities shall present to the Ministry of Agriculture and Fisheries of São Tomé e Príncipe, via the Commission Delegation responsible for São Tomé e Príncipe, an application for each vessel that wishes to fish under the Agreement, as least 20 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 Government of the Democratic Republic of São Tomé e Príncipe, a specimen of which is attached hereto (Appendix 1).

Licences shall be issued by the São Tomé e Príncipe authorities within 20 days of submission of the application to the shipowners or their representatives via the Delegation of the Commission of the European Communities responsible for São Tomé e Príncipe.

Licences shall be issued for a specific vessel and shall not be transferable. However, at the request of the Commission of the European Communities, a vessel's licence may, and where *force majeure* is proved, shall, be replaced by a new licence for another vessel whose features are similar to those of the first vessel. The owner of the first vessel shall return the cancelled licence to the Ministry of Agriculture and Fisheries of São Tomé e Príncipe via the Delegation of the Commission of the European Communities responsible for São Tomé e Príncipe.

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 new lump sum as laid down in paragraph 5 shall be due.

The licence must be on board at all times; however, on receipt of notification of payment of the advance sent to the São Tomé e Príncipe authorities by the European Commission, the vessel shall be entered on a list of vessels authorised to fish, which shall be sent to the São Tomé e Príncipe authorities responsibilities 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.

2. **VALIDITY OF LICENCES AND PAYMENT OF FEES**

Licences shall be valid for one year. They shall be renewable;

The fees provided for in Article 4 of the Agreement shall be set at EUR 25 per tonne caught in the São Tomé e Príncipe fishing zone.

The competent authorities of São Tomé e Príncipe shall indicate the detailed rules for payment of the fees, in particular the bank accounts and currencies to be used.

Licences shall be issued following payment to the National Bank of São Tomé e Príncipe of a lump sum of EUR 3 750 for each tuna seiner per year, EUR 625 for each pole-and-line tuna vessel, EUR 1 375 per year for each surface long-liner of more than 150 GRT and EUR 1 000 per year for each surface long-liner of 150 GRT or less, equivalent to the fees for:

- 150 tonnes of tuna caught per year in the case of seiners,
- 25 tonnes of tuna caught per year in the case of pole-and-line vessels,
- 40 tonnes per year for surface long-liners of 150 GRT or less,
- 55 tonnes per year for surface long-liners of more than 150 GRT.

3. **STATEMENT OF CATCH AND STATEMENT OF FEES DUE FROM SHIPOWNERS**

A fishing log in accordance with the ICCAT model in Annex 2 shall be kept on vessels for each fishing period spent in São Tomé e Príncipe waters. It shall be filled in even when no catches are made.

The words 'Outside São Tomé e Príncipe's EEZ' shall be entered in the above-mentioned log-book in respect of periods during which the said vessels are not in São Tomé e Príncipe waters.

The log-books referred to in this paragraph shall be sent to the Ministry of Agriculture and Fisheries within 15 working days of vessels arriving in a port.

Copies of these documents shall be sent to the scientific institutes referred to in the third subparagraph of paragraph 7 below and to the Delegation of the Commission of the European Communities responsible for São Tomé e Príncipe.

The São Tomé e Príncipe authorities shall draw up the statement of fees due for the past calendar year on the basis of the catch declarations for each Community vessel and any other information in their possession.

The previous year's statement shall reach the Commission by 31 March which shall forward it simultaneously to the shipowners and national authorities of the Member States concerned by 15 April.

Where the shipowners dispute the statement presented by São Tomé e Príncipe they may request the relevant scientific institutes, e.g. France's Institut de la Recherche Scientifique at Technique d'Outre-Mer (ORSTOM) and the Instituto Español de Oceanografía (IEO), to verify the catch data before consulting with the São Tomé e Príncipe authorities with a view to drawing up the final statement by 15 May of the current year. In the absence of any observations from the shipowners by that date, the statement drawn up by the São Tomé e Príncipe authorities shall be deemed final. Member States shall forward to the Commission the final statements relating to their own fleets.

Any payment due in addition to the advance shall be made by the shipowners to the National Bank of São Tomé e Príncipe no later than 31 May of that year.

However, if the amount of the final statement is lower than the advance referred to in paragraph 5, the resulting balance shall not be reimbursable to the shipowner.

4. **INSPECTION AND MONITORING**

Community vessels fishing in the Sao Tomé et Principe fishing zone shall permit and facilitate the boarding and fulfilment of the tasks of Sao Tomé et Principe officials responsible for the inspection and monitoring of fishing activities. These officials should not remain on board any longer than the time required to verify catches by sampling and carry out any other inspections relating to fishing activities.

5. **OBSERVERS**

At the request of the Sao Tome e Principe authorities, tuna seiners and surface longliners shall take an observer on board who shall be treated as an officer. The time spent on board by the observer shall be fixed by the Sao Tome et Principe authorities but, as a general rule, it should not exceed the time required to carry out his duties. Once on board, the observer shall:

- observe the fishing activities of the vessels,
- verify the position of vessels engaged in fishing operations,
- perform biological sampling in the context of scientific programmes,
- note the fishing gear used,
- verify the catch data for the Sao Tomé et Principe zone recorded in the logbook.

While on board, the observer:

- must take all appropriate steps to ensure that the conditions under which he is taken on board and his 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.

The conditions governing his embarkation shall be agreed between the shipowner or his agent and the Sao Tome e Principe authorities. The shipowner shall, via his agent, make a payment of EUR 10 to the Government of Sao Tome e Principe for each day spent by an observer on board a tuna seiner or surface longliner. If the shipowner is unable to take the observer aboard and put him off at a Sao Tome e Principe port agreed by common accord with that country's authorities, the shipowner shall bear the cost of taking the observer aboard and putting him ashore.

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

6. **FISHING ZONES**

The vessels referred to in Article 1 of the Protocol shall be authorised to engage in fishing activities in the waters beyond twelve nautical miles from the coast of each island.

7. **ENTERING AND LEAVING THE ZONE**

Vessels shall notify the Sao Tome e Principe Ministry responsible for fisheries of their intention to enter or leave Sao Tome e Principe's fishing zone at least 24 hours in advance.

When notifying their departure, all vessels shall also notify the estimated catches taken during the time they have spent in Sao Tome e Principe's fishing zone. This information should preferably be communicated by fax or, for vessels not equipped with a fax, by radio.

A vessel found to be fishing without having informed the Sao Tome e Principe Ministry responsible for fisheries shall be regarded as a vessel without a licence.

Vessels shall be informed of the relevant fax number and radio frequency when the fishing licence is issued.

The Sao Tome e Principe Ministry responsible for fisheries and the shipowners shall keep a copy of fax communications or a recording of radio communications until both parties have agreed to the final statement of fees due referred to in point 3.

8. **BY-CATCHES**

Tuna seiners shall endeavour to make any by-catches available to the São Tomé e Príncipe authorities at prices fixed by mutual agreement.

9. **SIGNING-ON OF SEAMEN**

At the request of the Sao Tome et Principe authorities, the tuna seiner fleet shall take on board six São Tomé e Príncipe seamen for the duration of the fishing season. No vessel may take more than one seaman on board.

The conditions of employment and remuneration shall be fixed by mutual agreement between the shipowners and representatives of the seamen.

Should the seamen not be signed on, shipowners shall be obliged to pay a lump sum to the Ministry for responsible for fisheries equivalent to the wages of seamen not signed on.

That sum shall be used for the training of seamen/fishermen in São Tomé e Príncipe and shall be paid into an account specified by the Ministry responsible for fisheries.

10. **STANDARDS**

The international standards on tuna fishing as recommended by ICCAT shall apply.

11. **USE OF SERVICES**

Community vessels shall, wherever possible, procure the supplies and services they require in Sao Tome e Principe ports.

12. **BOARDING**

a) Transmission of information

The Ministry responsible for fisheries shall inform the Delegation of the European Commission and the flag State, within 48 hours, of the boarding of any fishing vessel flying the flag of a Member State of the Community fishing under the Fisheries Agreement in the Sao Tomé e Príncipe fishing zone and shall transmit a brief report of the circumstances and reasons leading to such boarding. The Delegation and the flag State shall be kept informed of any proceedings initiated and penalties imposed.

b) Settlement of boarding

In accordance with the law on fisheries and the relevant regulations, infringements may be settled:

- either by composition, in which case the amount of the fine shall be determined in accordance with Sao Tomé e Príncipe legislation laying down minimum and maximum figures;
- or by legal proceedings, if no composition is possible, in accordance with Sao Tomé e Príncipe law.

- c) The vessel shall be released and its crew authorised to leave the port:
- either as soon as the obligations imposed by the composition procedure have been completed on presentation of the receipt for the settlement, or
 - on presentation of proof that a bank security has been lodged, pending completion of the legal proceedings.

Appendix 1

**DEMOCRATIC REPUBLIC OF SÃO TOMÉ E PRÍNCIPE
MINISTRY OF AGRICULTURE AND FISHERIES
FISHING LICENCE APPLICATION No**

Name of applicant:.....

Name and address of shipowner:

Name and address of any representative in São Tomé e Príncipe:

.....

Name of vessel:.....

Type of vessel:.....

Country of registry:

Port and registration number:

Vessel's external identification:.....

Radio call sign and frequency:.....

Length of vessel:.....

Width of vessel:.....

Engine type and horse power:.....

Hold capacity:

Minimum number of seamen:

Type of fishing:

Species targeted:

.....

Period of validity requested:.....

"I certify that this information is correct.

I hereby declare that I know, approve and undertake to comply with the law governing sea fishing in the Democratic Republic of São Tomé e Príncipe and the applicable international law."

Date:

APPLICANT

.....

FINANCIAL STATEMENT

1. **TITLE OF OPERATION:** New Protocol setting out the fishing opportunities and financial compensation under the EC/São Tomé e Príncipe Fisheries Agreement
2. **BUDGET HEADING INVOLVED:** B7-8000
3. **LEGAL BASIS:** Article 37 of the Treaty, in conjunction with Article 300(2) and the first subparagraph of Article 300(3) thereof

EC/ Tomé e Príncipe Agreement (OJ L 54, 25.2.1984, p. 1)
4. **DESCRIPTION OF THE OPERATION**
 - 4.1 **General Objective:** Protocol and Annex for three years
 - 4.2 **Period covered and arrangements for renewal**
Period: 1.6.1999 to 31.5.2002
Renewal arrangements: negotiation prior to the expiry of the Protocol
5. **CLASSIFICATION OF EXPENDITURE/REVENUE:**
 - 5.1 **CE**
 - 5.2 **DA**
 - 5.3 **Type of revenue**
6. **TYPE OF EXPENDITURE/REVENUE:**
 - Other: financial compensation paid to a non-member country in exchange for fishing opportunities granted by it and set out in the Protocol.
7. **FINANCIAL IMPACT**
 - 7.1 **Method of calculating total cost of operation (definition of unit costs)**
See Annex to the Protocol

7.2 Itemised breakdown of cost

CA in EUR million (current prices)

Breakdown (current euros)	1999	2000	2001	Total
Article 2 of the Protocol	0.31875	0.31875	0.31875	0.95625
Article 3 of the Protocol	0.95625 ⁴			0.95625
Total	1.275	0.31875	0.31875	1.9125

7.3 Schedule of commitment appropriations/payment appropriations

CA in EUR million

	1999	2000	2001	Total
Commitment appropriations	1.275	0.31875	0.31875	1.9125
Payment appropriations				
1999	0.796875			0.796875
2000		0.557812		0.557812
2001 and subsequent years			0.557812	0.557812
Total	0.796875	0.557812	0.557812	1.9125

8. FRAUD PREVENTION MEASURES

Since financial compensation is paid by the Community for services rendered (fishing opportunities), it is used by the authorities of the non-member country as they think fit, provided they report to the Community, as provided for in each agreement, on the use of certain funds (measures covered by Article 3 of the Protocol). In the case of Sao Tomé et Príncipe, all the measures referred to in Article 3 of the Protocol are subject to an annual

⁴ Scientific and technical programmes: EUR 286 875
 fisheries surveillance: EUR 286 875
 training: EUR 191 250
 small-scale fisheries: EUR 76 500
 fisheries administration: EUR 114 750
 The full amount of the allocations not including the financial compensation should be paid as follows: 50% in 1999, 25% in 2000 and 25% in 2001

report on implementation and results achieved; the payments can be reviewed in the light of the actual implementation of the various measures.

The Agreement also provides for Community vessels to submit catch declarations.

9. ELEMENTS OF COST-EFFECTIVENESS ANALYSIS

Category	1996-1999		1999-2002
	Fishing opportunities (vessels)	Utilisation rate	Fishing opportunities (vessels)
Tuna seiners:	37	79%	36
Pole-and-line tuna vessels:	7	14%	7
Surface longliners	25	89%	33

The unit cost of each tonne of tuna caught is EUR 75 payable by the Community and EUR 25 payable by shipowners. The average commercial value of a tonne of tuna is EUR 1 000.

Because tuna is such a highly migratory species, actual catches taken in a given zone can fluctuate greatly from one fishing year to the next.

The catches taken by the Community fleet in the waters of the non-member country cannot be known in advance. Therefore, as in all other tuna agreements, the Community pays a fixed amount which is directly proportionate to an expected catch weight ("reference weight") calculated on the basis of the average catches recorded during previous years, adjusted where necessary according to the number of vessels authorised to fish. If the expected catch weight is exceeded, an additional amount is paid. If the expected catch is not taken, the non-member country keeps the amount initially paid.

The guidelines laid down by the Council for negotiating fisheries agreements with the ACP States specify that account must be taken of the Community's interest in maintaining or establishing fisheries relations with the countries concerned.

In the case of Sao Tomé e Príncipe, during the period of validity of the 1996-99 Protocol, Community shipowners actually obtained licences for tuna fisheries according to the rates shown in the table above. Average annual catches recorded during the 1996-99 Protocol fell short of the reference

weight of 9 000 tonnes per year, justifying the reduction of the reference weight to 8 500 per year, although the number of vessels authorised to fish under the new Protocol has been increased by eight units.

The Community has made renewal of the Protocol subject to the provision that São Tomé e Príncipe sets up an effective system for the surveillance and control of fishing activities and undertakes to allocate a substantial part of the financial contribution to the specific measures. 50% of the total financial compensation of EUR 1 912 500 is earmarked explicitly for specific measures to develop fisheries (scientific research, marine surveillance, training, etc.), as compared with 17.2% under the previous Protocol.

The advances paid by shipowners to obtain their licences have been increased for all categories of vessel: tuna seiners (EUR 3 750 instead of EUR 3 000), pole-and-line tuna vessels (EUR 625 instead of EUR 500) and surface longliners (from EUR 1 000 to 1 375 depending on tonnage, instead of EUR 500). The purpose of this increase is to increase the responsibility of shipowners by making them bear a larger share of the overall cost of the agreement. In addition, the shipowners are obliged for the first time to pay the wages of the national seamen taken on board, the number of whom has been increased, as well as a flat-rate contribution to the programme of observers on board vessels.

Assuming the fishing opportunities provided for in the Protocol are fully used, the annual cost of the Agreement to the EC budget has fallen by 12%. At the same time, the new contributions to be paid by shipowners are likely to increase the costs borne by them by around 70%.

The Agreement is clearly profitable in that the value of catches far exceeds the cost of the Protocol.

In addition to the direct sale value of catches, the Agreement also offers the following advantages:

- guaranteed employment on board fishing vessels,
- the multiplier effect on jobs for the ports, auctions, processing factories, shipyards and service industries in the regions concerned,
- these jobs are created in regions where there are no alternatives to fishing,
- guaranteeing supply to the Community market in fishery products.

Clearly, the list of advantages must include the importance of relations with São Tomé e Príncipe, both in the fisheries sector and in the political sphere.

10. ADMINISTRATIVE EXPENDITURE (PART A OF THE BUDGET)

No impact on administrative expenditure.