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EUROPEAN COMMISSION

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Proposal for a

COUNCIL DECISION

on the signing, on behalf of the European Union, and the 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 Republic of Cape Verde

EXPLANATORY MEMORANDUM

On the basis of a mandate from the Council¹, the European Commission has conducted negotiations with the Republic of Cape Verde on the renewal of the Protocol to the Fisheries Partnership Agreement between the European Community and the Republic of Cape Verde of 19 December 2006. Following the negotiations, a new Protocol was initialled on 22 December 2010 covering a period of three years from 1 September 2011, the current Protocol being due to expire on 31 August 2011.

This procedure is being initiated, along with the procedures relating to the Council Decision, with the consent of the Parliament, for the conclusion of the Protocol itself and the Council Regulation on the allocation of fishing opportunities among the Member States of the EU.

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

The main objective of the Protocol to the Agreement is to define the fishing opportunities offered to European Union vessels based on the surplus available as well as the financial contribution due, separately, for access rights and for sectoral support.

The aim is to continue the cooperation between the European Union and the Republic of Cape Verde, thereby creating a partnership framework within which to develop a sustainable fisheries policy and sound exploitation of fishery resources in the Cape Verde 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.

The overall financial contribution of the Protocol of EUR 1 305 000 over the whole period is based on: a) an annual reference tonnage fixed at 5 000 tonnes for 74 vessels corresponding to EUR 325 000 per year, and b) support for the development of the sectoral fisheries policy of the Republic of Cape Verde amounting to EUR 110 000 per year. This support meets the objectives of the national fisheries policy.

With regard to the fishing opportunities, 28 tuna seiners, 35 surface longliners and 11 pole-and-line vessels 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.

The Commission proposes, on this basis, that the Council adopt by Decision the signing and the provisional application of the Protocol.

¹ Decision No 12600/10 of 27 September 2010.

Proposal for a

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on the signing, on behalf of the European Union, and the 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 Republic of Cape Verde

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 Commission,

Whereas:

- (1) On 19 December 2006, the Council adopted Regulation (EC) No 2027/2006 on the conclusion of the Fisheries Partnership Agreement between the European Community and the Republic of Cape Verde².
- (1) The Protocol setting out the fishing opportunities and financial contribution provided for in the Partnership Agreement will expire on 31 August 2011.
- (2) The European Union has negotiated with the Republic of Cape Verde (hereafter referred to as 'Cape Verde') a new Protocol granting European Union vessels fishing opportunities in the waters over which Cape Verde exercises sovereignty or jurisdiction in fishing matters.
- (3) On completion of the negotiations, a new Protocol was initialled on 22 December 2010.
- (4) In order to allow European Union vessels to carry out fishing activities, Article 15 of the new Protocol provides for it to be applied on a provisional basis.
- (5) The new Protocol should be signed and applied on a provisional basis, pending the completion of the procedures for its formal conclusion.

HAS ADOPTED THIS DECISION:

² Council Regulation (EC) No 2027/2006 of 19 December 2006, OJ L 414, 30.12.2006, p.1.

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 the Republic of Cape Verde 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 person(s) empowered to sign the Protocol on behalf of the European Union, subject to its conclusion.

Article 3

The Protocol shall apply on a provisional basis from 1 September 2011, in accordance with Article 15, pending the completion of the procedures for its formal conclusion.

Article 4

This Decision shall enter into force on the day of its adoption.

Done at Brussels,

*For the Council
The President*

ANNEX

Protocol

Protocol agreed between the European Union and the Republic of Cape Verde setting out fishing opportunities and the financial contribution provided for in the Fisheries Partnership Agreement between the two parties currently in force

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).

- freezer tuna seiners: 28 vessels;
- pole-and-line tuna vessels: 11 vessels;
- surface longliners: 35 vessels.

2. Paragraph 1 shall apply subject to Articles 4 and 5 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 435 000.

2. The financial contribution comprises:

(a) an annual amount for access to the Exclusive Economic Zone (EEZ) of Cape Verde of EUR 325 000, equivalent to a reference tonnage of 5 000 tonnes per year, and

(b) a specific amount of EUR 110 000 per year for support to and implementation of the sectoral fisheries policy of Cape Verde.

3. Paragraph 1 shall apply subject to Articles 3, 4, 5, 7 and 8 of this Protocol and Articles 12 and 13 of the Fisheries Partnership Agreement.

4. If the overall quantity of catches by European Union vessels in Cape Verdean waters exceeds 5 000 tonnes per year, the total amount of the financial contribution of EUR 325 000 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) (EUR 325 000). 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.

5. Payment of the financial contribution due under Paragraph 2(a) and (b) above shall be made within 60 days of the entry into force of the Protocol for the first year and by the renewal date for subsequent years.
6. The Cape Verdean authorities shall have full discretion regarding the use to which the financial contribution referred to in paragraph 2(a) is put.
7. The financial contribution shall be paid into a single Public Treasury account opened with a financial institution specified by the Cape Verdean authorities.

Article 3

Promotion of responsible and sustainable fishing in Cape Verdean waters

1. No later than three 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 Cape Verde in its national fisheries policy and 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, or on the basis of an exchange of correspondence.
3. Each year, the Cape Verdean 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, within the Joint Committee, an evaluation of the progress made in implementing the multiannual sectoral programme. Where this evaluation indicates that the objectives financed directly by the share of the financial contribution referred to in Article 2(2)(b) of this Protocol have not been satisfactorily achieved, the European Union reserves the right to reduce that share 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 Cape Verdean waters on the basis of the principles of non-discrimination between the different fleets fishing in those waters.
2. During the period covered by this Protocol, the European Union and the Cape Verdean authorities shall monitor the evolution of resources in the Cape Verdean 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, based on the recommendations and resolutions adopted within the ICCAT and the best available scientific advice, the Parties shall consult each other within the Joint Committee provided for in Article 9 of the Fisheries Partnership Agreement and, where necessary after a scientific meeting and by mutual agreement, take measures to ensure the sustainable management of fisheries resources concerning the activities of European Union vessels.

Article 5
Adjustment of fishing opportunities by mutual agreement

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 and the necessary amendments shall be made to this Protocol and to its Annex.

Article 6
Landing incentives and promoting cooperation between economic operators

1. The two parties shall cooperate with a view to improving landing options in Cape Verdean ports.
2. The Joint Committee shall define the methods to be used to achieve this and shall set the level of financial incentives to apply.
3. The Parties shall endeavour to create conditions favourable to the promotion of relations between their enterprises in the technical, economic and commercial spheres by encouraging the establishment of an environment favourable to the development of business and investment.

Article 7
Suspension of the payment of the financial contribution

1. The financial contribution, as referred to in Article 2(2)(a) and (b), may be suspended if one or more of the following conditions apply:
 - (a) Unusual circumstances, other than natural phenomena, prevent fishing activities in the Cape Verdean 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 in Cape Verde of the essential and fundamental elements of human rights and democratic principles 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 8
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 7.3(a) of the Fisheries Partnership Agreement, prevent fishing activities in the Cape Verdean EEZ;
 - (b) following significant changes in the policy objectives 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 violates one of the essential and fundamental elements of human rights and democratic principles as provided for in Article 9 of the Cotonou Agreement;
 - (d) there is 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 7 of this Protocol;

- (e) a dispute which has not been settled in the Joint Committee is ongoing between the two Parties;
- (f) one of the two Parties does not comply with the provisions of this Protocol and the Annex and appendices hereto.
2. Where the application of the Protocol is suspended for reasons other than those given in paragraph 1(c) above, it 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. Suspension of the Protocol for the reasons given in paragraph 1(c) shall apply immediately after the suspension decision has been taken.
 3. In the event of suspension, the Parties shall continue to consult with a view to finding an amicable settlement to their dispute. Where such 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 has been suspended.

Article 9
Electronic communication

1. Cape Verde and the EU undertake to install as soon as possible the computer systems required for the electronic exchange of all the information and documents related to the implementation of the Agreement.
2. Once the systems provided for in Paragraph 1 above are operational, the electronic version of a document shall be considered to be the equivalent of a paper document in every way.
3. Cape Verde and the EU shall inform each other of any malfunction of a computer system as soon as possible. The information and documents related to the implementation of the Agreement shall then be automatically replaced by their paper version as specified in the Annex.

Article 10
Satellite monitoring

Cape Verde shall install as soon as possible a satellite monitoring system (VMS) for fishing vessels fishing in its waters. Once this system has been set up, the provisions defined in the Annex to this Protocol shall apply.

Article 11
Confidentiality of data

Cape Verde undertakes to process all data relating to EU vessels and their fishing activities obtained within the framework of the Agreement in a confidential manner at all times and to use it exclusively for the purposes of implementing the Agreement.

Article 12
National legislation

1. The activities of European Union fishing vessels operating in the waters of Cape Verde under this Protocol shall be governed by the legislation in force in Cape Verde, in particular the provisions of the Cape Verdean fisheries resources management plan, unless the Fisheries Partnership Agreement, this Protocol and its Annex and appendices provide otherwise.
2. The Cape Verdean authorities shall inform the European Commission of any change or any new legislation relating to the fishing sector.

Article 13
Duration

This Protocol and the annex hereto shall apply for a period of three years from the provisional application in accordance with Article 15, unless notice of termination is given in accordance with Article 14.

Article 14
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 it at least six 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 15
Provisional application

This Protocol shall apply provisionally as from 1 September 2011.

Article 16
Entry into force

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 FOR THE EXERCISE OF FISHING ACTIVITIES BY EUROPEAN UNION VESSELS IN THE CAPE VERDEAN FISHING ZONE

CHAPTER I

General provisions

Designation of competent authority

For the purposes of this Annex and notwithstanding any indication to the contrary, any reference to the European Union (EU) or to Cape Verde as a competent authority shall mean:

- For the EU: the European Commission, where applicable via the EU delegation in Cape Verde;
- For Cape Verde: the Minister for Fisheries.

National EEZ

Cape Verde shall notify the EU, before the Protocol enters into force, of the geographical coordinates of its EEZ and the baselines.

Fishing Zones

EU vessels may carry out their fishing activities from 12 nautical miles off the baselines.

Appointment of a local agent

Any EU vessel which plans to land or tranship in a Cape Verde port must be represented by a consignee resident in Cape Verde.

Bank account

Cape Verde shall notify the EU before the entry into force of the Protocol of the details of the bank account(s) into which the financial sums payable by EU vessels under the Agreement should be paid. The inherent costs linked to bank transfers shall be borne by shipowners.

CHAPTER II

Fishing authorisations

Condition for obtaining a fishing authorisation – eligible vessels

The Fishing authorisations referred to in Article 6 of the Agreement shall be issued on the condition that the vessel is included in the EU register of fishing vessels and that all previous obligations of the shipowner, the master, or the vessel itself arising out of fishing activities in Cape Verde under the Agreement have been met.

Application for a fishing authorisation

The EU shall submit to Cape Verde an application for a fishing authorisation in respect of any vessel wishing to fish under the Agreement at least 15 days before the start of the period of validity requested using the form attached to this Annex as Appendix 1. The application must be typed or legibly written in block capitals.

For each initial application for a fishing authorisation on the basis of the Protocol in force, or following a technical change to the vessel concerned, the application shall be accompanied by:

- i. proof of payment of the flat-rate fee for the period of validity of the fishing authorisation requested, and the flat-rate contribution for the observers referred to in Chapter X of this Annex;
- ii. the name and address of the local consignee for the vessel, where there is one;
- iii. a recent colour photograph of the vessel, showing a lateral view, and at least 15 cm x 10 cm in size;
- iv any other document specifically required under the Agreement.

For renewal of a fishing authorisation under the Protocol in force for a vessel whose technical specifications have not been modified, the renewal application shall only be accompanied by proof of payment of the fee and the flat-rate contribution to the costs of the observer.

Anticipated flat-rate fee

The amount of the flat-rate fee is set on the basis of the annual rate specified in the technical sheets included in Appendix 2 to this Annex. It shall include all local and national taxes with the exception of port taxes, transshipment taxes and charges for the provision of services.

Provisional list of vessels authorised to fish

Once it has received the fishing authorisation applications, Cape Verde shall immediately draw up, for each category of vessel, the provisional list of applicant vessels. This list shall be sent without delay to the national body responsible for supervising fishing, and to the EU.

The EU shall forward the provisional list to the shipowner or to the consignee. If the EU offices are closed, Cape Verde may send the provisional list directly to the shipowner or their consignee with a copy to the EU.

Issue of fishing authorisation

Cape Verde shall issue the fishing authorisation to the EU within 15 days of receiving the full application file.

Where a fishing authorisation is renewed during the period in which the Protocol applies, the new fishing authorisation must contain a clear reference to the initial fishing authorisation.

The EU shall forward the fishing authorisation to the shipowner or to the consignee. If the EU offices are closed, Cape Verde may issue the fishing authorisation directly to the shipowner or their consignee and send a copy to the EU.

List of vessels authorised to fish

Once the fishing authorisation is issued, Cape Verde shall draw up immediately for each category of vessel the final list of vessels which are authorised to fish in the Cape Verdean zone. This list shall be sent immediately to the national body responsible for monitoring fishing and to the EU and shall replace the provisional list mentioned above.

Period of validity of the fishing authorisation

Fishing authorisations shall be valid for one year and be renewable.

In order to establish the start of the period of validity, annual period shall mean:

- i. for the first year of application of the Protocol, the period between the date of its entry into force and 31 December of the same year;
- ii. then, each complete calendar year;
- ii. for the last year of application of the Protocol, the period between 1 January and the date of expiry of the Protocol.

Keeping the fishing authorisation on board

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

However, vessels shall be authorised to fish as soon as they are included on the provisional list mentioned above. Vessels must keep the provisional list on board until their fishing authorisation is issued.

Transfer of fishing authorisation

The fishing authorisation shall be issued for a given vessel and shall not be transferable.

However, in the case of force majeure and at the request of the EU, the fishing authorisation shall be replaced by a new authorisation, issued for another similar vessel or a substitute vessel.

The transfer shall involve the fishing authorisation to be replaced being returned by the shipowner or their consignee in Cape Verde and Cape Verde drawing up the replacement authorisation as soon as possible. The replacement authorisation shall be issued as soon as possible to the shipowner or their consignee when the authorisation to be replaced is returned. The replacement authorisation shall take effect on the day on which the authorisation to be replaced is returned.

Cape Verde shall update the list of vessels authorised to fish as soon as possible. The new list shall be sent without delay to the national body responsible for supervising fishing, and to the EU.

Support vessels

At the request of the EU, Cape Verde shall authorise EU vessels which are holders of a fishing authorisation to be assisted by support vessels. The support vessels shall fly the flag of

an EU Member State or belong to an EU company, and may not be equipped for catching fish or be used for transshipments.

Cape Verde shall define its support activities and the conditions for obtaining authorisations and shall draw up a list of authorised support vessels and send it without delay to the national body responsible for supervising fishing and to the EU.

CHAPTER III

Technical measures

Technical measures applicable to the vessels holding a fishing authorisation, relating to the zone, fishing gear and additional catch, shall be defined for each fishing category in the technical sheets contained in Appendix 2 to this Annex.

The vessels shall respect all the recommendations adopted by the ICCAT (International Commission for the Conservation of Atlantic Tunas).

CHAPTER IV

Catch reporting

Fishing logbook

The master of an EU vessel fishing under the Agreement shall keep a fishing logbook, for which the model for each category of fishing is included in Appendix 3 of this Annex.

The fishing logbook shall be completed by the master for each day the vessel is present in the Cape Verde fishing zone.

Each day the master shall record in the fishing logbook the quantity of each species, identified by its code alpha 3 of the FAO, caught and kept on board, expressed in kilograms of live weight or, where necessary, the number of individual fish. For each main species, the master shall also mention the bad catch.

Where applicable, the master shall also record each day in the fishing logbook the quantities of each species thrown back into the sea, expressed in kilograms of live weight or, where necessary, the number of individual fish.

The fishing logbook shall be filled in legibly, in block capitals, and shall be signed by the master.

The master shall be responsible for the accuracy of the data recorded in the fishing logbook.

Catch reporting

The master shall notify the vessel's catch by submitting to Cape Verde its fishing logbooks for the period of its presence in the Cape Verdean fishing zone.

The fishing logbooks shall be transmitted in one of the following ways:

- i. when passing through a Cape Verdean port, the original of each fishing logbook shall be submitted to the local representative of Cape Verde, who shall confirm receipt thereof in writing;
- ii. when leaving the Cape Verde fishing zone without first passing through a Cape Verdean port, the original of each fishing logbook shall be sent within a period of 14 days after arrival in any other port, and in any case within a period of 30 days after leaving the Cape Verdean zone;
 - a. by letter sent to Cape Verde;
 - b. or by fax, to the number given by Cape Verde;
 - c. or by e-mail.

The two Parties shall make every effort to establish a system for reporting catches based on the electronic exchange of all the data.

As soon as Cape Verde is able to receive catch declarations by e-mail, the master shall send the fishing logbooks to Cape Verde at the e-mail address given by Cape Verde. Cape Verde shall confirm receipt thereof immediately by return e-mail.

The master shall send a copy of all the fishing logbooks to the EU. For tuna-fishing vessels and surface longliners, the master shall also send a copy of all the fishing logbooks to one of the following scientific institutes:

- i. Institut de recherche pour le développement (IRD);
- ii. Instituto Español de Oceanografía (IEO);
- iii. IPIMAR (Instituto Português de Investigação Marítima), or
- iv. INDP (Instituto Nacional de Desenvolvimento das Pescas).

The return of the vessel into the Cape Verdean zone within the period of validity of its fishing authorisation shall give rise to further catch reporting.

Where the provisions concerning catch reporting are not observed, Cape Verde may suspend the fishing authorisation of the vessel concerned until the missing catch report is obtained and penalise the shipowner in accordance with the relevant provisions under the national legislation in force. If the offence is repeated, Cape Verde may refuse to renew the fishing authorisation. Cape Verde shall inform the EU immediately of any sanction applied in this context.

Final statement of fees for the tuna-fishing vessels and surface longliners

For each tuna-fishing vessel and surface longliner, the EU shall draw up, on the basis of its catch reporting confirmed by the above scientific institutes, a final statement of the fees owed by the vessel in respect of its annual season for the previous calendar year.

The EU shall send this final statement to Cape Verde and to the shipowner before 31 July of the year in progress. Cape Verde may contest the final statement, on the basis of documentary

proof, within thirty days of its being sent. In the case of disagreement, the Parties shall consult each other in the Joint Committee. If Cape Verde does not object within 30 days, the final statement shall be considered to be adopted.

Where the final statement is greater than the anticipated flat-rate fee paid to obtain the fishing authorisation, the shipowner shall pay the outstanding balance to Cape Verde by 30 September of the year in progress. Where the final statement is less than the expected flat-rate fee, the remaining amount may not be reclaimed by the shipowner.

CHAPTER V

Landings and transshipments

The master of an EU vessel wishing to land in a Cape Verdean port, or to tranship catch from the Cape Verde zone, must notify Cape Verde, at least 24 hours before landing or transhipment, of the following:

- a. the name of the fishing vessel which must land or tranship;
- b. the port of landing or transhipment;
- c. the date and time scheduled for the landing or transhipment;
- d. the quantity (expressed in kilograms of live weight or, if necessary, the number of individual fish) of each species to be landed or transhipped (identified by its FAO alpha 3 code);
- e. in the case of transhipment, the name of the receiving vessel;
- f. the health certificate of the receiving vessel.

The transhipment operation must be carried out in the waters of a Cape Verdean port authorised for this purpose. Transhipment at sea is prohibited.

Non-compliance with these provisions shall lead to the application of the relevant sanctions provided for under Cape Verdean legislation.

An EU vessel which lands in a Cape Verdean port, or which sells its catch to a processing factory in Cape Verde shall benefit from a financial incentive in the form of a partial reduction in the fee, in accordance with the limits set out in the technical sheets included in Appendix 2 of this Annex.

CHAPTER VI

Check

Entering and leaving the zone

Any entry into or departure from the Cape Verdean fishing zone of an EU vessel holding a fishing authorisation must be notified to Cape Verde within 3 hours of the entry or departure.

When notifying its entry or departure, the vessel shall notify in particular:

- i. the date, time and point of passage scheduled;
- ii. the quantity of each species held on board, as identified by its FAO alpha 3 code and expressed in kilograms of live weight or, if necessary, the number of individual fish;
- iii. product presentation.

Notification shall be given preferably by e-mail or, failing that, by fax or radio, to an e-mail address, a telephone number or a frequency communicated by Cape Verde. Cape Verde shall immediately inform the vessels concerned and the EU of any change to the e-mail address, telephone number or transmission frequency.

Any vessel found to be fishing in the Cape Verde zone without having previously notified its presence shall be considered to be an unauthorised fishing vessel.

Inspection at sea

The inspection at sea in the Cape Verde zone of EU vessels holding a fishing authorisation shall be carried out by vessels and inspectors of Cape Verde who are clearly identified as being assigned to carry out fishing checks.

Before going on board, the Cape Verdean inspectors shall warn the EU vessel of their decision to carry out an inspection. The inspection shall be carried out by a maximum of two inspectors, who must provide proof of their identity and official position as an inspector before carrying out the inspection.

The Cape Verdean inspectors shall only stay on board the EU vessel for the time necessary to carry out tasks linked to the inspection. They shall carry out the inspection in a way which minimises the impact on the vessel, its fishing activity and cargo.

Cape Verde may authorise the EU to participate in the inspection at sea as an observer.

The master of the EU vessel shall allow the Cape Verdean inspectors to come on board and carry out their work.

At the end of each inspection, the Cape Verdean inspectors shall draw up an inspection report. The master of the EU vessel has the right to make comments in the inspection report. The inspection report shall be signed by the inspector drawing up the report and the master of the EU vessel.

The Cape Verdean inspectors shall send a copy of the inspection report to the master of the EU vessel before leaving the vessel. Cape Verde shall send a copy of the inspection report to the EU within a period of 8 days after the inspection.

Inspection in port

The inspection in port of EU vessels which land or tranship their catch from the Cape Verdean zone in the waters of a Cape Verdean port shall be carried out by Cape Verde inspectors who are clearly identified as being assigned to carry out fishing checks.

The inspection shall be carried out by a maximum of two inspectors, who must provide proof of their identity and official position as an inspector before carrying out the inspection. The Cape Verde inspectors shall only stay on board the EU vessel for the time necessary to carry out the tasks related to the inspection and shall conduct the inspection in such a way as to minimise the impact on the vessel, the landing or transshipment operation and the cargo.

Cape Verde may authorise the EU to participate in the inspection in port as an observer.

The master of the EU vessel shall allow the Cape Verdean inspectors to carry out their work.

At the end of each inspection, the Cape Verdean inspector shall draw up an inspection report. The master of the EU vessel has the right to include his comments in the inspection report. The inspection report shall be signed by the inspector drawing up the report and the master of the EU vessel.

The Cape Verdean inspectors shall give a copy of the inspection report to the master of the EU vessel at the end of the inspection. Cape Verde shall send a copy of the inspection report to the EU within a period of 8 days after the inspection.

CHAPTER VII

Satellite monitoring system (VMS)

Vessel position messages – VMS system

Whilst they are in the Cape Verdean zone, EU vessels holding a fishing authorisation must be equipped with a satellite monitoring system (Vessel Monitoring System – VMS) to enable automatic and continuous communication of their position, at all times, to the fishing control centre (Fisheries Monitoring Centre – FMC) of their flag state.

Each position message must

- i. contain
 - a. the vessel identification;
 - b. the most recent geographical position of the vessel (longitude, latitude), with a position error of less than 500 metres, and with a confidence interval of 99%;
 - c. the date and time the position is recorded;
 - d. the speed and the course of the vessel;
- ii. be configured in accordance with the format included in Appendix 4 to this Annex.

The first position recorded after entry into the Cape Verde zone shall be identified by the code 'ENT'. All subsequent positions shall be identified by the code 'POS', with the exception of the first position recorded after departure from the Cape Verde zone, which shall be identified by the code 'EXI'.

The FMC of the flag state shall ensure the automatic processing and, if necessary, the electronic transmission of the position messages. The position messages shall be recorded in a secure manner and kept for a period of three years.

Transmission by the vessel in the event of breakdown of the VMS system

The master shall ensure at all times that the VMS system of his vessel is fully operational and that the position messages are correctly transmitted to the FMC of the flag state.

In the event of breakdown, the VMS system of the vessel shall be repaired or replaced within one month. After that period, the vessel shall no longer be authorised to fish in the Cape Verdean zone.

Vessels fishing in the Cape Verdean zone with a defective VMS system must communicate their position messages by e-mail, radio or fax to the FMC of the flag state, at least every four hours, and must provide all the compulsory information.

Secure communication of the position messages to Cape Verde

The FMC of the flag state shall automatically send the position messages of the vessels concerned to the FMC of Cape Verde. The FMC of the flag state and Cape Verde shall exchange their contact e-mail addresses and inform each other without delay of any change to these addresses.

The transmission of position messages between the FMCs of the flag state and Cape Verde shall be carried out electronically using a secure communication system.

The FMC of Cape Verde shall inform the FMC of the flag state and the EU of any interruption in the receiving of consecutive position messages from a vessel holding a fishing authorisation, where the vessel concerned has not notified its departure from the zone.

Malfunction of the communication system

Cape Verde shall ensure the compatibility of its electronic equipment with that of the FMC of the flag state and inform the EU immediately of any malfunction as regards the communication and receiving of position messages with a view to finding a technical solution as soon as possible. The Joint Committee shall deal with any possible dispute arising.

The master shall be considered to be responsible for any proven manipulation of the a vessel's VMS system aimed at disturbing its operation or falsifying its position messages. Any infringement shall be subject to the penalties provided for by Cape Verdean legislation in force.

Revision of the frequency of position messages

On the basis of documentary evidence proving an infringement, Cape Verde may ask the FMC of the flag state, copying in the EU, to reduce the interval for sending position messages from a vessel to every thirty minutes for a set period of investigation. This documentary evidence must be sent by Cape Verde to the FMC of the flag state and the EU. The FMC of the flag state shall immediately send the position messages to Cape Verde at the new frequency.

At the end of the set investigation period, Cape Verde shall inform the FMC of the flag state and the EU of any monitoring which is required.

CHAPTER VIII

Infringements

Treatment of infringements

Any infringement committed by an EU vessel holding a fishing authorisation in accordance with the provisions of this Annex must be mentioned in an inspection report.

The signature of the inspection report by the master shall be without prejudice to the shipowner's right of defence in respect of an infringement.

Detention of a vessel – information meeting

Where permitted under the Cape Verdean legislation in force regarding the infringement, any EU vessel having committed an infringement may be forced to cease its fishing activity and, where the vessel is at sea, to return to a Cape Verdean port.

Cape Verde shall notify the EU within 24 hours of any detention of an EU vessel holding a fishing authorisation. This notification shall be accompanied by documentary evidence of the infringement.

Before taking any measure against the vessel, the master, the crew or the cargo, with the exception of measures aimed at protecting evidence, Cape Verde shall organise, at the request of the EU, within one working day of notification of the detention of the vessel, an information meeting to clarify the facts which have led to the vessel being detained and to explain what further action may be taken. A representative of the flag state of the vessel may attend this information meeting.

Penalties for infringements - Compromise procedure

The penalty for the infringement shall be set by Cape Verde according to the provisions of the national legislation in force.

Where settling the infringement involves legal proceedings, before these are launched, and provided that the infringement does not involve a criminal act, a compromise procedure shall be undertaken between Cape Verde and the EU in order to determine the terms and level of the sanction. A representative of the flag state of the vessel may participate in this compromise procedure. The compromise procedure shall finish at the latest 3 days after the notification of the detention of the vessel.

Legal proceedings – Bank security

If the compromise procedure fails and the infringement is brought before the competent court, the owner of the vessel which committed the infringement shall deposit a bank security at a bank designated by Cape Verde, the amount of which, as set by Cape Verde, covers the costs linked to the detention of the vessel, the estimated fine and any compensation. The bank security may not be recovered until the legal proceedings have been concluded.

The bank security shall be released and returned to the shipowner without delay after the judgment has been given:

- a. in full, if no penalty has been imposed;
- b. for the amount of the remaining balance, if the penalty is a fine which is lower than the amount of the bank security.

Cape Verde shall inform the EU of the outcome of the legal proceedings within 8 days of the judgement being given.

Release of the vessel and the crew

The vessel and its crew shall be authorised to leave the port once the penalty has been paid in a compromise procedure, or once the bank security has been deposited.

CHAPTER IX

Signing-on of seamen

Number of seamen to sign on

During their fishing season in the Cape Verdean zone, the EU vessels shall sign on Cape Verde seamen, subject to the following limits:

- a. the tuna seiner fleet shall sign on at least 6 seamen;
- b. the pole-and-line tuna fleet shall sign on at least 2 seamen;
- c. the surface longliner fleet shall sign on at least 5 seamen.

The owners of EU vessels shall endeavour to sign on additional Cape Verde seamen.

Free choice of seamen

Cape Verde holds a list of Cape Verde seamen qualified to be signed on for EU vessels.

The shipowner, or their consignee, shall choose freely from the list of Cape Verde seamen to be signed on and shall notify Cape Verde of their inclusion in the crew.

Seamen's contracts

The employment contract for Cape Verde seamen shall be drawn up by the shipowner or its consignee and the seaman, represented by their union, if necessary. It shall be signed by the Cape Verdean maritime authority. It shall stipulate in particular the date and port of signing on.

These contracts shall guarantee the seamen the social security cover applicable to them in Cape Verde, including life assurance and sickness and accident insurance.

A copy of the contract shall be given to the signatories.

The basic working rights laid down in the declaration of the International Labour Organisation (ILO) shall be afforded to Cape Verde seamen. 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.

Seamen's wages

The wages of the Cape Verde seamen shall be paid by the shipowner. They shall be set before the fishing authorisation is issued and by mutual agreement between the shipowner and its consignee in Cape Verde.

The wages shall not be lower than those of crews on national vessels, nor the level determined by the ILO.

Seamen's obligations

The seamen shall report to the master of the vessel to which they have been appointed the day before the signing-on date stipulated in their contract. The master shall inform the seaman of the date and time of signing on. If the seaman withdraws or does not present himself at the date and time stipulated for his signing on, his contract shall be considered to be null and void and the shipowner shall be automatically discharged from its obligation to sign him on. In this case the shipowner shall not be liable for any financial penalty or compensation payment.

Non-signing on of Cape Verdean seamen

The shipowners of a fleet which does not sign on Cape Verde seamen shall pay, before 30 September of the year in progress, for each seaman above the number set at the start of this Chapter, a flat-rate of EUR 20 for each day of presence of their vessels in the Cape Verdean zone.

Cape Verde shall use this sum to finance training for national seamen.

CHAPTER X

Cape Verde observers

Observation of fishing activities

Vessels holding a fishing authorisation shall be subject to a scheme for observing their fishing activities carried out within the framework of the Agreement.

This observation scheme shall conform to the provisions provided for in the recommendations adopted by the ICCAT (International Commission for the Conservation of Atlantic Tunas).

Designated vessels and observers

Cape Verde shall designate the EU vessels which must allow an observer to embark and the observer assigned to them at the latest 15 days before the date provided for the embarkation of the observer.

When the fishing authorisation is issued, Cape Verde shall inform the EU and the shipowner, or its consignee, of the designated vessels and observers and the times at which the observer

will be present on board each vessel. Cape Verde shall immediately inform the EU and the shipowner or its consignee of any change in the designated vessels and observers.

Cape Verde shall endeavour not to designate observers for vessels which already have an observer on board, or which are already formally obliged to allow an observer to embark during the fishing season in question as part of their activities in fishing zones other than the Cape Verdean zone.

The observers shall not spend more time on board the vessel than is necessary to carry out their duties.

Flat-rate financial contribution

At the time the fee is paid, the shipowner shall pay Cape Verde a flat-rate sum of EUR 100 per year for each vessel.

Observer's salary

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

Embarkation conditions

The embarkation conditions for the observer, in particular the duration of presence on board, shall be defined by mutual agreement between the shipowner or its consignee and Cape Verde.

Observers shall be treated as officers. However, receiving the observer on board shall take into account the technical structure of the vessel.

The shipowner shall bear the costs of providing accommodation and food for the observer on board.

The master shall take all the measures for which he is responsible to guarantee the physical safety and general wellbeing of the observer.

Observers shall be offered every facility needed to carry out their duties. They shall have access to means of communication and to documents relating to the fishing activities of the vessel, in particular the fishing logbook and navigation log, and the parts of the vessel directly linked to their duties.

Observer's obligations

Whilst they are on board observers shall:

- a. take all appropriate measures so as not to interrupt or hinder fishing operations;
- b. respect on-board property and equipment;
- c. respect the confidential nature of any document belonging to the vessel.

Embarkation and landing of observers

The observer shall sign on in a port chosen by the shipowner.

The shipowner or its representative shall notify Cape Verde, with a notice period of 10 days before the embarkation, of the date, time and port of embarkation of the observer. If the observer is embarked in a foreign country, their travel costs to the port of embarkation shall be borne by the shipowner.

If the observer does not arrive to embark within 12 hours of the date and time set, the shipowner shall be automatically discharged from its obligation to allow the observer to embark. It shall be free to leave the port and start fishing operations.

Where the observer is not disembarked in a Cape Verdean port, the shipowner shall bear the costs of repatriation of the observer to Cape Verde as soon as possible.

Observer's obligations

The observer shall carry out the following duties:

- a) observe the fishing activities of the vessel;
- b) verify the position of the vessel during fisheries operations;
- c) perform biological sampling in the context of a scientific programme;
- d) note the fishing gear used;
- e) verify the catch data for the Cape Verdean zone recorded in the logbook,
- f) verify the percentages of by-catches and estimate the discarded catches;
- g) communicate observations by radio, fax or e-mail at least once a week while the vessel is fishing in the Cape Verdean zone, including the quantity of catches and by-catches on board.

Observer's report

Before leaving the vessel, the observer shall submit a report of his observations to the master of the vessel. The master of the vessel shall have the right to make comments in the observer's report. The report shall be signed by the observer and the master. The master shall receive a copy of the observer's report.

The observer shall send his report to Cape Verde, which shall send a copy of it to the EU within 8 days of the disembarkation of the observer.

Appendices to this Annex

1. Appendix I - Application form for a fishing authorisation
2. Appendix 2 – Technical sheets

3. Appendix 3 – Fishing logbook

4. Appendix 4 – Format of VMS message position

Appendix 1 - Application form for a fishing authorisation

FISHERIES MINISTRY

Application for a licence for foreign industrial fishing vessels:

1. Name of shipowner:
2. Address of shipowner:
3. Name of shipowner's representative or local agent:
4. Address of shipowner's representative or local agent:
5. Name of master:
6. Name of vessel:
7. Registration No:
8. Date and place of construction:
9. Flag country:
10. Port of registration:
11. Port of fitting out:
12. Overall length:
13. Beam:
14. Gross tonnage:
15. Net tonnage:
16. Hold capacity:
17. Cold storage and freezing capacity:
18. Engine type and power:
19. Fishing gear:
20. Number of crew:
21. Communications 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:

Opinion of the Directorate-General for Fisheries:

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

Appendix 2 – Technical sheets

SHEET 1: POLE-AND-LINE TUNA VESSELS

(2) Fishing zone	
<ul style="list-style-type: none">Beyond twelve nautical miles from the base lines	
(3) Authorised gear:	
<ul style="list-style-type: none">Poles and lines	
(4) By-catches:	
Compliance with ICCAT and FAO recommendations	
(5) Authorised tonnage/Fees:	
Additional fee per tonne fished	25 EUR/tonne
Annual flat-rate fee:	450 EUR for 18 tonnes per vessel
Number of vessels authorised to fish	11 vessels
(6) Financial incentive for voluntary landing and the sale of catch	
<ul style="list-style-type: none">Vessels which land voluntarily in a port in Cape Verde shall benefit from a reduction in the fee of EUR 5 per tonne landed. An additional reduction of EUR 5 per tonne sold shall be granted where fisheries products are sold to a Cape Verde processing factory.This mechanism shall apply up to a maximum of 50% of the final statement for the catch.	

SHEET 2: POLE-AND-LINE TUNA VESSELS AND SURFACE LONGLINERS

(1) Fishing zone:	
<ul style="list-style-type: none"> Beyond twelve nautical miles from the base lines. 	
(2) Authorised gear:	
<ul style="list-style-type: none"> Seine Surface longliners 	
(3) By-catches:	
<ul style="list-style-type: none"> Compliance with ICCAT and FAO recommendations. 	
(4) Authorised tonnage/Fees:	
Additional fee per tonne caught	35 EUR/tonne
Annual flat-rate fee:	<ul style="list-style-type: none"> 4 375 EUR for 125 tonnes per tuna seiner 3 150 EUR for 90 tonnes per surface longliner
Number of vessels authorised to fish	28 seiner vessels 35 surface longliner vessels
(5) Financial incentive for voluntary landing and the sale of catch	
<ul style="list-style-type: none"> Vessels which land voluntarily in a Cape Verdean port shall benefit from a reduction in the fee of EUR 5 per tonne landed. An additional reduction of EUR 5 per tonne sold shall be granted where fisheries products are sold to a Cape Verde processing factory. This mechanism shall apply up to a maximum of 50% of the final statement for the catch. 	

Appendix 4 – Format of VMS message position

**COMMUNICATION OF VMS MESSAGES TO CAPE VERDE
POSITION REPORT**

Data Element	Code	Mandatory or Optional?	Content
Start record	SR	O	System detail – indicates start of record
Addressee	AD	O	Message detail – addressee. Alpha-3 ISO country code
From	FR	O	Message detail – sender. Alpha-3 ISO country code
Flag State	FS	F	
Type of message	TM	O	Message detail – message type ‘POS’
Radio call sign	RC	O	Vessel detail – international radio call sign of vessel
Contracting Party internal reference number	IR	F	Vessel detail – unique Contracting Party number (flag State ISO3 code followed by number)
External registration number	XR	O	Vessel detail – number marked on side of vessel
Latitude	LA	O	Vessel position detail – position in degrees and minutes N/S DDMM (WGS84)
Longitude	LO	O	Vessel position detail – position in degrees and minutes E/W DDMM (WGS84)
Course	CO	O	Vessel course 360° scale
Speed	SP	O	Vessel speed in tenths of knots
Date	DA	O	Vessel position detail – date of record of UTC position (YYYYMMDD)
Time	TI	O	Vessel position detail – time of record of UTC position (HHMM)
End record	ER	O	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.