



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 24.07.1996
COM(96) 394 final

96/0199 (CNS)

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 defining for the period 1 June 1996 to 31 May 1999 the fishing opportunities and the financial contribution provided for by the Agreement between the European Community and the Democratic Republic of São Tome e Principe on fishing off the coast of São Tome e Principe

Proposal for a

COUNCIL REGULATION (EC)

on the conclusion of the Protocol defining, for the period from 1 June 1996 to 31 May 1999, the fishing opportunities and the financial contribution provided for by the Agreement between the European Community and the Democratic Republic of São Tome e Principe on fishing off São Tome e Principe

(presented by the Commission)

EXPLANATORY MEMORANDUM

The protocol annexed to the fisheries agreement between EC and São Tome e Principe expired on 31.05.1996. A new protocol was initialled by the two parties on 23.05.1996, setting technical and financial terms governing fishing by EEC vessels in São Tome e Principe waters for the period 01.06.1996 to 31.05.1999.

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 São Tome e Principe from the period 01.06.1996 to 31.05.1999.

**Proposal for a
COUNCIL DECISION
of**

on the conclusion of the Agreement in the form of an Exchange of Letters concerning the provisional application of the Protocol defining for the period 1 June 1996 to 31 May 1999 the fishing opportunities and the financial contribution provided for by the Agreement between the European Community and the Democratic Republic of São Tome e Principe on fishing off the coast of São Tome e Principe

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 the Democratic Republic of São Tome e Principe on fishing off São Tome e Principe ⁽¹⁾,

Having regard to the proposal from the Commission,

Whereas the Community and the Democratic Republic of São Tome e Principe have held negotiations with a view to determining amendments to be made to the abovementioned Agreement at the end of the period of application of the Protocol in force which is annexed to the said Agreement;

Whereas, as a result of these negotiations, a new Protocol was initialled on 23rd May 1996;

Whereas, under that Protocol, Community fishermen have fishing rights in the waters under the sovereignty or jurisdiction of the Democratic Republic of São Tome e Principe for the period 1st June 1996 to 31st May 1999;

Whereas, in order to avoid interruption of fishing activities by Community vessels, both parties have initialled an Agreement in the form of an Exchange of Letters providing for the provisional application of the said Protocol from the day following the date of expiry of the Protocol previously in force; whereas the Agreement in the form of an Exchange of Letters should be approved subject to a definitive decision pursuant to Article 43 of the Treaty,

⁽¹⁾ OJ No L 54, 25.2.1984, p. 1.

Whereas the allocation of fishing possibilities among the Member States should be determined on the basis of the traditional allocation of fishing possibilities under the fisheries agreement;

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement in the form of an Exchange of Letters concerning the provisional application of the Protocol defining, for the period 1 June 1996 to 31 May 1999, the fishing opportunities and the financial contribution provided for by the Agreement between the European Community and the Democratic Republic of São Tomé e Príncipe on fishing off São Tomé e Príncipe 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 fishing possibilities provided for in the Protocol are allocated among the Member States as follows:

freeze tuna seiner: France 18, Spain 19

pole and line tuna vessels: France 7

surface long-liners: Spain 20, Portugal 5.

If licence applications from these Member States do not exhaust the fishing possibilities provided for in the Protocol the Commission may entertain licence applications from any other Member State.

Article 3

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**

96/0199 (CNS)

**Proposal for a
COUNCIL REGULATION (EC) No**
of
**on the conclusion of the Protocol defining,
for the period from 1 June 1996 to 31 May 1999,
the fishing opportunities and the financial contribution provided for by
the Agreement between the European Community and
the Democratic Republic of São Tome e Principe
on fishing off São Tome e Principe**

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,⁽¹⁾

Having regard to the Opinion of the European Parliament ⁽²⁾,

Whereas, in accordance with the Agreement between the European Community and the Democratic Republic of São Tome e Principe on fishing off ⁽³⁾, the Contracting Parties held negotiations with a view to determining amendments to be made to that Agreement at the end of the period of application of the Protocol attached to the said Agreement;

Whereas, as a result of these negotiations, a new Protocol defining for the period from 1 June 1996 to 31 May 1999 the fishing opportunities and the financial contribution provided for by the abovementioned Agreement was initialled on 23 May 1996;

Whereas it is in the Community's interest to approve that Protocol;

Whereas the allocation of fishing possibilities among the Member States should be determined on the basis of the traditional allocation of fishing possibilities under the fisheries agreement;

⁽¹⁾OJ N° C

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

⁽³⁾ OJ n° L 54 of 25.2.1984, p. 1.

HAS ADOPTED THIS REGULATION:

Article 1

The Protocol defining, for the period from 1 June 1996 to 31 May 1999, the fishing opportunities and the financial contribution provided for by the Agreement between the European Community and the Democratic Republic of São Tome e Principe on fishing off São Tome e Principe is hereby approved on behalf of the Community.

The text of the Protocol is attached to this Regulation.

Article 2

The fishing possibilities provided for in the Protocol are allocated among the Member States as follows:

- freezer tuna seiners: France 18, Spain 19**
- pole-and-line tuna vessels: France 7**
- surface long-liners: Spain, 20, Portugal 5**

If licence applications from these Member States do not exhaust the fishing possibilities provided for in the Protocol the Commission may entertain licence applications from any other Member State.

Article 3

The President of the Council is hereby authorized 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**

AGREEMENT
IN THE FORM OF AN EXCHANGE OF LETTERS
CONCERNING THE PROVISIONAL APPLICATION OF THE
PROTOCOL ESTABLISHING 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 AND
PRÍNCIPE ON FISHING OFF THE COAST OF SÃO TOMÉ AND PRÍNCIPE
FOR THE PERIOD 1 JUNE 1996 TO 31 MAY 1999

A. Letter from the Government of the Democratic Republic of São Tomé and Príncipe

Sir,

With reference to the Protocol initialled on 23 May 1996 establishing the fishing opportunities and the financial compensation for the period 1 June 1996 to 31 May 1999, I have the honour to inform you that the Government of the Democratic Republic of São Tomé and Príncipe is ready to apply the Protocol on a provisional basis, with effect from 1 June 1996, pending its entry into force in accordance with Article 7 of the Protocol, provided that the Community is prepared to do the same.

This is on the understanding that the first annual instalment of one third of the financial compensation specified in Article 2 of the Protocol is to be paid before 31 October 1996.

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

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

For the Government
of the Democratic Republic of São Tomé and Príncipe

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 May 1996 establishing the fishing opportunities and the financial compensation for the period 1 June 1996 to 31 May 1999, I have the honour to inform you that the Government of the Democratic Republic of São Tomé and Príncipe is ready to apply the Protocol on a provisional basis, with effect from 1 June 1996, pending its entry into force in accordance with Article 7 of the Protocol, provided that the Community is prepared to do the same.

This is on the understanding that the first annual instalment of one third of the financial compensation specified in Article 2 of the Protocol is to be paid before 31 October 1996.

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

I have the honour to confirm the 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

PROTOCOL
ESTABLISHING THE FISHING OPPORTUNITIES AND THE FINANCIAL
COMPENSATION PROVIDED FOR IN THE AGREEMENT BETWEEN THE
EUROPEAN COMMUNITY AND THE GOVERNMENT OF THE
DEMOCRATIC REPUBLIC OF SÃO TOMÉ AND PRÍNCIPE ON FISHING
OFF THE COAST OF SÃO TOMÉ AND PRÍNCIPE FOR THE PERIOD
1 JUNE 1996 TO 31 MAY 1999

ARTICLE 1

For a period of three years from 1 June 1996, the fishing rights granted pursuant to Article 2 of the Agreement shall be 37 freezer tuna seiners, 7 pole-and-line tuna vessels and 25 surface long-liners.

ARTICLE 2

1. The financial compensation referred to in Article 6 of the Agreement shall be, for the period referred to in Article 1, ECU 1 800 000, payable in three equal annual instalments. That amount shall cover an annual catch of 9 000 tonnes in São Tomé and Príncipe waters. If the tuna caught by Community vessels in São Tomé and Príncipe waters exceeds that weight, the abovementioned amount 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 Government of the Democratic Republic of São Tomé and Príncipe. It shall be paid into an account with the National Bank of São Tomé and Príncipe.

ARTICLE 3

1. In addition to the amount referred to in Article 2, the Community shall finance, during the period referred to in Article 1, scientific and technical programmes to improve biological and fishery resource information as regards the exclusive economic zone of São Tomé and Príncipe up to an amount of ECU 187 500.
2. These programmes shall be drawn up jointly by the competent authorities of São Tomé and Príncipe and the Community, which will, if necessary, participate in their implementation. Once the content of the programmes has been approved, they shall be financed by payments into an account indicated by the competent authorities of São Tomé and Príncipe.
3. The competent authorities of São Tomé and Príncipe shall send to the Commission of the European Communities a report on the implementation of the approved programmes and the results obtained. The Commission of the European Communities reserves the right to request any further scientific information from the authorities of São Tomé and Príncipe.

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, in addition to the amount referred to in Article 2:
 - (a) make it easier for nationals of São Tomé and Príncipe 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. These awards may also be used up to an amount of ECU 35 000 in any State linked to the Community by a Cooperation Agreement;
 - (b) cover São Tomé and Príncipe's participation in the Regional Fisheries Committee for the Gulf of Guinea and ICCAT up to an amount of ECU 90 000;
 - (c) bear the costs of participation in international meetings or training courses on fisheries up to an amount of ECU 62 500.
2. These sums shall be paid into the account indicated by the Ministry of Agriculture and Fisheries in three equal annual instalments. That Ministry shall manage all the measures financed in this way referred to in paragraph 1 and shall submit to the Commission a detailed report on the use made of these funds.

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 the Government of the Democratic Republic of São Tomé and Príncipe on fishing off São Tomé and Príncipe is hereby repealed and replaced by the Annex to this Protocol.

ARTICLE 7

This Protocol shall enter into force on the date on which it is signed.

It shall apply from 1 June 1996.

CONDITIONS FOR THE EXERCISE OF FISHING ACTIVITIES BY COMMUNITY VESSELS IN SÃO TOMÉ AND PRÍNCIPE'S FISHING ZONE

1. **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 and Príncipe, via the Commission Delegation responsible for São Tomé and Príncipe, an application for each vessel that wishes to fish under the Agreement, at 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 and Príncipe, a specimen of which is attached hereto (Appendix 1).

Licences shall be issued by the São Tomé and 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 and Príncipe.

Licences shall be issued for a specific vessel and shall not be transferable. However, where force majeure is proved and at the request of the Commission of the European Communities, a vessel's licence 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 and Príncipe via the Delegation of the Commission of the European Communities responsible for São Tomé and Príncipe.

The new licence shall indicate:

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

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 and Príncipe authorities by the European Commission, the vessel shall be entered on a list of vessels authorized to fish, which shall be sent to the São Tomé and Príncipe authorities responsible for fisheries inspection. A copy of the licence may be obtained by fax pending arrival of the licence itself; that copy shall be kept on board;

2. Licences shall be valid for one year and shall be renewable.
3. The fees provided for in Article 4 of the Agreement shall be set at ECU 20 per tonne caught in São Tomé and Príncipe's fishing zone.

4. The competent authorities of São Tomé and Príncipe shall indicate the detailed rules for payment of the fees, in particular the bank accounts and currencies to be used.
5. Licences shall be issued following payment to the National Bank of São Tomé and Príncipe of a lump sum of ECU 3 000 for each freezer tuna seiner per year and ECU 500 for each pole-and-line tuna vessel or surface long-liner per year, equivalent to the fees for:
 - 150 tonnes of tuna caught per freezer tuna seiner per year,
 - 25 tonnes of tuna caught per pole-and-line tuna vessel or surface long-liner per year;
6. ~~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 and Príncipe's waters. It shall be filled in even when no catches are made.

The words "Outside São Tomé and Príncipe's EEZ" shall be entered in the abovementioned log-book in respect of periods during which the said vessels are not in São Tomé and 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 and Príncipe.

7. The São Tomé and 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 of 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 and Príncipe they may request the relevant scientific institutes, e.g. France's Institut de la Recherche Scientifique et Technique d'Outre-Mer (ORSTOM) and the Instituto Español de Oceanografía (IEO), to verify the catch data before consulting with the São Tomé and 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 and 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 and 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.

8. **Within 3 hours of entering or leaving the zone and every 3 days during their fishing activities in São Tomé and Príncipe's waters, vessels shall be obliged to communicate their position and the volume of the catch on board direct to the Sao Tomé and Príncipe authorities preferably by fax or, failing that, by radio in the case of vessels not equipped with fax.**

The fax number and radio frequency shall be notified on issue of the licence.

A copy of the fax messages or of the record of radio communications shall be kept by the Sao Tomé and Príncipe authorities and the shipowners until both parties have approved the final statement of fees referred to in paragraph 7.

A vessel caught fishing without having notified the Sao Tomé and Príncipe authorities of its presence shall be considered an unlicensed vessel.

9. **Tuna seiners shall endeavour to make any by-catches available to the Sao Tomé and Príncipe authorities at prices fixed by mutual agreement.**
10. **Vessels shall allow on board observers at the request of the authorities of Sao Tomé and Príncipe. Observers must not remain on board for longer than needed to carry out spot checks on the catch. The master of the vessel shall take all necessary steps to facilitate the task of the observers on board. The salary and the social security contributions of the observer shall be borne by the competent authorities of Sao Tomé and Príncipe. Should the observer be taken on board in a foreign port, his travelling costs shall be borne by the shipowner. Should a vessel with an observer from Sao Tomé and Príncipe on board leave the Sao Tomé and Príncipe fishing zone, all measures must be taken to ensure the observer's return to Sao Tomé and Príncipe as soon as possible at the expense of the shipowner.**

At the request of the authorities of Sao Tomé and Príncipe, owners of tuna fishing vessels shall endeavour to sign on three Sao Tomé and Príncipe seamen for all the Community tuna seiners, all such seamen to be assigned to different vessels. The conditions of employment and remuneration shall be fixed by mutual agreement between the shipowners and representatives of the seamen.

11. **The international standards on tuna fishing as recommended by ICCAT shall apply.**
12. **The Delegation of the Commission of the European Communities responsible for Sao Tomé and Príncipe shall be notified within 48 hours of any boarding within Sao Tomé and Príncipe's 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 submitted within 72 hours.

Appendix 1

DEMOCRATIC REPUBLIC OF SAO TOMÉ AND PRÍNCIPE
MINISTRY OF AGRICULTURE AND FISHERIES
FISHING LICENCE APPLICATION No

Name of applicant:

Address of applicant:

.

Name and address of shipowner:

.

Name and address of any representative in Sao Tomé and Príncipe:

.

Name of vessel:

Type of vessel:

Country of registration:

Port and registration number:

External identification of vessel:

Radio call sign and frequency:

Length of vessel:

Width of vessel:

Engine type and rating:

Hold capacity:

Minimum crew:

Type of fishing:

Species to be fished:

.

Period of validity sought:

'I hereby certify that this information is correct and that I know and agree with and undertake to observe and enforce the laws of the Democratic Republic of Sao Tomé and Príncipe concerning fishing and the sea, and all applicable international legislation.'

Date:

THE APPLICANT

FINANCIAL STATEMENT

1. **TITLE OF OPERATION:** New financial Protocol EC/São Tomé and Principe
2. **BUDGET HEADING INVOLVED:** B7-800
3. **LEGAL BASIS:** Treaty art.43, in conjunction with art.228(2) and (3) first subpar.
EC/São Tomé and Principe Agreement (OJ No L 54, 25.2.1984,p.1)

4. **DESCRIPTION OF OPERATION**

4.1 General objective: Protocol and Annex for a 3-year period

4.2 Period covered and arrangements for renewal or extension:

1.6. 1996 to 31.5.1999

Arrangements for renewal by negotiations before the Protocol expires.

5. **Classification of expenditure or revenue**

5.1 Compulsory

5.2 Differentiated

6. **Type of expenditure or revenue**

- *Other:* Financial compensation to a third country in exchange for fishing opportunities granted by it and laid down in the Protocol.

7. **FINANCIAL IMPACT**

7.1 Method of calculating total cost of operation (definition of unit costs)
see complement to the Protocol

7.2 Itemised breakdown of cost

current ECUs

Breakdown	1996	1997	1998		TOTAL
protocol art.2	600.000	600.000	600.000		1.800.000
protocol art.3	187.500				187.500
protocol art.4	62.500	62.500	62.500		187.500
TOTAL	850.000	662.500	662.500		2.175.000

7.3 Schedule for proposed new operation

current ECUs					
	1996	1997	1998		TOTAL
Commitment appropriations	850.000	662.500	662.500		2.175.000
Payment appropriations					
1996	850.000				850.000
1997		662.500			662.500
1998			662.500		662.500
TOTAL	850.000	662.500	662.500		2.175.000

8. FRAUD PREVENTION MEASURES; RESULTS OF MEASURES TAKEN:

Since the financial contributions are made by the Community in direct exchange for the fishing possibilities offered, the third country uses them for whatever end it chooses. The exception to this rule is the case of programmes, such as the scientific programmes, where under the dispositions of the Agreement, Mauritania will furnish reports to the Community.

In addition, the Member States whose vessels operate under this Agreement must certify to the Commission the exactitude of the data indicated in the tonnage certificates of the vessels so that the licence fees may be calculated on a guaranteed basis. To that end, the Agreement includes catch declarations for Community vessels.

9. ELEMENTS OF COST-EFFECTIVENESS ANALYSIS:

Same financial compensation for higher fishing possibilities(69 ships instead of 48)

In terms of the benefits of this agreement, it is clear that the value of the catches of the main commercial species far exceeds the cost of 2,175 MECU.

In addition to the direct commercial value of the catches of the vessels concerned, there are the following evident benefits from this Agreement:

- guaranteed employment aboard the fishing vessels;
- multiplier employment effect in the ports, auctions rooms, processing factories, shipyards, service industries, etc.;
- these employment opportunities are in regions where no other opportunities are available;
- contribution to the supply of fish to the Community.

Obviously, in addition to those benefits, one must take account of the importance of our relations with São Tomé and Príncipe in the fisheries field and our overall political relations.

10. ADMINISTRATIVE EXPENDITURE (part A of the budget):

No incidence on administrative expenditure.

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