

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(94) 387 final
Brussels, 16.09.1994

94/0207 (CNS)

Proposal for a COUNCIL DECISION

on the conclusion of the Agreement in the form of an exchange of letters on the provisional application of the Protocol establishing, for the period from 1 July 1994 to 30 June 1997, the fishing opportunities and financial compensation provided for in the Agreement between the European Community and the Government of the Republic of Equatorial Guinea on fishing off Equatorial Guinea

Proposal for a COUNCIL REGULATION (EC)

94/0207 (CNS)

on the conclusion of the Protocol establishing, for the period from 1 July 1994 to 30 June 1997, the fishing rights and financial compensation provided for in the Agreement between the European Community and the Government of the Republic of Equatorial Guinea on fishing off the coast of Equatorial Guinea

(presented by the Commission)

EXPLANATORY MEMORANDUM

The protocol annexed to the fisheries agreement between EC and the Equatorial Guinea expired on 26.6.1992. A new protocol was initialled by the two parties on 30.6.1994, setting technical and financial terms governing fishing by EC vessels in the Equatorial Guinea waters for the period 1.7.1994 to 30.6.1997.

The Commission proposes on this basis that the Council adopt

- by a Decision, the proposal for an agreement in the form of an exchange of letters on provisional application of the new protocol pending its entry into force
- by a Regulation, the protocol setting fishing rights and the technical and financial terms thereof agreed between the EC and the Equatorial Guinea from the period 1.7.1994 to 30.6.1997.

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PROPOSAL FOR A
COUNCIL DECISION

on the conclusion of the Agreement in the form of an exchange of letters on the provisional application of the Protocol establishing, for the period from 1 July 1994 to 30 June 1997 the fishing opportunities and financial compensation provided for in the Agreement between the European Community and the Government of the Republic of Equatorial Guinea on fishing off Equatorial Guinea

THE COUNCIL OF THE EUROPEAN UNION

Having regard to the Treaty establishing the European Community,

Having regard to the Agreement between the European Community and the Government of the Republic of Equatorial Guinea on fishing off Equatorial Guinea (1),

Having regard to the proposal from the Commission,

Whereas the Community and the Republic of Equatorial Guinea held negotiations to determine the amendments or additions to be made to the abovementioned Agreement on the expiry of the application period of the Protocol to the Agreement ;

Whereas, as a result of those negotiations, a new Protocol was initialled on 30 June 1994;

Whereas the Protocol provides Community fishermen with fishing opportunities in waters over which the Republic of Equatorial Guinea has sovereignty from 1 July 1994 to 30 June 1997;

Whereas, in order to avoid any longer interruption in the fishing activities of Community vessels, the new Protocol should be applied as soon as possible ; whereas for this reason the two Parties have initialled an Agreement in the form of an exchange of letters providing for the provisional application of the initialled Protocol from 1 July 1994;

whereas that Agreement should be approved, pending a

final decision to be taken on the basis of Article 43 of the Treaty,

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement in the form of an exchange of letters on the provisional application of the Protocol establishing, for the period from 1 July 1994 to 30 June 1997, the fishing opportunities and financial compensation provided for in the Agreement between the European Community and the Government of the Republic of Equatorial Guinea on fishing off Equatorial Guinea 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 authorized to designate the persons empowered to sign the Agreement in the form of an exchange of letters in order to bind the Community.

Done at Brussels,

For the Council
The President

(1) OJ No L 29, 30.1.1987 p. 1.

AGREEMENT

in the form of an Exchange of Letters concerning the provisional application of the Protocol establishing, for the period from 1 July 1994 to 30 June 1997, the fishing rights and financial compensation provided for in the Agreement between the European Community and the Government of the Republic of Equatorial Guinea on fishing off the coast of Equatorial Guinea

A. Letter from the Government of Equatorial Guinea

Sir,

With reference to the Protocol initialled on 30 June 1994 establishing fishing rights and financial compensation for the period from 1 July 1994 to 30 June 1997, I have the honour to inform you that the Government of Equatorial Guinea is ready to apply this Protocol on a provisional basis, with effect from 1 July 1994, pending its entry into force in accordance with Article 7 of the said Protocol, provided that the European Community is disposed to do the same.

This is on the understanding that a first instalment equal to one third of the financial compensation specified in Article 2 of the Protocol is paid by 30 November 1994.

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

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

For the Government of the Republic of Equatorial Guinea

B. Letter from the Community

Sir,

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

'With reference to the Protocol initialled on 30 June 1994 establishing fishing rights and financial compensation for the period from 1 July 1994 to 30 June 1997, I have the honour to inform you that the Government of Equatorial Guinea is ready to apply this Protocol on a provisional basis, with effect from 1 July 1994, pending its entry into force in accordance with Article 7 of the said Protocol, provided that the European Community is disposed to do the same.

This is on the understanding that a first instalment equal to one third of the financial compensation specified in Article 2 of the Protocol is paid by 30 November 1994.

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

I have the honour to confirm the European Community's agreement to this provisional application of the Protocol.

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

On behalf of the Council of the European Union

Proposal for a
COUNCIL REGULATION (EC)

on the conclusion of the Protocol establishing for the period 1 July 1994 to 30 June 1997 the fishing rights and financial compensation provided for in the Agreement between the European Community and the Government of the Republic of Equatorial Guinea on fishing off the coast of Equatorial Guinea

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

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

Whereas, pursuant to the Agreement between the European Community and the Government of the Republic of Equatorial Guinea on fishing off the coast of Equatorial Guinea (2)

the two Parties conducted negotiations to determine the amendments or additions to be made to the Agreement at the end of the period of application of the Protocol;

Whereas, as a result of these negotiations, a new Protocol establishing the fishing rights and financial compensation provided for in the abovementioned Agreement for the period 1 July 1994 to 30 June 1997 was initialled on 30 June 1994;

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

HAS ADOPTED THIS REGULATION:

Article 1

The Protocol establishing, for the period 1 July 1994 to 30 June 1997, the fishing rights and financial compensation provided for in the Agreement between the European Community and the Government of the Republic of Equatorial Guinea on fishing off the coast of Equatorial Guinea is hereby approved on behalf of the Community.

The text of the Protocol is attached to this Regulation.

Article 2

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

Article 3

This Regulation shall enter into force on the third day following its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Council
The President

(1) OJ No C

(2) OJ No L 29, 30. 1. 1987, p. 1.

PROTOCOL

establishing for the period from 1 July 1994 to 30 June 1997 the fishing rights and financial compensation provided for in the Agreement between the European Community and the Government of the Republic of Equatorial Guinea on fishing off the coast of Equatorial Guinea

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Article 1

For a period of three years from 1 July 1994, the fishing rights granted pursuant to Article 2 of the Agreement shall be

- freezer tuna seiners: 47 vessels
- surface longliners: 2 vessels
- pole-and-line tuna vessels: 4 vessels

Article 2

1. The financial compensation referred to in Article 6 of the Agreement shall be, for the period referred to in Article 1, ECU 412 500, payable in three equal annual instalments.

This compensation shall cover a catch weight in waters of Equatorial Guinea of 2.750 tonnes of tuna fished per year. If the tuna caught by Community vessels in Equatorial Guinea's fishing zone exceeds this weight, the amount referred to above shall be proportionately increased.

2. The use to which this compensation is put shall be the sole responsibility of the Government of the Republic of Equatorial Guinea.

3. The compensation shall be paid into account No 4160 of the Treasury of Equatorial Guinea, opened at the 'Banque des Etats d'Afrique Central' (BEAC) in Malabo. Any changes shall be notified to the Commission of the European Communities.

Article 3

The Community shall also contribute, during the period referred to in Article 1, the sum of ECU 12 0 000 towards the financing of an Equatorial Guinea scientific or technical programme to improve information on the fishery resources within the exclusive economic zone of Equatorial Guinea.

This sum shall be made available to the Government of the Republic of Equatorial Guinea and paid into the account indicated by the Equatorial Guinea authorities.

The competent authorities of Equatorial Guinea shall send to the Commission a brief report on the utilisation of the funds.

Article 4

The two Parties agree that improving the skills of those involved in sea fishing is a vital element in the success of their cooperation. To that end, the Community shall make it easier for nationals of Equatorial Guinea to find places in establishments in its Member States and shall provide for that purpose, during the period referred to in Article 1, awards for study and practical training in the various scientific, technical and economic disciplines relating to fisheries. The awards may also be used in any State linked with the Community by a cooperation agreement. The total cost of the awards may not exceed ECU 127 500. At the request of the Equatorial Guinea authorities, part of this sum may be used to cover the costs of participation in international meetings or training courses concerning fisheries.

The sum shall be payable as and when it is used.

Article 5

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

Article 6

The Annex to the Agreement between the European Community and the Government of the Republic of Equatorial Guinea on fishing off the coast of Equatorial Guinea is hereby repealed and replaced by the Annex to this Protocol.

Article 7

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

It shall apply with effect from 1 July 1994.

ANNEX

CONDITIONS FOR THE EXERCISE OF FISHING ACTIVITIES BY COMMUNITY VESSELS IN
EQUATORIAL GUINEA'S FISHING ZONE

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A. Licence application and issuing formalities

The procedure for applications for, and issue of, the licences enabling vessels flying the flags of the Member States of the Community to fish in Equatorial Guinea's fishing zone shall be as follows:

The relevant Community authorities shall present to the Ministry of Water, Forestry and Reafforestation of the Republic of Equatorial Guinea, via the delegation of the Commission of the European Communities in Equatorial Guinea, an application for each vessel that is to be used for fishing under the Agreement

The applications shall be made on the forms provided for that purpose by the competent authorities of the Republic of Equatorial Guinea, a specimen of which is attached hereto (Annex 1).

Once signed, the licences shall be issued by the Equatorial Guinea authorities to the shipowners or their representatives via the delegation of the Commission of the European Communities in Equatorial Guinea within 15 working days of the date on which the application was submitted.

However, at the request of the European Economic Community, and where *force majeure* is proven, a vessel's licence shall be replaced by a new licence for another vessel whose features are similar to those of the first vessel. The owner of the first vessel shall return the cancelled licence to the Ministry of Water, Forestry and Reafforestation of the Republic of Equatorial Guinea via the delegation of the Commission of the European Communities.

The new licence shall indicate:

- the date of issue,
- the fact that the licence cancels and replaces that granted to the previous vessel.

In this case, no new lump sum shall be due.

The licence document must be held on board at all times. However, on receipt of the notification of the advance payment sent by the Commission of the European Communities to the authorities of Equatorial Guinea, the vessel will be included on a list, to be notified to the fisheries control authorities of Equatorial Guinea. Whilst awaiting receipt of the licence document, a fax copy of this licence document may be obtained and shall be kept on board, which will authorise the vessel to fish, pending delivery on board of the licence document.

Licences shall be valid for a period of one year. They are renewable.

The fees shall be ECU 20 per tonne caught within Equatorial Guinea's fishing zone.

The competent authorities of Equatorial Guinea shall indicate the detailed rules for payment of the fees, in particular the bank accounts and currencies to be used.

Licences shall be issued following payment to the Ministry of Water, Forestry and Reafforestation of a lump sum of ECU 1000 a year for each tuna seiner and ECU 200 a year for each pole-and-line tuna vessel and surface longliner

B. Declaration of catches and breakdown of fees due by shipowners

The captain shall complete a fishing form corresponding to the model given in Appendix 2 for each period spent fishing in Equatorial Guinea's fishing zone.

The form, which must be legible and signed by the captain of the ship, shall be sent without delay to ORSTOM or Spanish Oceanographical Institute, for processing.

Should this provision not be adhered to, the Government of Equatorial Guinea reserves the right to suspend the licence of the offending vessel until the formality has been complied with and to apply the penalties laid down under fisheries law No 2/1987 of 16 February 1987.

Member States shall inform the Commission of the European Communities before 15 April of the tonnages caught during the past year, as confirmed by the scientific institutes. On the basis of those figures the Commission shall establish a breakdown of the fees due in respect of a fishing year which it shall then send to the authorities of Equatorial Guinea for their comments.

Shipowners shall be notified by the Commission of the European Communities of this breakdown by the end of April at the latest and shall have 30 days in which to meet their financial obligations. The shipowner cannot recover the balance in cases where the amount payable in respect of actual fishing operations is less than the advance payment.

C. Inspection and monitoring

Any Community vessel fishing in Equatorial Guinea's fishing zone shall allow on board any official of Equatorial Guinea responsible for inspection and monitoring and shall assist him in the accomplishment of his duties. The official must not remain on board any longer than is necessary for the verification of catches by random checks and for any other inspection relating to fishing activities.

D. Fishing zones

The vessels referred to in Article 1 of the Protocol shall be authorized to fish in waters beyond four nautical miles from the base lines.

E. Entering and leaving the zone

All Community vessels fishing under the Agreement in the Equatorial Guinea zone shall communicate to the radio station indicated on the licence the date and time and their position when entering and leaving the Equatorial Guinea fishing zone.

F. Procedure in case of boarding

1. The delegation of the Commission of the European Communities in Equatorial Guinea shall be notified within two working days of any boarding within the Equatorial Guinea exclusive economic zone of a fishing vessel flying the flag of a Member State of the Community and holding a valid licence granted under the Agreement. The authorities shall at the same time receive a brief report of the circumstances and reasons leading to the boarding.
2. Before any measures regarding the master or the crew of the vessel or any action regarding the cargo and equipment of the vessel are considered, other than those to safeguard evidence relating to the presumed infringement, a consultation meeting shall be held, within one working day from the receipt of the abovementioned information, between the delegation of the Commission of the European Communities in Equatorial Guinea, the Fisheries Department and the inspection authorities, possibly attended by a representative of the Member State concerned. At the meeting, the parties shall exchange any relevant documentation or information helping to clarify the circumstances of the established facts. The shipowner or his representative shall be informed of the outcome of the meeting and of any measures resulting from the boarding.
3. Before any judicial procedure, an attempt shall be made to resolve the presumed infringement through a compromise procedure. This procedure shall end no later than three working days after the boarding.
4. Should the case not be settled by means of compromise, and therefore be brought before a competent Equatorial Guinea judicial body, a reasonable bank security shall be fixed by the competent authority within two working days, following the conclusion of the compromise procedure, pending the judicial decision. The bank security shall be released by the competent authority once the master of the vessel concerned has been acquitted by the judicial decision.

5. The vessel and its crew shall be released either:
- at the end of the consultation meeting, if the established facts permit,
 - or
 - on receipt of payment of a fine (compromise procedure),
 - or
 - once a bank security is deposited (judicial procedure).
6. Should one of the Parties consider that there is a problem in the application of the abovementioned procedure, it may request urgent consultations under Article 8 of the Agreement.
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Annex 1

REPUBLIC OF EQUATORIAL GUINEA

APPLICATION FOR A FISHING LICENCE

- 1. Valid from: to:
- 2. Name of vessel:
- 3. Name of shipowner:
- 4. Port and registration number:
- 5. Type of fishing:
- 6. Authorized mesh size:
- 7. Length of vessel:
- 8. Width of vessel:
- 9. Gross registered tonnage:
- 10. Hold capacity:
- 11. Engine rating:
- 12. Type of construction:
- 13. Usual number of seamen aboard:
- 14. Radio/electrical equipment:
- 15. Master's name:

The above information is the sole responsibility of the shipowner or his representative.

Date of application:

FINANCIAL STATEMENT				
		DATE		
1. BUDGET HEADING :B7-800				
2. TITLE : New protocol EC/Equatorial Guinea				
3. LEGAL BASIS : Agreement EC/Equatorial Guinea				
4. AIMS OF PROJECT : Protocole for a period of 3 years				
5. FINANCIAL IMPLICATIONS	PERIOD OF 12 MONTHS	CURRENT FINANCIAL YEAR (94)	FOLLOWING FINANCIAL YEAR (95)	
5.0. EXPENDITURE				
- charged to the EC budget (refunds/intervention)		220.000 ECU (annual average)	220.000 ECU (annual average)	
- national administration				
- other				
5.1. REVENUE				
- own resources of the CE (levies/customs duties)				
- national				
	1994	1995	1996	1997
5.0.1. ESTIMATED EXPENDITURE	220.000 (annual average)	220.000 (annual average)	220.000 (annual average)	
5.2. METHOD OF CALCULATION:				
- financial contribution :		412.500 ECU		
- scientific programme :		120.000 ECU		
- study grants :		127.500 ECU		
Financial compensation :		660.000 ECU		
Average annual cost :		220.000 ECU		
6.0. CAN THE PROJECT BE FINANCED FROM APPROPRIATIONS ENTERED IN THE RELEVANT CHAPTER OF THE CURRENT BUDGET ?				
				YES/++
6.1. CAN THE PROJECT BE FINANCED BY TRANSFER BETWEEN CHAPTERS OF THE CURRENT BUDGET ?				
				YES/++
6.2. IS A SUPPLEMENTARY BUDGET NECESSARY ?				
				+++/NO
6.3. WILL FUTURE BUDGET APPROPRIATIONS BE NECESSARY ?				
				YES/++
OBSERVATIONS :				

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DOCUMENTS

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