

**POMOC PAŃSTWA — ZJEDNOCZONE KRÓLESTWO****Pomoc państwa nr C 38/2006 (ex NN 93/2005)****Program poprawy warunków w przedsiębiorstwach rybnych****Zaproszenie do zgłaszania uwag zgodnie z art. 88 ust. 2 traktatu WE**

(2006/C 289/03)

(Tekst mający znaczenie dla EOG)

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:

European Commission  
Dyrekcja Generalna ds. Rybołówstwa  
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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.

W ramach programu poprawy warunków w przedsiębiorstwach rybnych, który obowiązywał od początku lat 80. do dnia 14 stycznia 2005 r., pomoc o maksymalnej wysokości 20 % została przyznana na zakup nowych urządzeń i maszyn w przemyśle przetwórczym i na budowę, rozbudowę przetwórnicy rybnych lub poprawę warunków w przetwórnicy. Do pomocy nie kwalifikowały się naprawy maszyn lub budynków. Maksymalna kwota pomocy na beneficjenta wynosiła 20 000 GBP dla przetwórnicy, których obrót był mniejszy niż 1 000 000 GBP; 25 000 GBP dla przetwórnicy, których obrót wahał się między 1 000 000 i 3 000 000 GBP oraz 30 000 GBP dla przetwórnicy, których obrót przekraczał 3 000 000 GBP. Od 1994 r. do dnia 14 stycznia 2005 r. w ramach programu przydzielono około 1,6 mln GBP, z czego 93 600 GBP przyznano przedsiębiorstwu związanemu z produkcją mączki rybnej i oleju rybnego.

Zgodnie z art. 88 ust. 3 traktatu WE państwo członkowskie jest zobowiązane do poinformowania Komisji 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<sup>(1)</sup> 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 wcześniej niż 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. W dziedzinie rybołówstwa konieczne jest zbadanie środka w świetle „Wytycznych dla badania pomocy państwa w odniesieniu do rybołówstwa i akwakultury”. Zgodnie z pkt 5.3 wytycznych „pomoc przyznana bezprawnie” w rozumieniu art. 1 lit. f) rozporządzenia (WE) nr 659/1999 zostanie oceniona zgodnie z wytycznymi mającymi zastosowanie w chwili wejścia w życie aktu administracyjnego ustanawiającego daną pomoc.

Środki stanowią pomoc państwa w rozumieniu art. 87 traktatu WE. Pomoc państwa dla sektora rybołówstwa należy ocenić na podstawie wymogów „Wytycznych dla badania pomocy państwa w odniesieniu do rybołówstwa i akwakultury” obowiązujących w chwili przyznania pomocy<sup>(2)</sup>.

<sup>(1)</sup> 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 zmienione aktem przystąpienia z 2003 r.

<sup>(2)</sup> Dz.U. C 260 z 17.9.1994, 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.

Zgodnie z pkt 2.3 wytycznych z 1994, 1997 i 2001 r. oraz pkt 3.10 wytycznych z 2004 r. pomoc na rzecz inwestycji w zakresie przetwarzania produktów rybnych i ich wprowadzania do obrotu może być uznana za zgodną z traktatem pod warunkiem, że są one zgodne z odpowiednimi wymogami ustanowionymi w rozporządzeniu (WE) nr 3699/93 i w rozporządzeniu (WE) nr 2792/1999. Pomoc może być przyznana do 60 % kwalifikujących się kosztów.

Wymogi programu są zgodne z tymi warunkami. Jednakże, w ramach programu, 93 600 GBP zostało przydzielone przedsiębiorstwu związanemu z produkcją mączki rybnej i oleju rybnego i w związku z tym część pomocy nie może być uważana za zgodną z wymogami właściwych wytycznych. Na obecnym etapie badania Komisja ma poważne wątpliwości co do zgodności tej pomocy z zasadami wspólnego rynku.

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 aid/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 which is the so-called “Fish Factory Improvement Scheme”.

(4) Under the fish factory improvement scheme, which was in force from at least the 1980's until 14 January 2005, aid could be granted for the purchase of new processing machinery and equipment and for the construction, improvement or extension of fish factories. Repairs of machinery or buildings are however not eligible. Aid for second hand equipment is only considered for assistance in special circumstances and must be inspected or certified as fully serviceable by an independent engineer.

- (5) Aid of maximum 20 % is granted either as direct grant or as interest relief grant on a Shetland Development Trust Loan or proportion of both. The interest relief grant is used to reduce the interest rate on a loan from 8 % to 5 %.
- (6) The maximum amount of aid per beneficiary is GBP 20 000 for factories with a turnover of less than GBP 1 000 000; GBP 25 000 for factories with a turnover of between 1 000 000 and GBP 3 000 000 and GBP 30 000 for factories with a turnover of more than GBP 3 000 000. In case of new fish processing operations with no track record regarding the turnover the maximum grant in the first year shall be fixed at GBP 30 000.
- (7) All applicants must ensure that all fish factory improvements comply with the Community health and hygiene regulations and that their factories and work practices meet the required standards specified by the Shetland Seafood Quality Control Ltd. Finally applicants must operate their businesses for at least five years, must be member of the Shetland Fish Processors Association and must retain membership for at least five years from the date of receipt of the aid.
- (8) Beneficiaries of the aid must submit to the Council their annual accounts within 9 months of the end of the financial year for each of the 5 years following the receipt of the aid. Breach of the conditions may lead to (partial) recovery of the aid from the beneficiary.

#### 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, with regard to the aid granted under the Fish Factory Improvement Scheme the United Kingdom states that during the years 1997 — 2005 aid has been granted under the scheme to a company involved in the production of fish meal and fish oil, not intended for human consumption, amounting to a total of GBP 93 600.

(13) The United Kingdom admits that this aid is incompatible with the rules for State aid to fisheries, but points out that the aids have been granted under the assumption that the aids were coming from private funds and thus would not fall under the State aid rules. In this respect the United Kingdom refers to the decisions of the Commission on cases 2003/612/EC<sup>(3)</sup> and C(2005)4649final<sup>(4)</sup>, in which the Commission decided that the principle of legitimate expectation on the side of the national authorities applied and for that reason recovery of the aid was not required. The United Kingdom states that the Shetland Islands Council was acting under the legitimate expectation that the funding was not covered by the State aid rules and during the course of 2004, when it became fully clear that the funds needed to be regarded as public funds, the Council acted decisively and responsibly to suspend all affected measures, including this scheme.

#### 4. ASSESSMENT

- (14) 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.
- (15) 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

- (16) According to the UK authorities, 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.
- (17) 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

- (18) Council Regulation (EC) No 659/1999<sup>(5)</sup> 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.
- (19) 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. During that time approximately GBP 1 600 000 appear to have been granted under the scheme.
- (20) 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<sup>(6)</sup> 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<sup>(7)</sup>.

##### 4.2.1. Guidelines of 1994, 1997 and 2001

- (21) According to point 2.3 of the 1994, 1997 and 2001 Guidelines, aid for investments in the processing and marketing of fishery products may be regarded compatible with the common market provided that the conditions are comparable to the conditions laid down in the respective regulations for the structural fund for fisheries and the sum of the State aid does not exceed, in subsidy equivalent, the total rate of national and Community subsidies fixed in annex IV of those Regulations.

<sup>(3)</sup> OJ C 211, 21.8.2003, p. 63.

<sup>(4)</sup> Commission decision of 7 December 2005, notified to the authorities of the United Kingdom on 8 December 2005, to be published in the Official Journal, C series.

<sup>(5)</sup> 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.

<sup>(6)</sup> OJ C 229, 14.9.2004, p. 5

<sup>(7)</sup> 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.

Regulation (EC) No 3699/93 and Regulation (EC) No 2792/1999

- (22) According to both Article 11 and point 2.4 Annex III of Regulation (EC) No 3699/93<sup>(8)</sup> and Article 13 and point 2.4. of Annex III of Regulation (EC) No 2792/1999<sup>(9)</sup> eligible investments shall relate in particular to the construction and acquisition of buildings and installation, the acquisition of new equipment and installations needed for the time of landing and the marketing of fishery and aquaculture products between the time of landing and the end-product stage and the application of new technologies intended in particular to improve competitiveness.
- (23) Investments shall not be eligible for assistance when they concern fishery and aquaculture products intended to be used and processed for purposes other than human consumption, with the exemption of investments exclusively for the handling, processing and marketing of fishery and aquaculture wastes.
- (24) As Shetland is an objective I region, aid may be granted up to 60 % of the eligible costs.

#### 4.2.2. Guidelines of 2004

- (25) According to point 3.10 of the 2004 Guidelines, aid for the categories of measures covered by Regulation (EC) No 1595/2004<sup>(10)</sup>, but which are designed to benefit enterprises other than SME's, or exceed the threshold laid down in Article 1(3) of that Regulation, will be assessed on the basis of the Guidelines and of the criteria laid down for each category of measures in the Articles 4 to 13 of that Regulation. As the Guidelines do not contain any specific provisions for this type of aid, the scheme is to be assessed by reference to the provisions laid down in that Regulation.
- (26) As regards the types of measures concerned, in Article 8 of Regulation (EC) No 1595/2004 it is established that aid for investments in the processing and marketing of fishery products shall be regarded compatible with the common market provided that the aid complies with the conditions of Article 13 of, and points 2 and 2(4) of Annex III to Regulation (EC) No 2792/1999, and that the amount of the aid does not exceed, in subsidy equivalent, the total rate of national and Community subsidies fixed by Annex IV to that Regulation.

#### 4.3. Compatibility

- (27) Under the scheme aid has been granted to improve fish factories for the purchase of new processing machinery

<sup>(8)</sup> Council Regulation (EC) No 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.

<sup>(9)</sup> 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.

<sup>(10)</sup> Commission Regulation (EC) No 1595/2004 of 8 September 2004 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises active in the production, processing and marketing of fisheries products, OJ L 291, 14.9.2004, p. 3.

and equipment and for the construction, improvement or extension of fish factories. As, according to the provisions provided under the Regulation (EC) No 3699/93 and Regulation (EC) No 2792/1999, investment should relate to the constructions and acquisition of building and installation, the acquisition of new equipment, the investment should be considered compatible with those provisions.

- (28) Aid has been granted to a maximum of 20 % as direct grant or as interest. According to the rules applicable may be granted up to 60 % of eligible cost, thus also the rate of aid is compatible with the conditions established in the respective Guidelines applicable at the time the aid was granted.
- (29) However, investments for processing and marketing of fishery and aquaculture products intended to be used and processed for purposes other than human consumption are not eligible. As pointed out in point 13 of this decision, the authorities of the United Kingdom have confirmed that under the scheme such aid has been granted in one occasion, with a total of GBP 93 600. This aid thus seems to be incompatible with the conditions.
- (30) Therefore, at this stage, the Commission considers that, as far as it concerns the aid referred to on point 13 and 25, the conditions of the respective Guidelines for the examination of State aid to fisheries and aquaculture seem not to have not been complied with.
- (31) The comments made by the United Kingdom that the principle of legitimate expectation would apply to this situation, just as was done in cases 2003/612/EC<sup>(11)</sup> and C(2005)4649final, are for the issue of compatibility of the aid of no relevance. This would however be of relevance with regard to the question whether or not the aid would have to be recovered from the final recipient and thus would will only need to be further assessed in a final negative decision would proceed.
- (32) All other aid granted under the scheme is considered to be compatible with the conditions of the Guidelines in force at the time the aid was granted and thus regarded compatible with the common market.

#### 5. DECISION

- (33) In view of the foregoing analysis the Commission has decided not to raise any objections to this aid scheme, with the exception of the aid granted for investments for processing and marketing of fishery and aquaculture products intended to be used and processed for purposes other than human consumption.
- (34) The Commission observes that, as far as it concerns this aid for investments for processing and marketing of fishery and aquaculture products intended to be used and processed for purposes other than human consumption, there exist, 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 with the Guidelines for the examination of State aid to Fisheries and aquaculture and, therefore, with the EC Treaty.

<sup>(11)</sup> OJ C 211, 21.8.2003, p. 63.

- (35) 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 assess the aid, 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.
- (36) 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.
- (37) 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.”
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