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### Legislation

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#### Contents

#### I Acts whose publication is obligatory

.....

#### II Acts whose publication is not obligatory

##### Council

2005/937/CE:

- ★ **Council Decision of 8 December 2005 on the conclusion of the Agreement in the form of an Exchange of Letters on the provisional application of the Protocol setting out, for the period from 18 January 2005 to 17 January 2011, the fishing opportunities and the financial contribution provided for by the Agreement between the European Economic Community and the Republic of Seychelles on fishing off Seychelles** ..... 1

Agreement in the form of an exchange of letters on the provisional application of the protocol setting out, for the period from 18 January 2005 to 17 January 2011, the fishing opportunities and the financial contribution provided for by the agreement between the European Economic Community and the Republic of Seychelles on fishing off Seychelles ..... 3

Protocol setting out, for the period from 18 January 2005 to 17 January 2011, the fishing opportunities and the financial contribution provided for by the agreement between the European Economic Community and the Republic of Seychelles on fishing off Seychelles ..... 4

2005/938/EC:

- ★ **Council Decision of 8 December 2005 on the approval on behalf of the European Community of the Agreement on the International Dolphin Conservation Programme** ..... 26
- Agreement on the International Dolphin Conservation Programme ..... 28

2005/939/EC:

- ★ **Decision No 9/2005 of the ACP-EC Committee OF Ambassadors of 27 July 2005 concerning the Staff Regulations of the Centre for the Development of Enterprise (CDE)** ..... 54

Price: 18 EUR

# EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other acts are printed in bold type and preceded by an asterisk.

## II

(Acts whose publication is not obligatory)

## COUNCIL

## COUNCIL DECISION

of 8 December 2005

**on the conclusion of the Agreement in the form of an Exchange of Letters on the provisional application of the Protocol setting out, for the period from 18 January 2005 to 17 January 2011, the fishing opportunities and the financial contribution provided for by the Agreement between the European Economic Community and the Republic of Seychelles on fishing off Seychelles**

(2005/937/CE)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 37 in conjunction with Article 300 (2) thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) The Community and Seychelles held negotiations to determine the amendments or additions to be made to the Protocol attached to the Agreement between the European Economic Community and the Republic of Seychelles on fishing off Seychelles <sup>(1)</sup> at the end of the period of application of the Protocol in force.

(2) As a result of these negotiations, a new Protocol was initialled on 23 September 2004.

(3) In accordance with this Protocol, Community fishermen enjoy fishing opportunities in the waters falling within the sovereignty or jurisdiction of the Republic of Seychelles for the period 18 January 2005 to 17 January 2011.

(4) In order to guarantee the continuation of fishing activities by Community vessels, it is essential that the Protocol in question be approved as quickly as possible; both Parties have therefore initialled an Agreement in the form of an Exchange of Letters providing for the provisional application of the initialled Protocol from 18 January 2005; the Agreement in the form of an Exchange of Letters should be signed, subject to its definitive conclusion by the Council.

(5) The scale for allocating the fishing opportunities among Member States should be defined on the basis of the traditional allocation of fishing opportunities under the Fisheries Agreement,

HAS DECIDED AS FOLLOWS:

*Article 1*

The Agreement in the form of an Exchange of Letters on the provisional application of the Protocol setting out, for the period from 18 January 2005 to 17 January 2011, the fishing opportunities and the financial contribution provided for by the Agreement between the European Economic Community and the Republic of Seychelles on fishing off Seychelles is hereby approved on behalf of the Community.

The text of the Agreement in the form of an Exchange of Letters and the text of the Protocol are attached to this Decision.

<sup>(1)</sup> OJ L 119, 7.5.1987, p. 26.

*Article 2*

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

- |                        |           |             |
|------------------------|-----------|-------------|
| — Tuna seiners:        | Spain:    | 22 vessels, |
|                        | France:   | 17 vessels, |
|                        | Italy:    | 1 vessel,   |
| — Surface long-liners: | Spain:    | 2 vessels,  |
|                        | France:   | 5 vessels,  |
|                        | Portugal: | 5 vessels.  |

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

*Article 3*

The President of the Council is hereby authorised to designate the persons empowered to sign the Agreement in the form of an Exchange of Letters in order to bind the Community.

Done at Brussels, 8 December 2005.

*For the Council*

*The President*

J. HUTTON

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**AGREEMENT IN THE FORM OF AN EXCHANGE OF LETTERS**

**on the provisional application of the protocol setting out, for the period from 18 January 2005 to 17 January 2011, the fishing opportunities and the financial contribution provided for by the agreement between the European Economic Community and the Republic of Seychelles on fishing off Seychelles**

*A. Letter from the Government of the Republic of Seychelles:*

Sir,

With reference to the Protocol, initialled on 23 September 2004, setting out, for the period from 18 January 2005 to 17 January 2011, the fishing opportunities and the financial contribution, I have the honour to inform you that the Government of the Republic of Seychelles is willing to apply the Protocol provisionally from 18 January 2005 pending its entry into force in accordance with Article 13 thereof, provided that the European Community is prepared to do likewise.

This is on the understanding that the first instalment of the financial contribution, laid down by Article 2 of the Protocol, must be paid before 30 September 2005.

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

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

*For the Government of the Republic of Seychelles*

*B. Letter from the European Community*

Sir,

I have the honour to acknowledge receipt of your letter of today's date which reads as follows:

‘With reference to the Protocol, initialled on 23 September 2004, setting out, for the period from 18 January 2005 to 17 January 2011, the fishing opportunities and the financial contribution, I have the honour to inform you that the Government of the Republic of Seychelles is willing to apply the Protocol provisionally from 18 January 2005 pending its entry into force in accordance with Article 13 thereof, provided that the European Community is prepared to do likewise.

This is on the understanding that the first instalment of the financial contribution, laid down by Article 2 of the Protocol, must be paid before 30 September 2005.

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

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

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

*For the Council of the European Union*



## PROTOCOL

### **setting out, for the period from 18 January 2005 to 17 January 2011, the fishing opportunities and the financial contribution provided for by the agreement between the European Economic Community and the Republic of Seychelles on fishing off Seychelles**

#### *Article 1*

#### **Period of application and fishing opportunities**

1. For a period of six years from 18 January 2005 to 17 January 2011, the fishing opportunities granted under Article 2 of the Agreement shall be as follows:

- (a) 40 ocean-going tuna seiners, and
- (b) 12 surface longliners.

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

3. Under Article 4 of the Agreement, vessels flying the flag of a Member State of the European Community may engage in fishing activities in the Seychelles waters only if they are in possession of a fishing licence issued under this Protocol in accordance with the Annex.

#### *Article 2*

#### **Financial contribution — Methods of payment**

1. For the period referred to in Article 1, the financial contribution referred to in Article 6 of the Agreement shall be EUR 24 750 000.

2. Paragraph 1 shall apply subject to Articles 4, 6 and 8.

3. The Community shall pay the financial contribution referred to in paragraph 1 at the rate of EUR 4 125 000 per year during the period of application of this Protocol.

4. If the total quantity of tuna catches per year by Community vessels in Seychelles' waters exceeds 55 000 tonnes, the total annual financial contribution shall be increased by EUR 75 per additional tonne of tuna caught. However, the total annual amount to be paid by the Community cannot exceed EUR 8 250 000.

5. Payment shall be made no later than 30 September 2005 for the first year and no later than the anniversary date of the Protocol for the following years.

6. Subject to Article 6 herewith, Seychelles shall have full discretion regarding the use to which this financial contribution is put.

7. The financial contribution shall be paid into no more than two Public Treasury accounts opened with the Seychelles Central Bank.

#### *Article 3*

#### **Cooperation on responsible fishing**

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

2. Based on the recommendations and resolutions taken within the Indian Ocean Tuna Commission (IOTC) and the best available scientific advice and, where appropriate after a joint meeting of scientists, the two parties may consult each other within the Joint Committee provided for in Article 7 of the Agreement and, where necessary, agree on the measures to ensure the sustainable management of fisheries resources.

#### *Article 4*

#### **Review of fishing opportunities**

1. The fishing opportunities referred to in Article 1 may be increased by mutual agreement insofar as the conclusions of the joint meeting of scientists referred to in Article 3(2) confirm that such an increase will not endanger the sustainable management of Seychelles' resources. In this case the financial contribution referred to in Article 2(1) shall be increased proportionately and pro rata temporis. However, the total amount of the financial contribution paid by the European Community shall not be more than twice the amount indicated in Article 2(1). In the event that the quantities caught by Community fishing vessels exceed the quantity which correspond to the total amount of financial contribution, the Parties shall consult each other as soon as possible in order to establish the amount due for the quantity caught in excess of this limit.

2. Conversely, if the parties agree to reduce the fishing opportunities provided for in Article 1, the financial contribution shall be reduced proportionally and pro rata temporis.

3. The allocation of the fishing opportunities among different categories of vessels may also be reviewed by mutual agreement between the parties, provided that any changes comply with any recommendations or resolutions adopted by the IOTC regarding the management of stocks liable to be affected by such redistribution. The parties shall agree on the corresponding adjustment of the financial contribution where the redistribution of fishing opportunities so warrants.

#### Article 5

##### **New fishing opportunities**

1. In the event that Community fishing vessels are interested in engaging in fisheries not provided for in Article 1, the Parties shall consult each other before authorisation is granted for any such activities and, where appropriate, agree to the conditions for such fishing, including effecting corresponding amendments to this Protocol and the Annex thereto.

2. The Parties should encourage experimental fishing, specially relating to deep water species present in Seychelles waters. To this end and on the request of one party, they shall consult each other and determine on a case-by-case basis the species, conditions and other parameters that are relevant.

The Parties shall carry out experimental fishing in accordance with parameters that will be agreed by both Parties in an administrative arrangement where appropriate. The authorisations for experimental fishing should be agreed for a maximum period of six months.

In the event that the Parties consider that experimental campaigns have yielded positive results, the Government of Seychelles may allocate fishing possibilities of the new species to the community fleet until the expiration of the present protocol. The financial compensation referred to in Article 2 (1) shall consequently be increased.

#### Article 6

##### **Suspension and review of the payment of the financial contribution**

1. Where as a result of circumstances solely attributable to the fault or negligence of Seychelles, fishing activities in Seychelles waters cannot be carried out in Seychelles waters, the European Community may, after prior consultation with Seychelles, suspend payment of the financial contribution provided that the Community has paid in full any amounts due at the time of suspension.

2. Payment of the financial contribution shall recommence once the situation has returned to normal and following consultation and agreement between the two Parties confirming that the situation is likely to allow a return to normal fishing activities.

#### Article 7

##### **Promoting responsible fishing and sustainable fisheries in Seychelles waters**

1. A share of at least 36 % of the financial contribution referred to in Article 2(1) shall be put towards defining and implementing a sectoral fisheries policy in Seychelles with a view to promoting responsible fishing and sustainable fisheries in its waters. This contribution shall be managed in the light of objectives identified by mutual agreement between the two Parties, and the annual and multiannual programming relating thereto.

2. For the purposes of paragraph 1, as soon as this Protocol enters into force and no later than three months after that date, the Community and Seychelles shall agree, within the Joint Committee provided for in Article 7 of the Agreement, on a multiannual sectoral programme and detailed implementing rules covering, in particular:

- (a) annual and multiannual guidelines for using the percentage of the financial contribution referred to in paragraph 1;
- (b) the objectives, both annual and multiannual, to be achieved with a view to introducing, over time, responsible fishing and sustainable fisheries, taking account of the priorities expressed by Seychelles in its national fisheries policy and other policies relating to or having an impact on the promotion of responsible fishing and sustainable fisheries;
- (c) criteria and procedures for evaluating the results obtained each year.

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

4. Each year, Seychelles shall allocate the percentage of the financial contribution referred to in paragraph 1 with a view to implementing the multiannual programme. For the first year of application of the Protocol, that allocation must be notified to the Community at the time when the multiannual sectoral programme is approved within the Joint Committee. For each year thereafter, Seychelles shall notify the Community of the allocation no later than 1 December of the previous year.

5. Where the annual evaluation of the progress made in implementing the multiannual sectoral programme so warrants, the European Community may ask, with the approval of the Joint Committee, for the financial contribution referred to in Article 2(1) to be modified with a view to bringing the actual amount of financial resources allocated to implementation of the programme into line with its results.

*Article 8*

**Disputes — suspension of application of the Protocol**

1. Any dispute between the Parties over the interpretation of this Protocol or its application shall be the subject of consultations between the parties within the Joint Committee provided for in Article 7 of the Agreement, in a special meeting if necessary.

2. Without prejudice to Article 9, application of the Protocol may be suspended at the initiative of one party if the dispute between the Parties is deemed to be serious and if the consultations held within the Joint Committee under paragraph 1 have not resulted in an amicable settlement.

3. Suspension of application of the Protocol shall require the interested party 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 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 9*

**Suspension of application of the Protocol on grounds of non-payment**

Subject to Article 3, if the European Community fails to make the payments provided for in Article 2, Seychelles may suspend the implementation of this Protocol.

*Article 10*

**National law**

The activities of Community fishing vessels in Seychelles are subject to the national laws and regulations unless otherwise provided under this Protocol and the Annex thereto.

*Article 11*

**Revision clause**

Following the third anniversary of this Protocol and the Annex thereto, the Parties will review the application of the Protocol and the Annex thereto and, where appropriate, consult on any amendments of their provisions. Any such amendments may include the reference tonnage and the standard amounts paid for licences and the ratio between the amount per tonne set out in Article 2(4) and the amount indicated in section 2(2) of the Annex.

*Article 12*

**Repeal**

The Protocol and Annex I, dated 17 January 2002, to the Agreement between the European Economic Community and the Republic of Seychelles on fishing off Seychelles, which came into force on 28 October 1987, is hereby repealed and replaced by this Protocol and the Annex thereto.

*Article 13*

**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.

2. It shall apply with effect from 18 January 2005.

## ANNEX

**CONDITIONS FOR THE PURSUIT OF FISHING ACTIVITIES BY COMMUNITY VESSELS IN SEYCHELLES WATERS**

## CHAPTER I

**APPLICATION FOR AND ISSUE OF LICENCES**

## SECTION 1

***Issue of licences***

1. Only eligible Community vessels may obtain a licence to fish in Seychelles waters under the Protocol setting out, for the period from 18 January 2005 to 17 January 2011, the fishing opportunities and the financial contribution provided for by the Agreement between the European Economic Community and the Republic of Seychelles on fishing off Seychelles.
2. For a Community vessel to be eligible, neither the owner, the master nor the vessel itself must be prohibited from fishing in Seychelles. They must be in order with the authorities of the Seychelles insofar as they must have fulfilled all prior obligations arising from their fishing activities in Seychelles under fisheries agreements concluded with the Community.
3. All Community vessels applying for a fishing licence shall be represented by an agent resident in Seychelles. The name and address of that agent shall be stated in the licence application.
4. The relevant Community authorities shall present to the SFA (Seychelles Fishing Authority) an application for each vessel wishing to fish under the Agreement at least 20 days before the date of commencement of the period of validity requested. However, vessel owners who have not submitted a licence application prior to the period of validity may do so, during the period of validity, no later than 20 days before the start of the fishing activities. In such cases, vessel owners shall pay the entire fees due for the full year.
5. Applications shall be submitted to the competent authority of Seychelles on a form drawn up in accordance with the specimen in Appendix 1.
6. All licence applications shall be accompanied by the following documents:
  - proof of payment of the fee for the period of validity of the licence,
  - 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 authorities of Seychelles.
8. Fees shall include all national and local charges except for port taxes and service charges.

9. Licences for all vessels shall be issued to shipowners or their agents within 15 days of receipt of all the documents referred to in point 6 by the competent authority of Seychelles.

A copy shall be sent to the European Commission delegation responsible for Seychelles.

10. Licences shall be issued for a specific vessel and shall not be transferable.
11. However, at the request of the European Community and where force majeure is proven, a vessel's licence shall be replaced, for the remaining period of its validity, by a new licence for another vessel whose features are similar to those of the first vessel, with no further fee due. However, if the gross registered tonnage (GRT) of the replacement vessel is above that of the vessel to be replaced, the difference in fee shall be paid pro rata temporis.
12. The owner of the first vessel, or the agent, shall return the cancelled licence to the competent authority of Seychelles via the European Commission delegation responsible for Seychelles.
13. The new licence shall take effect on the day that the vessel's owner returns the cancelled licence to the competent authority of Seychelles. The European Commission delegation responsible for Seychelles shall be informed of the licence transfer.
14. The licence must be kept on board at all times, without prejudice to point 2 of Chapter IX of this Annex.

## SECTION 2

### ***Licence conditions — fees and advance payments***

1. Licences shall be valid for one year and are renewable.
2. The fee shall be EUR 25 per tonne caught within Seychelles waters.
3. Licences shall be issued once the following standard amounts have been paid to the competent national authorities:
  - EUR 15 000 for tuna seiners, equivalent to the fees due for 600 tonnes of tuna and tuna-like species caught within Seychelles waters per year,
  - EUR 3 000 for surface longliners of more than 150 GRT, equivalent to the fees due for 120 tonnes of tuna and tuna-like species caught within Seychelles waters per year,
  - EUR 2 250 for surface longliners of 150 GRT or less, equivalent to the fees due for 90 tonnes of tuna and tuna-like species caught within Seychelles waters per year.
4. The SFA shall draw up a statement of fees due in respect of the previous calendar year on the basis of catch declarations by Community vessels and other information in the possession of the SFA.
5. The statement shall be sent to the Commission before 31 March of the current year. The Commission shall transmit it before 15 April simultaneously to the shipowners and national authorities of the Member States concerned.

6. Where the shipowners do not agree with the statement submitted by the SFA, they may consult the scientific institutes competent for verifying catch statistics such as the IRD (Institut de Recherche pour le Développement), the IEO (Instituto Español de Oceanografía) and IPIMAR (Instituto de Investigação das Pescas e do Mar), and thereafter discuss together with the Seychelles authorities to establish the final statement before 31 May of the current year. In the absence of observations by the shipowners at that date, the statement submitted by the SFA is considered as the final one.
7. Member States shall notify the Commission of the final statement relating to their own fleet.
8. Shipowners shall make any additional payment to the competent Seychelles authorities at the latest by 30 June of the same year at a bank account designated by the authorities of the Seychelles in accordance with Article 2 (6) of the Protocol.
9. Where the final statement is less than the advance payment referred to in point 3, the balance shall not be recoverable by the shipowner.

## CHAPTER II

### FISHING ZONES

To avoid any adverse effect on small-scale fisheries in Seychelles waters, fishing by Community vessels shall not be authorised in the zones defined in Seychelles legislation nor within three miles around any fish-aggregating device placed by Seychelles authorities, the geographical positions of which have been communicated to the shipowners' representatives or agents.

## CHAPTER III

### CATCH REPORTING ARRANGEMENTS

1. For the purposes of this Annex, the duration of a trip by a Community vessel shall be defined as follows:
  - either the period elapsing between entering and leaving Seychelles waters,
  - or the period elapsing between entering Seychelles waters and a transshipment,
  - or the period elapsing between entering Seychelles waters and a landing in Seychelles.
2. All vessels authorised to fish in Seychelles waters under the Agreement shall be obliged to communicate their catches to the competent authority of Seychelles in the following manner:
  - 2.1. The Community vessels licensed to fish in Seychelles waters shall complete a fishing form as set out in Appendices 2 and 3, for each trip it undertakes in Seychelles waters. In the absence of catches, the fishing forms shall still be filled in.
  - 2.2. As far as the submission of the fishing forms referred to in points 2.1 and 2.3 is concerned, the Community vessels shall:
    - in the event they call into Port Victoria, submit the completed forms to the Seychelles authorities within five days of arrival, or in any event before it leaves port, whichever occurs first,

- in any other case, send the completed forms to the Seychelles authorities within 14 days of arrival in any port other than Victoria.

Copies of these fishing forms must also be sent to the scientific institutes referred to in Chapter I, section 2.6.

2.3. The words 'Outside Seychelles waters' shall be entered in the abovementioned logbook in respect of periods during which the vessel is not in Seychelles waters.

2.4. The forms shall be filled in legibly and signed by the master of the vessel or his representative.

3. Where the provisions set out in this Chapter are not complied with, the Government of Seychelles reserves the right to suspend the licence of the offending vessel until formalities have been completed and to apply the penalty laid down in existing Seychelles legislation. The flag Member State and the European Commission shall be informed thereof.

#### CHAPTER IV

##### EMBARKING SEAMEN

1. Each tuna seiner shall take on board during its trip in Seychelles waters at least two Seychelles seamen designated by the agent of the vessel, in agreement with the shipowner, from the names on a list submitted by the competent authority of Seychelles.
2. Shipowners shall endeavour to take on board additional Seychelles seamen.
3. The shipowner or agent shall inform the competent authority of Seychelles of the names and particulars of the Seychelles seamen taken on board the vessel concerned, mentioning their position in the crew.
4. The International Labour Organisation's Declaration on Fundamental Principles and Rights at Work shall apply as of right to seamen signed on by EU 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.
5. Seychelles seamen's employment contracts, a copy of which shall be given to the signatories, shall be drawn up between the shipowners' agent(s) and the seamen and/or their trade unions or representatives in consultation with the competent authorities of Seychelles. These contracts shall guarantee the seamen the social security cover applicable to them, including life assurance and sickness and accident insurance and the pension benefits applicable to them.
6. Seychelles seamen's wages shall be paid by the ship-owners. They shall be fixed, before licences are issued, by mutual agreement between the ship-owners or their agents and the competent authorities of Seychelles. However, the wage conditions granted to Seychelles seamen shall not be lower than those applied to Seychelles crews performing similar duties and shall under no circumstances be below ILO standards.
7. For the purposes of the enforcement and application of the law of employment the ship-owner agent shall be considered as the local representative of the ship-owner. The contract concluded between the agent and the seamen shall include also the conditions for repatriation and the pension benefit applicable to them.
8. All seamen employed aboard Community vessels shall report to the master 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, ship-owners shall be automatically absolved of their obligation to take the seaman on board.

9. Where no Seychelles seamen are taken on board for reasons other than that referred to in point 8, shipowners shall be obliged to pay a flat-rate amount equivalent to a figure based on the number of days that the vessel operated in Seychelles' waters multiplied by the amount per day which is fixed at \$ 20. The flat rate amount shall be paid to the Seychelles authorities at the latest by the date set out in section 2(8) of Chapter I.
10. That sum shall be used for the training of seamen/fishermen in Seychelles and shall be paid into an account specified by the authorities of Seychelles.

## CHAPTER V

### TECHNICAL MEASURES

Vessels shall comply with the measures and recommendations adopted by the Indian Ocean Tuna Commission as well as the applicable national measures regarding fishing gear and the technical specifications thereof and all other technical measures applicable to their fishing activities.

## CHAPTER VI

### OBSERVERS

1. Vessels authorised to fish in Seychelles waters under the Agreement shall take on board observers appointed by Seychelles on the terms set out below.
  - 1.1. Community fishing vessels shall, at the request of the Seychelles authorities, take on board one observer, and when the authorities of Seychelles think it appropriate and necessary, two observers, designated by the said authorities.
  - 1.2. The competent authority of Seychelles 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 authority of Seychelles shall inform the shipowners concerned, or their agents, of the name of the observer appointed to be taken on board their vessel no later than 15 days before the observer's planned embarkation date.
2. The time spent on board by observers shall be fixed by the competent authority of Seychelles but, as a general rule, it should not exceed the time required to carry out their duties. The competent authority shall inform the shipowners or their agents thereof when notifying them of the name of the observer appointed to be taken on board the vessel concerned.
3. The conditions under which observers are taken on board shall be agreed between shipowners or their agents and the authorities of Seychelles.
4. Observers shall be taken on board in a manner chosen by the shipowner, after notification of the list of designated ships.
5. Within two weeks and giving 10 days' notice, the shipowners concerned shall make known at which port of Seychelles and on what dates they intend to take observers on board.



6. Where observers are taken on board in a foreign port, their travel costs shall be borne by the shipowner. Should a vessel with an observer from Seychelles on board leave Seychelles waters, all measures must be taken to ensure the observer's return to Seychelles as soon as possible at the expense of the shipowner.
7. If the observer is not present at the time and place agreed and during the 12 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. 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. perform biological sampling in the context of scientific programmes;
  - 8.4. note the fishing gear used;
  - 8.5. verify the catch data for Seychelles waters recorded in the logbook;
  - 8.6. verify the percentages of by-catches and estimate the quantity of discards;
  - 8.7. report fishing data once a week by fax or e-mail or other means of communication, including the quantity of catches and by-catches on board taken in Seychelles waters.
9. Masters of vessels shall do everything in their power to ensure the physical safety and welfare of observers during performance of their duties.
10. Similarly, as far as possible, they shall be offered every facility needed to carry out their duties. The master 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 as observer.
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 authorities of Seychelles, with a copy to the European Commission, which shall be signed by the observer. A copy of the report shall be handed to the master when the observer leaves the vessel.
13. Shipowners shall bear the cost of accommodating observers in the same conditions as the officers on the vessel.
14. The salary and social contributions of the observer shall be borne by the competent authorities of Seychelles.

## CHAPTER VII

**LANDING**

Tuna seiners landing in the port of Victoria shall endeavour to make their by-catches available to the authorities of Seychelles at the local market price. Furthermore, the Community tuna seiners shall participate in supplying tuna to the Seychelles cannery at the international market price.

## CHAPTER VIII

**PORT EQUIPMENT AND USE OF SUPPLIES AND SERVICES**

Community vessels shall endeavour to procure in Seychelles all supplies and services required for their operations. The Seychelles authorities shall lay down, in agreement with the shipowners, the conditions for using port equipment and, if necessary, supplies and services.

## CHAPTER IX

**MONITORING****1. Vessel list**

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

**2. Vessels Monitoring System**

Community vessels shall be monitored, inter alia, by vessel monitoring systems, without discrimination, in accordance with the provisions set out in Appendix 4.

**3. Entering and leaving Seychelles waters:**

- 3.1. Community vessels shall notify the competent authorities of Seychelles at least (three) hours in advance of their intention to enter or leave Seychelles waters and every three days during their fishing activities in Seychelles waters of their catches during this period.
- 3.2. When notifying entry/leaving, vessels shall also communicate their position at the time of communication and the volume and species in catches kept on board. These communications shall be made in the format set out in Appendix 5, by fax or e-mail, to the addresses provided therein. However, the competent authorities of Seychelles may exempt surface long liners not fitted with the appropriate communication equipment from this obligation by authorising communication by radio.
- 3.3. Community fishing vessels found to be fishing without having informed the competent authorities of Seychelles shall be deemed as vessels without a licence. The sanctions referred to in Chapter X, point 1 shall be applicable in such cases.

#### 4. **Control procedures**

- 4.1. Masters of Community fishing vessels engaged in fishing activities in Seychelles waters shall cooperate with any Seychelles official carrying out the inspection and control of fishing activities.
- 4.2. These officials shall not remain on board for longer than is necessary for the discharge of their duties.
- 4.3. Once an inspection has been completed, a copy of the inspection report shall be given to the master of the vessel.

#### 5. **Transhipment**

- 5.1. All Community vessels wishing to tranship catches in Seychelles waters shall do so within Seychelles ports.
- 5.2. The owners of such vessels must notify the following information to the competent authority of Seychelles at least 24 hours in advance:
  - the names of the transshipping fishing vessels,
  - the names of the cargo vessels,
  - the tonnage by species to be transhipped,
  - the day of transhipment.
- 5.3. Transhipment shall be considered as an exit from Seychelles waters. Vessels must therefore submit their catch declarations to the competent authorities of Seychelles.
- 5.4. Any transhipment of catches not covered above shall be prohibited in Seychelles waters. Any person infringing this provision shall be liable to the penalties provided for by Seychelles law.
- 5.5. Masters of Community fishing vessels engaged in landing or transhipment operations in a port of Seychelles shall allow and facilitate the inspection of such operations by Seychelles inspectors. Once the inspection has been completed, a certificate shall be issued to the master of the vessel.

### CHAPTER X

### ENFORCEMENT

#### 1. **Sanctions**

Failure to observe any one of the above rules, the management and conservation of living resources measures or Seychelles legislation may be penalised by suspension, revocation or non-renewal of the vessel's fishing licence.

The flag Member State and the European Commission shall immediately be fully informed of any suspension or revocation and of all relevant facts related thereto. During the period of the suspension of a licence or during the

remaining period of the validity of a licence which has been revoked, the European Commission may request another licence which would have otherwise have been applicable, for a vessel from another ship-owner, in accordance with the procedure set out in section 1.11 of Chapter I.

## 2. **Arrest of fishing vessels**

The Seychelles authorities shall inform the European Commission delegation responsible for Seychelles and the flag State, within 48 hours, of the arrest of any fishing vessel flying the flag of a Member State of the Community fishing under the Agreement in Seychelles fishing zone and shall transmit a brief report of the circumstances and reasons leading to such arrest. The delegation and the flag State shall be kept informed of any proceedings initiated and penalties imposed.

---

*Appendix 1***APPLICATION FOR A FOREIGN FISHING VESSEL LICENCE**

Name of applicant: .....

Address of applicant: .....

Name and address of charterer of vessel if different from above:

.....

Name and address of other legal representative in Seychelles:

.....

Name and address of master of vessel:

.....

Name of vessel: .....

Type of vessel: .....

Length and registered net tonnage of vessel: .....

Engine type, horse power and gross registered tonnage: .....

Port and country of registry: .....

Registration number: .....

Fishing vessel external identification: .....

Radio call sign/signal letters: .....

Frequency: .....

Particulars of equipment: .....

Number and nationality of crew: .....

Proposed fishing area and species of fish: .....  
.....  
.....

Description of fishing operations, joint ventures and other contractual arrangements:

.....  
.....

I certify that the above particulars are correct.

Date: ..... Signature: .....

\_\_\_\_\_

## Appendix 2

## STATEMENT OF CATCH FOR TUNA SEINERS

One line per haul whether yielding a catch or not. Enter crosses under INDICATORS and HAUL. Thank you.

[illegible]

## Appendix 3

## STATEMENT OF CATCH FOR SURFACE LONGLINERS

Name of vessel: \_\_\_\_\_ Skipper's name: \_\_\_\_\_

Date of setting: \_\_\_\_/\_\_\_\_/\_\_\_\_ Start of trip: \_\_\_\_/\_\_\_\_/\_\_\_\_/ at: \_\_\_\_

Trip number: \_\_\_\_\_ Setting number: \_\_\_\_\_

Wind direction: _____	Force: _____ (Beaufort)
Sea conditions: _____	Swell: _____
Surface temperature: ____ ° C	Current: speed: _____ Direction: _____
Moon: New moon + ____ days	Moon rises: _____
	Moon sets: _____ hours 0 to 24

## Setting details

Start time: \_\_\_\_\_ Finishing time: \_\_\_\_\_

Section	Position	Heading	Speed	Remarks
Depart: radio buoy number 1				
Radio buoy number 2				
Radio buoy number 3				
Radio buoy number 4				
Radio buoy number 5				
Radio buoy number 6				
Radio buoy number 7				

Number of hooks: \_\_\_\_\_

Length: Buoy lines: \_\_\_\_\_ Branch lines: \_\_\_\_\_

Length of line: \_\_\_\_\_

Recorded depth of the line (sounder): \_\_\_\_\_

Bait: Shrimp: \_\_\_\_\_ % Mackerel: \_\_\_\_\_ % \_\_\_\_\_: \_\_\_\_\_ %



Details of catch
------------------

	Time (0 to 24 H)		Latitude			Longitude		
Start of turn								
End of turn								

Species	Number	Estimated unit weight	Total weight	Number of fish eaten
Swordfish*				
Yellowfin**				
Bigeye**				
Marlin**				
Sailfish*				
Seabream				
Shark				
Other (give details)				
Total weight				

Total weight of catch landed (weighed)

\* VDK.

\*\* With head, gilled.

State the type of weight used (VAT, VDK, whole) if different from that specified.

*Appendix 4***Provisions establishing the method to be used for the transmission of data relating to satellite monitoring of the position of EC vessels fishing under the EC/Seychelles fishery agreement**

As the Republic of Seychelles has introduced a vessel monitoring system (VMS) applicable to all foreign vessels fishing in Seychelles waters, on a non-discriminatory basis, and has extended VMS surveillance to its own national fleet of the same category, and

Considering that EC fishing vessels are already subject to satellite tracking under Community legislation since January 2000,

It is recommended that the flag States and the authorities of the Republic of Seychelles implement satellite monitoring of Community vessels fishing under the Agreement between the European Community and the Republic of Seychelles on fishing off Seychelles in accordance with the following conditions:

1. For the purposes of satellite monitoring, the Seychelles authorities shall communicate to the Fisheries Monitoring Centres (FMCs) of the flag States the co-ordinates (latitudes and longitudes) of the Seychelles waters.

The Seychelles authorities will transmit this information in electronic format, expressed in degrees decimal in the Wgs-84 system datum.

2. The Seychelles authorities and the national FMCs will exchange information on their respective electronic addresses in X.25 format or, where appropriate, another secure communication protocol and on the specifications to be used in their respective FMCs in accordance with the conditions established in points 4 and 6. This information will include, as far as possible, the names, the telephone, and fax numbers and the electronic addresses (Internet), which can be used for the general communications between the FMCs.
3. The position of the vessels will be determined with a margin of error of less than 500 metres and with a confidence interval of 99 %.
4. When a vessel fishing under the Agreement between the European Community and the Republic of Seychelles on fishing off Seychelles and subject to satellite tracking under Community legislation enters into Seychelles waters, subsequent position reports shall be communicated by the FMC of the flag State to the Monitoring Centre of Seychelles automatically, in real time, at least every hour (frequency). These messages are identified as Position Reports.
5. The messages referred to in item 4 shall be transmitted electronically in X.25 format, or other secure communication protocols subject to prior agreement between the relevant FMCs. All messages will be communicated automatically, in real time, in accordance with the definitions given in Attachment 1.

It is prohibited for a vessel to switch off its satellite tracking device when operating in Seychelles waters.

6. In the event of a technical problem or malfunction of the satellite monitoring device installed on board the fishing vessel, the master of that vessel shall communicate in good time by fax or e-mail to the FMC of the flag State concerned the information specified in item 4. At least one Global Position Report every four hours shall be sufficient under such circumstances as long as the vessel stays in Seychelles waters. This Global Position Report will include the hourly positions as registered by the master of that vessel during those four hours. The FMC of the flag State or the vessel itself shall forward these messages to the Seychelles Monitoring Centre without delay. In case of necessity or doubts, the Seychelles Fishing Authority (SFA) could ask a specific vessel to transmit the Position Report on an hourly basis. Defective equipment shall be repaired or replaced as soon as the vessel concludes its fishing trip or within a month at most. After this period, a new fishing trip may not begin until the equipment has been repaired or replaced.

7. The Vessel Monitoring System hardware and software components shall be temper proof, i.e. shall not permit the input or output of false positions and must not be capable of being manually over-ridden. The system shall be fully automatic and operational at all times regardless of environmental conditions. It shall be prohibited to destroy, damage, render inoperative or otherwise interfere with the satellite tracking device.

In particular, the master shall ensure that:

- data are not altered in any way,
- the antenna or the antennas connected to the satellite tracking devices are not obstructed in any way, and
- the power supply of the satellite tracking devices is not interrupted in any way.

Any breach of the abovementioned obligations may render the master liable under the laws and regulations of Seychelles, provided that the vessel is operating in Seychelles waters.

8. The FMCs of the flag States shall monitor the tracking of their vessels when the latter are in Seychelles waters, at one-hour intervals. If the tracking of the vessels is not carried out under the conditions envisaged, the Seychelles Monitoring Centre shall be informed immediately and the procedure provided for in item 6 will be applicable.
  9. Relevant FMCs and the Seychelles Monitoring Centre shall cooperate to ensure the implementation of these provisions. If the Seychelles Monitoring Centre establishes that the flag State is not transmitting the data in conformity with item 4 above, the other party shall be notified immediately. Upon receipt of notification, the latter shall respond within 24 hours by informing the Seychelles Monitoring Centre of the reasons for non-transmission and stating a reasonable deadline for complying with these provisions. In case of failure to comply within this deadline, the two parties will settle such problems in writing or as provided for by point 13 of these provisions.
  10. Monitoring data transmitted in accordance with these provisions shall be used exclusively for control, management, monitoring and enforcement by the Seychelles authorities of the Community fleet fishing under the Agreement between the European Community and the Republic of Seychelles on fishing off Seychelles. These data cannot be communicated to other parties under any circumstances, except with the written consent of the flag State concerned, on a case by case basis, or by an order of the Court in Seychelles.
  11. It is agreed that, at the request of either party, there will be an exchange of information on the equipment used for satellite tracking, in order to ensure that this equipment is fully compatible with the requirements of the other party for the purposes of these provisions.
  12. The Parties agree to review these provisions as and when appropriate, including all cases of malfunctioning or anomalies related to individual vessels. All such cases will have to be notified by the SFA to the EC flag Member States at least 15 days before the review meeting.
  13. Any dispute concerning the interpretation or the application of these provisions shall be subject to consultation between the Parties within the framework of the Joint Committee provided for in Article 7 of the Agreement between the European Community and the Republic of Seychelles on fishing off Seychelles.
  14. These provisions shall enter into force on 18 January 2005.
-

## Attachment 1

## Communication of VMS messages to Seychelles

## Position report

Piece of data	Code	Mandatory/ Optional	Comments
Start record	SR	M	System detail; indicates start of record
Address	AD	M	Message detail; destination Party Alfa-3 ISO country code
From	FR	M	Message detail; the transmitting Party Alfa-3 ISO country code
Type of message	TM	M	Message detail; message type, 'POS'
Radio call sign	RC	M	Vessel detail; international radio call sign of the vessel
Internal Reference Number	IR	O	Vessel detail; Unique Party vessel number as Alfa-3 ISO flag country code followed by number
External Registration Number	XR	O	Vessel detail; the side number of the vessel
Latitude	LA	M	Position detail; position of the vessel in degrees and minutes N/S DDMM (WGS-84)
Longitude	LO	M	Position detail; position of the vessel in degrees and minutes E/W DDDMM (Wgs-84)
Speed	SP	M	Position detail; vessel speed in tenths of knots
Course	CO	M	Position detail; vessel course in 360 ° scale
Date	DA	M	Position detail; UTC date of position (YYYYMMDD)
Time	TI	M	Position detail; UTC time of position (HHMM)
End of record	ER	M	System detail; indicates end of record

Character set: ISO 8 859,1

A data transfer is structured in the following way:

- a double oblique bar (//) and a code mark the beginning of the transmission,
- a simple oblique bar (/) marks a separation between the code and the piece of data.

The optional data has to be inserted between the beginning and the end of the recording.

## Appendix 5

## COMMUNICATION FORMAT REPORTS

## 1. Entry report format (within three hours before the event)

(Content)	(Transmission)
Addressee	SFA
Action code	IN
Vessel name	
International radio call sign	
Position of entry	
Date and hour (UTC) of entry	
Quantity (Mt) of fish on board	
Yellowfin	(Mt)
Bigeye tuna	(Mt)
Skipjack	(Mt)
Others (specify)	(Mt)

## 2. Exit report format (within 3 hours before the event)

(Content)	(Transmission)
Addressee	SFA
Action code	OUT
Vessel name	
International radio call sign	
Position of entry	
Date and hour (UTC) of exit	
Quantity (Mt) of fish on board	
Yellowfin	(Mt)
Bigeye tuna	(Mt)

(Content)	(Transmission)
Skipjack	(Mt)
Others (specify)	(Mt)

3. **Weekly catch report format (every three days when the vessel is operating in seychelles waters)**

(Content)	(Transmission)
Addressee	SFA
Action code	WCRT
Vessel name	
International radio call sign	
Quantity (Mt) of fish on board	
Yellowfin	(Mt)
Bigeye tuna	(Mt)
Skipjack	(Mt)
Others (specify)	(Mt)
Number of sets made since last report	

All reports shall be transmitted to the competent authority at: Fax (248) 22 59 57 E-mail fmcsc@sfa.sc  
Seychelles Fishing Authority, P.O. Box 449, Fishing Port, Mahé, Seychelles

**COUNCIL DECISION****of 8 December 2005****on the approval on behalf of the European Community of the Agreement on the International Dolphin Conservation Programme**

(2005/938/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 37 in conjunction with the first sentence of the first subparagraph of Article 300(2) and the first subparagraph of Article 300(3) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament <sup>(1)</sup>,

Whereas:

- (1) The Community is competent to adopt measures for the conservation and management of fishery resources and to enter into agreements with third countries and international organisations.
- (2) The Community is a contracting party to the United Nations Convention on the Law of the Sea, which requires all members of the international community to cooperate in conserving and managing the sea's living resources.
- (3) The Community is a contracting party to the Agreement on the implementation of the provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks.
- (4) In February 1998, the 35th Intergovernmental meeting on the conservation of tunas and dolphins in the Eastern Pacific Ocean adopted the Agreement on the International Dolphin Conservation Programme (hereinafter referred to as the Agreement). The Agreement was signed in Washington on 21 May 1998 and entered into force on 15 February 1999.

(5) At present there are 15 contracting parties to the Agreement these being Bolivia, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Peru, Spain, United States, Vanuatu and Venezuela.

(6) The objectives of the Agreement include the progressive reduction of incidental dolphin mortalities in the tuna purse-seine fishery in the Eastern Pacific Ocean to levels approaching zero, through the setting of annual limits and the long term sustainability of the tuna stocks in the Agreement Area.

(7) The Community recognises the importance of the Agreement in protecting sustainable fishing as a means of guaranteeing the ecological conservation of species, particularly dolphins.

(8) Community fishermen fish tuna stocks in the Agreement Area and it is in the Community's interest to play an effective role in the implementation of the Agreement.

(9) The Community signed <sup>(2)</sup> the Agreement, and decided to apply it provisionally <sup>(3)</sup> until completion of the required procedures for its official accession to the Inter-American Tropical Tuna Commission (IATTC).

(10) Under Article XIV of the Agreement, the IATTC is to have an integral role in coordinating the implementation of the Agreement and many implementing measures will be adopted within the framework of the IATTC.

(11) In parallel, the Kingdom of Spain was authorised to accede to the Convention establishing the IATTC on a temporary basis <sup>(4)</sup>.

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<sup>(1)</sup> Opinion of 9 June 2005 (not yet published in the Official Journal).

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<sup>(2)</sup> OJ L 132, 27.5.1999, p. 1.

<sup>(3)</sup> OJ L 147, 12.6.1999, p. 23.

<sup>(4)</sup> OJ L 155, 22.6.1999, p. 37.

- (12) The Kingdom of Spain has acceded to the IATTC on June 2003.
- (13) The official accession of the Community to the IATTC will take place upon the entry into force of the Convention for the strengthening of the IATTC established by the 1949 Convention between the United States of America and the Republic of Costa Rica (the Antigua Convention), of which the Community is a signatory <sup>(1)</sup>.
- (14) Pending the entry into force of the Antigua Convention, the effective participation of the Community in the work of the IATTC and consequently, to all activities and measures decided under the Agreement, is ensured through the Kingdom of Spain's membership of the IATTC on behalf of the Community.
- (15) The Community is now therefore in a position to approve the Agreement and fully assume its duties and responsibilities under both the Agreement and the Convention establishing the IATTC,

HAS DECIDED AS FOLLOWS:

*Article 1*

The Agreement on the International Dolphin Conservation Programme is hereby approved on behalf of the Community.

The text of the Agreement is attached to this Decision.

*Article 2*

The President of the Council is hereby authorised to designate the person(s) empowered to deposit the instrument of approval with the Government of the United States of America as Depositary of the Agreement in Accordance with Article XXXII thereof.

Done at Brussels, 8 December 2005.

*For the Council*  
*The President*  
J. HUTTON

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<sup>(1)</sup> OJ L 15, 19.1.2005, p. 9.



**AGREEMENT**  
**on the International Dolphin Conservation Programme**

**PREAMBLE**

THE PARTIES TO THIS AGREEMENT,

AWARE THAT in accordance with the relevant provisions of international law, as reflected in the United Nations Convention on the Law of the Sea (UNCLOS) of 1982, all States have the duty to take, or to cooperate with other States in taking, such measures as may be necessary for the conservation and management of living marine resources;

INSPIRED by the principles contained in the Rio Declaration on Environment and Development of 1992, as well as the wish to implement the principles and standards of the Code of Conduct for Responsible Fisheries adopted by the FAO Conference in 1995;

STRESSING the political will of the international community to contribute to enhancing the effectiveness of fisheries conservation and management measures, through the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, adopted by the FAO Conference in 1993;

TAKING NOTE that the 50th General Assembly of the United Nations, pursuant to resolution A/RES/50/24, adopted the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Stocks and Highly Migratory Fish Stocks (the United Nations Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks);

REAFFIRMING the commitments established in the La Jolla Agreement of 1992 and in the Declaration of Panama of 1995;

EMPHASISING the goals of eliminating dolphin mortality in the purse-seine tuna fishery in the Eastern Pacific Ocean and of seeking ecologically sound means of capturing large yellowfin tunas not in association with dolphins;

CONSIDERING the importance of the tuna fishery as a source of food and income for the populations of the Parties and that conservation and management measures must address those needs and take into account the economic and social impacts of those measures;

RECOGNISING the dramatic reduction of incidental dolphin mortality achieved through the La Jolla Agreement;

CONVINCED that scientific evidence demonstrates that the technique of fishing for tuna in association with dolphins, in compliance with the regulations and procedures established under the La Jolla Agreement and reflected in the Declaration of Panama, has provided an effective method for the protection of dolphins and rational use of tuna resources in the Eastern Pacific Ocean;

REAFFIRMING that multilateral cooperation constitutes the most effective means for achieving the objectives of conservation and sustainable use of living marine resources;

COMMITTED to ensure the sustainability of tuna stocks in the Eastern Pacific Ocean and to progressively reduce the incidental dolphin mortalities in the tuna fishery of the Eastern Pacific Ocean to levels approaching zero; to avoid, reduce and minimise the incidental catch and the discard of juvenile tuna and the incidental catch of non-target species, taking into consideration the interrelationship among species in the ecosystem,

HAVE AGREED AS FOLLOWS:

#### Article I

#### Definitions

For the purposes of this Agreement:

1. 'tuna' means the species of the suborder *Scombroidei* (Klawe, 1980), with the exception of the genus *Scomber*;
2. 'dolphins' means species of the family *Delphinidae* associated with the fishery for yellowfin tuna in the Agreement Area;
3. 'vessel' means a vessel that fishes for tuna with purse seines;
4. 'parties' means the States or regional economic integration organisations which have consented to be bound by this Agreement and for which this Agreement is in force;
5. 'regional economic integration organisation' means a regional economic integration organisation to which its Member States have transferred competence over matters covered by this Agreement, including the authority to make decisions binding on its Member States in respect of those matters;
6. 'IATTC' means the Inter-American Tropical Tuna Commission;
7. 'La Jolla Agreement' means the instrument adopted at the Intergovernmental Meeting held in June 1992;
8. 'International Dolphin Conservation Programme' means the international programme established pursuant to this Agreement based on the La Jolla Agreement, as formalised, modified and enhanced in accordance with the Declaration of Panama;
9. 'On-Board Observer Programme' means the programme defined in Annex II;
10. 'Declaration of Panama' means the Declaration signed in Panama City, Republic of Panama, on 4 October 1995;

11. 'Director' means the Director of Investigations of the IATTC.

#### Article II

#### Objectives

The objectives of this Agreement are:

1. to progressively reduce incidental dolphin mortalities in the tuna purse-seine fishery in the Agreement Area to levels approaching zero, through the setting of annual limits;
2. with the goal of eliminating dolphin mortality in this fishery, to seek ecologically sound means of capturing large yellowfin tunas not in association with dolphins; and
3. to ensure the long-term sustainability of the tuna stocks in the Agreement Area, as well as that of the marine resources related to this fishery, taking into consideration the interrelationship among species in the ecosystem, with special emphasis on, *inter alia*, avoiding, reducing and minimising by-catch and discards of juvenile tunas and non-target species.

#### Article III

#### Area of application of the Agreement

The area of application of this Agreement (the Agreement Area) is defined in Annex I.

#### Article IV

#### General measures

The Parties shall, within the framework of the IATTC:

1. take measures to ensure the conservation of ecosystems as well as conservation and management measures to ensure the long-term sustainability of tuna stocks and other stocks of living marine resources associated with the tuna purse-seine fishery in the Agreement Area, based on the best scientific evidence available, and apply

the precautionary approach, consistent with the relevant provisions of the FAO Code of Conduct for Responsible Fisheries and the United Nations Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks. Such measures shall be designed to maintain or restore the biomass of harvested stocks at or above levels capable of producing maximum sustainable yield, and with the goal of maintaining or restoring the biomass of associated stocks at or above levels capable of producing maximum sustainable yield; and

2. take measures, according to their capacities, to assess the catch and by-catch of juvenile yellowfin tuna and other stocks of living marine resources related to the purse-seine tuna fishery in the Agreement Area and establish measures in accordance with Article VI to, *inter alia*, avoid, reduce and minimise the by-catch of juvenile yellowfin tuna and by-catch of non-target species, in order to ensure long-term sustainability of all these species, taking into consideration the interrelationships among species in the ecosystem.

#### Article V

### International Dolphin Conservation Programme

Pursuant to the International Dolphin Conservation Programme and in consideration of the objectives of this Agreement, the Parties shall, *inter alia*:

1. limit total incidental dolphin mortality in the purse-seine tuna fishery in the Agreement Area to no more than five thousand annually, through the adoption and implementation of relevant measures, which shall include:
  - (a) the establishment of a system that provides incentives to vessel captains to continue to reduce incidental dolphin mortality, with the goal of eliminating dolphin mortality in this fishery;
  - (b) the establishment within the framework of the IATTC of a system of technical training and certification for fishing captains and crews on the gear and its use, as well as the techniques for the rescue and safety of dolphins;
  - (c) within the framework of the IATTC, the promotion and support of research to improve gear, equipment, and fishing techniques, including those used in the fishery for tunas associated with dolphins;
  - (d) the establishment of an equitable system for the assignment of dolphin mortality limits (DMLs),

consistent with the per-year dolphin mortality caps, in accordance with Annexes III and IV;

- (e) requiring their respective vessels that have been assigned a DML, or that otherwise operate in the Agreement Area, to comply with the operational requirements set forth in Annex VIII;
- (f) the establishment of a system for the tracking and verification of tuna harvested with and without mortality or serious injury of dolphins, based on the elements set forth in Annex IX;
- (g) the exchange of scientific research data collected by the Parties pursuant to this Agreement on a full and timely basis; and
- (h) the conduct of research for the purpose of seeking ecologically sound means of capturing large yellowfin tunas not in association with dolphins;

2. establish per-stock, per-year dolphin mortality caps, and review and assess the effects of these caps, in accordance with Annex III; and
3. review the measures at a meeting of the Parties.

#### Article VI

### Sustainability of living marine resources

Pursuant to Article IV, the Parties commit to develop and implement, within the framework of the IATTC, measures to ensure the long-term sustainability of living marine resources associated with the purse-seine tuna fishery in the Agreement Area, taking into consideration the interrelationships among species in the ecosystem. To this end, the Parties shall, *inter alia*:

1. develop and implement a programme for assessing, monitoring and minimising by-catch of juvenile tuna and non-target species in the Agreement Area;
2. to the maximum extent practicable, develop and require the use of selective, environmentally safe and cost-effective fishing gear and techniques;
3. require that their vessels operating in the Agreement Area release alive incidentally caught sea turtles and other threatened or endangered species, to the maximum extent practicable; and

4. request the IATTC to initiate investigations to assess whether the fishing capacity of vessels fishing in the Agreement Area poses a threat to the sustainability of tuna stocks and other living marine resources associated with the fishery and, if so, examine possible measures and recommend their adoption whenever appropriate.

#### Article VII

### Implementation at the national level

Each Party shall adopt, in accordance with its laws and procedures, the necessary measures to ensure the implementation of and compliance with this Agreement including, as appropriate, the adoption of relevant laws and regulations.

#### Article VIII

### Meeting of the Parties

1. The Parties shall meet periodically to consider matters pertaining to the implementation of this Agreement and to make all decisions relevant thereto.
2. The ordinary meeting of the Parties shall take place at least once a year, preferably in conjunction with the IATTC meeting.
3. The Parties may also hold extraordinary meetings when deemed necessary. These meetings shall be convened at the request of any Party, provided that such request is supported by a majority of the Parties.
4. The meeting of the Parties shall be held when a quorum is present. Quorum is reached when a majority of the Parties are present. This rule shall also apply to meetings of subsidiary organs established under this Agreement.
5. The meetings shall be held in Spanish and English, and the documents of the meeting of the Parties shall be produced in both these languages.

#### Article IX

### Decision making

All decisions made by the Parties at meetings convened pursuant to Article VIII shall be by consensus.

#### Article X

### Scientific Advisory Board

The functions of the Scientific Advisory Board, established pursuant to the La Jolla Agreement, shall be those set forth in

Annex V. The Scientific Advisory Board shall be composed and shall operate in accordance with the provisions of Annex V.

#### Article XI

### National Scientific Advisory Committees

1. Each Party shall, in accordance with its laws and procedures, establish a National Scientific Advisory Committee (NATSAC) of qualified experts, operating in their individual capacities, from the public and private sectors, and from non-governmental organisations including, *inter alia*, qualified scientists.
2. The functions of the NATSACs shall be, *inter alia*, those set forth in Annex VI.
3. The Parties shall ensure that the NATSACs shall cooperate through regular and timely meetings in the review of data and the status of stocks, and in the development of advice for achieving the objectives of this Agreement. Such meetings shall take place at least once a year in conjunction with the ordinary meeting of the Parties.

#### Article XII

### International Review Panel

The functions of the International Review Panel (IRP), established pursuant to the La Jolla Agreement, shall be those set forth in Annex VII. The IRP shall be composed and shall operate in accordance with the provisions of Annex VII.

#### Article XIII

### On-Board Observer Programmes

The On-Board Observer Programme established pursuant to the La Jolla Agreement shall operate in accordance with Annex II.

#### Article XIV

### Role of the IATTC

Envisioning that the IATTC shall have an integral role in coordinating the implementation of this Agreement, the Parties shall, *inter alia*, request the IATTC to provide secretariat

support and to perform such other functions as are set forth in this Agreement or are agreed upon pursuant to this Agreement.

#### *Article XV*

### **Financing**

The Parties shall contribute to the expenses necessary to achieve the objectives of this Agreement, through the establishment and collection of vessel fees, the level of which shall be determined by the Parties, without prejudice to other voluntary financial contributions.

#### *Article XVI*

### **Compliance**

1. Each Party shall ensure with respect to vessels under its jurisdiction effective compliance with the measures set forth in this Agreement or adopted pursuant thereto. In particular, each Party shall ensure, through, *inter alia*, an annual certification and inspection programme, that vessels subject to its jurisdiction comply with:

- (a) the operational requirements established in Annex VIII; and
- (b) the on-board observer requirements established in Annex II.

2. In respect of violations, each Party, taking into consideration the recommendations of the IRP, shall apply, consistent with its national laws, sanctions of sufficient gravity as to be effective in securing compliance with the provisions of this Agreement and of measures adopted pursuant thereto and to deprive offenders of the benefits accruing from their illegal activities. Such sanctions shall, for serious offences, include refusal, suspension or withdrawal of the authorisation to fish.

3. The Parties shall establish incentives for the captains and crews of vessels, with the view to enhancing compliance with this Agreement and its objectives.

4. The Parties shall adopt cooperative measures to ensure compliance with this Agreement, building on decisions that have been taken under the La Jolla Agreement.

5. Each Party shall promptly inform the IRP of enforcement actions it has taken pursuant to this Agreement, and the results thereof.

#### *Article XVII*

### **Transparency**

1. The Parties shall promote transparency in the implementation of this Agreement, including through public participation, as appropriate.

2. Representatives from intergovernmental organisations and representatives from non-governmental organisations concerned with matters relevant to the implementation of this Agreement shall be afforded the opportunity to take part in meetings of the Parties convened pursuant to Article VIII as observers or otherwise, as appropriate, in accordance with the guidelines and criteria set forth in Annex X. Such intergovernmental organisations and non-governmental organisations shall have timely access to relevant information, subject to procedural rules on access to such information that the Parties may adopt.

#### *Article XVIII*

### **Confidentiality**

1. The meeting of the Parties shall establish rules of confidentiality for all bodies given access to information pursuant to this Agreement.

2. Notwithstanding any confidentiality rules which may be adopted in accordance with paragraph 1 above, any persons with access to such confidential information may disclose such information in connection with legal or administrative proceedings, if requested by a competent authority of the Party concerned.

#### *Article XIX*

### **Cooperation with other organisations or arrangements**

The Parties shall cooperate with subregional, regional and global fishery conservation and management organisations and arrangements with the goal of promoting the achievement of the objectives of this Agreement.

#### *Article XX*

### **Settlement of disputes**

1. The Parties shall cooperate in order to prevent disputes. Any Party may consult with one or more other Parties about any dispute related to the interpretation or application of the provisions of this Agreement to reach a solution satisfactory to all as quickly as possible.

2. If a dispute is not settled through such consultation within a reasonable period, the Parties in question shall consult among themselves as soon as possible in order to settle the dispute through any peaceful means they may decide upon in accordance with international law.

#### Article XXI

### Rights of States

No provision of this Agreement may be interpreted in such a way as to prejudice or undermine the sovereignty, sovereign rights or jurisdiction exercised by any State in accordance with international law, as well as its position or views with regard to matters relating to the law of the sea.

#### Article XXII

### Non-Parties

1. The Parties shall encourage all States and regional economic integration organisations referred to in Article XXIV of this Agreement that are not Parties to become Parties to this Agreement or to adopt laws and regulations consistent with it.

2. The Parties shall cooperate, in accordance with this Agreement and international law, to deter vessels flying the flags of States that are not Parties from carrying out activities that undermine the effectiveness of this Agreement. To this end, the Parties shall, *inter alia*, call to the attention of non-Parties such activities by their vessels.

3. The Parties shall exchange information among themselves, either directly or through the Director, with respect to activities of vessels flying the flags of non-Parties that undermine the effectiveness of this Agreement.

#### Article XXIII

### Annexes

The Annexes form an integral part of this Agreement and, unless expressly provided otherwise, a reference to this Agreement includes a reference to the Annexes relating thereto.

#### Article XXIV

### Signature

This Agreement is open for signature at Washington from 21 May 1998 until 14 May 1999 by States with a coastline

bordering the Agreement Area and by States or regional economic integration organisations which are members of the IATTC or whose vessels fish for tuna in the Agreement Area while the Agreement is open for signature.

#### Article XXV

### Ratification, acceptance or approval

This Agreement is subject to ratification, acceptance or approval by the signatories in accordance with their domestic laws and procedures.

#### Article XXVI

### Accession

This Agreement shall remain open to accession by any State or regional economic integration organisation that meets the requirements in Article XXIV, or is otherwise invited to accede to the Agreement on the basis of a decision by the Parties.

#### Article XXVII

### Entry into force

1. This Agreement shall enter into force upon deposit of the fourth instrument of ratification, acceptance, approval or accession with the depositary.

2. After the date referred to in paragraph 1, with respect to each State or regional economic integration organisation that meets the requirements of Article XXVI, the Agreement will enter into force for each State or regional economic integration organisation upon deposit of its instrument of ratification, acceptance, approval or accession.

#### Article XXVIII

### Reservations

No reservations may be made to this Agreement.

#### Article XXIX

### Provisional application

1. This Agreement shall be applied provisionally by a State or regional economic integration organisation which consents to its provisional application by so notifying the depositary in writing. Such provisional application shall become effective from the date of receipt of the notification.

2. Provisional application by a State or regional economic integration organisation shall terminate upon the entry into force of this Agreement for that State or regional economic integration organisation or upon notification by that State or regional economic integration organisation to the depositary in writing of its intention to terminate provisional application.

*Article XXX*

**Amendments**

1. Any Party may propose an amendment to this Agreement by providing to the depositary the text of a proposed amendment at least 60 days in advance of a meeting of the Parties. The depositary shall provide a copy of this text to all other Parties.

2. Amendments to this Agreement that are adopted by consensus at a meeting of the Parties shall enter into force on the date on which all Parties have deposited instruments of ratification, acceptance or approval with the depositary.

3. Unless the Parties decide otherwise, the Annexes to this Agreement may be amended, by consensus, at any meeting of

the Parties. Unless otherwise agreed, amendments to an Annex shall enter into force for all Parties upon adoption.

*Article XXXI*

**Withdrawal**

Any Party may withdraw at any time after 12 months from the date on which this Agreement entered into force with respect to that Party by giving written notice of withdrawal to the depositary. The depositary shall inform the other Parties of the withdrawal within 30 days of receipt of such notice. The withdrawal shall become effective six months after receipt of such notice.

*Article XXXII*

**Depositary**

The original texts of this Agreement shall be deposited with the Government of the United States of America, which shall send certified copies thereof to the signatories and the Parties thereto, and to the Secretary-General of the United Nations for registration and publication, pursuant to Article 102 of the Charter of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, having been duly authorised by their respective Governments, have signed this Agreement.

DONE AT Washington DC, on this twenty-first day of May 1998, in English and Spanish, both texts being equally authentic.

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ANNEX I**AGREEMENT AREA**

The Agreement Area comprises the area of the Pacific Ocean bounded by the coastline of North, Central and South America and by the following lines:

- (a) the 40°N parallel from the coast of North America to its intersection with the 150°W meridian;
  - (b) the 150°W meridian to its intersection with the 40°S parallel;
  - (c) and the 40°S parallel to its intersection with the coast of South America.
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## ANNEX II

**ON-BOARD OBSERVER PROGRAMME**

1. The Parties shall maintain an On-Board Observer Programme in accordance with the provisions of this Annex. As a component of this Programme, each Party may also maintain its own national observer programme, in accordance with the provisions of this Annex.
2. Each Party shall require its vessels with a carrying capacity greater than 363 metric tonnes (400 short tonnes) and that operate in the Agreement Area, to carry an observer during each fishing trip in the Agreement Area. At least 50 % of the observers on the vessels of each Party shall be IATTC observers; the remainder may be from the Party's national observer programme, based on criteria set forth in this Annex as well as any other criteria established by the meeting of the Parties.
3. All observers must:
  - (a) have completed the technical training required by the guidelines that the Parties establish;
  - (b) be a national of one of the Parties or a member of the scientific staff of the IATTC;
  - (c) be capable of performing the duties set forth in paragraph 4 of this Annex; and
  - (d) be included in a list of observers maintained by the IATTC or, if part of a national observer programme, by the Party maintaining such programme.
4. The duties of the observers shall be, *inter alia*:
  - (a) to gather all pertinent information on the fishing operations of the vessel to which the observer is assigned as is necessary for implementation of this Agreement;
  - (b) to make available to the captain of the vessel to which the observer is assigned all measures established by the Parties pursuant to this Agreement;
  - (c) to make available to the captain of the vessel to which the observer is assigned the record of dolphin mortality of that vessel;
  - (d) to prepare reports on information gathered in accordance with this paragraph, and provide the vessel captain with the opportunity to include in such reports any information the captain might deem to be relevant;
  - (e) to provide such reports to the Director or the pertinent national programme, to be used in accordance with Annex VII, paragraph 1, of this Agreement; and
  - (f) to perform such other functions as agreed by the Parties.
5. The observers shall:
  - (a) except to the extent required under paragraphs 4(d) and 4(e) of this Annex, treat as confidential all information with respect to the fishing operations of the vessels and of the vessel owners, and accept this requirement in writing as a condition of appointment as an observer;

- (b) comply with requirements established in the laws and regulations of the Party which exercises jurisdiction over the vessel to which the observer is assigned, insofar as such requirements are not incompatible with the provisions of this Annex;
  - (c) refrain from issuing or endorsing any certificate or other documentation relating to the fishing operations of the vessel, except as may be approved by the Parties; and
  - (d) respect the hierarchy and general rules of behaviour which apply to all vessel personnel, provided such rules do not interfere with the duties of the observers described in this Annex and with the obligations of vessel personnel set forth in paragraph 6 of this Annex.
6. The responsibilities of the Parties and vessel captains regarding observers shall include the following, *inter alia*:
- (a) observers shall be allowed access to vessel personnel and to the gear and equipment specified in Annex VIII;
  - (b) upon request, observers shall also be allowed access to the following equipment, if present on the vessel to which they are assigned, in order to facilitate the carrying out of their duties set forth in paragraph 4:
    - (i) satellite navigation equipment;
    - (ii) radar display viewing screens when in use;
    - (iii) high-powered binoculars including during the chase and encirclement of dolphins to facilitate identification, except when in use by vessel personnel; and
    - (iv) electronic means of communication;
  - (c) observers shall have access to the vessel working deck during net and fish retrieval and to any specimen, alive or dead, that is brought aboard the vessel during a set in order to collect biological samples in accordance with the On-Board Observer Programme or as otherwise required by competent national authorities as part of a national observer programme;
  - (d) observers shall be provided accommodations, including lodging, food, and adequate sanitary facilities equal to those of the crew;
  - (e) observers shall be provided with adequate space on the bridge or pilothouse for clerical work, as well as space on deck adequate for carrying out observer duties; and
  - (f) the Parties shall ensure that captains, crew, and vessel owners do not obstruct, intimidate, interfere with, influence, bribe, or attempt to bribe an observer in the performance of his or her duties.
7. The Parties shall:
- (a) ensure that any observers from their respective national programmes collect information in the same manner as is required for IATTC observers; and
  - (b) provide to the Director copies of all raw data collected by observers from their respective national programmes in a timely manner upon the conclusion of the trip during which the data were collected, along with summaries and reports comparable to those provided by IATTC observers.

8. In a timely manner after each trip observed by an IATTC observer, the Director, in a manner consistent with any applicable confidentiality requirements, is requested to provide to the Party under whose jurisdiction the vessel fished, copies of all raw data, summaries, and reports pertaining to the trip.
  9. Notwithstanding other provisions of this Annex, if the Director determines that the placement of an observer from the On-Board Observer Programme is not practical, a vessel subject to the jurisdiction of a Party that fishes in the Agreement Area without setting on dolphins may use a trained observer from another international programme, provided such programme is approved by the Parties, to collect pertinent information for the On-Board Observer Programme, and to confirm to the Director that such vessel does not set on dolphins.
  10. No observer shall be assigned to a vessel with a DML unless the vessel's fishing captain is on the list of qualified captains maintained in accordance with Annex VII, paragraph 1(e).
  11. Observers from the On-Board Observer Programme may be assigned to vessels of non-Parties at the discretion of the Director, provided the vessel and the vessel captain comply with all the requirements of this Annex, and all other applicable requirements of this Agreement. The Director is requested to inform the Parties of any such assignment in a timely manner.
  12. Fees
    - (a) The Parties shall establish the amount of the annual vessel fees to cover the costs of the On-Board Observer Programme. The fees shall be calculated on the basis of the carrying capacity of each vessel or any other standard specified by the Parties.
    - (b) At the time a Party submits to the Director the list of vessels under Annex IV to this Agreement, it shall also submit payment, in US dollars, for the fees established under paragraph 11(a) of this Annex, specifying which vessels the payment covers.
    - (c) No observer shall be assigned to a vessel for which the fees, as required under paragraph 11(b) of this Annex, have not been paid.
  13. Observer data
    - (a) Observer data shall be the basis to determine if:
      - (i) a vessel has met or exceeded its DML;
      - (ii) a Party has met or exceeded its national DML; or
      - (iii) the fleet has met or exceeded a per-stock, per-year dolphin mortality cap.
    - (b) Any Party wishing to object to the observer data must provide to the IRP the reasons for and the evidence to support such objection.
    - (c) The IRP will review the evidence provided by the Party and provide a recommendation to the meeting of the Parties for their consideration.
    - (d) The Parties will review the evidence and the recommendation of the IRP and make a decision as to the merits of the objection and whether the observer data should be modified.
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## ANNEX III

**PER-STOCK, PER-YEAR DOLPHIN MORTALITY CAPS**

1. The Parties shall establish, at a meeting convened pursuant to Article VIII of this Agreement, a per-stock, per-year dolphin mortality cap for each stock of dolphins, determined by the meeting of the Parties, based on the best available scientific evidence, of between 0,2 % and 0,1 % of the Minimum Estimated Abundance ( $N_{\min}$ ) as calculated by the US National Marine Fisheries Service or equivalent calculation standard as might be developed or recommended by the Scientific Advisory Board but in no event shall the total annual incidental dolphin mortality exceed 5 000, consistent with the provisions of this Agreement. In the year 2001 and thereafter, the per-stock, per-year cap shall be 0,1 % of  $N_{\min}$ .
2. The Parties shall conduct in 1998, or as soon as possible thereafter, a scientific review and assessment of progress toward the year 2001 objective, and consider recommendations as appropriate. Up to the year 2001, in the event that annual mortality of 0,2 % of  $N_{\min}$  is exceeded for any stock of dolphins, all sets on that stock and on any mixed schools containing members of that stock shall cease for that year. Beginning in the year 2001, in the event that annual mortality of 0,1 % of  $N_{\min}$  is exceeded for any stock of dolphins, all sets on that stock and on any mixed schools containing members of that stock shall cease for that year. In the event that annual mortality of 0,1 % of  $N_{\min}$  is exceeded for either eastern spinner or north-eastern spotted dolphin stocks, the Parties shall conduct a scientific review and assessment and consider further recommendations.
3. For purposes of this Agreement, the Parties shall use the current estimate of absolute abundance for the dolphin stocks of the Eastern Pacific Ocean presented by Wade and Gerrodette to the International Whaling Commission in 1992, based on US National Marine Fisheries Service research vessel data for the period 1986 to 1990, until the Parties agree on an updated set of figures. Such updates could result from the analysis of data from future research cruises and indices of abundance and other relevant scientific data from the Parties, the IATTC and other scientific organisations.
4. The Parties shall establish a system, based on real-time observer reporting, to ensure effective implementation and compliance with the per-stock, per-year dolphin mortality cap.
5. Within six months of the entry into force of this Agreement, the Parties shall establish a system for the allocation of the per-stock, per-year dolphin mortality cap for each stock for the ensuing year and years thereafter. This system shall provide for the distribution of the mortality limits in paragraph 1 of this Annex among vessels of the Parties which are eligible for Dolphin Mortality Limits, in accordance with Annex IV. When establishing this system, the Parties shall consider the best available scientific evidence on the distribution and abundance of the stocks in question, and other variables which the meeting of the Parties shall define at a later date.

## ANNEX IV

**DOLPHIN MORTALITY LIMITS (DMLS)****I. ASSIGNMENT OF DMLS**

1.
  - (a) Each Party shall provide to the other Parties, through the Director, prior to 1 October of each year, a list of vessels under its jurisdiction of carrying capacity greater than 363 metric tonnes (400 short tonnes) that have requested a full-year DML for the following year, indicating those other vessels that are likely to be operating in the Agreement Area in the following year.
  - (b) Each Party shall provide to the other Parties, through the Director, prior to 1 April of each year, a list of vessels under its jurisdiction of carrying capacity greater than 363 metric tonnes (400 short tonnes) that have requested a second-semester DML for that same year.
2. The IRP shall, by 1 November of each year, or later if agreed by the IRP, provide to the Parties a list of qualified applicant vessels eligible to receive a full-year DML for the following year. For second-semester DMLs, the IRP shall, by 1 May of each year, or later if agreed by the IRP, provide to the Parties a list of qualified applicant vessels eligible to receive a second-semester DML for that same year.
3. For purposes of this Agreement, a vessel shall be considered qualified if:
  - (a) it has been certified by the relevant national authorities to be in possession of all of the dolphin safety gear and equipment required in Annex VIII;
  - (b) its captain and crew have received approved training in dolphin release and rescue techniques comparable to a standard established by the meeting of the Parties;
  - (c) it is over 363 metric tonnes (400 short tonnes) carrying capacity in size;
  - (d) it has a captain considered qualified due to his or her prior record of performance; and
  - (e) the vessel is not deemed to be disqualified under Section II of this Annex.
4. A vessel shall not be considered qualified under paragraph 2 if, on the date of the request pursuant to paragraph 1 of this Annex, the vessel is operating under the jurisdiction of a Party whose applicable laws and regulations prohibit vessels under its jurisdiction from fishing for tuna in association with dolphins; nor shall DMLs be assigned to any Party in order to provide permits for fishing in the Agreement Area to vessels flying the flag of another State whose applicable laws and regulations prohibit vessels under its jurisdiction from fishing for tuna in association with dolphins.
5. 98 %, or such other unreserved portion as the Parties might determine, of the overall dolphin mortality limit for the fishery (5 000 or such other lower limit as the Parties might determine) shall be used to calculate into an average individual vessel DML (ADML) and distributed among the Parties for the succeeding year, as set forth in paragraph 5 of this section.

6. The ADML shall be calculated by dividing the unreserved portion of the overall DML for the fishery established under paragraph 4 by the total number of qualified vessels requesting full-year DMLs. The distribution of DMLs among Parties shall be determined by multiplying the ADML by the number of qualified vessels requesting full-year DMLs and operating under the jurisdiction of each Party.
7. The remaining 2 %, or such other portion as the Parties might determine, of the overall DML for the fishery shall be maintained as a separate Reserve DML Allocation (RDA), to be managed at the discretion of the Director. Any Party may request that the Director assign DMLs from such RDA to vessels fishing under its jurisdiction which do not normally fish for tuna in the Agreement Area but which may, from time to time, desire to participate in the fishery in the Agreement Area on a limited basis, provided that such vessels and their captains and crews meet the operational and training requirements set forth in Annex VIII of this Agreement and that the requirements set forth in paragraphs 2 and 3, of this section are met. Any accidental mortalities caused by vessels operating in the Agreement Area under the jurisdiction of any of the Parties that have not requested DMLs for their fleet shall also be deducted from this RDA.
8. No DML shall be assigned to a vessel unless, in the last year that it had a DML prior to the year in which it is applying for a DML, at least 5 % of the total number of the sets made by the vessel were on dolphins, and the average catch of yellowfin in its sets on dolphins was at least 3 metric tonnes per set. Otherwise, the vessel cannot receive a DML in the following year, unless there are reasons of force majeure, as agreed pursuant to Annex IV of this Agreement, that prevented it from complying with these requirements. A vessel applying for a DML for the first time shall not be subject to this provision.
9. No DML shall be assigned to a vessel which has been determined by the Parties to have engaged in a pattern of violations, as confirmed through enforcement actions taken against such vessel by the Party under whose jurisdiction it operates, which diminish the effectiveness of the International Dolphin Conservation Programme.
10. The individual Parties with qualified vessels that will be fishing for tuna in association with dolphins shall manage their DMLs in a responsible manner, provided that no individual vessel shall receive a total annual DML in excess of the DML established for 1997 by the IRP, and reported in the minutes of the 14<sup>th</sup> meeting of the IRP, held on 19 and 20 February 1997, under the La Jolla Agreement. No Party shall allocate to the total of its qualified vessels a greater number of DMLs than those that such Party has been allocated under Sections I and III of this Annex. No initial assignment of DMLs may result in any vessel receiving a DML in excess of the ADML unless its performance in reducing dolphin mortalities, as measured by the IRP based upon the previous two years' data, is better than the average performance of the international fleet as a whole. No initial assignment of DMLs may result in any vessel receiving a DML in excess of the ADML if, during the previous two years, it has committed any of the infractions identified in Section III, paragraph 4 of this Annex, subject to the conditions established pursuant to that paragraph.
11. Should the total mortalities of the fleet of any Party meet or exceed the total amount of DML distributed to it pursuant to this Annex, fishing for tuna in association with dolphins shall cease for all vessels operating under the jurisdiction of that Party.
12. Each Party shall, no later than 1 February of each year, notify the Director of the initial allocation of its distributed DML among its fleet. No vessel may begin fishing for tunas associated with dolphins until the Director receives such notification.

## II. UTILISATION OF DMLS

1. Any vessel which is assigned a full-year DML and does not set on dolphins prior to 1 April of that year, or which is assigned a second-semester DML and does not set on dolphins by 1 October of that year, or which is assigned a per-trip DML from the RDA and does not set on dolphins during that trip, unless as a

result of force majeure or extraordinary circumstances, as agreed by the IRP, shall lose its DML and may not set on dolphins for the remainder of that year. Notwithstanding the provision in Annex VII, paragraph 9, regarding decision making by the IRP, a request by a Party, on behalf of any of its vessels, for an exemption due to force majeure or extraordinary circumstances, shall be considered to be agreed by the IRP unless a majority of the government members of the IRP supports any objection, made formally and with cause by any other Party, to any such request. All requests for exemption must be sent to the secretariat by 1 April, and any formal objections must be sent to the Secretariat by 20 April. Any such vessel that loses its DML on two consecutive occasions shall not be eligible to receive a DML for the following year.

2. Within six months following entry into force of this Agreement, the IRP, in cooperation with the scientific staff of the IATTC, shall develop and recommend a system by which to measure DML utilisation in order to deter frivolous requests for DMLs. Such recommended system shall be presented for consideration by the meeting of the Parties.

### III. USE OF FORFEITED OR UNUTILISED DMLS

1. After 1 April of each year, any DMLs which the Director determines will not be utilised pursuant to Section II or which have otherwise been forfeited shall be reallocated to the Parties consistent with this Section.
2. No later than 1 May of each year, the full-year DMLs assigned to those vessels that have not utilised them, pursuant to Section II, or have otherwise forfeited them, shall be redistributed among the Parties by the Director, consistent with the formula established pursuant to Section I, paragraph 5, but after first adjusting such formula as set forth in subparagraphs (a), (b) and (c) below. Such additional DMLs may be reallocated by the individual Parties among qualified vessels under the jurisdiction of such Party, subject to limitations and conditions set forth in paragraphs 3, 4, 5, 6 and 7 of this section.
  - (a) In performing the reallocation, any vessels that may have lost or otherwise forfeited DMLs under this paragraph, and any vessels requesting second-semester DMLs after the deadline set forth in Section I, paragraph 1, shall not be considered;
  - (b) Prior to establishing the number of DMLs available for reallocation under this section, adjustment shall be made by subtracting from such number any observed dolphin mortalities caused by those vessels that lost their DMLs under Section II, paragraph 1.
  - (c) Prior to establishing the number of DMLs available for reallocation under this section, the Director shall deduct one third of the ADML calculated pursuant to Section I, paragraph 5, for allocation to each vessel requesting a second-semester DML prior to the deadline established pursuant to Section I, paragraph 1. Such second-semester DMLs shall be allocated by the Director to the Parties proportionately, based upon the jurisdiction of respective Parties over vessels covered under this subparagraph. The second-semester DMLs assigned to such vessels by the Parties under whose jurisdiction they operate shall not exceed one-third of the ADML calculated pursuant to Section I, paragraph 5. Such vessels may not begin setting on dolphins before 1 July of that year.
3. Any Party may adjust the DMLs of its qualified vessels which meet the criteria set forth in Section I, paragraph 2, of this Annex either upward or downward, provided that no vessel is assigned an adjusted DML in excess of 50 % above its initial DML, unless its performance in successfully reducing dolphin mortalities, as measured by the IRP, is in the upper 60 % of the performance of the international fleet as a whole, as determined by the IRP, based upon the prior year's data. A Party making such an adjustment shall so notify the Director no later than 20 May and no such adjustment shall take effect until the Director has been notified.

4. No vessel may have its initial DML adjusted upward by any Party if the IRP had determined, and the Party with jurisdiction over the vessel concurs, that during that year or the previous two years:
- (a) the vessel fished without an observer;
  - (b) the vessel set on dolphins without a DML;
  - (c) the vessel set on dolphins after reaching its DML;
  - (d) the vessel knowingly set on a banned dolphin stock;
  - (e) the captain, crew, or the vessel owner committed any of the actions described in Annex II, paragraph 6(f) of this Agreement;
  - (f) the vessel made a sanctionable night set; or
  - (g) the vessel used explosives during any phase of a fishing operation involving dolphins.

For infractions described in (a), (b), (c), (d), (f), and (g), a Party will be deemed to have provided such concurrence if it does not object to the IRP within six months of a referral of a possible violation from the IRP. For the infraction described in (e), a Party will be deemed to have provided such concurrence if it does not object to the IRP within 12 months of such referral.

A notification by a Party that the possible infraction is being investigated shall be considered to be an objection for the purposes of this paragraph, provided that the notification is received by the secretariat prior to the expiration of the relevant 6 or 12 month period.

In such cases, a Party will be deemed to have provided its concurrence to the infraction if that Party does not conclude its investigation and report the final results to the IRP within a period of two years from the date on which the possible infraction was originally referred to the Party, except as provided in the following paragraph.

If it is not possible for the Party in question to complete the investigation within this two-year period, the Party shall provide an update to the IRP of the status of the investigation and its estimated date of completion. The Party shall provide such a report at each subsequent meeting of the IRP until the case is resolved. If a report is not made, that Party will be deemed to have concurred with the possible infraction. The secretariat shall inform the relevant Party about the cases for which the deadline is about to lapse and for which the information needs to be updated.

5. No vessel may be eligible to receive an additional allocation of DML by a Party unless it has on board all of the required dolphin safety gear and equipment throughout the year; and no such upward allocation may be made for a vessel which has exceeded its initial DML prior to 1 April, unless due to force majeure or extraordinary circumstances, as agreed by the meeting of the Parties, in consultation with the IRP.
6. For any vessel exceeding its DML, as it may be adjusted pursuant to this Annex, during a given year, the amount of such excess, plus an additional 50 % of that amount, unless the IRP recommends otherwise, shall be deducted from DMLs assigned to that vessel by a Party under whose jurisdiction the vessel operates over subsequent years in a manner prescribed by the IRP.



7. If at any time a vessel meets or exceeds its DML, as it may be adjusted pursuant to this Annex, that vessel shall immediately cease all fishing for tuna in association with dolphins.

#### IV. IMPLEMENTATION

1. The Parties shall ensure that in the implementation of the DML system established by this Annex, the per-stock, per-year dolphin mortality caps, as specified in Annex III, are not exceeded.
  2. In cases involving unusual or extraordinary circumstances not foreseen in this Annex, the Parties, as recommended by the IRP, may take such measures as are necessary, consistent with the provisions of this Annex, in order to implement the DML system.
  3. If the mortality in any given year increases above levels which the IRP considers to be significant, the IRP shall recommend that the Parties hold a meeting to review and identify the causes of mortality and formulate options to address such causes.
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## ANNEX V

**SCIENTIFIC ADVISORY BOARD**

1. The Parties shall maintain the Scientific Advisory Board of technical specialists established pursuant to the La Jolla Agreement to assist the Director in matters regarding research to:
    - (a) modify current purse-seine technology to make it less likely to cause dolphin mortality; and
    - (b) seek alternative means of capturing large yellowfin tuna.
  2. The functions and responsibilities of the Board shall be to:
    - (a) meet at least once each year;
    - (b) review plans, proposals, and research programmes of the IATTC to seek to meet the objectives set forth in paragraph 1 above;
    - (c) provide advice to the Director concerning the design, facilitation, and guidance of research to achieve the objectives set forth in paragraph 1 above; and
    - (d) assist the Director in locating sources of funding to conduct such research.
  3. The Board will consist of no more than 10 members, no more than two of whom shall be from any one country, selected from the international community of scientists, fishing gear experts, the fishing industry, and environmentalists. The members will be proposed by the Director on the basis of their technical expertise, and each one will be subject to approval by the Parties.
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## ANNEX VI

## NATIONAL SCIENTIFIC ADVISORY COMMITTEES

1. The functions of the National Scientific Advisory Committees (NATSACs), established in accordance with Article XI of this Agreement, shall be, *inter alia*, to:
    - receive and review relevant data, including data provided to national authorities by the Director;
    - advise and recommend to their governments measures and actions that should be undertaken to conserve and manage stocks of living marine resources in the Agreement Area;
    - make recommendations to their governments regarding research needs, including research concerning ecosystems, the effects of climatic, environmental and socioeconomic factors, the effects of fishing as well as on measures contemplated in this Agreement, fishing techniques and practices, and gear technology research, including the development and use of selective environmentally safe and cost-effective fishing gear; and the coordination and facilitation of such research;
    - conduct scientific reviews and assessments by the year 1998 or as soon as possible thereafter, regarding progress toward the year 2001 objective of achieving a per-stock, per-year cap of 0,1 %  $N_{min}$ , and make appropriate recommendations to their governments concerning these reviews and assessments, as well as additional assessments in the year 2001 consistent with this Agreement;
    - ensure the regular and timely full exchange of data among the Parties and the NATSACs on catch of tuna and associated species and by-catch, including dolphin mortality data, for the purposes of developing conservation and management recommendations to their governments as well as recommendations for enforcement and scientific research while not violating the confidentiality of business confidential data;
    - consult with other experts as necessary for the purpose of gathering as much information as possible that might be useful for achieving the objectives of this Agreement; and
    - perform such other functions as their respective governments might assign to them.
  2. Reports of the NATSACs, including of their cooperative meetings, shall be made available to the Parties and the public, in a manner consistent with any applicable confidentiality requirements.
  3. The Director may convene, in addition to the meetings pursuant to Article XI, paragraph 3, meetings with the purpose of facilitating consultation among the NATSACs.
  4. The functions of the meetings of the NATSACs shall be to:
    - exchange information;
    - review IATTC research to achieve the objectives of this Agreement; and
    - make recommendations to the Director concerning the future research programme to achieve the objectives of this Agreement.
  5. The NATSAC members from any Party who attend the meeting shall be designated by that Party.
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## ANNEX VII

## INTERNATIONAL REVIEW PANEL

1. In compliance with Article XII of this Agreement, the International Review Panel (IRP) shall have the following functions:
  - (a) each year compile a list of the vessels that qualify for DMLs as agreed in Annex IV;
  - (b) analyse the reports submitted to the IRP, regarding all tuna-fishing trips made by vessels covered by this Agreement;
  - (c) identify possible infractions, based on the list of possible infractions approved by the meeting of the Parties;
  - (d) inform each Party, through the Director, of possible infractions committed by vessels flying its flag or operating under its jurisdiction, and receive from that Party information on the actions taken;
  - (e) maintain an updated report on the actions taken by the Parties to provide adequate training for fishing captains, and maintain a list of those fishing captains determined to be complying with established performance requirements, based on the information provided by each of the Parties;
  - (f) recommend to the meeting of the Parties pertinent measures for achieving the objectives of this Agreement, in particular those related to the use of gear, equipment and fishing techniques, considering improvements in technologies, as well as the adoption of appropriate incentives for captains and crews to meet the objectives of this Agreement;
  - (g) prepare and provide the meeting of the Parties an annual report on those aspects of the operation of the fleet relating to the implementation of this Agreement, including a summary of possible infractions identified and the actions taken by the Parties;
  - (h) recommend to the Parties ways to progressively reduce dolphin mortality incidental at the fishery in the Agreement Area; and
  - (i) perform other functions as assigned by the meeting of the Parties.
2. The IRP shall be made up of representatives of the Parties (governmental members), three representatives of non-governmental environmental organisations with recognised experience in matters pertaining to this Agreement and with offices in the territory of a Party, and three representatives from the tuna industry that operates under the jurisdiction of any of the Parties in the Agreement Area (non-governmental members).
3. The non-governmental members shall have a two-year term of membership, starting at the first meeting of the IRP immediately after their election.
4. The non-governmental members will be elected in accordance with the following procedure:
  - (a) prior to the expiration of the term of a non-governmental member, the relevant non-governmental organisations may present candidates' nominations 60 days before the expiration of the term to the Director. A curriculum vitae should accompany each nomination. The current non-governmental members may be nominated for additional periods;

- (b) once the nominations are received, the Director shall transmit them in writing to the Parties within 10 days. The Parties should send their votes to the Director within 20 days of the transmittal of the nominations by the Director. In this election, the three nominees from each non-governmental sector who receive the most votes shall be elected; the nominee who receives the fourth largest number of votes shall be designated the alternate member. In the case of a tie, the Director should solicit a new vote from the Parties to determine the member and the alternate;
  - (c) if a non-governmental position becomes permanently vacant, because of death, resignation, or failure to participate in three consecutive meetings of the IRP, the alternate shall fill the position for the remainder of that position's term. The candidate who received the fifth largest number of votes in the elections referred to in paragraphs (a) and (b) shall be designated the alternate member. If additional vacancies occur, the Director shall inform the relevant non-governmental organisations so that new candidates may be submitted for an election process consistent with that described in paragraphs (a) and (b);
  - (d) each alternate may attend the meetings of the IRP, but shall have no speaking rights if all the members of his/her respective sector are present.
- 5. The IRP shall hold at least three meetings a year, one of which will preferably be held on the occasion of the ordinary meeting of the Parties.
  - 6. The IRP may convene additional meetings at the request of at least two of the Parties, provided that a majority of the Parties support the request.
  - 7. The IRP meetings shall be chaired by a Presider elected by the governmental members at the beginning of each meeting, who shall decide on matters of order. Any member shall have the right to ask that any decision made by the Presider be decided as specified in paragraph 9 of this Annex.
  - 8. The meetings shall be in Spanish and English, and IRP documents shall also be produced in both languages.
  - 9. The decisions at the meetings of the IRP shall be adopted by consensus among the governmental members.
  - 10. The following criteria shall be applied to attendance at IRP meetings:
    - (a) there shall be no restrictions on the number of persons a Party can include in its delegation to an IRP meeting;
    - (b) any IATTC Member State or signatory to this Agreement may be represented by an observer;
    - (c) any State not a member of the IATTC and any State or regional economic integration organisation not a signatory to this Agreement may be represented by an observer, with prior notification to IRP governmental members, unless any governmental member of the IRP objects in writing;
    - (d) the Director may invite representatives of intergovernmental organisations as observers, with prior notification to IRP members, unless any governmental member of the IRP objects in writing;
    - (e) in any cases referred to in (c) and (d) above, the Director shall not disclose the identity of the objecting Party;
    - (f) each observer is limited to two delegates, but may bring more with the approval of two-thirds of the governmental members of the IRP.

11. In cases of urgency, and without prejudice to the provisions of paragraph 9 of this Annex, the IRP may take decisions by correspondence through a vote of the governmental members, under the following procedures:
    - (a) the proposal shall be circulated to all members of the IRP, in writing, with all pertinent documentation, at least 14 days before the proposed effective date of the resolution, action, or measure; the votes shall be transmitted to the Director no less than seven days before the proposed effective date;
    - (b) the proposal shall be considered urgent unless a simple majority of the governmental members objects in writing; the proposal shall be accepted unless any governmental member objects in writing; and
    - (c) the Director shall circulate the proposal as well as the accompanying documentation, receive and count the votes, and inform the IRP members of the results of a vote as soon as the voting closes.
  12. The Director will carry out the functions of the Secretary, which shall include:
    - (a) assisting in the convening and organisation of IRP meetings;
    - (b) presenting information required by the IRP for carrying out its functions and responsibilities, including observer IRP forms and field data forms providing information on the activities of the vessels, dolphin mortality, and the presence, condition, and use of the dolphin safety equipment and gear;
    - (c) preparing minutes of all meetings and draft special reports and documents dealing with the activities of the IRP;
    - (d) providing to each Party, for its consideration, recommendations and information concerning possible infractions identified by the IRP for vessels under its jurisdiction;
    - (e) distributing to the IRP information received from Parties on the actions taken on possible infractions identified by the IRP;
    - (f) publishing the Annual Report of the IRP and making it available to the public, in accordance with the instructions given by the meeting of the Parties;
    - (g) presenting to the members of the IRP information received from the Parties referred to in paragraph 1(e) of this Annex; and
    - (h) carrying out other tasks necessary for the accomplishment of the IRP's functions, as assigned by the Parties.
  13. The rules of procedure of the IRP may be modified by the meeting of the Parties. Modifications may be recommended by the IRP.
  14. The members of the IRP and any other participants invited to attend IRP meetings as observers shall treat all the information presented at such meetings in accordance with the provisions of confidentiality set forth in Article XVIII of this Agreement.
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## ANNEX VIII

**OPERATIONAL REQUIREMENTS FOR VESSELS****1. For the purposes of this Annex:**

- (a) 'strip' means a section of net that is approximately 6 fathoms deep;
- (b) 'backdown' means the procedure for releasing captured dolphins by shifting the vessel's engine(s) into reverse during net retrieval, causing the net remaining in the water to form a channel, and the corkline at the apex of the channel to submerge;
- (c) 'bunch' means a length of corkline gathered together;
- (d) 'sack-up' means that part of the fishing process when the catch is concentrated near the surface for loading aboard the vessel.

**2. Dolphin safety gear and equipment requirements**

A vessel with a carrying capacity of more than 363 metric tonnes (400 short tonnes) operating in the Agreement Area shall:

- (a) have a purse seine equipped with a dolphin safety panel (DSP) with the following characteristics:
  - (i) a minimum length of 180 fathoms (as measured before installation), except that the minimum length of the DSP in nets deeper than 18 strips must be determined in a ratio of 10 fathoms in length for each strip of net depth. The DSP must be installed so as to cover the backdown channel along the corkline, beginning at the outboard end of the last bow bunch pulled and continuing to at least two-thirds the distance from the apex of the backdown channel to the point where the net is secured at the stern. The DSP shall consist of small-mesh webbing not to exceed 1 1/4 inches (3,2 cm) stretched mesh, extending downward from the corkline to a minimum depth of two strips;
  - (ii) each end shall be identified with a highly visible marker;
  - (iii) any space between the corks or the corkline and the small mesh shall not exceed 1 3/8 inches (3,5 cm) in diameter;
- (b) have at least three operable speedboats equipped with operable towing bridles or posts, and tow lines;
- (c) have an operable raft suitable for the observation and rescue of dolphins;
- (d) have at least two operable facemasks suitable for underwater observation; and
- (e) have an operable long-range floodlight with a minimum output of 140 000 lumens.

### 3. Dolphin protection and release requirements and prohibitions

A vessel with a carrying capacity of more than 363 metric tonnes (400 short tonnes) operating in the Agreement Area shall:

- (a) perform backdown during every set in which dolphins are captured, until it is no longer possible to remove live dolphins from the net by this procedure. At least one crewman shall be deployed during backdown to aid in the release of dolphins;
- (b) continue efforts to release any live dolphins remaining in the net after backdown, so that all live dolphins are released prior to the initiation of the sack-up procedure;
- (c) not sack-up or brail live dolphins;
- (d) avoid injuring or killing dolphins captured in the course of fishing operations;
- (e) complete backdown no later than 30 minutes after sunset, as determined by an accurate and reliable source approved by the Parties. A set that does not meet this requirement is termed a 'night set';
- (f) not use any type of explosive during any phase of a fishing operation involving dolphins (underwater flares are not considered to be explosives);
- (g) cease setting on dolphins when its DML has been reached;
- (h) not intentionally set on dolphins if the vessel does not have a DML; and
- (i) perform a periodic net alignment to ensure the proper location of the dolphin safety panel during the backdown procedure, based on criteria established by the IRP.

It is emphasised that the above requirements should not lead to crewmen being placed in situations that present unnecessary risks to their personal safety.

### 4. Exceptions

- (a) A vessel without a DML is exempt from the requirements of paragraph 2 of this Annex and from the obligation of carrying out the backdown manoeuvre mentioned in paragraph 3 of this Annex unless the Party with jurisdiction over that vessel determines otherwise.
- (b) Any such vessel that captures dolphins accidentally shall attempt to release the dolphins, using every means at its disposal, including aborting the set, and taking into consideration the requirements set forth in paragraph 3 of this Annex.

### 5. Treatment of observers

Captains, crew, and other personnel shall comply with their responsibilities regarding the presence of observers aboard their vessels, as specified in Annex II, paragraph 6.

### 6. Vessels under 363 metric tonnes (400 short tonnes)

No vessel with a carrying capacity of 363 metric tonnes (400 short tonnes) or less may intentionally set on dolphins.

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## ANNEX IX

**ELEMENTS OF A TUNA TRACKING AND VERIFICATION PROGRAMME**

1. Pursuant to Article V, paragraph 1(f), the Parties shall establish a programme to track and verify tuna harvested by vessels in the Agreement Area, based on the following elements:
    - (a) the use of weight calculation for the purposes of tracking tuna caught, landed, processed and exported;
    - (b) additional measures to enhance current observer coverage, including the establishment of criteria for training and for improving monitoring and reporting capabilities and procedures;
    - (c) the designation of well location, procedures for sealing holds, procedures for monitoring and certifying both above and below deck, or through equally effective methods;
    - (d) the reporting, receipt, and database storage of radio and facsimile transmittals from vessels containing information related to the tracking and verification of such tuna;
    - (e) the shore-based verification and tracking of such tuna throughout the fishing, transshipment, and canning process by means of On-board Observer Programme trip records;
    - (f) the use of periodic audits and spot checks for caught, landed, and processed tuna products; and
    - (g) the provision of timely access to relevant data.
  2. Each Party shall implement this programme in its respective territory, on vessels subject to its jurisdiction and in marine areas with respect to which it exercises sovereignty or sovereign rights and jurisdiction.
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## ANNEX X

**GUIDELINES AND CRITERIA FOR THE PARTICIPATION OF OBSERVERS AT A MEETING OF THE PARTIES**

1. The Director shall invite to meetings of the Parties convened pursuant to Article VIII intergovernmental organisations whose work is relevant to the implementation of this Agreement, as well as non-Parties whose participation may promote implementation of this Agreement.
  2. Non-governmental organisations (NGOs) with recognised experience in matters pertaining to this Agreement shall be eligible to participate as observers in all meetings of the Parties convened pursuant to Article VIII except meetings held in executive session or meetings of Heads of Delegation.
  3. Any NGO desiring to participate as an observer in a meeting of the Parties shall notify the Director of its desire to participate at least 50 days in advance of the meeting. The Director shall notify the Parties of the names of such NGOs at least 45 days prior to the beginning of the meeting.
  4. If a meeting of the Parties is held with less than 50 days notice, the Director shall have greater flexibility concerning the timing of the sending of the invitations.
  5. An NGO desiring to participate as an observer may do so unless a majority of the Parties formally objects for cause in writing at least 30 days prior to the beginning of the meeting in question.
  6. Any participating observer may:
    - (a) attend meetings, subject to paragraph 2 of this Annex, but not vote;
    - (b) make oral statements during the meetings upon the invitation of the chairman;
    - (c) distribute documents at the meeting, with the approval of the chairman; and
    - (d) engage in other activities, as appropriate and as approved by the chairman.
  7. The Director may require NGO observers to pay reasonable fees, and to cover costs attributable to their attendance (e.g. copying expenses).
  8. All observers admitted to a meeting of the Parties shall be sent or otherwise provided the same documentation generally available to Parties, except documentation containing business-confidential data.
  9. All observers admitted to a meeting of the Parties shall comply with all rules and procedures applicable to other participants in the meeting.
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**DECISION No 9/2005 OF THE ACP-EC COMMITTEE OF AMBASSADORS**  
**of 27 July 2005**  
**concerning the Staff Regulations of the Centre for the Development of Enterprise (CDE)**  
(2005/939/EC)

THE ACP-EC COMMITTEE OF AMBASSADORS,

Having regard to the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States, of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000 <sup>(1)</sup>, hereinafter referred to as the 'Cotonou Agreement' and in particular Article 2(6) of Annex III thereto,

Having regard to the Internal Agreement of 12 September 2000 between Representatives of the Governments of the Member States, meeting within the Council, on the Financing and Administration of Community Aid under the Financial Protocol to the Cotonou Agreement,

Having regard to the proposal from the Commission drawn up in agreement with the Centre for the Development of Enterprise,

Whereas the Committee of Ambassadors after the signature of the Cotonou Agreement should lay down the Staff Regulations of the Centre for the Development of Enterprise,

HAS ADOPTED THE FOLLOWING STAFF REGULATIONS OF THE CENTRE FOR THE DEVELOPMENT OF ENTERPRISE:

TITLE I

**GENERAL PROVISIONS**

*Article 1*

1. These Staff Regulations, hereinafter referred to as 'these Regulations', are hereby established taking into account the international and public nature of the activity of the Centre for the Development of Enterprise, hereinafter referred as the 'Centre'. In particular, they regulate the rights and obligations of the staff, conditions relating to employment, grading of posts and termination of service; working conditions; remuneration and social benefits, disciplinary arrangements and appeals procedures.

2. The Executive Board of the Centre, hereinafter referred to as 'the Executive Board', may, within the limits of these Regulations, adopt proposals for, or amendments to, internal rules submitted by the Director of the Centre, hereinafter referred to as 'the Director', for the purpose of setting out in greater detail the principles embodied in these Regulations; this option shall apply in particular to aspects expressly provided for therein.

3. The Executive Board shall notify the ACP-EC Committee of Ambassadors, hereinafter referred to as 'the Committee', and the Commission of proposals for internal rules or amendments thereto it has adopted as soon as possible and not later than 30 working days from the date of their adoption.

The Executive Board may, if it considers it necessary, provisionally and conditionally apply proposals for internal rules or amendments thereto it has adopted. The effective date of application may not be earlier than the date of adoption by the Executive Board.

Not later than three months from the date of notification, the Committee shall either approve the internal rules notified or make amendments thereto.

4. The Cotonou Agreement, the Headquarters Agreement between Belgium and the Centre, the Statutes and Rules of Procedure of the Centre, these Regulations and the Annexes thereto, which form an integral part thereof, the Financial Regulation of the Centre, the internal rules approved in accordance with paragraphs 2 and 3 of this Article after the entry into force of these Regulations, the internal implementing rules established by the Director and any individual conditions laid down in writing at the time of recruitment or subsequently, in both cases with the Executive Board's approval, together make up the legal framework applicable to the Director, the Deputy Director and the staff of the Centre within the meaning of Article 2.

5. Members of staff who were entitled to allowances and tax abatements under the Staff Regulations of previous Conventions shall remain entitled thereto.

<sup>(1)</sup> OJ L 317, 15.12.2000, p. 3. Agreement as amended by Decision No 1/2003 of the ACP-EC Council of Ministers (OJ L 141, 7.6.2003, p. 25).

## Article 2

1. These Regulations lay down the conditions applicable to:

- the Director and Deputy Director of the Centre,
- the staff of the Centre,
- the local staff of the Centre.

2. Within the meaning of these Regulations, a member of staff of the Centre is any person employed under a contract signed by the Director for a specified period within the meaning of Article 6(2) (a) and (b) and in the manner and within the limitations laid down herein.

3. For the purpose of these Regulations, a member of local staff is any person employed under a contract for a specified period by the Centre to perform manual or service duties in a post not specified in Article 7, and in accordance with local custom.

4. Any reference in these Regulations to a person of the male sex shall be deemed also to constitute a reference to a person of the female sex, and vice versa, unless the context clearly indicates otherwise.

## Article 3

1. The Executive Board shall be responsible for approving, on proposals from the Director, the recruitment of staff at levels 2.A and 2.B and the renewal, extension or termination of staff contracts and any individual special conditions relating to one or more members of staff.

The recruitment of local staff and the renewal, extension or termination of their contracts shall be decided by the Director following the normal procedures in accordance with internal rules adopted by the Executive Board on a proposal from the Director.

2. The Director shall seek the approval of the Executive Board on all matters relating to recruitment of staff and the renewal, extension and termination of staff contracts. Such matters shall include, *inter alia*, vacancies, mode of advertisement of vacancies, applications received and the method and basis of selection of the candidates.

## Article 4

1. There shall be set up:

- a Staff Committee, and

— a Recruitment/Promotion Committee

which shall perform the functions assigned to them by these Regulations.

The composition and the procedures of these bodies shall be determined in accordance with the provisions of Annex V.

2. The Staff Committee shall represent the interests of the staff vis-à-vis the Centre and shall maintain contact between the Centre and the staff. It shall contribute to the smooth running of the service by providing a channel for the expression of opinion concerning staff matters.

The Staff Committee may submit to the Director proposals for the improvement of staff working conditions or general living conditions.

3. The Director must be informed of the election of the Staff Committee, the candidates put forward and the result of the votes cast.

The Director shall inform the Executive Board of the names of the members of the Staff Committee.

The Director shall grant reasonable facilities to the Staff Committee for the performance of its duties.

4. For each vacant statutory post or promotion provided for in the budget (and relating to a contract for an indefinite period of time as referred to in Article 6(2)(a)) a Recruitment/Promotion Committee shall be appointed by the Director.

## Article 5

The Centre may draw upon the services of seconded experts or experts funded by third parties. These experts shall be governed by internal rules adopted by the Executive Board on a proposal from the Director.

Any national or international civil servant or private sector executive, with qualifications and experience equivalent to those required by a member of staff of the Centre, who is temporarily transferred there or exchanged with another member of staff under the rules referred to in paragraph 1, shall be considered a seconded expert.

## TITLE II

## (c) Short-term contracts

## STAFF

## CHAPTER I

***Appointment — grading of posts — establishment plan****Article 6*

1. The sole object of any appointment of a member of staff shall be to fill, in accordance with the conditions laid down in these Regulations, a vacancy for a post contained in the list of posts annexed to the budget in accordance with Article 10.

2. Statutory staff shall be engaged under one of the following contracts:

## (a) Contracts for an indefinite period of time

A contract approved by the Executive Board is subject to:

- the availability of funding,
- continuing satisfactory performance, in accordance with Article 30,
- continuance of the functions occupied by the staff member,
- ability to perform the functions as per contract.

It shall be understood that the duration of an 'indefinite contract' does not imply permanent employment.

Any contract can be terminated as a result of disciplinary action.

## (b) Contracts for a fixed period of time

- A contract approved by the Director for staff engaged to fill a post which is included in the list of posts appended to the section of the Centre's budget and which the budgetary authorities have classified as temporary. The duration of such contracts shall be up to two years, renewable twice only, up to a maximum overall period of five years.
- A contract approved by the Director for staff engaged to fill a post established under programmes or funds managed by the Centre.

A contract approved by the Director for staff engaged for the performance of full-time or part-time duties but not assigned to a post included in the list of posts appended to the section of the Centre's budget. The duration of short-term contracts shall be up to one year, renewable twice only, up to a maximum overall period of two years.

The contract engaging a member of staff, drawn up in accordance with the specimen in Annex I, shall state the date on which the indefinite contract takes effect, the category, level and step, and the obligation of the staff member to comply with these Regulations. The years of service in any previous employment as a staff member at the Centre shall be taken into account in this contract.

*Article 7*

1. Posts covered by these Regulations shall be graded, according to the nature and level of duties to which they correspond, into four categories designated, in descending hierarchical order 'directors', 'professional', 'clerical' and 'supporting staff'.

2. Each category shall comprise levels, and each level steps.

The categories, levels (with typical duties corresponding thereto) and steps are contained, along with other information, in the table referred to in Annex II. On the basis of that table, the Director shall define the duties and powers attaching to each post at the Centre.

3. The 'professional' category shall be for staff carrying out management and advisory duties in the development area, requiring university-level education. This category shall comprise four levels:

- (a) a level 2.A and a level 2.B for staff carrying out the duties of 'main expert', requiring a university degree or equivalent, giving entitlement to undertake post-graduate studies, and specific relevant professional experience of at least 20 and 15 years respectively after having obtained a degree;
- (b) a level 2.C and a level 2.D for staff carrying out the duties of 'expert', requiring a university degree or equivalent, giving entitlement to undertake post-graduate studies, and specific relevant professional experience of at least 10 and 5 years respectively after having obtained a degree.

The Executive Board, on a proposal from the Director, shall define the number of posts at level 2.A.

4. The 'clerical' category shall comprise three levels:

(a) two levels for staff carrying out the duties of 'principal assistant' and 'clerical assistant' respectively:

— a level 3.A requiring a diploma of higher education or equivalent qualification in the area of competence and relevant professional experience of at least five years after having obtained a qualification;

— a level 3.B requiring a secondary school or equivalent qualification, a diploma from a recognised secretarial school and relevant professional experience of at least five years after having obtained a qualification;

(b) a level 3.C for staff carrying out the duties of 'secretary' or 'clerk', entailing duties requiring a secondary school or equivalent qualification and relevant professional experience of at least three years after having obtained a qualification.

5. The category 'supporting staff' shall comprise a level 4.A for staff carrying out the duties of 'technical staff', entailing manual or service duties requiring primary education, possibly supplemented by technical knowledge, and professional experience of at least two years.

#### *Article 8*

1. The grading of a member of staff at the time of appointment, specifying category, level and step, shall be established by the Director in accordance with the budget and with the internal rules adopted by the Executive Board on a proposal from the Director.

2. Staff members should be recruited at the first step of their level.

However, in order to take account of the training and specific professional experience of the person concerned, the Director may allow him to pass over one step by recruiting him at step two.

3. Assignment of a member of staff to a post corresponding to a level higher than that at which he was appointed shall necessitate amendment of his contract.

#### *Article 9*

1. The Director shall assign each member of staff by transfer to posts requiring duties of his category and level, purely in

the interests of the Centre and without taking nationality into account.

2. Assignment of a member of staff to a post of head or deputy head of a unit at any level shall be for functional reasons only.

3. Assignment of members of staff shall reflect as far as possible the joint ACP-EC nature of the Centre.

4. Assignment to a duty station outside Brussels shall be governed by internal rules adopted by the Executive Board on a proposal from the Director.

#### *Article 10*

A table attached to the annual budget of the Centre shall fix the number of posts in each category and level and specify any vacancies.

### *CHAPTER II*

#### ***Rights and obligations***

#### *Article 11*

1. Staff shall carry out their duties and conduct themselves solely with the interests of the Centre in mind; they shall neither seek nor take instructions from any government, authority, organisation or person outside the Centre.

2. They shall not, without the permission of the Director, accept from any government or from any source outside the Centre any favour, gift or payment of any kind whatsoever, except for services rendered either before appointment or during special leave, and in respect of such services.

#### *Article 12*

1. Staff shall abstain from any action and, in particular, any public expression of opinion, which may reflect adversely on their position or on the reputation of the Centre.

2. Staff shall not engage in activities, whether gainful or not, likely to detract from their independence or be detrimental to the interests of the Centre.

#### *Article 13*

If the legal spouse of a staff member or the person with whom the staff member lives in a marital status is in gainful employment, the staff member shall inform the Director.

Should the nature of the employment prove to be incompatible with that of the staff member or with the interests of the Centre and if the staff member is unable to give an undertaking that it will cease within a specified and reasonable period, the Director shall propose that the Executive Board take a decision as to whether the staff member is to continue in his post, have his contract terminated, or be suspended.

#### *Article 14*

A staff member who, in the performance of his duties, is called upon to decide on a matter in the handling or outcome of which he has a personal interest such as to impair his independence shall inform the Director thereof.

#### *Article 15*

A staff member shall, after leaving the service, continue to be bound by the obligation to behave with integrity and discretion as regards the acceptance of certain appointments or benefits linked directly or indirectly with the Centre.

#### *Article 16*

1. Staff shall exercise the greatest discretion with regard to all facts and information coming to their knowledge in the course of or in connection with the performance of their duties; they shall not in any manner whatsoever disclose to any unauthorised natural or legal person any document or information not already made public. They shall continue to be bound by this obligation after leaving the service for a period of 10 years.

2. Staff shall not, whether alone or together with others, publish or cause to be published, without the permission of the Director, any matter dealing with the work of the Centre. Permission shall be refused only where the proposed publication is liable to prejudice the interests of the Centre.

#### *Article 17*

All rights, including copyright and other intellectual property rights, in any writings or other work carried out by staff in the performance of their duties shall be the property of the Centre.

#### *Article 18*

Staff shall reside either in the place where they are employed or at no greater distance therefrom than is compatible with the proper performance of their duties.

#### *Article 19*

1. Whatever his rank, a staff member shall assist and tender advice to his superiors; he shall be responsible for the performance of the duties assigned to him.

2. A staff member in charge of any branch of the service shall be responsible to his superiors in respect of the authority conferred on him and for the carrying out of instructions given by him. The responsibility of his subordinates shall in no way release him from his own responsibilities.

3. A staff member who receives instructions, which he considers to be irregular or likely to give rise to serious difficulties, shall inform his immediate superior thereof, if necessary, in writing. If he then receives written confirmation of the instructions from his superior, he shall carry them out, unless they constitute a breach of criminal law or would give rise to inordinate risk to personal security. In the event that the instructions constitute a breach of law, the staff member shall refer the case to the Director.

#### *Article 20*

1. A staff member shall be required to make good, in whole or in part, any damage suffered by the Centre as a result of serious misconduct on his part in the course of, or in connection with, the performance of his duties

2. A reasoned decision shall be taken by the Executive Board on a proposal from the Director, in accordance with the procedure laid down in regard to disciplinary matters.

#### *Article 21*

1. The privileges and immunities enjoyed by staff members of the Centre are accorded solely in the interests of the latter. Subject to the relevant provisions of the Protocol on Privileges and Immunities of the Cotonou Agreement that are applicable to the Centre and its staff, and, as the case may be, the Headquarters Agreement, staff members shall not be exempt from fulfilling their private obligations or from complying with the laws and police regulations in force.

2. When such privileges and immunities are in dispute, the staff member concerned shall immediately inform the Director.

#### *Article 22*

1. The Centre shall assist any staff member in any legal proceedings against the perpetrators of threats, insulting or defamatory acts or utterances, or any attack against person or property to which he or a member of his family is subjected by reason of his position or duties. It shall jointly and severally compensate for damage suffered thereby by any staff member in so far as he did not either intentionally or through grave negligence cause the damage and has been unable to obtain compensation from the person who did cause it.

2. The Centre shall facilitate the training of any staff member in so far as it is compatible with the requirements of the proper functioning of the service and is of benefit to the Centre.

#### Article 23

A staff member shall be entitled to exercise the right of association; he may in particular be a member of trade unions or staff associations. The fact of performing duties in such trade unions or staff associations shall in no way be prejudicial to the person concerned.

#### Article 24

1. Staff may address a petition to the Director on questions concerning their duties.

2. Any decision relating to a specific individual which is taken under these Regulations shall at once be communicated in writing to the staff member.

3. Any decision adversely affecting a staff member shall state the grounds on which it is based.

#### Article 25

1. There shall be only one personal file for each staff member. This file shall contain:

- all documents concerning his administrative status and all reports relating to his ability, efficiency and conduct,
- any comments by the staff member on such documents.

A staff member shall have the right to acquaint himself with all the documents in his file. After leaving the service, he shall retain this right for a maximum period of two years.

The personal file shall be confidential and may be consulted only in the offices of the Administration. Copies of relevant documents shall be forwarded to the Administrative Tribunal of the International Labour Organisation if an action concerning the staff member is brought before the Tribunal and if the Tribunal requires it.

2. Any document contained in the staff member's personal file concerning a disciplinary measure for the first degree of seriousness in accordance with Article 55(2) shall be cancelled after a period of three years if no further disciplinary measure has been imposed on the staff member during that period.

### CHAPTER III

#### **Recruitment — periodic assessment - professional advancement - termination of service/contract - removal from post**

#### Section 1

#### **Recruitment**

#### Article 26

1. Recruitment of staff shall be directed at securing for the Centre the services of persons of the highest standard of ability, efficiency and integrity.

2. Staff members shall be selected on the basis of a competition in accordance with internal rules adopted by the Executive Board on a proposal from the Director.

3. The recruitment procedure established by the rules referred to in paragraph 2 shall be open and transparent, offering the same participation and employment opportunities to all nationals of States signatory to the Cotonou Agreement.

Staff members shall be selected without reference to race, creed or sex.

No post shall be reserved for nationals of any specific Member State.

Given equivalent levels of professional qualifications and experience required for appointment to a post, recruitment shall be on as wide a geographical basis as possible from among nationals of States signatory to the Cotonou Agreement.

The recruitment of staff members must reflect as far as possible the joint ACP-EC nature of the Centre.

#### Article 27

1. A staff member may be employed only on condition that he:

- (a) is a national of one of the States signatory to the Cotonou Agreement;
- (b) has fulfilled any obligations imposed on him by the laws concerning military service applicable to him;
- (c) produces the appropriate character references as to his suitability for the performance of his duties;



- (d) was recruited in accordance with the competition-based procedure as referred to in Article 26(2);
- (e) is physically fit to perform his duties, as determined by a medical examination by a medical practitioner appointed by the Centre;
- (f) produces evidence of a thorough knowledge of one of the Centre's two principal working languages (French or English) and a satisfactory knowledge of the other working language of the Centre to the extent necessary for the performance of his duties.

2. Before taking up his duties, every staff member shall provide the Centre with the following documents:

- (a) a medical certificate attesting to his capacity to carry out the duties for which he has been recruited;
- (b) a document attesting to the fact that he has fulfilled his military service obligations;
- (c) documentary evidence that he is a national of one of the States signatory to the Cotonou Agreement and that he enjoys his full rights as a citizen;
- (d) documents relating to his civil status, and to that of his legal spouse and dependent children.

3. At the request of the Centre, staff members agree to undergo a medical examination by the Centre's medical officer before the end of the trial period.

#### Article 28

1. In order to fill vacant posts, the Director, after considering the possibilities of assigning members of staff from the Centre to those posts by transfer or promotion in level or category pursuant to the terms of Articles 32 and 33, shall initiate an external recruitment procedure on the basis of a competition in accordance with the rules referred to in Articles 4(1) and 26 (2) and Annex V.

2. The recruitment procedure may also be initiated in order to constitute a reserve list for future recruitment.

#### Article 29

1. On recruitment, a staff member shall serve a trial period of six months' duration.

2. A staff member whose work has not proved adequate for establishment in his post shall be dismissed. However, the Director may, in exceptional circumstances, extend the trial

period for further periods, up to a total of a further six months.

3. Where, during his trial period and subsequent extensions, a staff member is prevented, by sickness, maternity leave or accident, from performing his duties for a continuous period of at least one month, the Director may extend his trial period by the corresponding length of time.

4. Without prejudice to paragraph 3, the total length of the trial period shall in no circumstances exceed 12 months.

5. The probationer may resign at any time during the trial period, giving one month's notice, unless otherwise agreed.

### Section 2

#### Periodic Assessment — Professional Advancement

##### Article 30

1. Every 12 months, at the end of the calendar year and subject to the internal implementing rules laid down by the Director, the ability, efficiency and conduct of a staff member shall be the subject of an assessment report by his superiors.

2. The assessment report shall be communicated to the staff member. He shall be entitled to make any comments thereon which he considers relevant.

##### Article 31

1. A member of staff, after good performance and continuous service of not less than two years at the same level and step and whose contract will continue for at least one month after that period, may advance to the next step of his level.

2. The abovementioned increases in step shall not be automatic and shall be decided on by the Director on the basis of the ability, efficiency and conduct of the staff member as assessed by his superiors and of changes in the complexity of his duties.

##### Article 32

1. Any promotion in level of a staff member shall occur only in order to fill vacancies by means of appointment by the Director to the level immediately above, in accordance with internal rules adopted by the Executive Board on a proposal from the Director.

2. The appointment of a staff member to the level immediately above the category to which he belongs shall take place from among staff members who have completed a minimum length of service at their level, after consideration of their comparative merits and the reports of their hierarchical superiors.

3. A staff member may be appointed to the category immediately above only after a competitive assessment among staff members applying, who have the requisite training and experience and have completed a minimum length of service at their level. The staff member shall be appointed to the lowest level of the new category.

4. A minimum of two years at the same level shall be a condition for eligibility for promotion in level or category.

#### Article 33

1. A staff member shall be classified at the step for which the salary is closest to that which he was receiving at his previous level.

2. In no case shall a staff member receive at his new level a basic salary lower than that which he received at his former level.

3. In no case shall a staff member be penalised in monetary terms in a case where, had he not been promoted, he would have received a merit step at his former level. In such a case, the staff member shall receive a supplementary step on the date on which the merit step would have been due at his former level.

#### Section 3

### Termination of Service — Termination of Contract

#### Article 34

Apart from cessation on death, employment shall cease:

1. at the end of the period of notice following resignation by the staff member. Such notice shall be for a minimum of three months and a maximum of six months, unless a shorter period is mutually agreed;
2. at the end of the period of notice following notification by the Centre;

The length of the period of notice shall be one month for each completed year of service, subject to a minimum of three months and a maximum of nine months. The period of notice shall not commence to run, however, during maternity leave or sick leave, provided such sick leave does not exceed three months. It shall, moreover, be

suspended during maternity or sick leave, subject to the aforesaid limits;

3. at the end of the month in which the staff member reaches the age of 65 years.
4. In the interest of the efficient working of the Centre, a staff member's contract may be terminated in the case of incompetence or unsatisfactory service during the course of employment, in accordance with Article 55.
5. In the event of the closure of the Centre, due notably to the lack of funding, a staff member shall receive compensation of one month's gross basic salary per completed year of service, up to a maximum of twelve months. Such calculation shall be based on the staff member's last gross basic monthly salary.
6. In the event of redundancy of a post, the staff member concerned shall receive notice as provided for in paragraph 2 and shall receive compensation as defined in paragraph 5.

#### Article 35

The contract of a staff member may be terminated without notice on the initiative of the Director:

- (a) during or at the end of the trial period, under the conditions set out in Article 29(2);
- (b) if the staff member ceases to fulfil the conditions set out in Article 27(1);
- (c) in the case provided for in Article 36;
- (d) in the case provided for in Article 37.

#### Article 36

1. After completion of the disciplinary procedure laid down in Chapter VI of this Title, the contract of a staff member may be terminated without notice on disciplinary grounds in serious cases of failure to comply with his obligations, whether intentionally or through negligence on his part. The decision to terminate a contract shall be taken by the Director, after the person concerned has had an opportunity to submit his defence.

2. Prior to the termination of his contract, the staff member may be suspended under the conditions set out in Article 57.

3. In the event of termination of duties pursuant to paragraph 1 of this Article, the Director may propose that the Executive Board should decide to withhold from the person concerned all or part of his entitlement to the compensation and reimbursement of costs provided for in the rules referred to in Articles 46 and 52.

*Article 37*

1. The contract of a staff member must be terminated without notice by the Centre where the Director finds that, at the time of his recruitment, the person concerned intentionally provided false information concerning his professional skills or the conditions set out in Article 27(1).

2. In this case, the termination of the contract shall be declared by the Executive Board on a proposal from the Director, after the person concerned has been heard and after completion of the disciplinary procedure laid down in Chapter VI of this Title.

3. Prior to the termination of his contract, the staff member may be suspended under the conditions set out in Article 57.

The provisions of Article 36(3) shall apply.

*CHAPTER IV***Working conditions***Section 1***Duration of work***Article 38*

1. Staff in active employment shall at all times be at the disposal of the Centre.

However, the normal working week shall not exceed 37,5 hours, the hours of the normal working day being determined in accordance with the internal implementing rules laid down by the Director.

2. The Director may, on duly justified grounds, authorise a staff member to work part-time, if he considers that this would be in line with the interests of the Centre.

The arrangements for granting this authorisation shall be set out in the internal implementing rules laid down by the Director.

*Article 39*

1. Staff may be required to work overtime in cases of urgency or exceptional pressure of work. Night work and all work on Sundays or public holidays may be authorised only in accordance with the internal implementing rules laid down by the Director.

2. The total amount of overtime required of a staff member may not exceed 150 hours worked in a six-month period.

3. Overtime worked by staff in the 'professional' and 'clerical' staff categories shall not create entitlement to compensation or to remuneration.

Under the conditions laid down in the internal implementing rules referred to in paragraph 1, overtime worked by staff in the 'supporting staff' category shall create entitlement to a compensatory rest period or, if the needs of the service do not allow compensation in the six months following that during which the overtime was worked, to the automatic granting of a payment per hour of overtime fixed by those rules.

*Section 2***Leave***Article 40*

1. Staff shall be entitled to a minimum of 24 working days and a maximum of 30 working days of annual leave per calendar year, in accordance with the internal implementing rules laid down by the Director. These rules shall specify the conditions for carrying over leave from one calendar year to the next.

2. Apart from this annual leave, staff may exceptionally, on request, be granted special leave by the Director. The arrangements for granting such leave shall be laid down in internal rules adopted by the Executive Board on a proposal from the Director.

*Article 41*

Female members of staff shall be entitled, in addition to the leave provided for in Article 40, and on production of a medical certificate, to maternity leave with full pay normally starting six weeks before the expected date of confinement shown in the certificate and normally ending 10 weeks after the date of confinement; such leave shall not be for less than 16 weeks.

However, with medical authorisation, the staff member concerned may start her maternity leave less than six weeks before the expected date of confinement, ending in this case at the end of a period of 10 weeks after the date of confinement plus the time which the staff member concerned has continued to work as from the sixth week preceding the actual date of confinement.

Male members of staff shall be entitled to five working days' paternity leave within 10 weeks after the date of birth of the child.

#### *Article 42*

A staff member who provides evidence of incapacity to perform his duties because of sickness or accident shall automatically be entitled to sick leave, in accordance with the internal rules adopted by the Executive Board on a proposal from the Director. At its own discretion, the Centre may decide to obtain an expert medical opinion.

#### *Article 43*

The annual leave of a staff member authorised to work part-time shall, for the duration of such work, be reduced accordingly. Fractions of deductible days shall be calculated on a pro rata basis, in accordance with the internal implementing rules laid down by the Director.

#### *Article 44*

1. Except in case of sickness or accident, a staff member may not be absent without prior permission from his immediate superior. Without prejudice to any disciplinary measures that may apply, any unauthorised absence which is duly established shall be deducted from the annual leave of the staff member concerned. If he has used up his annual leave, he shall automatically forfeit his remuneration for an equivalent period.

2. Where a staff member wishes to spend his sick leave in a place other than his place of employment, he shall be required to obtain prior authorisation from the Director.

3. A staff member may, in exceptional circumstances and at his request, be granted unpaid leave, at the Director's discretion, on personal grounds. The duration of such leave shall not exceed one year per period of 15 years.

During this period, the staff member shall not benefit from any increase in step, nor shall his period of absence on unpaid leave be taken into account in the minimum period stipulated under Article 31(1) and (2).

The rules applying to unpaid leave shall be defined in the internal rules adopted by the Executive Board on a proposal from the Director.

4. At the end of each period of 18 months' continuous service, staff members, their legal spouses and dependent children shall be entitled to return passage to their place of

origin, in accordance with the internal rules adopted by the Executive Board on a proposal from the Director.

### *Section 3*

#### **Public holidays**

##### *Article 45*

The list of public holidays shall be drawn up by the Director.

### *CHAPTER V*

#### **Remuneration and expenses**

##### *Article 46*

1. Under the conditions set out in the internal rules adopted by the Executive Board on a proposal from the Director, and save as otherwise provided, a staff member shall be entitled to the remuneration relating to his category, level and step by the sole fact of his employment.

He may not waive this entitlement.

2. The remuneration shall comprise a basic salary and family and other allowances.

##### *Article 47*

The remuneration shall be expressed and paid in euro.

##### *Article 48*

On a proposal from the Director, the Executive Board shall approve the adjustment of remuneration on a yearly basis based on the methodology agreed by the Council of the European Union for Community staff.

##### *Article 49*

The basic monthly salaries shall be fixed for each category, level and step in accordance with the table in Annex II.

##### *Article 50*

1. The family allowances to which a staff member is entitled shall be laid down in the internal rules referred to in Article 46 and comprise:

- (a) the household allowance;
- (b) the dependent child allowance;

(c) the education allowance.

2. A staff member in receipt of the family allowances referred to in this Article shall be required to declare allowances of the same type paid elsewhere, these allowances being deducted from those paid under these Regulations.

3. The dependent child allowance may be doubled by a special and duly justified decision of the Director taken on the basis of substantiating medical documents drawn up by a doctor designated by the Centre, certifying that the child in question imposes on the staff member a heavy financial burden resulting from a mental or physical handicap suffered by the child.

#### *Article 51*

If a staff member dies during his term of employment, the surviving legal spouse or the dependent children shall receive the overall remuneration of the deceased until the end of the sixth month following that of the death.

#### *Article 52*

Under the conditions set out in the internal rules referred to in Article 46, a staff member shall be entitled to reimbursement of the expenses which he incurred on taking up his duties, on being transferred, on periodic home leave or at the end of his contract, as well as the expenses he incurred in the pursuit, or in connection with the pursuit, of his duties, without prejudice to Article 36(3).

#### *Article 53*

1. In the event of the death of a staff member, of his legal spouse or of his dependent children, the costs incurred in respect of the transporting of the body from the staff member's place of employment to his place of origin shall be reimbursed by the Centre. An advance may be granted for that purpose by the Centre.

The Centre shall also reimburse travel expenses and the costs relating to the transporting of the personal effects and luggage of the surviving persons mentioned in the preceding subparagraph returning to the place of origin of the deceased staff member.

2. If a staff member dies during a mission, the costs incurred in respect of the transporting of the body from the place of death to the staff member's place of origin shall be reimbursed by the Centre.

#### *Article 54*

Any sum overpaid shall be recovered if the recipient had knowledge of the irregularity of the payment or if such irregularity was so obvious that he could not fail to have

knowledge of it. The arrangements for recovery shall be laid down by the Director.

### *CHAPTER VI*

## ***Disciplinary measures***

#### *Article 55*

1. Any failure by a staff member to comply with his obligations under these Regulations, whether intentionally or through negligence on his part, shall make him liable to disciplinary action.

2. Disciplinary measures shall take one of the following forms:

— measures for the first degree of seriousness:

(a) written warning;

(b) reprimand;

— measures for the second degree of seriousness:

(a) relegation in step;

(b) downgrading in level or category;

(c) removal from post.

3. A single offence shall not give rise to more than one disciplinary measure.

#### *Article 56*

1. The Director may issue the warning and the reprimand, without consulting the Executive Board, on a proposal from the staff member's immediate superior or on his own initiative. The person concerned shall be heard beforehand. The staff member may, if he wishes, respond to the warning or reprimand. His reply shall be kept in his personal file.

2. The other measures shall be imposed by the Executive Board after completion of the disciplinary procedure laid down in Article 58. This procedure could be initiated by the Director or the Executive Board after hearing the person concerned.

#### *Article 57*

1. Where an allegation of serious misconduct is made against a staff member, whether this amounts to failure to carry out his official duties or to a breach of law, the Director may order that he be suspended. The decision that a staff member be suspended shall be taken as a precautionary step within four working days of the day following discovery of the acts with which he is charged.

2. The decision that a staff member be suspended shall specify whether he is to continue to receive his remuneration during the period of suspension or what part thereof is to be withheld; the part withheld shall not be more than half the staff member's basic salary.

3. Where no decision has been taken on the staff member by the end of two months, from the date on which the decision that the staff member be suspended came into force, the continuation of that suspension must be confirmed by the Executive Board.

4. Where no decision has been taken on the staff member by the end of four months, from the date on which the decision that the staff member be suspended came into force, the staff member shall again receive his full remuneration.

5. Where, at the end of the disciplinary procedure, no disciplinary action has been taken in respect of a staff member, or no measure other than a written warning or reprimand, the staff member concerned shall be entitled to reimbursement of the amount of remuneration withheld.

6. Where, however, the staff member is prosecuted for those same acts, a final decision shall be taken only after a final verdict has been reached by the court hearing the case.

#### Article 58

1. A disciplinary procedure shall be initiated by the Director, involving an ad hoc committee of enquiry which shall provide the Director with a report, which must clearly state the facts complained of and, if appropriate, the circumstances in which they occurred.

This report shall be communicated to the Chairman of the Executive Board, who shall notify the staff member concerned in writing.

Any frustration of notification ascribable to the staff member and any refusal by the staff member to sign an acknowledgement of receipt shall count as notification.

2. The composition and procedures of the ad hoc committee of enquiry shall be laid down in the internal rules adopted by the Executive Board on a proposal from the Director.

#### TITLE III

### THE DIRECTOR AND DEPUTY DIRECTOR

#### Article 59

1. The provisions of these Regulations laying down rights and obligations for staff shall apply *mutatis mutandis* to the Director and Deputy Director.

2. Where, in the context of these Regulations, it is provided that the Director shall take decisions with respect to the staff and local staff, the Executive Board shall take such decisions with respect to the Director and Deputy Director.

Similarly, where it is provided that the staff and local staff shall give information to the Director, the Director and Deputy Director shall give such information to the Executive Board.

#### TITLE IV

### PROVISIONS CONCERNING SOCIAL SECURITY, TAXATION AND APPEALS

#### CHAPTER I

#### *Social provisions*

#### Section 1

### Social Security

#### Article 60

1. As regards social security schemes, staff members, the Deputy Director, the Director and, to the extent necessary, legal members of their family recognised by the Centre, may choose between the scheme of the State in whose territory the Centre has its headquarters, the scheme of the State where they last resided or that of the State of which they are nationals or any private scheme with which the Centre has signed an agreement.

However, this choice may be exercised only once and must be made within three months of the date of recruitment; it shall take effect on the date on which duties are taken up.

2. Staff members, the Deputy Director, the Director and their legal spouses, where these are not eligible for benefits of the same type and level under all other legal provisions or regulations, and their dependent children, as referred to in the internal rules, shall be covered against illness. The degree of cover shall be defined in the internal rules adopted by the Executive Board on a proposal from the Director.

3. The contributions necessary to provide such cover against illness shall be borne by the staff members and the Centre in accordance with the internal rules referred to in paragraph 2.

#### Article 61

1. Staff members, the Deputy Director and the Director shall be insured from the date of their entering the service against the risk of occupational hazards and of accident, subject to the internal rules referred to in Article 60. They shall contribute to the cost of insuring against these risks.

2. Risks not covered, benefits payable and expenses covered shall be specified in the internal rules referred to in paragraph 1.

#### *Article 62*

1. On the birth of a child to a staff member, the Deputy Director or the Director, a single, flat-rate grant shall be paid to the person who has actual care of the child, in accordance with the internal rules referred to in Article 60.

2. The recipient of the grant on the birth of a child must declare any grants of the same nature received from other sources for the same child; such grants shall then be deducted from the grant referred to in paragraph 1. This grant shall be paid once only, where both parents as staff members of the Centre are potentially eligible.

#### *Section 2*

### **Provident Fund**

#### *Article 63*

1. The Centre shall set up a provident fund for staff members, the Deputy Director and the Director in accordance with the internal rules adopted by the Executive Board on a proposal from the Director. The methods of compulsory and voluntary contribution to the fund by these staff members and by the Centre, together with the methods of payment by the fund to staff members leaving the service of the Centre, shall be established by these rules.

2. The contributions necessary to set up the Provident Fund shall be borne by the staff members and the Centre in accordance with the internal rules referred to in paragraph 1.

#### *Section 3*

### **Final and Voluntary Severance Bonus**

#### *Article 64*

1. A staff member whose contract is terminated as the result of an agreement between the staff member and the Centre, and who has served in the Centre for at least five years, may receive, by a decision of the Executive Board and on the basis of a report drawn up by the Director, a final and voluntary severance bonus in accordance with the internal rules adopted by the Executive Board on a proposal from the Director.

2. This severance bonus is not automatic, and the interests and objectives of the Centre shall be considered when deciding whether it is to be granted. Payment shall be made under the conditions laid down by the Executive Board on a proposal from the Director and in accordance with the internal rules referred to in paragraph 1.

3. No severance bonus shall be paid where the contract is terminated, as laid down in Articles 36 and 37.

4. The Director and Deputy Director shall not receive this severance bonus.

5. The severance bonus shall be incompatible with the compensation referred to in Article 34(5).

#### *CHAPTER II*

### **Tax Provisions**

#### *Article 65*

1. The Director, the Deputy Director and the staff of the Centre shall be liable to a tax for the benefit of the Centre on remuneration paid by the Centre.

The conditions and the procedure for applying the tax are laid down in Annex III. The Committee shall be empowered to amend that Annex if necessary.

2. Tax shall be collected by the Centre by means of deduction at source. The proceeds of the tax shall be entered as revenue in the budget of the Centre.

#### *CHAPTER III*

### **Appeals Provisions**

#### *Article 66*

1. Staff members, the Deputy Director and the Director may submit to the competent authority a request that it take a decision relating to them. The competent authority shall notify the person concerned of his reasoned decision within two months from the date on which the request was made. If at the end of that period no reply to the request has been received, this shall be deemed to constitute an implied decision rejecting it, against which a complaint may be lodged in accordance with the following paragraph.

2. Staff members, the Deputy Director and the Director may submit to the competent authority a complaint against an act adversely affecting them, either where the competent authority has taken a decision, or where it has failed to adopt a measure prescribed by these Regulations. A complaint is a written document requesting that an amicable solution be found to the dispute in question. The complaint must be lodged within a period of two months, failing which the complaint is void. The period shall begin:

- on the date of notification of the decision to the person concerned, but in no case later than the date on which the latter received such notification, if the measure affects a specified person; if, however, an act affecting a specified person also involves another person, the period shall start to run in respect of that other person on the date on which he receives notification thereof,
- on the date of expiry of the deadline prescribed for a reply, where the complaint concerns an implied decision rejecting a request as provided for in paragraph 1.

The competent authority shall notify the person concerned of its reasoned decision within two months from the date on which the complaint was lodged. If at the end of that period no reply to the complaint has been received, this shall be deemed to constitute an implied decision rejecting it, against which an appeal may be lodged pursuant to Article 67.

The procedure whereby the competent authority shall reach its reasoned decision shall be laid down in the internal rules adopted by the Executive Board on a proposal from the Director.

The competent authority within the meaning of this Article shall be:

- the Director for staff members,
- the Executive Board for the Director and Deputy Director, and for cases of appeal against a disciplinary measure taken by the Director,
- the Committee for cases of appeal against a disciplinary measure taken by the Executive Board regarding the Director or Deputy Director.

#### Article 67

1. Disputes between staff members and the Centre, as well as disputes between the Director or Deputy Director and the Centre, may be resolved by conciliation in accordance with the procedures set out in Annex IV to these Regulations. However, where no settlement can be reached, the staff member shall have the right to revert to the Administrative Tribunal of the International Labour Organisation.

2. The Administrative Tribunal of the International Labour Organisation, hereinafter referred to as 'the Administrative Tribunal', shall have jurisdiction in any dispute between the Centre and a member of the staff of the Centre regarding the legality of an act adversely affecting such person within the meaning of Article 66(2).

3. An appeal to the Administrative Tribunal shall only be admissible if:

- the competent authority has previously had a complaint submitted to it pursuant to Article 66(2) within the period prescribed therein,
- the complaint has been rejected by express decision or by implied decision,
- conciliation has failed or there is no settlement within four months of the appointment of the conciliator.

4. Appeals under paragraph 2 shall be filed within three months. This period shall begin on the date on which the failure of the conciliation has been notified to the two parties or, if there is no settlement, on the date of expiry of the deadline of four months as from the date of appointment of the conciliator.

#### TITLE V

#### LOCAL STAFF

##### Article 68

1. Local staff shall be engaged by the Director on employment contracts for a specified period.

2. With the exception of Articles 6 to 10, 29, 31 to 37, 40 to 43, 46 to 50 and Chapter VI, Title II shall apply *mutatis mutandis* to local staff.

##### Article 69

The conditions of employment of local staff and in particular:

- (a) the manner of their engagement and termination of their contracts,
- (b) leave, and
- (c) grading and remuneration

shall be determined by the Director in accordance with current rules and practices in the place where they are to perform their duties.



*Article 70*

The Centre shall cover the employer's share of the social security contributions required under current regulations in the place where a local staff member is to perform his duties.

*Article 71*

Any member of the local staff may submit to the Director a request that he takes a decision relating to him. The Director shall notify the person concerned of his decision, giving the grounds therefore, within one month of the date on which the request was made. In the event of disagreement, the local staff member may lodge an appeal in accordance with Article 72.

*Article 72*

Disputes between the Centre and local staff shall be referred to the competent court in accordance with the legislation in force at the place where the local staff member performs his duties.

## TITLE VI

**STAFF SERVING ABROAD***Article 73*

Provisions applicable to staff serving abroad shall be covered in the internal rules adopted by the Executive Board on a proposal from the Director.

## TITLE VII

**RULES APPLICABLE TO STAFF TEMPORARILY TRANSFERRED TO THE CENTRE***Article 74*

Provisions applicable to persons from organisations or companies, who are temporarily transferred to the Centre under special cooperation or exchange agreements, shall be covered in the internal rules adopted by the Executive Board on a proposal from the Director.

## TITLE VIII

**FINAL PROVISIONS***Article 75*

These Regulations shall enter into force at the same time as the Decision of the ACP-EC Committee of Ambassadors approving them.

*Article 76*

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

Done at Brussels, 27 July 2005.

*For the Committee of Ambassadors*

*The President*

F.J. WAHNON FERREIRA

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## ANNEX I TO THE STAFF REGULATIONS

**CENTRE FOR THE DEVELOPMENT OF ENTERPRISE (CDE)**

CONTRACT (\*) WITH:

Ms/Mr

Date of birth

Nationality

Holder of identity card No

Issued on

In view of the information you supplied in your application and following the competitive recruitment procedure, the Centre for the Development of Enterprise (CDE), represented by its Director, ..., in accordance with Article 6 of Decision No 9/2005 of the ACP-EC Committee of Ambassadors laying down the Staff Regulations of the Centre, has decided to employ you as a staff member of the Centre.

The conditions of your employment are as follows:

1. DURATION

The contract shall enter into force on ... and shall be for an indefinite period within the framework of Annex III to the Cotonou Agreement.

2. TRIAL PERIOD

The first six months of employment shall be regarded as a trial period. During this period, either party may terminate this contract by registered letter without prior notice. Such a trial period shall apply to newly recruited staff only.

3. PLACE

The place of employment is currently.... However, you may be assigned to another duty station purely in the interest of the Centre.

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(\*) The specimen contract will have to be adapted for the fixed-term and short-term contracts referred to in Article 6 of these Regulations to take account of the provisions applicable to that type of contract and to allow for individual conditions established when the contract is made.

#### 4. CLASSIFICATION

Category:

Level:

Step:

You agree to be assigned by the Director, whenever he considers it to suit the requirements of the Centre, to a post requiring your category and level, which may involve changes in your duties.

#### 5. WORKING WEEK

The working week consists of 37,5 hours.

#### 6. TERMINATION OF SERVICE FOLLOWING A PERIOD OF NOTICE

In accordance with Article 34 of the current Staff Regulations of the Centre, either party may terminate this contract by registered letter.

#### 7. STAFF REGULATIONS

The two parties hereto acknowledge that they are bound by the following:

- (a) the Statutes and Rules of Procedure of the Centre, the Staff Regulations of the Centre and the Headquarters Agreement;
- (b) the various internal rules issued by the Centre in accordance with the aforementioned Staff Regulations, of which you state you have cognisance; no amendments to those rules may be invoked against you unless they have been notified to you;
- (c) any individual conditions which the Centre may lay down for you, in accordance with Article 1 (5) of the aforementioned Staff Regulations.

You hereby expressly waive those benefits, provided for in the Staff Regulations upon entry into service which you already received on the occasion of any previous contract with the Centre.

Your years of service in any previous employment as a staff member at the Centre shall be taken into account in this contract.

#### 8. DISPUTES

Any disputes between you and the Centre shall be resolved by conciliation or shall be brought before the Administrative Tribunal of the International Labour Organisation in accordance with Article 67 of the Staff Regulations.

Disputes may not be resolved in any other manner.

9. STATEMENTS

Annex A (Administrative Statement) and Annex B (Family Statement) form an integral part of this contract.

For the Centre for the Development of Enterprise

Brussels,

Director

To the Director of the Centre

I duly accept the above contract as well as the conditions laid down therein.

I have received and taken note of the Statutes and Rules of Procedure of the Centre, the Staff Regulations of the Centre and the internal rules of the Centre.

I agree to abide by the rules laid down in the Staff Regulations for the settlement of any dispute with the Centre and I expressly renounce any other form of settlement, including recourse to any other judicial body.

Date

Signature of the staff member

\_\_\_\_\_

## ANNEX A TO ANNEX I

## ADMINISTRATIVE STATEMENT

Name:

Forename(s):

Date of birth:

Family situation:

Date of contract:

Date on which this contract takes effect:

Duration of the contract:

Place of origin:

Place of residence for employment purposes:

Category, level and step:

Basic monthly salary:

Special clauses:

Signature of the staff member

Director

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## ANNEX B TO ANNEX I

**FAMILY STATEMENT**

Name:

Forename(s):

Place and date of birth:

## DEPENDENTS

Name and forename(s)	Place and date of birth	Relationship	Civil status	Nationality
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The undersigned hereby certifies that the above information is correct

Signature of the staff member

Director

Date:

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## ANNEX II TO THE STAFF REGULATIONS

## TABLE OF BASIC GROSS MONTHLY SALARIES (IN EURO)

Applicable as from 1 July 2003 (index of June 2003)

Category	Level	Basic Post	Step					
			1	2	3	4	5	6
1. DIRECTORS	1. A	Director	12 016,80	12 737,81				
	1. B	Deputy Director	10 643,46	11 282,07				
2. PROFESSIONAL	2. A	Main Expert	8 583,47	9 098,43	9 613,46	10 190,27		
	2. B	Main Expert	6 866,75	7 278,71	7 725,10	8 171,43	8 652,13	9 171,26
	1. C	Expert	6 008,44	6 386,08	6 763,77	7 141,47	7 553,38	8 006,58
	2. D	Expert	4 806,73	5 098,55	5 407,56	5 733,75	6 077,09	6 441,72
3. CLERICAL	3. A	principal Assistant	4 017,11	4 257,35	4 497,75	4 789,59	5 081,39	5 386,27
	3. B	Clerical Assistant	3 090,01	3 261,68	3 467,71	3 673,74	3 879,42	4 112,19
	3. C	Secretary/Clerk.	2 231,71	2 369,02	2 506,39	2 643,72	2 815,35	2 984,27
4. SUPPORTING STAFF	4. A	Technical staff	1 819,66	1 922,67	2 025,70	2 128,73	2 266,02	2 401,98

With the exception of levels 1.A and 1.B, the number of staff at the highest step of each level may not exceed 25 % of the number of statutory posts at each respective level.

## ANNEX III TO THE STAFF REGULATIONS

**Conditions and procedure for applying the tax for the benefit of the Centre**

1. The following shall be liable to the tax for the benefit of the Centre referred to in Article 65 of the Staff Regulations: the Director, the Deputy Director and the staff of the Centre, excluding local staff.

The tax shall be payable each month on salaries, wages and emoluments paid by the Centre to each person liable.

However, monies and allowances, whether lump sums or not, which represent compensation for expenses incurred in the performance of official duties, shall be excluded from the basic taxable amount.

2. Family allowances and social benefits shall be deducted from the basic taxable amount.
3. An abatement of 10 % for occupational and personal expenses shall be made from the amount obtained by applying paragraphs 1 and 2 of this Annex.

An additional abatement equivalent to twice the amount of the allowance received by the person liable for a dependent child shall be made for each dependent child or person.

To calculate the basic taxable amount, an additional abatement of 16 % shall be applied to the gross remuneration of each expatriate member of staff. The minimum abatement under this provision shall not be less than EUR 200.

All amounts paid by the person under the social security scheme to which he is subject shall be deducted from the basic taxable amount, as defined in Articles 60 to 63 and the corresponding internal rules.

4. The tax shall be calculated on the taxable amount obtained by applying paragraph 3 disregarding any amount not exceeding EUR 84,96 and by applying the following rate:

— 0 %	to amounts of less than EUR	84,96		
— 8 %	to amounts between EUR	84,97	to	1 501,99
— 10 %	to amounts between EUR	1 502,00	to	2 068,75
— 12,5 %	to amounts between EUR	2 068,76	to	2 370,93
— 15 %	to amounts between EUR	2 370,94	to	2 692,21
— 17,5 %	to amounts between EUR	2 692,22	to	2 994,41
— 20 %	to amounts between EUR	2 994,42	to	3 287,26
— 22,5 %	to amounts between EUR	3 287,27	to	3 588,08
— 25 %	to amounts between EUR	3 588,09	to	3 882,46
— 27,5 %	to amounts between EUR	3 882,47	to	4 184,60



— 30 %	to amounts between EUR	4 184,61	to	4 477,50
— 32,5 %	to amounts between EUR	4 477,51	to	4 779,78
— 35 %	to amounts between EUR	4 779,79	to	5 072,72
— 40 %	to amounts between EUR	5 072,73	to	5 374,80
— 45 %	to amounts above EUR	5 374,81		

The amount of tax shall be rounded down to the nearest unit.

The taxable amounts set out above shall be those applicable on 1 July 2003.

5. By way of derogation from paragraphs 3 and 4, the sums paid as compensation for overtime shall be assessed for purposes of tax at the rate which, in the month preceding that of payment, was applied to the highest taxable amount of the remuneration of the staff member.

Payments made on account of termination of service shall be taxed, after applying the abatements laid down in the first three subparagraphs of paragraph 3, at a rate equal to two-thirds of the ratio existing at the time of last salary payment, between:

- the amount of tax payable, and
- the basic taxable amount as defined in paragraphs 1, 2 and 3.

6. Where the taxable payment covers a period of less than one month, the rate of the tax shall be that which is applicable to the corresponding monthly payment.

Where the taxable payment covers a period of more than one month, the tax shall be calculated as if this payment had been spread evenly over the months to which it relates.

Corrective payments not related to the month during which they are paid shall be subject to the tax to which they would have been subject had they been made at the proper time.

7. The Committee shall adopt any provisions necessary for implementing the provisions of this Annex.

The Director of the Centre shall ensure that these provisions are implemented.

Where necessary, he shall refer by analogy to the relevant regulations applicable to officials of the European Communities, in particular Council Regulation (EEC, Euratom, ECSC) No 260/68 of 29 February 1968 laying down the conditions and procedure for applying the tax for the benefit of the European Communities <sup>(1)</sup>.

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<sup>(1)</sup> OJ L 56, 4.3.1968, p. 8. Regulation as last amended by Regulation (EC) No 1750/2002 (OJ L 264, 2.10.2002, p. 15).

## ANNEX IV TO THE STAFF REGULATIONS

**CONCILIATION***Article 1***Scope**

Disputes between the staff of the Centre, the Director or the Deputy Director, on the one hand, and the Centre, on the other, may be settled by conciliation in accordance with these procedural rules.

*Article 2***Definitions**

In these rules, unless the context requires otherwise, the following words and expressions shall have the meaning here assigned to them:

- ACP State: a State belonging to the African, Caribbean and Pacific Group of States which are signatories to the Cotonou Agreement
- Member State: a Member State of the European Union
- The Tribunal: the Administrative Tribunal of the International Labour Organisation
- The Agreement: the ACP-EC Partnership Agreement of Cotonou
- The Council of Ministers: the ACP-EC Council of Ministers referred to in the Cotonou Agreement
- The Committee: the ACP-EC Committee of Ambassadors
- The Executive Board: the Executive Board of the Centre for the Development of Enterprise
- The Centre: the Centre for the Development of Enterprise
- The Staff Regulations: the Staff Regulations of the Centre for the Development of Enterprise under the Cotonou Agreement
- Claimant: the party which commences conciliation by giving notice to the other party requesting the proceedings and submitting claims
- Respondent: the party to the conciliation against whom claims are made
- Party: when used in connection with conciliation, the claimant or respondent in the conciliation.

*Article 3***Notice and calculation of time**

1. Any notice provided by these rules shall be served by registered letter or physically delivered, with a request for a dated acknowledgement of receipt in either case. A notice shall be deemed to have been received on the day it is so delivered. Any failure to serve notice ascribable to the recipient or any refusal to sign an acknowledgement of receipt shall constitute notice.

2. For the purposes of calculating a period of time under these rules, such period shall begin to run on the day following the day on which a notice, communication or proposal is received. If the last day of such period is an official holiday or a non-working day at the address mentioned in the notice, communication or proposal, the period shall be extended until the first working day which follows. However, official holidays or non-working days occurring while the period of time is running shall be included.

*Article 4***Conciliation**

1. Before an application to the Administrative Tribunal of the International Labour Organisation, a person with the right to request such a settlement must request the settlement of the dispute by conciliation in accordance with these rules. The request to appoint a conciliator must be submitted within a period of two months. This period shall begin:

- on the date of notification of the decision taken in response to the complaint,
- on the date of expiry of the period prescribed for the reply, where the request for conciliation is in response to an implied decision rejecting a complaint submitted pursuant to Article 66(2). However, where a complaint is rejected by express decision after being rejected by implied decision but before the period for submitting a request for conciliation has expired, the period for submitting a request for conciliation shall start to run afresh.

2. If the dispute is between the Director or the Deputy Director and the Centre, the claimant shall send the Committee a request for the appointment of a conciliator.

The appointment shall be made by the Committee within 60 days at most following receipt of the request.

3. If the dispute is between a member of staff and the Centre, the claimant shall send the Executive Board a request for the appointment of a conciliator. The appointment shall be made within 45 days at most.

4. To qualify for appointment as conciliator, the person must have the nationality of one of the States signatory to the Agreement.

5. Within 30 days of receiving notice of the appointment of the conciliator, the party making a request for conciliation shall notify the other party and the conciliator of the request.

The request shall consist of a statement of the case of the claimant and shall be accompanied by copies of relevant papers and documents.

6. Within 30 days of receiving notice of the request, the other party shall submit to the conciliator and to the claimant a reply to the claimant's case.

7. The proceedings of the conciliator shall be as informal and expeditious as is compatible with a just and objective settlement of the dispute and shall be based on a fair hearing of each party. Each of the parties may be represented or assisted by an agent of his choice.

8. After examining the case, the conciliator shall submit terms of settlement to the parties.
  9. Should a settlement result, the conciliator shall draw up and sign a record of the settlement. The record shall be signed by the parties to signify their acceptance thereof. The record of the settlement so signed by the parties shall be binding upon them.
  10. Copies of the record of settlement so signed shall be given to the parties.
  11. Should the conciliation fail or should a settlement not result within four months of the appointment of the conciliator, the parties shall be at liberty to refer their dispute to the Administrative Tribunal of the International Labour Organisation, in which case nothing that has transpired in connection with the proceedings before the conciliator shall in any way affect the legal rights of any of the parties to the Tribunal.
  12. The case may be submitted within three months to the Administrative Tribunal of the International Labour Organisation. This period shall begin on the date on which the failure of the conciliation has been notified to the two parties or, if there is no settlement, on the date of expiry of the deadline of four months as from the date of appointment of the conciliator.
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## ANNEX V TO THE STAFF REGULATIONS

**Composition and procedures of the bodies provided for in article 4 of the Staff Regulations**

## SECTION 1

*Staff Committee*

The Staff Committee shall comprise the members thereof whose term of office shall be three years. Every staff member shall be entitled to vote and stand for election, which shall be by secret ballot.

The conditions for election to the Staff Committee and its functioning shall be laid down by the General Assembly of the staff members in the Staff Association's Rules of Procedure.

Membership of the Staff Committee shall be such as to ensure the representation of all categories provided for in Article 7 and will as far as possible reflect the joint ACP-EU nature of the Centre.

Elections to the Staff Committee shall be valid only if two-thirds of the staff members entitled to vote take part. However, if this proportion is not attained, the second vote shall be valid if the majority of those entitled to vote take part.

The duties undertaken by members of the Staff Committee and by staff members appointed by the Staff Committee to bodies set up under the Staff Regulations or by the Centre shall be deemed to be part of their normal service. The fact of performing such duties shall in no way be prejudicial to the person concerned.

## SECTION 2

*Recruitment/Promotion Committee*

For each vacant post or promotion provided for in the budget, a Recruitment/Promotion Committee shall be appointed by the Director.

The Staff Committee shall be represented therein as an observer.

The composition and functioning of the Recruitment/Promotion Committee shall be determined in the internal rules.

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