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NOTE

From: General Secretariat of the Council
To: Delegations

Subject: Minutes of the negotiations for the renewal of the Protocol to the EU-Kiribati Sustainable Fisheries Partnership Agreement, Hong Kong and Macau, 20 - 23 November 2017

Delegations will find herewith the above-mentioned document, as received from the Commission services.



EUROPEAN UNION – REPUBLIC OF KIRIBATI

**NEGOTIATIONS FOR RENEWAL OF THE PROTOCOL TO THE EU-KIRIBATI
SUSTAINABLE FISHERIES PARTNERSHIP AGREEMENT**

20 – 23 November 2017

European Union Office to Hong Kong and Macao

Representatives from the Republic of Kiribati and the European Union met from 20 to 23 November 2017 in Hong Kong, for the Third Round of Negotiations of a new Fisheries Protocol.

The Republic of Kiribati delegation was led by Ms Naomi Biribo, Secretary of the Ministry of Fisheries and Marine Resources Development and the EU delegation was led by Mr Emmanuel Berck, Deputy-Head of Unit, Trade Negotiations and Sustainable Fisheries Partnership Agreements, Directorate General for Maritime Affairs and Fisheries, of the European Commission.

In their opening statements both Parties recognised the long cordial – bilateral partnership in fisheries and looked forward to a positive and constructive approach in view of renewing the Protocol. Mr Emmanuel Berck underlined the importance of SFPAs as a tool for fisheries governance and in that context, the willingness of the European Union to accompany Kiribati in addressing the challenges in its fisheries and maritime policy. Ms Naomi Biribo stressed the importance and value of tuna resources as a source of livelihood and revenue for Kiribati. The recent Kiribati 20 Year Vision focuses on fisheries and tourism sector to support the economic development of the country recognising at the same time the significance of sustainable management of the fisheries resources. Kiribati values partnership to achieve its vision and acknowledges the keen interest of the EU in the context of this SPFA.

The draft Agenda was adopted and it is attached as Annex 1. The list of participants is attached as Annex 2.

Significant progress on the main principles underlying a new Protocol has been achieved, such as the use of a reference tonnage as a method for calculating the financial contribution, stability of the EU contribution and a 4-year term Protocol. However, Parties considered it necessary to work further on the figures related to historical fishing activities of Union vessels in the Kiribati fishing zone in order to determine the reference tonnage and the financial

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contribution to be paid. Therefore it was not possible for both Parties to reach an agreement on the final text for a Fisheries Protocol.

A detailed review of the text proposed for a new Fisheries Protocol was also undertaken by both Parties. The draft text of the Protocol is attached in Annex 3. However, the draft Annex and its appendixes were not discussed entirely. It was agreed that Kiribati will submit comments in writing in advance of the next round of negotiations.

Discussions were held in a positive, open and constructive atmosphere. Both the EU and Kiribati expressed their satisfaction on the progress achieved during the negotiations and look forward to a successful conclusion of the negotiation in the near future. As a result, both Parties agreed to hold the next round of negotiations in early 2018 at a place and location to be agreed upon.

For the Republic of Kiribati:



Ms Naomi Biribo,
Secretary
Ministry of Fisheries and Marine Resources
Development

For the European Union:



Mr Emmanuel Berck,
Deputy Head of Unit
Directorate General for Maritime
Affairs and Fisheries
European Commission



EUROPEAN UNION – REPUBLIC OF KIRIBATI

Agenda

**NEGOTIATIONS FOR RENEWAL OF THE PROTOCOL TO THE EU-KIRIBATI
SUSTAINABLE FISHERIES PARTNERSHIP AGREEMENT**

20 - 23 November 2017

European Union Office to Hong Kong and Macao

Monday, 20 November 2017

1. Introduction

- 1.1. Timetable and procedures of the negotiation
- 1.2. Fisheries legal framework in the Kiribati EEZ (presentation by Kiribati)

2. Review of the Protocol texts and its Annexes

- 2.1. Protocol duration
- 2.2. Fishing opportunities / reference tonnage
- 2.3. EU financial contribution for access
- 2.4. Fishing authorisations, fees and advance payments for ship-owners
- 2.5. Sectoral support
- 2.6. Review of technical Annexes and Appendices

Tuesday, 21 November 2017

Continuation of discussions

Wednesday, 22 November 2017

Continuation of discussions

Thursday, 23 November 2017

1. Continuation of discussions
2. Minutes of the meeting
3. Conclusion and next steps.



EUROPEAN UNION – REPUBLIC OF KIRIBATI

List of Participants

**NEGOTIATIONS FOR RENEWAL OF THE PROTOCOL TO THE EU-KIRIBATI
SUSTAINABLE FISHERIES PARTNERSHIP AGREEMENT**

20 - 23 November 2017

European Union Office to Hong Kong and Macao

European Union: Mr. Emmanuel Berck (Head of Delegation) Ms. Jurate Smalskyte Mr. J. Ignacio de Leiva	Republic of Kiribati: Ms. Naomi Biribo (Head of Delegation) Ms. Aketa Taanga Ms. Ruria Iteraera
Member States Mr. Samuel Juarez (Spain)	

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PROTOCOL

setting out the fishing opportunities and financial contribution provided for in the Fisheries Partnership Agreement between the European Union and the Republic of Kiribati

Article 1

Period of application and fishing opportunities

1. This Protocol and its Annex shall apply for a period of 4 years starting from the date on which it is signed unless notice of termination is given in accordance with Article 12 of this Protocol.
2. Kiribati shall grant fishing authorisations to the Union tuna fishing vessels pursuant to Article 6 of the Fisheries Partnership Agreement (hereinafter 'the Agreement') within the limits established by the Kiribati Tuna Management Plan, the Western and Central Pacific Fisheries Commission (WCPFC) conservation and management measures and taking into account the resolutions of the Inter-American Tropical Tunas Commission (IATTC).
3. The fishing opportunities granted for each year under Article 5 of the Agreement shall be for XX tonnes of highly migratory species as listed in Annex 1 to the 1982 United Nations Convention on the Law of the Sea. The number of authorised vessels under this Protocol is 4 purse seiners.
4. Paragraphs 2 and 3 shall apply subject to Articles 2 and 5 of this Protocol.

Article 2

Financial contribution — Methods of payment

1. The Union shall pay each year during the period of application of this Protocol an annual contribution of EUR XX.
2. The financial contribution shall comprise two elements:
 - (a) an annual amount for the access to the Kiribati fishing zone of EUR XX for a reference tonnage of XX tonnes per year;
 - (b) a specific annual amount of EUR XX for the support and implementation of initiatives taken in the context of the Kiribati sectoral fisheries policy.
3. In addition, ship-owners shall pay an annual financial contribution to Kiribati as defined in Section 6 of the Annex.
4. Paragraph 1 of this Article shall apply subject to Articles 3, 5, 7 and 9 of this Protocol and to Articles 12 and 13 of the Agreement.

5. The Union shall pay the amount referred to in paragraph 2(a) no later than 60 days after the start of the provisional application for the first year, and, for the following years, no later than the anniversary date of the provisional application.

6. Both parties will secure to closely follow up the utilisation of Union fishing opportunities in the Kiribati fishing zone. Once EU vessels have taken 80% of the fishing opportunities, the Parties shall consult each other and analyse the relationship between the fishing opportunities of Union vessels and the fishing limits specified in the Kiribati national legislation in view of ensuring that such legislation is respected. [To ensure the promotion of responsible and sustainable management, where the catches made by Union vessels have reached XX tonnes, Kiribati may decide to close the fishing activities for the Union vessels].

[7. In the event that Kiribati authorises EU vessels to continue fishing beyond the reference tonnage referred to in Article 1, it shall inform the Union on the price per tonne, expected for any additional catch. If the annual level of catches exceeds the annual reference tonnage, the Union financial contribution for access rights shall be EUR XX for each additional tonne caught. The ship-owners shall pay the remaining part of the price per tonne.]

8. The total annual amount paid by the Union for access shall not be more than twice the amount indicated in point (a) of paragraph 2. Where the quantities caught by Union vessels in Kiribati fishing zone exceed the quantities corresponding to twice the total annual amount, the amount due for the quantity exceeding that limit shall be paid in the subsequent year.

9. The Union financial contribution under Article 2 paragraph 2(a) as well as the ship-owners contribution under Article 2 paragraph 3 shall be paid into the Kiribati Government account No 1 with the ANZ Bank of Kiribati, Ltd, Bairiki, Tarawa. The Union financial contribution indicated in Article 2 paragraph 2(b) of this Protocol shall be paid into the Kiribati Government Account No 4 with the ANZ Bank of Kiribati, Ltd, Bairiki, Tarawa ('Fisheries Sectoral Support'). The account numbers shall be confirmed annually by the Kiribati authorities to the Union.

Article 3

Sectoral Support

1. The financial contribution as indicated in Article 2 paragraph 2(b) shall be managed by the Kiribati authorities in the light of objectives agreed within the Joint Committee.

2. No later than three months after the date of provisional application of the Protocol, the Joint Committee shall agree on:

- (a) annual and multiannual sectoral programme for using the financial contribution referred to in Article 2 paragraph 2(b);
- (b) the objectives, both annual and multiannual, to be achieved with a view to promoting, over time, responsible fishing and sustainable fisheries, taking

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account of the priorities expressed by Kiribati in its 20 Year Vision, national fisheries policy and other related policies having an impact on responsible and sustainable fisheries;

- (c) detailed implementing rules and procedures, including, where appropriate, budgetary and financial indicators, for evaluating the results obtained each year

3. The specific amount of the financial contribution for sectoral support under Article 2 paragraph 2(b) shall be paid every year according to progress achieved. For the first year of the Protocol, the financial contribution shall be paid on the basis of the needs identified as part of the agreed programming. For the subsequent years of application, the financial contributions shall be paid based on the results achieved in the implementation of the sectoral programme. Payment of the financial contribution shall occur no later than 45 days after the decision of the Joint Committee.

4. Each year, Kiribati shall provide a progress report on the actions implemented and the results achieved with sectoral support, which shall be examined by the Joint Committee. Kiribati shall also produce a final report before expiry of the present Protocol.

5. The Union may review, suspend, partially or totally, payment of the specific financial contribution provided for in Article 2 paragraph 2(b) of this Protocol:

- (a) if the results obtained are inconsistent with the programming, following an evaluation carried out by the Joint Committee;
- (b) in the event of failure to implement this financial contribution as determined by the Joint Committee.

6. The Joint Committee is responsible for the follow-up of the implementation of the multiannual sectoral support programme. If necessary, both parties shall continue this follow-up through the Joint Committee, after the expiry of this Protocol until the specific financial counterpart related to sectoral support foreseen in Article 2 paragraph 2(b) has been fully utilised.

7. However, the payment of the financial contribution foreseen in Article 2 paragraph 2(b) cannot be paid after a period of 8 months following the expiry of this Protocol.

8. The Parties undertake to ensure visibility of the actions implemented with sectoral support.

Article 4

Principles for sustainable and responsible fishing

1. Both parties hereby undertake to promote responsible fishing in the Kiribati fishing zone as defined in the Annex based on the principles set out in the FAO's Code of Conduct and of non-discrimination between the different fleets fishing in

that zone.

2. During the period covered by this Protocol, the Union and Kiribati shall ensure the sustainable use of the fishery resources in the Kiribati fishing zone.
3. The parties undertake to promote scientific cooperation at sub-regional level on responsible fishing and, in particular, within the WCPFC and IATTC and any other sub-regional or international organisation concerned to which they are members.
4. In accordance with Article 4 of the Agreement, Article 4 paragraph 1 of this Protocol and in light of the best available scientific advice, the Parties may within the Joint Committee adopt, where appropriate, measures in respect of the activities of Union vessels licensed and authorised to undertake fishing activities by this Protocol to ensure sustainable management of the fishery resources in the Kiribati fishing zone.

Article 5

Adjustment of fishing opportunities

1. The fishing opportunities referred to in Article 1 may be adjusted by mutual agreement within the Joint Committee insofar as the recommendations of WCPFC, regional and sub-regional organisations, corroborate that such an adjustment will secure the sustainable management of Kiribati resources. In this case the financial contribution referred to in Article 2 paragraph 2(a) of this Protocol shall be adjusted proportionately and *pro rata temporis*.
2. If the fishing opportunities available to EU vessels are reduced due to conservation and management measures adopted by Kiribati, WCPFC or IATTC, the Joint Committee shall by mutual agreement adjust the financial contribution of this Protocol proportionately and *pro rata temporis*.

Article 6

Conditions governing fishing activities

1. Union vessels may fish in Kiribati fishing zone only if they are in possession of a valid fishing authorisation issued by Kiribati authorities under this Protocol.
2. In the interest of transparency, Kiribati will inform the Union on the number of foreign vessels authorized to fish in the waters under its jurisdiction.
3. Both Parties shall cooperate to implement a monitoring system of the utilization of fishing opportunities by EU vessels through the appropriate tools and electronic or any other reporting system.

*Article 7***Suspension and Review of the Payment of the Financial Contribution**

1. The financial contribution referred to in Article 2 paragraph 2(a) of this Protocol may be reviewed or suspended in the event that unusual circumstances, other than natural phenomena, prevent fishing activities in the Kiribati fishing zone following consultation and agreement of the two parties within a period of two months following the request of one of the parties, and provided that the EU has paid in full any amount due at the time of suspension.
2. Suspension of the payment shall require the EU to notify its intention in writing at least two months before the date on which the suspension is due to take effect.
3. Payment of the financial contribution shall recommence once the situation has been remedied following actions to mitigate the above mentioned circumstances and following consultation and agreement of the two Parties confirming that the situation is likely to allow a return to normal fishing activities.

*Article 8***Suspension and reinstatement of fishing authorisations**

1. Kiribati reserves the right to suspend and revoke fishing authorisations provided under Article 1 paragraph 2 of this Protocol where:
 - (a) a specific vessel is found to be in serious violation of the Kiribati laws and regulations; or
 - (b) a court order issued in relation to a violation of a specific vessel has not been respected by the ship-owner.
2. The fishing authorisation that has been suspended remains suspended unless a court order under paragraph 1 (b) has been respected, and provided Kiribati authorities agree to reinstate the fishing authorisation for the remaining period of that fishing authorisation.

*Article 9***Suspension of the application of the Protocol**

1. The implementation of this Protocol, including payment of the financial contribution as referred to in Article 2 paragraphs 2(a) and 2(b), may be suspended at the initiative of either one of the Parties in the event of:
 - (a) Union fails to make the payments provided for in Article 2 paragraph 2 of this Protocol for reasons not covered in Article 3 paragraph 5 and Article 7 paragraph 1.
 - (b) a dispute between the Parties over the interpretation of this Protocol or its




implementation arises;

- (c) either one of the Parties does not respect the provisions of this Protocol,
- (d) either one of the Parties ascertains a breach of essential and fundamental elements of human rights as laid out by Article 9 of the Cotonou Agreement.

2. Suspension of application of the Protocol shall be notified in writing by the interested Party to the other Party and shall take effect three months after receipt of notification. The Parties shall consult each other from the moment of notification of suspension with a view to finding an amicable settlement to their dispute within three months. Where such settlement is reached or as soon as the situation existing prior to the events mentioned in paragraph 1(a) has been re-established, implementation of the Protocol shall resume and the amount of the financial contribution referred to in Article 2 shall be reduced proportionately and *pro rata temporis* according to the duration of the suspension.

Article 10

National laws and regulations

1. The activities of Union fishing vessels when operating in the Kiribati fishing zone under this Protocol shall be governed by the applicable laws and regulations in Kiribati, unless otherwise provided for in the Agreement, this Protocol and the Annex and Appendices hereto.
2. Any changes or new legislation which is related to the activities of Union vessels shall apply to them from the 60th day following the day when the notification is received by the EU from Kiribati.

Article 11

Review clause

The Parties within the Joint Committee may review the provisions of the Protocol, the Annex and the Appendixes and, where necessary make amendments.

Article 12

Termination

1. This Protocol may be terminated by either party in the event of unusual circumstances such as the degradation of the stocks concerned, the discovery of a reduced level of exploitation of the fishing opportunities granted to the Union vessels, or failure to comply with undertakings made by the parties with regard to

combating illegal, unreported and unregulated fishing.

2. In the event of termination of this Protocol, the party concerned shall notify the other party in writing of its intention to terminate it at least six months before the date on which such termination would take effect. Dispatch of the notification referred to in the previous sentence shall open consultations by the parties.

3. Payment of the financial contribution referred to in Article 2 of this Protocol for the year in which the termination takes effect shall be reduced proportionately and *pro rata temporis*.

Article 13

Electronic exchanges of data

1. Kiribati and the Union encourage the electronic exchange of all information and documents related to the implementation of this Protocol.

2. The electronic form of a document at any point shall be considered equivalent to the paper version.

3. Both Parties will immediately notify the other Party of any disruption of a computer system impeding such exchanges. In these circumstances, the information and documents related to the implementation of this Protocol shall be replaced automatically by their paper version in the manner defined in the Annex.

Article 14

Confidentiality

1. Kiribati shall maintain the confidentiality and security of the commercially sensitive data concerning the Union fishing activities in its fishing zone in a manner no less stringent than the standards established by the WCPFC Commission for the Secretariat in its Information Security Policy.

2. Both Parties shall ensure that only public domain aggregated data for the fishing activities of the Union vessels in the Kiribati fishing zone may be disseminated, in accordance with the WCPFC Rules and Procedures for the Protection, Access to, and Dissemination of Data Compiled by the Commission. Data for the activities of the Union vessels defined as non-public domain by those WCPFC Rules and Procedures and data which may be considered as otherwise confidential shall be used exclusively for the application of the Agreement.

Article 15



Provisional application

This Protocol shall be applied provisionally from the date of its signature by the Parties.

Article 16

Entry into force

This Protocol with its Annex shall enter into force on the date on which the Parties notify each other of the completion of the procedures necessary for that purpose.

