

POMOC PAŃSTWA — ZJEDNOCZONE KRÓLESTWO**Pomoc państwa nr C 37/06 (ex NN 91/05)****Program modernizacji statków rybackich****Zaproszenie do zgłaszania uwag zgodnie z art. 88 ust. 2 traktatu WE****(Tekst mający znaczenie dla EOG)**

(2006/C 293/05)

Pismem z dnia 13 września 2006 r., zamieszczonym w języku oryginału na stronach następujących po niniejszym streszczeniu, Komisja powiadomiła Zjednoczone Królestwo Wielkiej Brytanii i Irlandii Północnej o swojej decyzji dotyczącej wszczęcia postępowania przewidzianego w art. 88 ust. 2 traktatu WE w odniesieniu do wyżej wspomnianej pomocy.

Zainteresowane strony mogą zgłaszać uwagi w terminie jednego miesiąca od daty publikacji niniejszego streszczenia i następującego po nim pisma. Uwagi należy kierować do Dyrekcji Generalnej ds. Konkurencji Komisji Europejskiej na następujący adres lub numer faksu:

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Komentarze te zostaną przekazane Zjednoczonemu Królestwu Wielkiej Brytanii i Irlandii Północnej. Zainteresowane strony zgłaszające uwagi mogą wystąpić z odpowiednio umotywowanym pisemnym wnioskiem o objęcie ich tożsamości klauzulą poufności.

STRESZCZENIE

W czerwcu 2004 r. Komisja została poinformowana o pomocy przyznanej przez Shetland Islands Council, organ państwowy na Wyspach Szetlandzkich, dla sektora rybołówstwa, związanej najprawdopodobniej z nielegalną pomocą państwa.

Na mocy programu modernizacji statków rybackich pomoc, maksymalnie 40 000 GBP na statek przyznano na modernizację statków rybackich, związaną np. ze znaczną poprawą warunków przechowywania połowów, wymianą silnika, poprawą warunków pracy lub bezpieczeństwa załogi. Projekty związane z poprawą warunków, które przekroczyły 50 % kosztów nowego statku tego samego rodzaju nie kwalifikowały się do pomocy, jak również prace dotyczące statków młodszych niż pięć lat.

Zgodnie z art. 88 ust. 3 traktatu WE państwa członkowskie zobowiązane są poinformować Komisję o wszelkich planach przyznania lub zmiany pomocy. Według Zjednoczonego Królestwa program był stosowany przynajmniej od lat 80. do dnia 14 stycznia 2005 r. Jednakże Zjednoczone Królestwo nie było w stanie, z powodu braku dokumentacji dotyczącej wcześniejszego okresu, udowodnić, że środki pomocy istniały już przed przystąpieniem Zjednoczonego Królestwa do Unii, i w związku z tym należy je uważać za istniejącą pomoc. Ponadto Zjednoczone Królestwo potwierdziło, że w ciągu tych lat dokonywało zmian pomocy bez powiadomienia o tym Komisji i dlatego środek pomocy należy uważać za nową pomoc.

Rozporządzenie Rady (WE) nr 659/1999⁽¹⁾ nie ustanawia żadnego terminu przedawnienia zbadania nielegalnej pomocy. Jednakże art. 15 tego rozporządzenia stanowi, że kompetencje Komisji w zakresie windykacji pomocy podlegają dziesięcioletniemu okresowi przedawnienia, że okres przedawnienia rozpoczyna bieg w dniu, w którym przyznano pomoc beneficjentowi oraz że jakiegokolwiek działanie podejmowane przez Komisję powoduje przerwanie okresu przedawnienia. W związku z tym Komisja uznaje, że nie jest konieczne w tym przypadku zbadanie pomocy przyznanej ponad 10 lat przed podjęciem przez Komisję jakiegokolwiek środka dotyczącego tej pomocy. Komisja uznaje, że okres przedawnienia został przerwany wnioskiem o podanie informacji wysłanym do Zjednoczonego Królestwa dnia 24 sierpnia 2004 r. W związku z tym okres przedawnienia ma zastosowanie do pomocy przyznanej beneficjentom przed dniem 24 sierpnia 1994 r. i Komisja ocenia poniżej jedynie pomoc przyznaną na mocy decyzji podjętych między dniem 24 sierpnia 1994 r. i 14 stycznia 2005 r. Zgodnie z informacjami udostępnionymi Komisji od 1994 r. do dnia 14 stycznia 2005 r. w ramach programu przydzielono około 11 673 514 GBP.

Środki stanowią pomoc państwa w rozumieniu art. 87 traktatu WE. Pomoc państwa może być uznana za zgodną ze wspólnym rynkiem, jeżeli odpowiada jednemu z wyjątków przewidzianych w traktacie WE. Pomoc państwa dla sektora rybołówstwa może zostać uznana za zgodną ze wspólnym rynkiem, jeżeli spełnia ona wymogi „Wytucznych dla celów analizy pomocy państwa dla rybołówstwa i akwakultury” mające zastosowanie w chwili przydzielania pomocy⁽²⁾.

⁽¹⁾ Rozporządzenie Rady (WE) nr 659/1999 z dnia 22 marca 1999 r. ustanawiające szczegółowe zasady stosowania art. 93 traktatu WE (Dz.U. L 83 z 27.3.1999, str. 1). Rozporządzenie ostatnio zmienne aktem przystąpienia z 2003 r.

⁽²⁾ Dz.U. C 260 z 17.9.94, str. 3. Dz.U. C 100 z 27.3.1997, str. 12 i Dz.U. C 19 z 20.1.2001, str. 7; Dz.U. C 229 z 14.9.2004, str. 5.

Wytyczne dokonują odesłania do wymogów rozporządzenia (WE) nr 3699/93 i rozporządzenia (WE) nr 2792/1999. Zgodnie z rozporządzeniem (WE) nr 3699/93 kwalifikujące się inwestycje odnoszą się w szczególności do poprawy jakości produktów złowionych i przechowywanych na pokładzie, wykorzystania lepszych metod połowowych i metod związanych z przechowywaniem oraz wdrożenia przepisów prawnych i regulacji dotyczących zdrowia lub poprawy warunków pracy i bezpieczeństwa. i/lub urzędów na pokładzie statków do monitorowania działalności połowowej. Działania mogą jedynie obejmować statki młodsze niż 30 lat chyba, że dotyczy to inwestycji związanych z poprawą warunków pracy i bezpieczeństwa lub wyposażenia na pokładzie statków do monitorowania działalności połowowej.

Na mocy rozporządzenia (WE) nr 2792/1999, mającego zastosowanie do programu istniejącej pomocy od dnia 1 lipca 2001 r. wprowadzanie nowych statków rybackich objętych pomocą finansową ze środków publicznych powinno być kompensowane przez wycofanie statków rybackich nieobjętych pomocą finansową ze środków publicznych, które jest co najmniej równe nowym statkom rybackim wprowadzanym w tych segmentach, których to dotyczy. Ponadto do dnia 31 grudnia 2001 r., jeżeli warunki dotyczące wielkości floty nie są jeszcze spełnione, wycofanie statków rybackich powinno być co najmniej o 30 % większe niż wielkość nowych wprowadzonych statków rybackich. Pomoc może być przyznawana jedynie, jeżeli państwa członkowskie spełniają swoje zobowiązania na mocy wieloletnich programów orientacji zgodnie z wymogami art. 5 tego rozporządzenia. Ponadto art. 9 właściwego rozporządzenia ustanawia, że pomoc na modernizację statków rybackich może zostać przyznana, jedynie jeżeli pomoc nie dotyczy statków rybackich w kategoriach zarówno tonażu jak i mocy.

Na tym etapie badania część pomocy przyznanej na modernizację statków rybackich wydaje się nie spełniać wymogów art. 9 rozporządzenia (WE) nr 2792/1999. Zatem Komisja ma, na tym etapie, poważne wątpliwości co do zgodności programu z wymogami mającymi zastosowanie z dniem 1 lipca 2001 r.

Zgodnie z art. 14 rozporządzenia Rady (WE) nr 659/1999, wszelka bezprawnie przyznana pomoc może podlegać windykacji od jej beneficjenta.

TEKST PISMA

„(1) The Commission wishes to inform the United Kingdom of Great Britain and Northern Ireland that, having examined the information supplied by your authorities on the measure referred to above, it has decided to initiate the procedure laid down in Article 88 (2) of the EC Treaty.

1. PROCEDURE

(2) By letter of 15 June 2004 the Commission was informed by a citizen of the United Kingdom of unlawful aid granted by the authorities of the Shetland Islands of the United Kingdom. By letters of 24 August 2004, 4 February, 11 May and 16 December 2005 the Commission has requested the United Kingdom authorities to provide information about these measures, to which the United Kingdom authorities responded by letters of

10 December 2004, 6 April, 8 September 2005 and 31 January 2006.

2. DESCRIPTION

- (3) The Shetland Islands Council (SIC), the public authority in Shetland, has made payments to the fisheries sector under the scope of two general aid measures named “Aid to the Fish Catching and Processing Industry” and “Aid to the Fish Farming Industry”, which actually consisted of several different types of aid schemes. One of these schemes is the “Aid for modernisation of fishing vessels”.
- (4) Under this scheme, which applied from at least the 1980's until 14 January 2005, aid could be granted for the modernisation of fishing vessels, related to a major improvement like for example better storage of catches, replacement of the engine, improvements in working conditions or to crew safety.
- (5) Aid was granted up to 10 % of the total cost of the improvement project, with a maximum of GBP 40 000 per vessel. Only one application per year could be considered. Improvement projects which exceeded 50 % of the costs of a new vessel of the same type were not eligible, as well as works to vessels of less than five years old. The works should meet all required standards specified by Shetland Seafood Quality Control.
- (6) All applicants must hold a pressure stock licence and other relevant Certificates of Competency and applicants should become member of Shetlands Fishermen's Association.
- (7) The beneficiary of the aid must undertake to operate the vessel full-time, to retain ownership of the vessel and to provide full-time employment of the vessels crew for a period of at least five years from receipt of the aid.
- (8) Finally, beneficiaries had a yearly reporting obligation in order to prove that all conditions have been complied with and the scheme contains a provision for reimbursement of the aid in case of non-compliance with any of the conditions.

3. COMMENTS FROM THE UNITED KINGDOM

- (9) The United Kingdom states that the aid measures concerned have already been applied already before the accession of the United Kingdom to the European Economic Community. The United Kingdom is however not able to provide any evidence of the existence of these measures at the time of accession.
- (10) The United Kingdom confirms that the aid measures have been changed over the years and that these changes have not been notified to the Commission in accordance with Article 88(3) of the EC Treaty (former Article 93(3)). The United Kingdom states however that the expenditure and application of the measures have been reported yearly to the Commission by way of the annual State aid inventory and that the officials responsible for the aids believed that by transmitting the annual reports no notification of the aid would be necessary.

(11) Finally the United Kingdom states that where the measures and the amendments to the schemes might have been applied without prior notification to the Commission, they were applied in accordance with the conditions laid down in the Guidelines for the examination of State aid to fisheries and aquaculture applicable at the time aid was granted under the measures.

(12) In addition, as regards aid granted under the Fishing Modernisation Scheme the United Kingdom states that the scheme was closed on 14 January 2005 pending a review of all Council grants scheme for State aid compliance and that the provision of the scheme were not altered to any meaningful extent between 1994 and 2005. The United Kingdom also states that the aid is considered to have been compatible with guidelines for the examination of State aid to fisheries and aquaculture applicable at the times concerned.

4. ASSESSMENT

(13) It must be determined first if the scheme can be regarded as State aid and if this is the case, if this aid is compatible with the common market.

(14) Aid has been granted to a limited number of companies within the fisheries sector and is thus of a selective nature. The aids have been granted by the Shetland Islands Council, the public authority of Shetland, from State resources and are in the benefit of these companies which are in direct competition with other companies in the fisheries sector of both within the United Kingdom as well as in other Member States. Therefore, the measures distort or threaten to distort competition and appear to be State aid in the sense of Article 87 of the EC Treaty.

4.1. Legality

(15) According to the United Kingdom, the scheme has been applied at least from the 1980's until January 2004. However, due to the absence of past records, the United Kingdom acknowledged that it is not able to provide evidence that the aid measures existed already before the United Kingdom joined the union and thus would have to be regarded as existing aids. In any event, the United Kingdom confirmed that the aid schemes have been changed over the years and that these changes have not been notified to the Commission in accordance with Article 88(3) of the EC Treaty (former Article 93(3)). As a result, the aid measures have to be considered as new aid.

(16) The Commission regrets that the United Kingdom did not respect Article 88(3) of the EC Treaty, under which Member State are obliged to inform the Commission of any plans to grant or alter aid. In this respect the United Kingdom has stated that its authorities were mistakenly convinced that the inclusion of the measures into the annual

State aid inventory, yearly submitted to the Commission, would be sufficient to inform the Commission of the aid in question. It must be noted however that such reporting to the Commission can not be considered as notification of the aid as required under Article 88(3) of the EC Treaty.

4.2. Basis for the assessment

(17) Council Regulation (EC) No 659/1999⁽³⁾ does not lay down any limitation period for the examination of unlawful aid within the meaning of Article 1(f) thereof, i.e. aid implemented before the Commission is able to reach a conclusion about its compatibility with the common market. However, Article 15 of that Regulation stipulates that the powers of the Commission to recover aid is subject to a limitation period of ten years, that the limitation period begins on the day on which the aid is awarded to the beneficiary and that that limitation period is interrupted by any action taken by the Commission. Consequently, the Commission considers that it is not necessary in this case to examine the aid covered by the limitation period, i.e. aid granted more than ten years before any measure taken by the Commission concerning it.

(18) The Commission considers that in this case the limitation period was interrupted by its request for information sent to the United Kingdom on 24 August 2004. Accordingly, the limitation period applies to aid granted to beneficiaries before 24 August 1994. Consequently, the Commission will assess below only the aid granted by decisions taken between 24 August 1994 and January 2005. According to the information available to the Commission, from 1994 to 14 January 2005 at least GBP 11 673 514 appear to have been granted under the scheme.

(19) State aid can be declared compatible with the common market if it complies with one of the exceptions foreseen in the EC Treaty. As regards the State aid to the fisheries sector, State aid measures are deemed to be compatible with the common market if they comply with the conditions of Guidelines for the examination of State aid to fisheries and aquaculture. According to point 5.3 of the current Guidelines⁽⁴⁾ an "unlawful aid" within the meaning of Article 1 (f) of Regulation (EC) No 659/1999 will be appraised in accordance with the guidelines applicable at the time when the administrative act setting up the aid has entered into force. The aid thus needs to be assessed on the compatibility with the Guidelines of 1994, 1997, 2001 and 2004⁽⁵⁾.

⁽³⁾ Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, OJ L 83, 27.3.1999, p. 1. Regulation as amended by the Act of Accession of 2003.

⁽⁴⁾ OJ C 229, 14.9.2004, p.5

⁽⁵⁾ OJ C 260, 17.9.1994, p. 3; OJ C 100, 27.3.1997, p. 12 and OJ C 19, 20.1.2001, p. 7; OJ C 229, 14.9.2004, p.5.

4.2.1. Guidelines of 1994 and 1997

- (20) With regard to the aid for the modernisation of fishing vessels, according to point 2.2.3.2 of the 1994 and the 1997 Guidelines aid for the modernisation of fishing vessels may be deemed compatible provided that it meets the relevant conditions laid down in Regulation (EC) No 3699/93 ⁽⁶⁾.

Regulation (EC) No 3699/93

- (21) According to Articles 7 and 10 and Annex III of Regulation (EC) No 3699/93, the investments should relate to:
- the rationalization of fishing operations, in particular by the use of more selective fishing gear and methods;
 - improvement of the quality of products caught and preserved on board, the use of better fishing and preserving techniques and the implementation of legal and regulatory provisions regarding health;
 - improvement of working conditions and safety, and/or equipment on board vessels to monitor fishing activities.

The operations may cover only vessels less than 30 years old, unless it concerns investments related to the improvement of working conditions and safety or equipment on board vessels to monitor fishing activities.

As Shetland is an objective I region, aid may be granted up to 60 % of total cost of the improvement project.

4.2.2. Guidelines of 2001

- (22) According to point 2.2.3.2 of 2001 Guidelines, applicable to existing aid as from 1 July 2001, aid for the construction of new fishing vessels may be deemed compatible with the common market provided that it meets the relevant conditions laid down in Regulation (EC) No 2792/1999 ⁽⁷⁾.

Regulation (EC) No 2792/1999

- (23) Articles 6, 7, 9 and 10 and Annex III of Regulation (EC) No 2792/1999 require that any entry of new capacity is compensated by the withdrawal of a capacity without public aid which is at least equal to the new capacity introduced in the segments concerned. Until 31 December 2001, where the objectives for the size of the fleet were not yet respected, the withdrawal of capacity should at least be 30 % more than the new capacity introduced.
- (24) The aid may only be granted where the Member State has submitted the information concerning the application of the Multi-annual Guidance Programme (MAGP), has complied with its obligations under Regulation (EEC) No 2930/86 concerning the characteristics of fishing vessels, has implemented the permanent arrangements for fleet renewal and modernisation under Article 6 of Regulation

(EC) No 2792/1999, and has complied with the overall MAGP-objectives.

- (25) Furthermore, the aid for the modernisation of fishing vessels can be granted only if the aid does not concern capacity in terms of tonnage or power.
- (26) Finally, the vessels have to be registered in the fleet register and the changes in vessels characteristics must be communicated to this register. The replacement of fishing gear shall not be eligible.
- (27) As Shetland is an objective I region, aid may be granted up to 40 % of the total eligible costs.

Regulation (EC) No 2369/2002

- (28) On 1 January 2003 the relevant Articles and Annex of Regulation (EC) No 2792/1999 were amended by Regulation (EC) No 2369/2002 ⁽⁸⁾. In addition to the conditions of Regulation (EC) No 2792/1999, the aid for the modernisation of fishing vessels is further restricted in the sense that such aid may only be granted provided that the aid does not serve to increase the effectiveness of the fishing gear.
- (29) As regards the existing condition regarding the fact that the aid may not concern capacity in terms of tonnage or of power, the amendment introduced an exemption to this restriction, allowing such types of aids when they are in line with Article 11(5) of Regulation (EC) No 2371/2002, which allows capacity increases in case of modernisations works relating to safety, working conditions, hygiene and product quality.

Regulation (EC) No 1421/2004

- (30) With regard to condition concerning the replacement of fishing gear the Regulation was once more amended by Regulation (EC) No 1421/2004 ⁽⁹⁾, which entered into force on 26 August 2004. From the entry into force of that amendment replacement of fishing gear could be considered eligible if the vessel is subject to a recovery plan and is required to end its participation in the fishery concerned and fish for other species with different fishing gear. In such a case the Commission may decide that the first replacement of fishing gear, where fishing possibilities are significantly reduced by a recovery plan may be considered eligible.

4.2.3. Guidelines of 2004

- (31) The 2004 Guidelines should be applied to all existing schemes as from 1 January 2005. With regard to the aid for modernisation of fishing vessels these guidelines refer to the Articles 6, 7, 9 and 10 and Annex III (point 1.4) of Regulation (EC) No 2792/1999 and thus the same conditions remain to apply.

⁽⁶⁾ Council Regulation (EC) 3699/93 of 21 December 1993 laying down the criteria and arrangements regarding Community structural assistance in the fisheries and aquaculture sector and the processing and the marketing of its products, OJ L 346, 31.12.1993, p. 1.

⁽⁷⁾ Council Regulation (EC) No 2792/1999 of 17 December 1999 laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector OJ L 337, 30.12.1999, p. 10, as last amended by Regulation (EC) No 485/2005, OJ L 81, 30.3.2005, p. 1.

⁽⁸⁾ OJ L 358, 31.12.2002, p. 49.

⁽⁹⁾ OJ L 260, 6.8.2004, p. 1.

4.3. Compatibility

- (32) Under the scheme aid could be granted for the modernisation of fishing vessels, related to a major improvement like for example better storage of catches, replacement of the engine, improvements in working conditions or to crew safety.
- (33) Thus as regards aid granted under the scheme until 1 July 2001, the scheme is in compliance with the conditions of Regulation (EC) No 3699/93 and of the 1994 and 1997 Guidelines. Furthermore, aid has been granted up to 10 % of the total cost of the improvement project, with a maximum of GBP 40 000 per vessel. Until 1 July 2001 aid could be granted up to 60 % and after that date up to 40 % of the total eligible costs. The rate aid of the scheme is therefore considered compatible with the conditions applicable under both the 1994 and 1997 Guidelines.
- (34) Moreover, the United Kingdom has complied with its reporting obligations under MAGP IV and with the overall MAGP IV objectives for its fleet.
- (35) However, with regard to the period from 1 July 2001, the scheme does not seem to comply fully with the conditions of Article 9 of the Regulations (EC) No 2792/1999, as applicable under the 2001 Guidelines as from 1 July 2001. According to this provision, aid for modernisation of fishing vessel may be granted only if the aid does not concern capacity in terms of tonnage or power.
- (36) Under the scheme replacement of engines has been financed as well as other types of modernisation that could concern capacity in terms of tonnage or power (e.g. better storage of catches). Such types of modernisation aid can not be considered compatible with the 2001 Guidelines. Therefore, at this stage, the Commission seriously doubts if such aids granted under the scheme from 1 July 2001 could be considered compatible with the common market.
- (37) All other types of aid granted under the scheme from 1 July 2001 that do not concern capacity in terms of tonnage or power are regarded compatible with the common market.

4.3. Conclusion

- (38) With regard to the above the Commission considers that the scheme as applied until 1 July 2001 can be considered to be compatible with the respective Guidelines in force at the time the aid was granted and thus compatible with the common market.

- (39) However, as regards the application of the scheme after 1 July 2001, the Commission has at this stage, for the reasons pointed out in points 35 and 36, serious doubts on its compatibility with common market of aids granted for types of modernisation that concern capacity in terms of tonnage or power.

5. DECISION

- (40) In view of the foregoing analysis the Commission has decided not to raise any objections to this aid scheme as far as it concerns the aid granted before 1 July 2001.
- (41) However, with regard to the application of the scheme after 1 July 2001, the Commission observes that there exists, at this stage of the preliminary examination, as provided for by Article 6 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 88 of the EC Treaty, serious doubts on the compatibility of this aid scheme with the Guidelines for the examination of State aid to Fisheries and aquaculture and, therefore, with the EC Treaty.
- (42) In the light of the foregoing conditions, the Commission, acting under the procedure laid down in Article 88 (2) of the EC Treaty and Article 6 of Regulation (EC) No 659/1999, requests the United Kingdom of Great Britain and Northern Ireland to submit its comments and to provide all such information as may help to further assess the aid scheme, within one month of the date of receipt of this letter. It requests your authorities to forward a copy of this letter to the recipients of the aid immediately.
- (43) The Commission wishes to remind the United Kingdom of Great Britain and Northern Ireland that Article 88 (3) of the EC Treaty has suspensory effect and would draw your attention to Article 14 of Council Regulation (EC) No 659/1999, which provides that all unlawful aid may be recovered from the recipient.
- (44) The Commission warns the United Kingdom of Great Britain and Northern Ireland that it will inform interested parties by publishing this letter and a meaningful summary of it in the *Official Journal of the European Union*. It will also inform interested parties in the EFTA countries which are signatories to the EEA Agreement, by publication of a notice in the EEA Supplement to the *Official Journal of the European Union* and will inform the EFTA Surveillance Authority by sending a copy of this letter. All such interested parties will be invited to submit their comments within one month of the date of such publication."