

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(94) 388 final
Brussels, 16.09.1994
94/201(CNS)

Proposal for a
COUNCIL DECISION

on the conclusion of an Agreement in the form of an exchange of letters
on the provisional application of the Protocol defining, for the period
from 6 September 1994 to 5 September 1997, the fishing opportunities and
the financial contribution provided for by the Agreement
between the European Community and Cape Verde
on fishing in the waters of Cape Verde

Proposal for a
COUNCIL REGULATION (EC)

94/201(CNS)

on the conclusion of the Protocol establishing the fishing
rights and financial compensation provided for in the
Agreement between the European Community and Cape Verde
on fishing off Cape Verde for the period from
6 September 1994 to 5 September 1997

(presented by the Commission)

EXPLANATORY MEMORANDUM

The protocol annexed to the fisheries agreement between EC and Cape Verde expires on 5.9.1994. A new protocol was initialled by the two parties on 23.6.1994, setting technical and financial terms governing fishing by EC vessels in cape Verdian waters for the period 6.9.1994 to 5.9.1997.

The Commission proposes on this basis that the Council adopt

- by a Decision, the proposal for an agreement in the form of an exchange of letters on provisional application of the new protocol pending its entry into force
- by a Regulation, the protocol setting fishing rights and the technical and financial terms thereof agreed between the EC and Cape Verde from the period 6.9.1994 to 5.9.1997.

PROPOSAL OF
COUNCIL DECISION

of

on the conclusion of an Agreement in the form of an exchange of letters on the provisional application of the Protocol defining, for the period from 6 september 1994 to 5 september 1997, the fishing opportunities and the financial contribution provided for by the Agreement between the European Community and Cape Verde on fishing in the waters of Cape Verde

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to the Agreement between the European Community and Cape Verde on fishing in the waters of Cape Verde⁽¹⁾,

Having regard to the proposal from the Commission,

Whereas the Community and Cape Verde held negotiations to determine the amendments or additions to be made to the Agreement on fishing off Cape Verde at the end of the period of application of Protocol ;

Whereas, as a result of these negotiations a new Protocol was initialled on 23 June 1994 ;

Whereas, under this Protocol, Community fishermen enjoy fishing opportunities in the waters falling within the sovereignty or jurisdiction of Cape Verde for the period from 6 september 1994 to 5 september 1997;

Whereas, in order to avoid interruption of fishing activities by Community vessels, it is essential that the Protocol in question be approved as quickly as possible ; whereas both parties have therefore initialled an Agreement in the form of an exchange of letters providing for the provisional application of the initialled Protocol from the day following the date of expiry of the Protocols previously in force ; whereas the Agreement in the form of an exchange

of letters should be concluded, subject to a definitive decision under Article 43 of the Treaty,

HAS DECIDED AS FOLLOWS :

Article 1

The Agreement in the form of an exchange of letters on the provisional application of the Protocol defining, for the period from 6 september 1994 to 5 september 1997, the fishing opportunities and the financial contribution provided for by the Agreement between the European Community and Cape Verde on fishing in the waters of Cape Verde is hereby approved on behalf of the Community.

The text of the Agreement in the form of an exchange of letters is attached to this Decision.

Article 2

The President of the Council is hereby authorized 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

(¹) OJ No L212 . 9.8.90 . p. 1.

AGREEMENT

in the form of an exchange of letters on the provisional application of the Protocol defining, for the period from 6 September 1994 to 5 September 1997, the fishing opportunities and the financial contribution provided for by the Agreement between the European Community and Cape Verde on fishing in the waters of Cape Verde

A. Letter from the Government of Cape Verde

Sir,

With reference to the Protocol, initialled on 23 June 1994, defining the fishing opportunities and the financial contribution for the period from 6 September 1994 to 5 September 1997, I have the honour to inform you that Cape Verde is willing to apply the Protocol provisionally from 6 September 1994 pending its entry into force in accordance with Article 7 thereof, provided that the European Community is prepared to do likewise.

This is on the understanding that the first instalment, equal to one third of the financial compensation laid down by Article 2 of the Protocol, must be paid before 31 December 1994.

I should be grateful if you would confirm the agreement of the European Community to such a provisional application.

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

For the Government of Cape Verde

B. Letter from the 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 23 June 1994, defining the fishing opportunities and the financial contribution for the period from 6 September 1994 to 5 September 1997, I have the honour to inform you that Cape Verde is willing to apply the Protocol provisionally from 6 September 1994 pending its entry into force in accordance with Article 7 thereof, provided that the European Community is prepared to do likewise.

This is on the understanding that the first instalment, equal to one third of the financial compensation laid down by Article 2 of the Protocol, must be paid before 31 December 1994.

I should be grateful if you would confirm the agreement of the European Community to such a provisional application.'

I am pleased to confirm the agreement of the European Community to a provisional application.

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

*For the Council
of the European Union*

94/ 0201 (CNS)

PROPOSAL OF
COUNCIL REGULATION (EC) No

of

on the conclusion of the Protocol establishing the fishing rights and financial compensation provided for in the Agreement between the European Community and Cape Verde on fishing off Cape Verde for the period from 6 September 1994 to 5 September 1997

THE COUNCIL OF THE EUROPEAN UNION,

HAS ADOPTED THIS REGULATION:

Having regard to the Treaty establishing the European Community, and in particular Article 43 thereof in conjunction with the first sentence of Article 228 (2) and the first subparagraph of Article 228 (3),

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament (1),

Whereas, pursuant to the Agreement between the European Community and Cape Verde on fishing off Cape Verde (2), the two parties conducted negotiations to determine the amendments or additions to be made to the Agreement at the end of the period of application of the Protocol annexed thereto ;

Whereas, as a result of those negotiations, a new Protocol establishing the fishing rights and financial compensation provided for in the abovementioned Agreement for the period 6 September 1994 to 5 September 1997 was initialled on 23 June 1994;

Whereas, it is in the Community's interest to conclude the new Protocol,

Article 1

The Protocol establishing the fishing rights and financial compensation provided for in the Agreement between the European Community and Cape Verde on fishing off Cape Verde for the period from 6 September 1994 to 5 September 1997 is hereby approved on behalf of the Community.

The text of the Protocol is attached to this Regulation.

Article 2

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

Article 3

This Regulation shall enter into force on the third day following 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

Opinion delivered on the Official Journal).
OJ No L212. 9.8.90 . p. 1

(not yet published in

PROTOCOL

establishing the fishing rights and financial compensation provided for in the Agreement between the European Community and the Republic of Cape Verde on fishing off the coast of Cape Verde

Article 1

1. Pursuant to Article 2 of the Agreement, and for a period of three years from 6 September 1994, the following fishing possibilities shall be accorded:

- (a) Highly migratory species
 - Freezer tuna seiners: 23 vessels,
 - Pole-and-line tuna vessels and surface longliners: 17 vessels.
- (b) Other species
 - Bottom longliners: 3 vessels, each with a tonnage of less than 210 GRT,

Article 2

1. For the period referred to in Article 1, the financial compensation referred to in Article 7 of the Agreement shall be ECU 1.063.500, payable in three equal annual instalments.

In the case of tuna fishing, this compensation shall cover a catch weight in waters of Cape Verde of 4.850 tonnes of tuna fished per year. If the annual amount of tuna caught by Community vessels in the waters of Cape Verde exceeds this quantity, the abovementioned compensation shall be increased by ECU 50 for each additional tonne caught.

- 2. The use to which this compensation is put shall be the sole responsibility of the Cape Verdean authorities.
- 3. The compensation shall be paid into an account opened with a financial institution or any other body designated by the Cape Verdean authorities.

Article 3

The Community shall also contribute during the period referred to in Article 1 the sum of ECU 261.900 towards the financing of a Cape Verde scientific or technical programme (equipment, infrastructure, seminars, studies, etc.) to improve information on the fishery resources within the exclusive economic zone of Cape Verde.

This sum shall be made available to the Ministry for Fisheries, Agriculture and Rural Life of Cape Verde and paid into the bank account indicated by the Office.

Article 4

1. The two Parties agree that improving the skills and knowledge of those involved in sea fishing is a vital element in the success of their cooperation. To that end, the Community shall make it easier for nationals of Cape Verde to find places in establishments in its Member States and shall provide for that purpose awards for study and practical training in the various scientific, technical and economic disciplines relating to fisheries. The awards may also be used in any country linked with the Community by a cooperation agreement.

2. The total cost of the awards may not exceed ECU 174.600. At the request of the Cape Verdean authorities, part of this sum may be used to cover the costs of participation in international meetings or training courses concerning fisheries. The sum shall be payable as and when it is used.

Article 5

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

Article 6

The Annex to the Agreement between the European Community and Cape Verde on fishing in the waters 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 of its signature.

It shall apply from 6 September 1994.

**CONDITIONS FOR THE EXERCISE OF FISHING ACTIVITIES BY COMMUNITY VESSELS IN THE
CAPE VERDE FISHING ZONE**

A. Licence application and issuing formalities

1. The relevant Community authorities shall present to the Office of the Ministry for Fisheries, Agriculture and Rural Life of Cape Verde, via the Commission Delegation in Cape Verde, an application for each vessel that is to be used for fishing 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 Office of the Ministry for Fisheries, Agriculture and Rural Life of Cape Verde, a specimen of which is attached hereto (Appendix 1).

2. Each licence application 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.

3. Licences for all vessels shall be issued by the Office of the Ministry for Fisheries, Agriculture and Rural Life of 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.

4. 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 in the case of *force majeure* shall, be replaced by a new licence for another vessel with features similar to those of the first vessel. The owner of the first vessel shall return the cancelled licence to the Office of the Ministry for Fisheries, Agriculture and Rural Life of 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 unexpired period of validity.

5. The licence must be held on board at all times.

6. The Office of the Ministry for Fisheries, Agriculture and Rural Life of Cape Verde shall give notice, before the Agreement enters into force, of the arrangements for payment of the fee, including information on bank accounts and the currencies to be used.

B. Provisions applicable to tuna vessels and surface longliners

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

2. The fee shall be ECU 20 per tonne caught within the Cape Verde fishing zone.

3. Licences shall be issued after payment to the Ministry for Fisheries, Agriculture and Rural Life of Cape Verde of a lump sum of ECU 1 500 a year for each tuna seiner and ECU 300 a year for each pole-and-line tuna vessel and surface longliner, equivalent to the fees payable for a catch of:

- 75 tonnes of tuna per year in the case of seiners,
- 15 tonnes of tuna per year in the case of pole-and-line vessels and surface longliners.

4. The master must keep a fishing log as shown in Appendix 2 for each fishing period spent in the Cape Verde fishing zone.

Logs shall be sent for processing to the Institut Français de Recherche Scientifique et Technique d'Outre-Mer (ORSTOM), the Instituto Español de Oceanografía (IEO) and the Instituto Nacional de Investigação das Pescas (INIP) of Cape Verde within a month of the end of each calendar quarter.

The Member States shall notify the Commission of the European Communities by 15 April of catches, in tonnes, during the previous year, as confirmed by the scientific institutes. On the basis of this information, the Commission shall draw up a statement of fees due for the fishing period and send it to the Office of the Secretary of State for Fisheries of Cape Verde for comments.

Shipowners shall receive notification by the end of April of the statement drawn up by the Commission, and shall have thirty days to make any payment due. If the amount of the final statement is lower than the amount of the lump sum advance payment, the balance shall not be reimbursable to the shipowner.

C. Provisions applicable to licences for other vessels

In the case of bottom longliners, licences shall be valid for three, six or 12 months. The annual fee shall be fixed according to GRT, at the rate of ECU 100 per GRT, in proportion to the duration of the licence.

D. Statement of catch

1. For tuna seiners, pole-and-line tuna vessels and surface longliners, a fishing log shall be kept in accordance with paragraph 4 of point B.
2. Bottom longliners shall be obliged to notify the Office of the Ministry for Fisheries, Agriculture and Rural Life of 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 statements shall be monthly and must be communicated at least once every three months.
3. Forms must be completed legibly and be signed by the master of the vessel.
4. Should these provisions not be adhered to, the relevant 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 this case, the Delegation of the Commission of the European Communities in Cape Verde shall be informed.

E. Landing of catch

Community tuna vessels shall, wherever possible, contribute towards supplying the Cape Verde tuna canning factories in accordance with their catches in the zone at a price fixed by mutual agreement between the Community shipowners and the Cape Verdean fishing authorities on the basis of current prices on the international market. Payment shall be made in convertible currency.

Moreover, tuna vessels landing their catches in a Cape Verdean port shall, wherever possible, make part of their by-catch available to the fishing authorities of Cape Verde at local market prices.

F. Signing-on of seamen

1. Tuna vessel and surface longliner owners shall employ Cape Verdean nationals, subject to the following conditions and limits:
 - for the fleet of tuna seiners, 4 Cape Verdean seamen shall be signed on during the tuna fishing period in the Cape Verde fishing zone,
 - for the fleet of pole-and-line tuna vessels, 3 Cape Verdean seamen shall be signed on during the tuna fishing period in the Cape Verde fishing zone, all of them to be assigned to different vessels,

— for the fleet of surface longliners, two Cape Verdean seamen shall be signed on during the fishing period in the Cape Verde fishing zone, each of them to be assigned to different vessels.

2. The wages of these seamen shall be fixed, before licences are issued, by mutual agreement between the shipowners or their representatives and the relevant Cape Verdean authorities; the wages shall be borne by the shipowners and must include the social contributions to which the seaman is subject (including life assurance and accident and sickness insurance).

The shipowner or his representative shall send a copy of the labour contract to the Directorate-General of Fisheries of Cape Verde.

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

This sum will be used for the training of seamen in Cape Verde and is to be paid into the account specified by the relevant Cape Verdean authorities.

4. The shipowner or his representative shall notify the Ministry for Fisheries, Agriculture and Rural Life of the list of Cape Verdean sailors taken on board Community ships during the fishing season, with details of their registration as crew members and the ships they have boarded.

G. Taking on board of observers

1. Before issuing licences, the Ministry for Fisheries, Agriculture and Rural Life of Cape Verde shall notify shipowners or their representatives of the vessels on board which they must take an observer. The observer may not remain on board longer than is necessary for the accomplishment of his duties. The salary and social contributions of the observer shall be borne by the relevant Cape Verdean authorities.

2. The work of the observer and the conditions on which he is taken on board must not interrupt or hinder fishing activities. The observer shall be taken on board at a port chosen by the shipowner at the beginning of the first voyage after notification of the list of designated ships. Within two weeks, the shipowners concerned shall make known at which ports and on what dates, giving ten days' notice, they intend to take observers on board.

Should the observer be taken on board in a foreign port, his travelling costs shall be borne by the shipowner. Should a tuna 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 expense of the shipowner.

H. Fishing zones

1. Community vessels may carry out fishing activities in the following zones, determined by reference to the base lines:
 - beyond 12 miles for tuna seiners and surface longliners,
 - beyond six miles for pole-and-line tuna vessels,
 - from the base lines for live bait fishing and for bottom longliners.

I. Meshes authorized

The minimum mesh size authorized 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 ICCAT shall apply.

J. Entering and leaving the zone

1. All Community vessels fishing under the Agreement in the Cape Verde zone shall communicate to the São Vicente radio station the date and time and their position when entering and leaving the Cape Verde fishing zone.
2. When leaving the Cape Verde fishing zone, ships shall notify their total catch to the relevant Cape Verdean authorities via the São Vicente radio station.

3. The call sign and operating frequencies and working hours of the station shall be communicated to the shipowners or their representatives by the Office of the Ministry for Fisheries, Agriculture and Rural Life of Cape Verde at the time the licence is issued.

4. In cases where this radio communication cannot be used, vessels may use alternative means, such as telex or fax.

K. Port equipment and use of supplies and services

Community vessels shall, where possible, procure in Cape Verde all supplies and services necessary for their activities. The relevant Cape Verdean authorities shall, in agreement with the shipowners or their representatives, establish the conditions for using port equipment and, if necessary, supplies and services.

L. Procedure in case of boarding

1. The Delegation of the Commission of the European Communities in Cape Verde shall be notified within 48 hours of any boarding within the Cape Verde fishing zone of a fishing vessel flying the flag of a Member State of the Community and operating under this Agreement. A brief report of the circumstances and reasons leading to the boarding shall be provided within 72 hours.

2. A meeting shall be held, within 24 hours of receipt of the abovementioned information, between the Delegation of the Commission of the European Communities in Cape Verde, the Office of the Ministry for Fisheries, Agriculture and Rural Life of 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 or information helping to clarify the circumstances of the established facts. The shipowner or his representative shall be informed of the outcome of the meeting and of any measures resulting from the boarding.

3. A 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.

OFFICE OF THE SECRETARY OF STATE FOR FISHERIES

Licence application for foreign industrial fishing vessels

1. Name of shipowner:
2. Address of shipowner:
3. Name of representative or local agent of shipowner:
4. Address of representative or local agent of shipowner:
5. Name of master:
6. Name of vessel:
7. Registration number:
8. Date and place of construction:
9. Flying the flag of:
10. Port of registration:
11. Port of rigging:
12. Overall length:
13. Width:
14. Gross tonnage:
15. Net tonnage:
16. Hold capacity:
17. Chilling or freezing capacity:
18. Engine type and horse power:
19. Type of fishing:
20. Crew complement:
21. Communication equipment:
22. Call sign:
23. Dialling signals:
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:

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Opinion of the Directorate-General for Fisheries

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Office of the Secretary of State for Fisheries

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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. Master's name:
5. Fishing licence issued by:
valid for the period:
6. Type of fishing:
7. Date of leaving port:
Date of entering port:
8. Catches:

Date	Fishing zone	Species caught	Tonnage	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

Signed
The Master

FINANCIAL STATEMENT				
		DATE :		
1. BUDGET HEADING : B7 - 800		APPROPRIATIONS :		
2. TITLE : New protocol EC/Cape Verde				
3. LEGAL BASIS : EC/Cape Verde				
4. AIMS OF PROJECT : Protocol for a period of 3 years				
5. FINANCIAL IMPLICATIONS		PERIOD OF 12 MONTHS	CURRENT FINANCIAL YEAR (94)	FOLLOWING FINANCIAL YEAR (95)
5.0. EXPENDITURE			500.000 ECU	500.000 ECU
- charged to the EC budget (refunds/intervention)			(annual average)	(annual average)
- national administration				
- other				
5.1. REVENUE				
- own resources of the EC (levies/customs duties)				
- national				
		1994	1995	1996
5.0.1. ESTIMATED EXPENDITURE		500.000	500.000	500.000
5.1.1. ESTIMATED REVENUE		(annual average)		
5.2. METHOD OF CALCULATION :				
- financial contribution :		1.063.000 ECU		
- scientific programme :		261.000 ECU		
- study grants :		174.000 ECU		

Financial compensation :		1.500.000 ECU		
Average annual cost :		500.000 ECU		
6.0. CAN THE PROJECT BE FINANCED FROM APPROPRIATIONS ENTERED IN THE RELEVANT CHAPTER OF THE CURRENT BUDGET ?				YES/++
6.1. CAN THE PROJECT BE FINANCED BY TRANSFER BETWEEN CHAPTERS OF THE CURRENT BUDGET ?				YES
6.2. IS A SUPPLEMENTARY BUDGET NECESSARY ?				+++/NO
6.3. WILL FUTURE BUDGET APPROPRIATIONS BE NECESSARY ?				YES/++
OBSERVATIONS :				

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