EUROPEAN COMMISSION

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2010/0356 (NLE)

Proposal for a

COUNCIL DECISION

on the signing, on behalf of the European Union, and provisional application of the Protocol setting out the fishing opportunities and financial contribution provided for in the Fisheries Partnership Agreement between the European Community and the Democratic Republic of São Tomé and Príncipe

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

On the basis of a mandate from the Council[1], the European Commission has negotiated with the Democratic Republic of São Tomé and Príncipe to renew the Protocol to the Fisheries Partnership Agreement between the European Community and the Democratic Republic of São Tomé and Príncipe, which dates from 23 July 2007[2] and expired on 31 May 2010. On conclusion of these negotiations, a new Protocol was initialled on 15 July 2010 covering a period of three years from the time of the adoption of the Council Decision on the signing, on behalf of the Union, and provisional application of the said Protocol.

The Commission is asked to adopt this proposal and transmit it to the Council.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

The Commission's negotiating position was based in part on the results of an ex-post evaluation carried out by external experts.

The main purpose of the Protocol is to define the fishing opportunities offered to European Union vessels on the basis of the surplus available and the financial contribution due separately for access rights and sectoral support.

The overall objective is to continue the cooperation between the European Union and the Democratic Republic of São Tomé and Príncipe, thereby strengthening a partnership framework in the fisheries sector that has existed since 2006, in order, in particular, to contribute to developing a sustainable fisheries policy and sound exploitation of fishery resources in the São Toméan fishing zone, in the interests of both Parties.

The new Protocol is in keeping with the two Parties' concern to strengthen partnership and cooperation in the fisheries sector using all the financial instruments available. To this end, it should be reiterated that there is a need to create a framework which is favourable to the development of investment in this sector and optimising the production of small-scale fisheries.

3. LEGAL ELEMENTS OF THE PROPOSAL

This procedure relating to the Council Decision on the signing, on behalf of the European Union, and provisional application of the Protocol setting out the fishing opportunities and financial contribution provided for in the Fisheries Partnership Agreement between the European Community and the Democratic Republic of São Tomé and Príncipe is initiated in parallel with the procedures relating to:

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1 Decision No 8627/10 of 21 April 2010.

2 OJ L 205, 7.8.2007, p. 59.

- the Council Decision with the consent of the European Parliament on the conclusion of the new Protocol itself, and

- the Council Regulation on the allocation of fishing opportunities among the EU Member States concerned.

4. BUDGETARY IMPLICATION

The overall financial contribution under the Protocol of EUR 2 047 500 over the whole period is based on:

(a) an annual reference tonnage set at 7 000 tonnes for 40 vessels, corresponding to EUR 455 000 per year, and

(b) support for the development of the sectoral fisheries policy of the Democratic Republic of São Tomé and Príncipe, amounting to EUR 227 500 per year. This support meets the objectives of the national fisheries policy.

5. OPTIONAL ELEMENTS

With regard to the fishing opportunities, 28 tuna seiners and 12 surface longliners will be authorised to fish. Nevertheless, on the basis of the annual assessments of the state of stocks, these fishing opportunities could be revised upwards or downwards, which would lead to a corresponding review of the financial contribution.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43 in conjunction with Article 218(5) thereof,

Having regard to the proposal from the European Commission[3],

Whereas:

(1) The European Union negotiated a new Protocol to the Fisheries Partnership Agreement with the Democratic Republic of São Tomé and Príncipe, which dates from 23 July 2007[4], providing European Union vessels with fishing opportunities in the waters over which the Democratic Republic of São Tomé and Príncipe has sovereignty or jurisdiction in respect of fisheries.

(2) As a result of these negotiations, a Protocol was initialled on 15 July 2010.

(3) The previous Protocol to the Agreement expired on 31 May 2010.

(4) The new Protocol to the Agreement should be signed on behalf of the Union.

(5) In order to guarantee the continuation of fishing activities by European vessels, it is essential that the new Protocol should be applied as quickly as possible.

(6) It is in the European Union's interest to approve the provisional application of the new Protocol,

HAS ADOPTED THIS DECISION:

Article 1

The signing of the Protocol setting out the fishing opportunities and financial contribution provided for in the Fisheries Partnership Agreement between the European Community and

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[3] OJ C […], […], p. […].

[4] Council Regulation (EC) No 894/2007 of 23 July 2007 (OJ L 205, 7.8.2007).

the Democratic Republic of São Tomé and Príncipe is hereby approved on behalf of the Union, subject to its conclusion.

The text of the Protocol is attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the persons empowered to sign the agreement on provisional application in order to bind the European Union.

Article 3

This Decision shall enter into force on the day of its adoption. It shall be published in the *Official Journal of the European Union*.

This Decision is addressed to the Member States.

Done at Brussels,

For the Council
The President

ANNEX

Protocol

setting out the fishing opportunities and financial contribution provided for in the Fisheries Partnership Agreement between the European Union and the Democratic Republic of São Tomé and Príncipe

Article 1
Period of application and fishing opportunities

1. For a period of three years, the fishing opportunities granted to European Union vessels under Article 5 of the Fisheries Partnership Agreement shall be as follows:

   Highly migratory species (species listed in Annex 1 to the 1982 United Nations Convention on the Law of the Sea).

   – tuna seiners: 28 vessels

   – surface longliners: 12 vessels.

2. Paragraph 1 shall apply subject to Articles 5, 6, 8 and 9 of this Protocol.

Article 2
Financial contribution – Methods of payment

1. For the period referred to in Article 1, the financial contribution referred to in Article 7 of the Fisheries Partnership Agreement shall be EUR 2 047 500.

2. The financial contribution comprises:

   (a) an annual amount for access to the EEZ of São Tomé and Príncipe of EUR 455 000, equivalent to a reference tonnage of 7 000 tonnes per year, and

   (b) a specific amount of EUR 227 500 per year to support the implementation of the sectoral fisheries policy of São Tomé and Príncipe.

3. Paragraph 1 shall apply subject to Articles 3, 4, 5, 8 and 9 of this Protocol and Articles 12 and 13 of the Fisheries Partnership Agreement.

4. The European Union shall pay the financial contribution referred to in paragraph 1 at the rate of EUR 682 500 per year during the period of application of this Protocol, corresponding to the total of the annual amounts referred to in paragraph 2(a) and (b).

5. If the overall quantity of catches by European Union vessels in São Toméan waters exceeds 7 000 tonnes per year, the total amount of the annual financial contribution shall be increased by EUR 65 for each additional tonne caught. However, the total annual amount paid by the European Union shall not be more than twice the amount indicated in paragraph 2(a). Where the quantities caught by European Union vessels exceed the quantities corresponding to twice the total annual amount, the amount due for the quantity exceeding that limit shall be paid the following year.

6. Payment shall be made no later than sixty (60) days after the entry into force of the Protocol, as specified in Article 14, for the first year and no later than the anniversary date of this Protocol for the following years.

7. The São Toméan authorities shall have full discretion regarding the use to which the financial contribution referred to in paragraph 2(a) is put.

8. The entire financial contribution indicated in paragraph 1 of this Article shall be paid into a Public Treasury account opened with the National Bank of São Tomé and Príncipe.

Article 3
Promotion of responsible and sustainable fishing in São Toméan waters

1. No later than three (3) months after the entry into force of this Protocol, the Parties shall agree, within the Joint Committee provided for in Article 9 of the Fisheries Partnership Agreement, on a multiannual sectoral programme and detailed implementing rules, in particular:

   (a) annual and multiannual guidelines for using the financial contribution referred to in Article 2(2)(b);

   (b) the objectives, both annual and multiannual, to be achieved with a view to introducing, over time, responsible and sustainable fishing, taking account of the priorities expressed by São Tomé and Príncipe in its national fisheries policy or other policies relating to or having an impact on the introduction of responsible and sustainable fishing;

   (c) criteria and procedures for evaluating the results obtained each year.

2. Any proposed amendments to the multiannual sectoral programme must be approved by both Parties within the Joint Committee.

3. Each year, the São Toméan authorities may decide to allocate an additional amount over and above the share of the financial contribution referred to in Article 2(2)(b) with a view to implementing the multiannual programme. This allocation shall be communicated to the European Union no later than two (2) months before the anniversary date of this Protocol.

4. Each year, the two Parties shall carry out an evaluation of the progress made in implementing the multiannual sectoral programme. Where this evaluation indicates that the objectives financed directly by the part of the financial contribution referred to in Article 2(2)(b) of this Protocol have not been satisfactorily achieved, the European Commission reserves the right to reduce that part of the financial contribution with a view to adjusting the amount allocated to the implementation of the Programme in line with the results.

Article 4
Scientific cooperation on responsible fishing

1. The two Parties hereby undertake to promote responsible fishing in São Toméan waters based on the principle of non-discrimination between the different fleets operating in those waters.

2. During the period covered by this Protocol, the European Union and São Tomé and Príncipe shall undertake to cooperate to monitor the state of fishery resources in the São Toméan fishing zone.

3. The two Parties shall comply with the recommendations and resolutions of the International Commission for the Conservation of Atlantic Tunas (ICCAT) regarding the responsible management of fisheries.

4. In accordance with Article 4 of the Fisheries Partnership Agreement, on the basis of the recommendations and resolutions adopted within ICCAT and in the light of the best scientific advice available, the Parties shall consult each other within the Joint Committee provided for in Article 9 of the Fisheries Partnership Agreement to take measures to ensure the sustainable management of the fishery resources covered by this Protocol and concerning the activities of European Union vessels.

Article 5
Adjustment of fishing opportunities by mutual agreement

1. The fishing opportunities referred to in Article 1 may be adjusted by mutual agreement insofar as the recommendations and resolutions adopted by ICCAT confirm that this adjustment guarantees the sustainable management of the fishery resources covered by this Protocol. In this case, the financial contribution referred to in Article 2(2)(a) shall be adjusted proportionately and *pro rata temporis*. However, the total annual amount of the financial contribution paid by the European Union shall not be more than twice the amount referred to in Article 2(2)(a).

Article 6
New fishing opportunities

1. Should European Union vessels be interested in fishing activities which are not indicated in Article 1, the Parties shall consult each other before any authorisation is granted by the São Toméan authorities. Where appropriate, the Parties shall agree on the conditions applicable to these new fishing opportunities and, if necessary, make amendments to this Protocol and to the Annex hereto.

Article 7
Conditions governing fishing activities – Exclusivity clause

1. Without prejudice to Article 6 of the Agreement, fishing vessels flying the flag of a Member State of the European Union may fish in São Toméan waters only if they are in possession of a fishing authorisation issued under this Protocol in accordance with the Annex hereto.

Article 8
Suspension and review of the payment of the financial contribution

1. The financial contribution, as referred to in Article 2(2)(a) and (b), may be revised or suspended if one or more of the following conditions apply:

   (a) unusual circumstances, as defined in Article 2(h) of the Fisheries Partnership Agreement, prevent fishing activities in the São Toméan EEZ;

(b) following significant changes in the policy guidelines which led to the conclusion of this Protocol, one of the two Parties requests a review of the provisions with a view to a possible amendment thereof;

(c) the European Union notes that there has been a violation by the São Toméan authorities of the essential and fundamental elements of human rights as provided for in Article 9 of the Cotonou Agreement.

2. The European Union reserves the right to suspend, partially or totally, the payment of the specific financial contribution provided for in Article 2(2)(b) of this Protocol:

(a) if the results obtained are inconsistent with the programming, following an evaluation carried out by the Joint Committee;

(b) in the event of failure to implement this financial contribution.

3. Payment of the financial contribution shall resume after consultation and agreement by the two Parties, as soon as the situation existing prior to the events mentioned in paragraph 1 has been re-established and/or if the results of the financial implementation referred to in paragraph 2 so warrant.

Article 9
Suspension of the implementation of the Protocol

1. The implementation of this Protocol may be suspended at the initiative of one of the two Parties if one or more of the following conditions apply:

(a) unusual circumstances, as defined in Article 2(h) of the Fisheries Partnership Agreement, prevent fishing activities in the São Toméan EEZ;

(b) following significant changes in the policy guidelines which led to the conclusion of this Protocol, one of the two Parties requests a review of the provisions with a view to a possible amendment thereof;

(c) one of the two Parties notes that there has been a violation of the essential and fundamental elements of human rights as provided for in Article 9 of the Cotonou Agreement;

(d) there is a non-payment of the financial contribution provided for in Article 2(2)(a) by the European Union, for reasons other than those provided for in Article 8 of this Protocol;

(e) failure to embark observers from São Tomé and Príncipe on vessels covered by this Protocol in accordance with Chapter V of Annex I;

(f) There is a dispute between the two Parties concerning the interpretation of this Protocol;

(g) One of the two Parties does not comply with the provisions of this Protocol and the Annex and appendices hereto.

2. Implementation of the Protocol may be suspended at the initiative of one Party if it has not been possible to settle the dispute between the Parties in consultations held within the Joint Committee.

3. Suspension of application of the Protocol shall require the Party concerned to notify its intention in writing at least three months before the date on which suspension is due to take effect.

4. In the event of suspension, the Parties shall continue to consult with a view to finding an amicable settlement to their dispute. Where such a settlement is reached, application of the Protocol shall resume and the amount of the financial contribution shall be reduced proportionately and *pro rata temporis* according to the period during which application of the Protocol was suspended.

Article 10
National law

1. The activities of European Union fishing vessels operating in São Toméan waters shall be governed by the applicable law in São Tomé and Príncipe, unless otherwise provided for in the Fisheries Partnership Agreement, this Protocol and the Annex and appendices hereto.

2. The São Toméan authorities shall inform the European Commission of any change or any new legislation relating to the fishing sector.

3. The European Commission shall inform the São Toméan authorities of any change or any new legislation relating to the fishing activities of the European Union distant-water fleet.

Article 11
Duration

This Protocol and the Annex hereto shall apply for a period of three years from their provisional application in accordance with Articles 13 and 14, unless notice of termination is given in accordance with Article 12.

Article 12
Termination

1. In the event of termination of the Protocol, the Party concerned shall notify the other Party in writing of its intention to terminate the Protocol at least six (6) months before the date on which such termination would take effect.

2. Dispatch of the notification, as referred to in the previous paragraph, shall open consultations between the Parties.

Article 13
Provisional application

This Protocol shall apply provisionally from the date of signature.

Article 14
Entry into force

1. 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.

ANNEX

CONDITIONS GOVERNING FISHING ACTIVITIES BY EUROPEAN UNION VESSELS IN SÃO TOMÉ AND PRÍNCIPE'S FISHING ZONE

CHAPTER I – APPLICATION AND ISSUE FORMALITIES FOR FISHING AUTHORISATIONS

Section 1
Issue of fishing authorisations

1. Only eligible vessels may obtain an authorisation (licence) to fish in São Tomé and Príncipe's fishing zone.

2. For a vessel to be eligible, neither the owner, the skipper nor the vessel itself must be prohibited from fishing in São Tomé and Príncipe. They must be in order vis-à-vis the São Toméan authorities insofar as they must have fulfilled all prior obligations arising from their fishing activities in São Tomé and Príncipe under fisheries agreements concluded with the European Union. Furthermore, they must comply with the provisions of Regulation (EC) No 1006/2008[5] on fishing authorisations.

3. Any European Union vessel applying for a fishing authorisation must be represented by an agent resident in São Tomé and Príncipe. The name and address of that representative shall be stated in the fishing authorisation application.

4. The relevant European Union authorities shall submit (by electronic means) to the Ministry responsible for fisheries in São Tomé and Príncipe an application for each vessel wishing to fish under the Fisheries Partnership Agreement at least fifteen (15) working days before the date of commencement of the period of validity requested. Unless otherwise agreed in the Joint Committee, the competent European Union authority for the purposes of applying this Annex is the European Union Delegation to Gabon.

5. Applications shall be submitted to the Ministry responsible for fisheries on a form drawn up in accordance with the specimen in Appendix 1. The São Toméan authorities shall take all the necessary steps to ensure that the data received as part of the application for a fishing authorisation are treated as confidential. These data shall be used exclusively in the context of the implementation of the Fisheries Partnership Agreement.

6. All fishing authorisation applications shall be accompanied by the following documents:

   - proof of payment of the flat-rate advance for the period of validity of the authorisation;

   - any other documents or certificates required under the specific rules applicable to the type of vessel concerned pursuant to this Protocol.

7. The fee shall be paid into the account specified by the São Toméan authorities in accordance with Article 2(8) of the Protocol.

8. The fees shall include all national and local charges, with the exception of port taxes and service charges.

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[5] OJ L 286, 29.10.2008, p. 33.

9. Fishing authorisations for all vessels shall be issued to shipowners or their representatives via the European Union Delegation to Gabon within 15 working days of receipt of all the documents referred to in point 6 by the Ministry responsible for fisheries in São Tomé and Príncipe.

10. If a fishing authorisation is signed at a time when the European Union Delegation offices are closed, it shall be sent directly to the vessel's agent and a copy shall be sent to the Delegation.

11. Fishing authorisations shall be issued for a given vessel and shall not be transferable.

12. However, at the request of the European Union and where *force majeure* is proven, a vessel's fishing authorisation shall be replaced by a new fishing authorisation for another vessel of the same category as the first vessel, as referred to in Article 1 of the Protocol, with no further fee due. In this case, the calculation of the catch levels to determine whether an additional payment should be made shall take account of the sum of the total catches of the two vessels.

13. The owner of the first vessel, or his or her representative, shall return the cancelled fishing authorisation to the Ministry responsible for fisheries in São Tomé and Príncipe via the European Union Delegation to Gabon.

14. The new fishing authorisation shall take effect on the day on which the cancelled fishing authorisation is returned to the Ministry responsible for fisheries in São Tomé and Príncipe. The European Union Delegation to Gabon shall be informed of the transfer of the fishing authorisation.

15. The fishing authorisation must be kept on board at all times.

Section 2
Fishing authorisation conditions – fees and advance payments

1. Fishing authorisations shall be valid for a period of one year.

2. The fee for tuna seiners and surface longliners shall be set at EUR 35 per tonne caught within São Tomé and Príncipe's fishing zone.

3. Fishing authorisations shall be issued once the following standard fees have been paid to the competent national authorities:

   - EUR 6 125 per tuna seiner, equivalent to the fees due for 175 tonnes per year;

   - EUR 2 275 per surface longliner, equivalent to the fees due for 65 tonnes per year.

4. The final statement of the fees due for year n shall be drawn up by the European Commission no later than sixty (60) days after the anniversary date of the Protocol in year n+1 on the basis of the catch declarations made by each shipowner and confirmed by the scientific institutes responsible for verifying catch data in the Member States, such as the IRD (Institut de Recherche pour le Développement), IEO (Instituto Español de Oceanografía) and IPIMAR (Instituto Português de Investigação Marítima), via the European Union Delegation to Gabon.

5. This statement shall be sent simultaneously to the Ministry responsible for fisheries in São Tomé and Príncipe and to the shipowners.

6. Any additional payments (for quantities caught in excess of 175 tonnes for tuna seiners and 65 tonnes for longliners) shall be made by the shipowners to the competent São Toméan national authorities no later than three (3) months after the anniversary date of the Protocol in the year n+1, into the account referred to in point 7 of Section 1 of this Chapter, on the basis of EUR 35 per tonne.

7. However, if the amount of the final statement is lower than the advance referred to in point 3 of this Section, the resulting balance shall not be reimbursable to the shipowner.

CHAPTER II – FISHING ZONES

1. European Union vessels operating in São Toméan waters under this Protocol may carry out their fishing activities in waters beyond 12 nautical miles from the base lines in the case of tuna seiners and surface longliners.

2. The coordinates of São Tomé and Príncipe's Exclusive Economic Zone are given in Appendix 3.

3. Without exception, all fishing activity in the zone intended for joint exploitation by São Tomé and Príncipe and Nigeria, delimited by the coordinates set out in Appendix 3, shall be prohibited.

CHAPTER III – MONITORING AND SURVEILLANCE

Section 1
System for recording catches

1. The skippers of all vessels operating in São Toméan waters under this Protocol shall be required to notify their catches to the Ministry responsible for fisheries in São Tomé and Príncipe, so as to allow monitoring of the quantities caught, which shall be validated by the competent scientific institutes in accordance with the procedure referred to in point 5 of Section 2 of Chapter I of this Annex. Catches shall be notified as follows:

   1.1. EU vessels operating in São Toméan waters under this Protocol shall fill out the logbook (Appendix 2) on daily basis for each trip in those waters. The logbook must still be filled in if there are no catches.

   1.2 The skippers of the vessels shall send copies of the logbook to the Ministry responsible for fisheries in São Tomé and Príncipe and to the scientific institutes specified in point 4 of Section 2 of Chapter I.

2. The words 'Outside São Tomé and Príncipe's EEZ' shall be entered in the logbook in respect of periods during which the vessel was not in São Toméan waters.

3. The forms shall be filled in legibly and signed by the skipper of the vessel or by his or her legal representative.

4. Where the provisions set out in this Chapter are not complied with, the Government of São Tomé and Príncipe shall suspend the fishing authorisation of the offending vessel until formalities have been completed and impose on the shipowner the penalty laid down in current São Toméan legislation. The European Commission and the flag Member State shall immediately be informed thereof.

5. Declarations shall include the catches made by the vessel during each trip. They shall be transmitted to the Ministry responsible for fisheries in São Tomé and Príncipe by electronic means, with a copy to the European Commission, at the end of each trip and, in all cases, before the vessel leaves São Toméan waters. Electronic receipts shall be sent at once to the vessel by both addressees, with a copy to the other.

6. The original of the declarations relating to the annual period of validity of the fishing authorisation, within the meaning of point 1 of Section 2 of Chapter I of this Annex, shall be transmitted on a physical medium to the Ministry responsible for fisheries in São Tomé and Príncipe within 45 days of the end of the last trip made during the said period. Hard copies shall be sent to the European Commission at the same time.

7. The two Parties undertake to make every effort to establish and bring into operation a system for reporting catches based exclusively on the electronic exchange of all data: the two Parties shall thus plan the rapid replacement of the paper version of catch reporting with an electronic version.

8. Once the electronic catch reporting system has been set up and in the event of a technical fault in this system, catch reports shall be made in accordance with points 5 and 6 above until the system is working again.

Section 2
Reporting of catches: entering and leaving São Toméan waters

1. For the purposes of this Annex, the duration of a trip by a European Union vessel operating in São Toméan waters under this Protocol shall be defined as follows:

   - the period elapsing between entering and leaving São Tomé and Príncipe's fishing zone, or

   - the period elapsing between entering São Tomé and Príncipe's fishing zone and a transhipment in São Toméan waters, or

   - the period elapsing between entering São Toméan waters and a landing in São Tomé and Príncipe.

2. European Union vessels operating in São Toméan waters under this Protocol shall notify the competent São Toméan authorities, at least three (3) hours in advance, of their intention to enter or leave São Toméan waters.

3. When notifying entry into/exit from São Tomé and Príncipe's EEZ, vessels shall, at the same time, also communicate their position and the catch already held on board, without prejudice to Section 2. This information shall be communicated by e-mail or fax to the addresses and in the format set out in Appendix 4. However, the competent São Toméan authorities may waive this requirement for surface longliners that do not have the technical communication equipment referred to above and may authorise them to transmit this information by radio. The information should preferably be communicated by e-mail (dpescas1@cstome.net) or fax (++ 239 2222 828) or, failing that, by radio (call sign: 12.00 Hz from 08:00 to 10:00, and 8.634 Hz from 14:00 to 17:00).

4. Vessels found to be fishing without having informed the competent São Toméan authorities shall be regarded as vessels without a fishing authorisation and shall be subject to the consequences provided for under national law.

5. Vessels shall also be informed of the e-mail address, fax and telephone numbers and radio coordinates when the fishing authorisation is issued.

Section 3
Transhipments

1 All European Union vessels operating in São Toméan waters under this Protocol which tranship catches in São Toméan waters shall do so off São Toméan ports.

1.1. The owners of such vessels must notify the following information to the competent São Toméan authorities at least 24 hours in advance:

– the names of the transhipping fishing vessels;

– the names of the cargo vessels;

– the tonnage by species to be transhipped, indicating the catch zone;

– the day of transhipment;

– the beneficiary of the catches transhipped.

2. Transhipment is authorised only in the following areas: Fernão Dias, Neves and Ana Chaves.

3. Transhipment shall be considered as an exit from São Toméan waters. Vessels must submit their catch declarations to the competent São Toméan authorities and state whether they intend to continue fishing or to leave São Toméan waters.

4. Any transhipment of catches not covered above shall be prohibited in São Toméan waters. Any person infringing this provision shall be liable to the penalties provided for by São Toméan law.

Section 4
Satellite monitoring

European Union vessels operating under this Protocol must be monitored, *inter alia*, by the satellite-based monitoring system, without discrimination, in accordance with the following provisions.

1. For the purposes of satellite monitoring, the São Toméan authorities shall communicate the geographical positions of the limits of the São Toméan fishing zone to the representatives or agents of the shipowners and to the Control Centres of the flag States.

2. Using the model provided in Appendix 4, the Parties shall exchange information on https addresses and the specifications for electronic data transmission between their Control Centres in accordance with points 4 and 6. Such information shall include the following where they exist: names, telephone, telex and fax numbers and e-mail addresses which may be used for general communications between Control Centres.

3. The position of vessels shall be determined with a margin of error of less than 500 metres and a confidence interval of 99%.

4. When a European Union vessel which is operating in São Toméan waters under this Protocol and is the subject of satellite monitoring pursuant to European Union legislation enters São Tomé and Príncipe's fishing zone, the subsequent position reports shall immediately be transmitted by the Control Centre of the flag State to São Tomé and Príncipe's Fisheries Monitoring Centre at intervals of no more than two hours. The messages concerned shall be identified as position reports.

5. The messages referred to in point 4 shall be transmitted electronically in https format, without any further protocol. They shall be communicated in real time in the format set out in the table in Appendix 4.

5.1 It is prohibited for vessels to turn off the satellite monitoring equipment when they are operating in São Toméan waters.

6. Where the continuous satellite monitoring equipment installed on board a fishing vessel develops a technical fault or breaks down, the skipper of the vessel shall transmit the information specified in point 4 to the Control Centre of the flag State in good time. In such circumstances, it will be necessary to send a position report every 24 hours while the vessel is in São Toméan waters.

6.1 This global position report shall include the hourly positions as recorded by the skipper of that vessel during those 24 hours.

6.2 The Control Centre of the flag State or the vessel itself must forward these messages to São Tomé and Príncipe's Fisheries Monitoring Centre without delay.

6.3 In case of need or doubt, the competent São Toméan authorities may request additional information from the Control Centre of the flag State about a particular vessel.

7. The defective equipment shall be repaired or replaced as soon as the vessel completes its fishing trip and, in any case, within one month at the latest. After this deadline, the vessel in question may not undertake any further fishing trips until the equipment has been repaired or replaced.

8. The satellite monitoring system's software and hardware components shall be tamper-proof, i.e. they must not permit the input or output of false positions or be capable of being manipulated. The system shall be fully automatic and operational at all times regardless of environmental conditions. Destroying, damaging, rendering inoperative or tampering with the satellite monitoring system shall be prohibited.

8.1 The skipper of the vessel must ensure in particular that:

- data are not altered in any way;

- the antenna or antennas connected to the satellite monitoring equipment are not obstructed in any way;

- the power supply of the satellite monitoring equipment is not interrupted in any way;

- the vessel tracking device is not removed from the vessel or from the place where it was originally installed;

- any replacement of the vessel tracking device shall immediately be notified to the competent São Toméan authorities.

8.2 Any violation of the above-mentioned requirements may make the skipper and the shipowner liable under the laws and regulations of São Tomé and Príncipe, provided that the vessel is operating in São Toméan waters.

9. The Control Centres of the flag States shall monitor the movements of their vessels in São Toméan waters. If the vessels are not being monitored in accordance with the conditions laid down, São Tomé and Príncipe's Fisheries Monitoring Centre shall be informed immediately and the procedure laid down in point 6 shall apply.

10. The Control Centres of the flag States and São Tomé and Príncipe's Fisheries Monitoring Centre must cooperate to ensure the implementation of these provisions. If São Tomé and Príncipe's Fisheries Monitoring Centre establishes that a flag State is not transmitting the data in accordance with point 4, the other Party must be informed immediately. Upon receipt of notification, the latter must respond within 24 hours by informing São Tomé and Príncipe's Fisheries Monitoring Centre of the reasons for non-transmission and stating a reasonable deadline for complying with these provisions. If these provisions are not complied with within the time limit set, the two Parties shall resolve the dispute in writing or as provided for in point 14 below.

11. The monitoring data communicated to the other Party in accordance with these provisions shall be intended solely for the purposes of the São Toméan authorities in controlling and monitoring the European Union fleet fishing under the Fisheries Partnership Agreement. Such data may not, under any circumstances, be communicated to third parties.

12. The Parties agree to exchange, upon request, information on the equipment used for satellite monitoring, in order to ensure that each piece of equipment is fully compatible with the requirements of the other Party for the purposes of these provisions.

13. The Parties agree to review these provisions where appropriate, in particular in the event of a malfunction or anomaly relating to the vessels. These cases should be notified by the competent São Toméan authority to the flag State at least 15 days before the review meeting.

14. Any dispute over the interpretation or application of these provisions shall be the subject of consultation between the Parties within the Joint Committee provided for in Article 9 of the Fisheries Partnership Agreement.

CHAPTER IV – EMBARKING SEAMEN

1. Owners of tuna vessels and surface longliners shall employ ACP nationals, subject to the following conditions and limits:

   - for the fleet of tuna seiners, at least 20% of the seamen signed on during the tuna-fishing season in the fishing zone of the third country shall be of São Toméan or possibly ACP origin;

   - for the fleet of surface longliners, at least 20% of the seamen signed on during the fishing season in the fishing zone of the third country shall be of São Toméan or possibly ACP origin.

2. Shipowners shall endeavour to sign on additional seamen of São Toméan origin.

3. Shipowners shall be free to select the seamen they take on board their vessels from the names on a list of able and qualified seamen available from the São Toméan agents.

4. The shipowner or his or her representative shall inform the competent São Toméan authorities of the names of the seamen taken on board the vessel concerned, mentioning their position in the crew.

5. The International Labour Organisation (ILO) Declaration on Fundamental Principles and Rights at Work shall apply as of right to seamen signed on by European Union vessels. This concerns in particular the freedom of association and the effective recognition of the right to collective bargaining, and the elimination of discrimination in respect of employment and occupation.

6. The employment contracts of São Toméan and ACP seamen, a copy of which shall be given to the Ministry of Labour, the Ministry of Fisheries and the signatories of the contracts, shall be drawn up between the shipowners' representative(s) and the seamen and/or their trade unions or representatives. These contracts shall guarantee the seamen the social security cover applicable to them, in accordance with the applicable legislation, including life assurance and sickness and accident insurance.

7. The wages of the seamen shall be paid by the shipowners. They shall be fixed by mutual agreement between the shipowners or their representatives and the seamen and/or their trade unions or representatives. However, the wage conditions granted to the seamen shall not be lower than those applied to crews from their respective countries and shall, under no circumstances, be below ILO standards.

8. All seamen employed aboard European Union vessels shall report to the skipper of the vessel designated on the day before their proposed embarkation date. Where a seaman fails to report at the date and time agreed for embarkation, shipowners shall be automatically absolved of their obligation to take the seaman on board.

9. Where no São Toméan or ACP seamen are taken on board for reasons other than that referred to in the previous point, shipowners shall be required to pay, for each day of the fishing trip in São Toméan waters, a flat-rate amount of EUR 20 per day and per vessel. The payment of this amount shall take place within the time limits laid down in point 4 of Section 2 of Chapter I of this Annex.

10. This sum shall be used for training ACP deep-sea fishermen and shall be paid into the account specified by the São Toméan authorities.

CHAPTER V – OBSERVERS

1. European Union vessels operating in São Toméan waters under this Protocol shall take on board observers appointed by the Ministry responsible for fisheries in São Tomé and Príncipe on the terms set out below:

1.1 At the request of the competent São Toméan authorities, European Union vessels shall take on board an observer designated by the former to check catches made in São Toméan waters.

1.2 The competent São Toméan authority shall draw up a list of vessels designated to take an observer on board and a list of the appointed observers. These lists shall be kept up

to date. They shall be forwarded to the European Commission as soon as they have been drawn up and every three months thereafter where they have been updated.

1.3 The competent São Toméan authorities shall inform the shipowners concerned, or their representatives, of the name of the observer appointed to be taken on board their vessel at the time the fishing authorisation is issued, or no later than 15 days before the observer's planned embarkation date.

2. The time spent on board by observers shall be one fishing trip. However, at the express request of the competent São Toméan authorities, this embarkation may be spread over several trips, depending on the average trip duration for a particular vessel. This request shall be made by the competent authority when the name of the observer appointed to board the vessel in question is notified.

3. The conditions under which observers are taken on board shall be agreed between shipowners or their representatives and the competent authority.

4. Observers shall embark and disembark at a port chosen by the shipowner. Embarkation shall take place at the beginning of the first voyage in São Toméan waters after notification of the list of designated vessels.

5. Within two weeks and giving ten days' notice, the shipowners concerned shall make known at which ports in the subregion and on what dates they intend to embark and disembark the observers.

6. Where observers are taken on board in a country other than São Tomé and Príncipe, their travel costs shall be borne by the shipowner. Should a vessel with an observer on board leave São Tomé and Príncipe's fishing zone, all measures must be taken to ensure the observer's return to São Tomé and Príncipe as soon as possible at the expense of the shipowner.

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

8. Observers shall be treated as officers. When the vessel is operating in São Toméan waters, they shall carry out the following tasks:

8.1 observe the fishing activities of the vessels;

8.2 verify the position of vessels engaged in fishing operations;

8.3 note the fishing gear used;

8.4 verify the catch data for São Toméan waters recorded in the logbook;

8.5 verify the percentages of by-catches and estimate the quantity of discards of species of marketable fish;

8.6 report fishing data, including the quantity of catches and by-catches on board, to their competent authority by any appropriate means.

9. Skippers shall do everything in their power to ensure the physical safety and welfare of observers during performance of their duties.

10 Observers shall be offered every facility needed to carry out their duties. Skippers shall give them access to the means of communication needed for the discharge of their duties, to documents directly concerned with the vessel's fishing activities, including in particular the logbook and the navigation log, and to those parts of the vessel necessary to facilitate the exercise of their tasks.

11. While on board, observers shall:

11.1 take all appropriate steps to ensure that the conditions of their boarding and presence on the vessel neither interrupt nor hamper fishing operations;

11.2 respect the material and equipment on board and the confidentiality of all documents belonging to the vessel.

12. At the end of the observation period and before leaving the vessel, observers shall draw up an activity report to be transmitted to the competent São Toméan authorities, with a copy to the European Commission. They shall sign it in the presence of the skipper, who may add or cause to be added to it any observations considered relevant, followed by the skipper's signature. A copy of the report shall be handed to the skipper when the observer is put ashore.

13. Shipowners shall bear the cost of providing board and accommodation for observers in the same conditions as for officers, within the confines of the practical possibilities offered by the vessel.

14. The salary and social contributions of the observer shall be borne by São Tomé and Príncipe.

CHAPTER VI – MONITORING

European fishing vessels shall comply with the measures and recommendations adopted by ICCAT with regard to fishing gear and the technical specifications thereof and all other technical measures applicable to their fishing activities.

1. List of vessels

1.1. The European Union shall keep an up-to-date draft list of the vessels to which a fishing authorisation (fishing licence) has been issued under this Protocol. This list shall be notified to the São Toméan authorities responsible for fisheries inspection as soon as it is drawn up and each time it is updated.

2. Monitoring procedures

2.1 Skippers of authorised European Union vessels engaged in fishing activities in São Toméan waters shall allow and facilitate boarding and the discharge of their duties by São Toméan officials responsible for the inspection and control of fishing activities.

2.2. These officials shall remain on board only as long as is necessary for the discharge of their duties.

2.3. Once the inspection and monitoring has been completed, a copy of the inspection report shall be provided to the skipper of the vessel and to the European Commission Delegation to Gabon.

2.4. In order to facilitate safe inspection procedures and without prejudice to São Toméan legislation, monitoring must be carried out in such a way that the inspection platforms and the inspectors are identified as officers authorised by São Tomé and Príncipe.

2.5 Skippers of European Union vessels engaged in transhipment operations in the zones of São Tomé and Príncipe referred to in point 2 of Section 3 of Chapter III shall allow and facilitate the inspection of such operations by São Toméan inspectors.

CHAPTER VII – INFRINGEMENTS

1.1 The competent São Toméan authorities shall inform the flag State and the European Commission, within a maximum of 24 hours, of any inspection that revealed an infringement by a European Union vessel.

1.2 The flag State and the European Commission shall, at the same time, receive a brief report of the circumstances and reasons that led to the finding.

2. Statement of inspection

2.1 After the competent São Toméan authorities have drawn up a statement, the skipper of the vessel shall sign it.

2.2 This signature shall not prejudice the rights of the skipper or any defence which the skipper may make against the presumed infringement.

2.3 The skipper shall take the vessel to the port indicated by the São Toméan authorities. In the case of minor infringements, the competent São Toméan authorities may authorise the boarded vessel to continue fishing.

3. Consultation meeting in the event of infringement

3.1 Before any measures regarding the skipper or the crew of the vessel or any action regarding the cargo and equipment of the vessel are considered, other than those to safeguard evidence relating to the presumed infringement, a consultation meeting shall be held, within one working day of the receipt of the above information, between the European Commission and the competent São Toméan authorities, possibly attended by a representative of the Member State concerned.

3.2 At the meeting, the Parties shall exchange any relevant documentation or information helping to clarify the circumstances of the findings. The shipowner or his or her representative shall be informed of the outcome of the meeting and of any measures resulting from the boarding.

4. Settlement of boarding

4.1. Before any judicial proceedings, with the exception of cases under criminal law, an attempt shall be made to resolve the presumed infringement by means of an amicable settlement. This procedure shall end no later than three working days after the boarding.

4.2. In the event of an amicable settlement, the amount of the fine shall be determined in accordance with São Toméan legislation.

4.3. If the case cannot be settled by amicable procedure and has to be brought before a competent judicial body, a bank security set to take account of the boarding costs and the

fines and compensation payable by the parties responsible for the infringement shall be lodged by the shipowner with a bank specified by the competent São Toméan authorities.

4.4. The bank security shall be irrevocable until the legal proceedings have been concluded. It shall be released once legal proceedings end without a conviction. Similarly, in the event of a conviction leading to a fine of less than the security lodged, the balance shall be released by the competent São Toméan authorities.

4.5. The vessel shall be released and its crew authorised to leave the port:

- once the obligations arising under the amicable settlement have been fulfilled, or

- when the bank security referred to in point 4.3 has been lodged and accepted by the competent São Toméan authorities, pending completion of the legal proceedings.

APPENDICES

1 – Application form for a fishing authorisation

2 – Logbook

3 – Coordinates of the zone in which fishing is prohibited

4 – Communication of VMS messages to São Tomé and Príncipe

5 – Limits of São Tomé and Príncipe's EEZ – coordinates of the EEZ

6 – Contact details of São Tomé and Príncipe's FMC

7 – Contact details of the FMCs of the European Union Member States concerned by the Protocol to the Fisheries Partnership Agreement

Appendix 1

MINISTRY RESPONSIBLE FOR FISHERIES IN SÃO TOMÉ AND PRÍNCIPE

APPLICATION FOR FISHING AUTHORISATION FOR FOREIGN INDUSTRIAL FISHING VESSELS

1. Name of shipowner:
2. Address of shipowner:
3. Name of representative or agent:
4. Address of shipowner's representative or local agent:
5. Name of skipper:
6. Name of vessel:
7. Registration No:
8. Fax No:
9. E-mail address:
10. Radio code:
11. Date and place of construction:
12. Flag country:
13. Port of registration:
14. Port of fitting out:
15. Overall length:
16. Beam:
17. Gross tonnage:
18. Hold capacity:
19. Cold storage and freezing capacity:
20. Engine type and horse power:
21. Fishing gear:
22. Number of crew:
23. Communications equipment:
24. Call sign:

25. Identification markings:

26. Fishing operations to be carried out:

27. Place of landing:

28. Fishing zones:

29. Species to be caught:

30. Period of validity:

31. Special conditions:

Opinion of the Directorate-General for Fisheries and Aquaculture:

Comments of the Ministry responsible for fisheries:

Appendix 2

LOGBOOK

	Longline
	Live bait
	Purse seine
	Trawl
	Outros (Others)

			Month	Day	Year	Port
Name of vessel: …….	Gross tonnage: …….	Vessel DEPARTED:				
Flag country: …….	Capacity – (MT): …….					
Registration No: …….	Skipper: …….	Vessel RETURNED:				
Shipowner: …….	No of crew: …….					
Address: …….	Reporting date: …….					
	(Reported by):	No of days at sea:		No of fishing days: / No of sets made:		Trip number:

Date		Sector		Surface water temp (ºC)	Fishing effort / No of hooks used	Capturas (Catches)																		Isco usado na pesca (Bait used)			
Month	Day	Latitude N/S	Longitude E/W			Bluefin tuna *Thunnus thynnus or maccoyii*		Yellowfin tuna *Thunnus albacares*		(Bigeye tuna) *Thunnus obesus*		(Albacore) *Thunnus alalunga*		(Swordfish) *Xiphias gladius*		(Strip marlin) (White marlin) *Tetraptunus audax or albidus*		(Black marlin) *Makaira indica*		(Sailfish) *Istiophorus albicans or platypterus*		(Skipjack) *Katsuwonus pelamis*		(Miscellaneous fish)		Daily total (weight in kg only)		Saury	Squid	Live bait	(Other)
						No	Weight kg	No	kg	No	kg	No	kg	No	kg	No	kg	No	kg	No	kg	No	kg	No	kg	No	kg				
LANDING WEIGHT (IN KG)																															

Notes

1 – Use one sheet per month and one line per day.

2 - At the end of each trip, forward a copy of the log to your correspondent or to ICCAT, Calle Corazón de María, 8, 28002 Madrid, Spain.

3 – 'Day' refers to the day you set the line.

4 - Fishing area refers to the position of the vessel. Round off minutes and record degree of latitude and longitude. Be sure to record N/S and E/W.

5 - The last line (landing weight) should be completed only at the end of the trip. Actual weight at the time of unloading should be recorded.

6 - All information reported herein will be kept strictly confidential.

Appendix 3

Latitude				Longitude			
Degrés	Minutes	Secondes		Degrés	Minutes	Secondes	
03	02	22	N	07	07	31	E
02	50	00	N	07	25	52	E
02	42	38	N	07	36	25	E
02	20	59	N	06	52	45	E
01	40	12	N	05	57	54	E
01	09	17	N	04	51	38	E
01	13	15	N	04	41	27	E
01	21	29	N	04	24	14	E
01	31	39	N	04	06	55	E
01	42	50	N	03	50	23	E
01	55	18	N	03	34	33	E
01	58	53	N	03	53	40	E
02	02	59	N	04	15	11	E
02	05	10	N	04	24	56	E
02	10	44	N	04	47	58	E
02	15	53	N	05	06	03	E
02	19	30	N	05	17	11	E
02	22	49	N	05	26	57	E
02	26	21	N	05	36	20	E
02	30	08	N	05	45	22	E
02	33	37	N	05	52	58	E
02	36	38	N	05	59	00	E
02	45	18	N	06	15	57	E
02	50	18	N	06	26	41	E
02	51	29	N	06	29	27	E
02	52	23	N	06	31	46	E
02	54	46	N	06	38	07	E
03	00	24	N	06	56	58	E
03	01	19	N	07	01	07	E
03	01	27	N	07	01	46	E
03	01	44	N	07	03	07	E
03	02	22	N	07	07	31	E

Appendix 4

COMMUNICATION OF VMS MESSAGES TO SÃO TOMÉ AND PRÍNCIPE

Table II - FORMAT OF VMS DATA

Data Element	**Code**		**Comments**
Start record	SR		System detail – indicates start of record
Addressee	AD		Message detail – addressee. Alpha-3 ISO country code
From	FR		Message detail – sender. Alpha-3 ISO country code
Flag State	FS		
Type of message	TM		Message detail – message type 'POS'
Radio call sign	RC		Vessel detail – international radio call sign of vessel
Contracting Party internal reference number	IR		Vessel detail – unique Contracting Party number (flag State ISO-3 code followed by number)
External registration number	XR		Vessel detail – number marked on side of vessel
Latitude	LA		Vessel position detail – position in degrees and minutes N/S DD.ddd (WGS-84)
Longitude	LO		Vessel position detail – position in degrees and minutes E/W DDD.ddd (WGS-84)
Course	CO		Vessel course 360° scale
Speed	SP		Vessel speed in tenths of knots
Date	DA		Vessel position detail – date of record of UTC position (YYYYMMDD)
Time	TI		Vessel position detail – time of record of UTC position (HHMM)
End record	ER		System detail - indicates end of record

Character set: ISO 8859.1

Each data transmission is structured as follows:

– a double slash (//) and field code indicate the start of the message;

– a single slash (/) separates the field code and the data.

Optional data elements must be inserted between the start and end of the record.

Format for communication of catches and fishing vessel reports

‘Catch on entry to the EEZ’ report

‘Catch on transhipment’ report

‘Catch on exit from the EEZ’ report

Appendix 5

LIMITS OF SÃO TOMÉ AND PRÍNCIPE'S EEZ

COORDINATES OF THE EEZ

http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/losic/losic9ef.pdf

Appendix 6

CONTACT DETAILS OF SÃO TOMÉ AND PRÍNCIPE'S FMC

Name of FMC:

VMS Tel.:

VMS Fax:

VMS e-mail:

DSPG Tel.:

DSPG Fax:

Address X25 =

Declaration of entries/exits:

Appendix 7

CONTACT DETAILS OF THE FMCs OF THE EUROPEAN UNION MEMBER STATES CONCERNED BY THE PROTOCOL TO THE EU/SÃO TOMÉ AND PRÍNCIPE FISHERIES PARTNERSHIP AGREEMENT