

Protocol establishing the fishing opportunities and the compensation provided for in the Agreement between the European Economic Community and the Government of the Republic of Guinea-Bissau on fishing off the coast of Guinea-Bissau for the period 16 June 2001 to 15 June 2006

Official Journal L 19 , 22/01/2002 pp. 35 - 46

Article 1

For a period of five years from 16 June 2001, the fishing opportunities granted pursuant to Article 4 of the Agreement shall be as follows:

1. (a) freezer shrimp trawlers: 9600 gross registered tonnes (GRT) per year;
(b) freezer fin-fish and cephalopod trawlers: 2800 gross registered tonnes per year;
2. freezer tuna seiners: 40 vessels;
3. pole-and-line tuna vessels and surface longliners: 36 vessels.

Article 2

1. For the first three years of application of the Protocol, the compensation provided for in Article 9 of the Agreement shall be fixed at EUR 10000000 annually (EUR 9000000 of financial compensation, payable no later than 15 January 2002 for the first year and after the anniversary date of the Protocol in the following years, and EUR 1000000 for the measures provided for in Article 4 of this Protocol).

2. For the final two years of application of the Protocol, the compensation provided for in Article 9 of the Agreement shall be fixed at EUR 10500000 annually (EUR 9500000 of financial compensation and EUR 1000000 for the measures provided for in Article 4 of this Protocol).

3. The Government of the Republic of Guinea-Bissau shall have full discretion regarding the use to which the financial compensation is put.

4. The financial compensation shall be paid into an account specified by the Government of the Republic of Guinea-Bissau and opened with the Public Treasury.

Article 3

The two parties undertake to promote responsible fishing in Guinea-Bissau waters based on the principle of non-discrimination between the different fleets fishing in these waters.

During the period covered by this Protocol, the Community and the Guinea-Bissau authorities shall follow the evolution of resources in Guinea-Bissau's fishing zone. A joint scientific meeting shall be held annually in Brussels or Bissau to that end.

Based on the conclusions of the annual scientific meeting and the best available scientific advice, the two parties shall consult each other within the Joint Committee provided for in Article 11 of the Agreement and, where necessary and by common agreement, take measures to ensure the sustainable management of fisheries resources.

Should the above measures involve a reduction in the fishing opportunities granted under this Protocol, the compensation shall be adjusted.

At the request of the Community, the fishing opportunities granted under this Protocol may be increased by successive instalments of 1000 GRT per year, if resources permit. In such cases, the compensation referred to in Article 2 shall be increased proportionately, pro rata temporis.

Article 4

The measures set out below shall be financed from the compensation provided for in Article 2(1), as follows:

- (a) financing of a Guinea-Bissau scientific or technical programme to improve information on fisheries resources and the monitoring of the evolution of resources in Guinea-Bissau's fishing

zone and the functioning of the fisheries research laboratory, in particular as regards the improvement of health and hygiene conditions in the fisheries sector: EUR 200000 per year;

(b) 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 EUR 150000 per year. At the request of the Guinea-Bissau authorities, part of that sum may be used to cover the costs of participation in international meetings or training courses concerning fisheries or the organisation of seminars on fishing in Guinea-Bissau. This sum shall be paid into the account specified by the competent national authorities, who shall administer all the study awards and other activities financed in this way;

(c) support for investments in the small-scale fishing sector: EUR 250000 per year;

(d) fisheries surveillance, including setting up a satellite vessel monitoring system (VMS): EUR 300000 per year;

(e) institutional support for the Ministry of Fisheries: EUR 60000 per year;

(f) technical assistance to set up and monitor the above measures, the content and arrangements for which shall be defined by common agreement between the two parties: EUR 40000 per year. The measures shall be decided on by the competent national authorities on the basis of an action programme, which shall be sent to the Commission of the European Communities for information before the first payment.

Article 5

The amounts referred to in Article 4(a), (c), (d), (e), and (f) shall be made available to the competent Guinea-Bissau authorities and bodies no later than 15 January 2002 for the first year and after the anniversary date of the Protocol for the following years, and shall be paid into the bank accounts of the competent Guinea-Bissau authorities according to the schedule for their use. The amounts referred to in Article 4(b) shall be payable as they are used. The competent national authorities shall transmit an annual report on the implementation of these measures and the results achieved, and on any difficulties encountered, to the Delegation of the European Commission in Guinea-Bissau, not later than three months after the anniversary date of the Protocol. This report shall include information on the implementation of training measures financed by the payments from shipowners provided for in point 5.3 of the Technical Annex. The European Community reserves the right to ask the competent national authorities for any additional information on the results and, where applicable, to reconsider the payments concerned should the measures not be implemented.

Article 6

Should the Community fail to make the payments provided for in Articles 2 and 4, Guinea-Bissau reserves the right to suspend the application of this Protocol.

Article 7

Where severe circumstances not attributable to natural phenomena prevent fishing activities in Guinea-Bissau's exclusive economic zone, the European Community may suspend payment of the compensation during the period when fishing is prevented following prior consultations, where possible, between the two parties. Payment of the compensation shall recommence once the situation returns to normal and following consultation between the two parties confirming that the situation is likely to allow a return to normal fishing activities.

Article 8

The Annex to the Agreement between the European Economic Community and the Government of the Republic of Guinea-Bissau on fishing off the coast of Guinea-Bissau is hereby repealed and replaced by the Annex hereto.

Article 9

This Protocol with its Annexes shall enter into force on the date on which the parties notify each other of the completion of the procedures necessary for that purpose.
It shall apply from 16 June 2001.

ANNEX

CONDITIONS GOVERNING THE PURSUIT OF FISHING ACTIVITIES BY COMMUNITY VESSELS IN GUINEA-BISSAU'S FISHING ZONE

1. Licence application and issuing formalities

1.1. The competent European Community authorities shall present to the Ministry of Fisheries of the Republic of Guinea-Bissau, via the Delegation of the European Commission in Guinea-Bissau, an application for each vessel wishing to fish under the Agreement, at least 20 days before the date of commencement of the requested term of validity.

Applications shall be made on the forms provided for that purpose by the Government of the Republic of Guinea-Bissau, a specimen of which is attached (Appendix 1).

1.2. Licence applications shall be accompanied by proof of payment of the fee for the licence's term of validity, the amount laid down in 6.2 and, in the case of freezer trawlers, a copy of the document drawn up by the Member State certifying the vessel's tonnage in GRT. The fee shall be paid into the account specified by the Guinea-Bissau authorities. The original of the licence shall be issued to the master of the vessel or to his representative.

Should a licence application be made in respect of a vessel which has already had a licence under this Protocol and the technical characteristics of which remain unchanged, this application shall be presented to the Ministry of Fisheries via the Delegation of the European Commission in Bissau, accompanied only by the proof of payment of the fee for the periods in question. The Ministry of Fisheries shall authorise the new licence, entering details of the first licence application submitted under the Protocol in force.

1.3. The Delegation of the European Commission in Bissau shall be notified of each licence issued.

1.4. The fees shall include all national and local charges except for port charges.

1.5. The following 12-month periods shall be used for determining the validity of the licences:

first period: 16 June 2001 to 31 December 2001

second period: 1 January to 31 December 2002

third period: 1 January to 31 December 2003

fourth period: 1 January to 31 December 2004

fifth period: 1 January to 31 December 2005

sixth period: 1 January to 15 June 2006

No licence may begin during a 12-month period and end during the following 12-month period.

1.6. Licences shall be issued for specific vessels and shall not be transferable. However, at the request of the European 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. If the gross registered tonnage (GRT) of the replacement vessel is above that of the vessel to be replaced, the difference in fee must be paid pro rata temporis.

The new licence shall take effect on the day that the vessel's owner returns the cancelled licence to the Ministry of Fisheries of the Republic of Guinea-Bissau. The Delegation of the European Commission in Bissau shall be informed of the licence transfer.

1.7. Provisions applicable to freezer trawlers

1.7.1. Licences must be kept on board at all times.

1.7.2. Before licences are issued, vessels must put into the port of Bissau once in each 12-month period so that the inspection required under the regulations can be carried out. This inspection shall be carried out exclusively by duly authorised persons and must be effected within 48 working hours of arrival of the vessel in port if arrival has been announced at least 72 hours in advance. If the licence is not issued within the 48-hour limit for reasons ascribable to the Ministry of Fisheries, any costs arising shall be borne by the latter. If the vessel remains in port after the licence is issued, the shipowner shall bear the relevant costs and charges.

Should a new licence be allocated in that same 12-month period, vessels whose technical characteristics remain unchanged shall not be required to undergo inspection or to put into the port. However, any costs arising from the issuing of the licence shall be borne by the shipowner.

1.7.3. Article 4(3) of the Agreement notwithstanding, licences shall be issued for three, six or twelve months and shall be renewable. Utilisation of the fishing opportunities granted under Article 1 of the Protocol shall be calculated with regard to the term of validity of licences. In the first and last 12-month periods, licences shall be payable in proportion to their term of validity.

1.7.4. The fees payable by shipowners shall be as follows in EUR per GRT:

- for annual licences:

- 197 for fin-fish trawlers,
- 219 for cephalopod trawlers,
- 279 for shrimp trawlers;

- for six-month licences:

- 102 for fin-fish trawlers,
- 113 for cephalopod trawlers,
- 144 for shrimp trawlers;

- for three-month licences:

- 52 for fin-fish trawlers,
- 58 for cephalopod trawlers,
- 73 for shrimp trawlers.

These fees shall be increased by 5 % as from the fourth 12-month period of application of the Protocol.

1.7.5. As an alternative to the compulsory landing at market prices provided for under point 4, the supplementary fees for shipowners opting not to land fish shall be as follows:

- EUR 7/GRT for three-month licences,
- EUR 14/GRT for six-month licences,
- EUR 23/GRT for annual licences.

1.8. Provisions applicable to licences for tuna vessels and surface longliners

1.8.1. Licences must be held on board at all times; however, once the Commission of the European Communities has informed the Guinea-Bissau authorities that the advance payment has been made, the latter shall enter the vessel in question in the register of vessels authorised to fish that is sent to the Guinea-Bissau surveillance authorities. Pending receipt of the original of the licence, a copy of the licence that has been drawn up may be issued by fax to be held on board the vessel.

1.8.2. Licences shall cover 12-month periods. The fees shall be EUR 25 per tonne caught within Guinea-Bissau's fishing zone.

1.8.3. Licences shall be issued following payment to the competent national authorities of a lump sum of EUR 2250 per year for each tuna seiner, EUR 375 per year for each pole-and-line tuna vessel and EUR 625 per year for each surface longliner, covering the fees for:

- 90 tonnes of tuna caught per year in the case of seiners,
- 15 tonnes caught per year in the case of pole-and-line tuna vessels,
- 25 tonnes caught per year in the case of surface longliners.

1.8.4. The final statement of the fees due for the fishing year shall be drawn up by the Commission of the European Communities at the end of each calendar year on the basis of the catch declarations made by each shipowner and confirmed by the scientific institutes responsible for verifying catch data (ORSTOM and IEO). The statement shall be forwarded to the Ministry of Fisheries and to the shipowners at the same time. Any additional payments shall be made by the shipowners to the competent Guinea-Bissau authorities by 31 May of the following year at the latest, into the account referred to in 1.2. However, if the final statement is lower than the abovementioned advance, the resulting balance shall not be reimbursed.

2. Catch declarations

All Community vessels authorised under the Agreement to fish in Guinea-Bissau's fishing zone are required to forward a declaration of their catches to the Ministry of Fisheries, with a copy to the Delegation of the European Commission in Guinea-Bissau, in accordance with the following:

- for trawlers a declaration shall be made out according to the specimen annexed hereto (Appendix 2). The declarations shall be drawn up each month and presented at least once each quarter;
- for tuna seiners, pole-and-line tuna vessels and surface longliners, a fishing log shall be kept, in accordance with Appendix 3, for the fishing periods spent in Guinea-Bissau's fishing zone. The form must be sent every six months to the Ministry of Fisheries via the Delegation of the European Commission in Guinea-Bissau. Where no fishing operations are carried out in Guinea-Bissau's fishing zone, shipowners are nevertheless required to forward a declaration to the effect that no catch has been made;
- forms must be completed legibly, giving in particular the monthly totals per species, and must be signed by the master of the vessel.

Should these provisions not be adhered to, the Government of Guinea-Bissau reserves the right to suspend and, in the event of a second offence, not to renew the licence of the offending vessel until the formality has been complied with.

3. By-catches

3.1. Fin-fish trawlers may not hold on board crustaceans or cephalopods accounting, in each case, for more than 9 % of their total catch in Guinea-Bissau's fishing zone.

Cephalopod trawlers may not hold on board crustaceans accounting for more than 9 % of their total catch in Guinea-Bissau's fishing zone.

Shrimp trawlers may not hold on board cephalopods and fin-fish accounting for more than 50 % of their total catch in Guinea-Bissau's fishing zone.

3.2. Pole-and-line tuna vessels shall be authorised to fish for live bait with a view to carrying out their fishing activities in Guinea-Bissau's fishing zone.

4. Fish landings

With a view to security of fish supplies for the local market, trawlers shall undertake to land fish at the market price.

Community shipowners may choose between landing the catch or an alternative flat-rate payment.

4.1. Should the shipowner opt to land the catch, the following quantities must be landed at the market price:

- fin-fish trawlers: 50 kg of fish per GRT and per quarter,
- cephalod trawlers: 30 kg of fish per GRT and per quarter,
- shrimp trawlers: 10 kg of fish per GRT and per quarter,

These landings may be made individually or collectively.

Shipowners shall inform the Guinea-Bissau Ministry of Fisheries of the landing as quickly as possible and at least 48 hours before their estimated time of arrival in port, indicating the estimated total quantity to be landed.

Landing operations should take no longer than 24 hours following the arrival of the vessel in port. If this deadline is not met, the vessel is authorised to leave the port and considered to have met its obligation to land the quantity declared by the shipowner. Where this 24 hour deadline is not met, a number of fishing days proportional to the period of landing shall be deducted from the subsequent licence for that vessel or for another vessel designated by the shipowner with the same technical characteristics. Moreover, all port charges and costs shall be borne by Guinea-Bissau.

The above time limits shall not include Saturdays, Sundays and public holidays.

A certificate indicating the quantity and value of the catches landed shall be issued to the captain of the vessel at the end of the landing operations.

Any failure to comply with the requirement to land catches shall incur a fine of EUR 1000 for each tonne not landed.

4.2. Should the shipowner opt to pay the flat-rate payment, the provisions of point 1.7.5 shall apply.

5. Signing-on of seamen

Owners who have been issued fishing licences under the Agreement shall contribute to the practical vocational training of Guinea-Bissau nationals and to an improvement of the labour market, subject to the conditions and limits set out below.

5.1. Each trawler owner shall undertake to employ:

- three seamen/fishermen on vessels of less than 250 GRT,
- four seamen/fishermen on vessels of 250 to 400 GRT,
- five seamen/fishermen on vessels of 400 to 650 GRT,
- six seamen/fishermen on vessels of more than 650 GRT.

However, Community shipowners shall strive to increase the complement of Guinea-Bissau seamen signed on to 33 % of the non-officer crew engaged in fishing activities.

Such seamen shall be selected by shipowners. However, depending on training and employment needs, Guinea-Bissau may designate a maximum of one seaman per trawler.

5.2. Owners of tuna vessels and surface longliners shall undertake to employ Guinea-Bissau nationals, subject to the conditions and limits set out below:

- for the fleet of tuna seiners, seven Guinea-Bissau seamen shall be signed on during the fishing season in Guinea-Bissau's fishing zone,
- for the fleet of pole-and-line tuna vessels and surface longliners, 17 Guinea-Bissau seamen shall be signed on for the tuna fishing season in Guinea-Bissau's fishing zone, all of them to be assigned to different vessels.

5.3. The wages of these seamen/fishermen shall be fixed, before licences are issued, by common agreement between the shipowners or their representatives and the Ministry of Fisheries; wages shall be paid by the shipowners and must include the social contributions to which seamen are subject (including life assurance and accident and sickness insurance).

Should the seamen not be signed on, the owners of tuna seiners, pole-and-line tuna vessels and surface longliners shall be obliged to pay as soon as possible a lump sum equivalent to the wages of seamen not signed on for the fishing season.

That sum shall be used for the training of seamen/fishermen in Guinea-Bissau and shall be paid into an account specified by the Guinea-Bissau authorities.

6. Observers on board

6.1. Each trawler shall take on board an observer appointed by the Ministry of Fisheries.

Observers shall not normally remain on board for more than two consecutive trips. The embarkation and debarkation of observers may not interrupt trips or fishing operations.

6.2. Observers shall be treated as officers. They shall:

- observe the fishing activities of the vessels,
- perform biological sampling in the context of scientific programmes,
- note the fishing gear used,
- verify the catch data for Guinea-Bissau's zone recorded in the logbook,
- report fishing data by radio at least once a week.

While on board, observers shall:

- take all appropriate steps to ensure that the conditions under which they are taken on board and their presence on board do not interrupt or hamper fishing activities,
- respect the material and equipment on board and the confidentiality of all documents belonging to the vessel,
- draft an activity report to be transmitted to the competent Guinea-Bissau authorities. Those authorities shall send a copy of the report, after processing and within one week, to the Delegation of the European Commission in Bissau.

The terms of observers' embarkation are to be agreed between the shipowner or his agent and the Guinea-Bissau authorities. Their wages and social insurance contributions are to be paid by the Ministry of Fisheries.

As a contribution to the costs arising from the presence of the observer on board, together with the licence fee the shipowner shall pay the Guinea-Bissau authorities the sum of EUR 10 per GRT per year pro rata temporis for each vessel fishing in Guinea-Bissau waters.

Should the observer be taken on board in a foreign port, his travelling costs shall be borne by the shipowner. Should a vessel with an observer from Guinea-Bissau on board leave the Guinea-Bissau fishing zone, all measures must be taken to ensure the observer's return to Bissau as soon as possible at the expense of the shipowner.

If the observer is not present at the time and place agreed and during the 12 hours following the time agreed, the shipowner shall be automatically absolved of his obligation to take the observer on board.

6.3. Tuna seiners and surface longliners shall take an observer on board at the request of the Ministry of Fisheries.

In such cases, the port of embarkation shall be determined by common agreement between the Ministry of Fisheries and the shipowners or their representatives.

7. Inspection and monitoring

Community vessels fishing in Guinea-Bissau's fishing zone shall permit and assist any Guinea-Bissau official responsible for inspection and monitoring to board the vessel and carry out his duties on board. The official must not remain on board any longer than is necessary to verify catches by random checks and to conduct any other inspection relating to fishing activities.

8. Fishing zones

Freezer trawlers as referred to in Article 1 of the Protocol shall be authorised to fish in waters beyond 12 nautical miles from the base lines.

9. Authorised mesh size

The minimum mesh size authorised for the trawl body (mesh fully extended) shall be:

- (a) 70 mm for fin-fish vessels,
- (b) 70 mm for cephalopod vessels,
- (c) 40 mm for shrimp vessels,
- (d) 16 mm for fishing for live bait.

Outrigger fishing shall be authorised.

10. Entering and leaving the zone

Community vessels fishing under the Agreement in Guinea-Bissau's fishing zone shall report the date and time and their position to the radio station of the Ministry of Fisheries on entering and leaving Guinea-Bissau's fishing zone.

When licences are issued, the Ministry of Fisheries shall inform the shipowners of the call sign, frequency and working hours of the station.

Where they cannot communicate information by radio, vessels may use alternative means, such as telex, telegram or fax (numbers 20.11.57, 20.19.57 and 20.16.84).

11. Procedure for boarding and application of penalties

11.1. The Delegation of the European Commission in Guinea-Bissau shall be notified within 48 hours of any boarding of or application of penalties to a fishing vessel flying the flag of a Member State of the Community and operating under this Agreement in Guinea-Bissau's waters and shall at the same time receive a summary report of the circumstances surrounding the boarding or application of penalties and the reasons leading to it.

Where boarding takes place, before any judicial proceedings are initiated, an attempt shall be made to settle the alleged infringement through an administrative procedure. This procedure shall end no later than three working days after the boarding.

11.2. If the case cannot be settled by administrative procedure and has to be brought before a competent judicial body, the competent authority shall set a bank security within 48 hours of completion of the administrative procedure, pending the judicial decision. The security shall not exceed the maximum fine provided for under national legislation in respect of the alleged infringement.

The bank security shall be released by the competent authority once the master of the vessel is acquitted by judicial decision.

The vessel and its crew shall be released:

- either on fulfilment of the obligations arising from the administrative procedure, or
- once the bank security has been lodged.

12. Provisioning zones

Community vessels wishing to carry out refuelling within 12 nautical miles of the coast-must comply with national legislation in this respect.