

Guidelines for the examination of State aid to fisheries and aquaculture

(2008/C 84/06)

1. LEGAL BASIS AND SCOPE

- 1.1. These Guidelines apply to the entire fisheries sector and concern the exploitation of aquatic resources and aquaculture together, with the means of production, processing and marketing of the resultant products, but excluding recreation and sport fishing which does not result in the sale of fishery products.
- 1.2. For the application of these Guidelines, fishery products means both products caught at sea or in inland waters and the products of aquaculture listed in Article 1 of Council Regulation (EC) No 104/2000 of 17 December 1999 on the common organisation of the markets in fishery and aquaculture products ⁽¹⁾.
- 1.3. The application of the State aid rules, laid down in Articles 87 to 89 of the EC Treaty, to the production of and trade in fishery and aquaculture products is provided for in Article 7 of Council Regulation (EC) No 1198/2006 of 27 July 2006 on the European Fisheries Fund ⁽²⁾ and in Article 32 of Regulation (EC) No 104/2000.

The principle of incompatibility of State aid with the common market, laid down in Article 87(1) of the Treaty, is subject to the derogations provided for in Article 87(2) and (3). It is within the framework of these Guidelines that the Commission intends to administer those derogations in the fisheries sector.

- 1.4. These Guidelines relate to all measures which constitute aid within the meaning of Article 87(1) of the Treaty, including any measure entailing a financial advantage in any form whatsoever funded directly or indirectly from the budgets of public authorities (national, regional, provincial, departmental or local) or from other State resources. The following, for example, are to be considered as aid: capital transfers, reduced-interest loans, interest subsidies, certain State holdings in the capital of undertakings, aid financed by special levies or parafiscal charges, aid granted in the form of State securities against bank loans, the reduction of or exemption from charges or taxes, including accelerated depreciation and the reduction of social contributions.

2. OBLIGATION TO NOTIFY STATE AID AND EXEMPTION FROM THIS OBLIGATION

The Commission reminds Member States of their duty to notify to the Commission their plans to grant new aid, in accordance with Article 88(3) of the Treaty and Article 2 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty ⁽³⁾.

Under the conditions specified in points 2.1, 2.2 and 2.3, certain measures are however exempt from the notification requirement.

- 2.1. As laid down in Article 7(2) of Regulation (EC) No 1198/2006, Articles 87, 88 and 89 of the Treaty do not apply to financial contributions by Member States to operations co-financed by the European Fisheries Fund and provided for as part of an operational programme. Consequently, Member States should not notify such contributions to the Commission. Such contributions are not subject to these Guidelines.

However, under Article 7(3) of Regulation (EC) No 1198/2006, measures of the same kind which provide for public financing by Member States exceeding the provisions of that Regulation must be notified as State aid to the Commission. Such measures, as a whole, are subject to these Guidelines.

⁽¹⁾ OJ L 17, 21.1.2000, p. 22. Regulation as amended by the 2003 Act of Accession.

⁽²⁾ OJ L 223, 15.8.2006, p. 1.

⁽³⁾ OJ L 83, 27.3.1999, p. 1. Regulation as amended by the 2003 Act of Accession.

In order to reduce the administrative burden which may result from an application of Article 7(3) of Regulation (EC) No 1198/2006, and to facilitate the disbursement of funds of The European Fisheries Fund, Member States have an interest in distinguishing clearly between the financial contributions they intend to grant in order to co-finance Community measures within the framework of the European Fisheries Fund in compliance with Article 7(2) of Regulation (EC) No 1198/2006, which do not have to be notified, and State aid, which is subject to the notification requirement.

- 2.2. It should be recalled that Member States are exempted from notifying aid in the fisheries sector fulfilling the conditions laid down in one of the Regulations adopted by the Commission pursuant to Article 1 of Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid ⁽¹⁾, which apply to the fisheries sector. Such aid includes:
- aid for training fulfilling the conditions laid down in Commission Regulation (EC) No 68/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to training aid ⁽²⁾,
 - aid to research and development fulfilling the conditions laid down in Commission Regulation (EC) No 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises ⁽³⁾,
 - aid for employment fulfilling the conditions laid down in Commission Regulation (EC) No 2204/2002 of 12 December 2002 on the application of Articles 87 and 88 of the EC Treaty to State aid for employment ⁽⁴⁾,
 - aid fulfilling the conditions of a Commission Regulation on the exemption from notification of certain categories of State aid to small and medium-sized enterprises active in the production, processing and marketing of fisheries products,
 - aid fulfilling the conditions of any regulation adopted by the Commission pursuant to Article 1 of Regulation (EC) No 994/98 and which applies to the fisheries sector.
- 2.3. It should also be recalled that Member States are exempted from notifying *de minimis* aid fulfilling the conditions of Commission Regulation (EC) No 875/2007 of 24 July 2007 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid in the sector and amending Regulation (EC) No 1860/2004 ⁽⁵⁾ or any other future regulation adopted pursuant to Article 2 of Regulation (EC) No 994/98 and applicable to *de minimis* aid to fisheries.

3. PRINCIPLES

3.1. Consistency with the Competition Policy and the Common Fisheries Policy

In the fisheries sector, as well as in other economic sectors in the Community, the policy of the Community relating to State aid aims to prevent distortion of competition in the internal market.

State aid in the fisheries sector is only justified if it is in accordance with the objectives of the Competition Policy and those of the Common Fisheries Policy.

State aid may not be protective in its effect: it must serve to promote the rationalisation and efficiency of the production and marketing of fishery products. Any such aid must yield lasting improvements so that the industry can develop solely on the basis of market earnings.

No aid may be granted in circumstances where Community law, and in particular rules of the Common Fisheries Policy, are not complied with. Aid measures should explicitly provide that, during the grant period the beneficiaries of the aid shall comply with the rules of the Common Fisheries Policy and that, if during this period it is found that the beneficiary does not comply with rules of the Common Fisheries Policy, the grant must be reimbursed in proportion to the gravity of the infringement.

⁽¹⁾ OJ L 142, 14.5.1998, p. 1.

⁽²⁾ OJ L 10, 13.1.2001, p. 20. Regulation as last amended by Regulation (EC) No 1976/2006 (OJ L 368, 23.12.2006, p. 85).

⁽³⁾ OJ L 10, 13.1.2001, p. 33. Regulation as last amended by Regulation (EC) No 1976/2006.

⁽⁴⁾ OJ L 337, 13.12.2002, p. 3. Regulation as last amended by Regulation (EC) No 1976/2006.

⁽⁵⁾ OJ L 193, 25.7.2007, p. 6.

3.2. Consistency with Community support provided by the European Fisheries Fund

It is essential to ensure consistency between the Community policies in respect of the control of State aid and in respect of the use of the European Fisheries Fund.

Therefore, as far as operations are eligible for funding under the European Fisheries Fund, they may only be eligible for State aid if they comply with the criteria laid down in Regulation (EC) No 1198/2006, in particular those concerning the conditions of eligibility and the intensity of public contribution, and to the extent they can be considered compatible on the basis of Paragraph 4 of these Guidelines.

If an aid scheme or an individual aid provides for aid beyond those criteria, the Member State shall demonstrate the justification and the indispensability of this aid. Such aid will be assessed on a case-by-case basis.

3.3. Incentive effect

In order to be considered compatible with the common market, any aid measure must contain some incentive element or require some counterpart on the part of the beneficiary.

Therefore, aid which is granted in respect of operations that the beneficiary has already begun to implement and aid for activities in which the beneficiary would already engage under market conditions alone cannot be considered to contain this incentive element and cannot be considered compatible with the common market.

This principle does not apply to aid which is compensatory in nature, as aid to make good damage caused by natural disasters or exceptional occurrences.

3.4. Operating aid

Operating aid, which for example increases the business liquidity of the recipient or is calculated on the quantity produced or marketed, product prices, units produced or the means of production and which has the effect of reducing the recipient's production costs or improving the recipients income is in principle incompatible with the common market.

It may be considered compatible only if the aid clearly and firmly contributes to serving the objectives of the Common Fisheries Policy.

This principle does not apply to aid which is compensatory in nature, such as aid to make good damage caused by natural disasters or exceptional occurrences.

State aid to the export of or to trade in fishery products within or outside the Community is incompatible with the common market.

3.5. Transparency

In the interest of transparency, no aid may be declared compatible by the Commission if the Member State concerned has not communicated the total amount of aid per measure as well as the aid intensity.

In accordance with the established practice of the Commission, thresholds should normally be expressed in terms of aid intensities in relation to a set of eligible costs. However, account can be taken of all factors making it possible to assess the real advantage to the recipient.

The cumulative effect for the recipient of all elements of State aid and other kinds of assistance are taken into account when an aid scheme or individual aid is being assessed.

3.6. Duration of State aid schemes

Aid schemes should be limited in duration to a maximum of 10 years.

If an aid scheme has a duration of more than 10 years, the Member State should provide justification for that and undertake to re-notify the scheme at least 2 months before the tenth anniversary of its entry into force.

3.7. **Link with Guidelines on regional aid**

Guidelines on national regional aid for 2007-2013 ⁽¹⁾ do not apply in this sector.

The components of regional aid schemes involving the fisheries sector will be examined on the basis of these Guidelines.

4. **AID WHICH MAY BE DECLARED COMPATIBLE**

4.1. **Aid for categories of measures covered by a block exemption Regulation**

Aid for measures of the same kind as those mentioned in any of the Regulations referred to in point 2.2, designed to benefit SMEs or undertakings other than SMEs, will be assessed on the basis of these Guidelines and of the criteria laid down for each category of measures in those Regulations.

If an aid scheme or an individual aid provides for aid beyond those criteria, the Member State shall demonstrate the justification and the indispensability of this aid. Such aid will be assessed on a case-by-case basis.

4.2. **Aid falling within the scope of certain horizontal guidelines**

Aid falling within the scope of other Guidelines or Regulations or any other instrument adopted by the Commission may be considered compatible with the common market if it complies with the criteria and conditions set out in those instruments, with the principles set out above in paragraph 3 and, where relevant, with the criteria and conditions set out in this paragraph 4.

Aid aimed at rescuing and restructuring firms in difficulty will be assessed in accordance with the Community Guidelines on State aid for rescuing and restructuring firms in difficulty ⁽²⁾. Restructuring aid can be approved only when an appropriate plan to reduce the capacity of the fleet concerned, either at the level of the firm or at the level of a group of firms, has been set up.

4.3. **Aid for investment on board fishing vessels**

Aid for the equipment and modernisation of fishing vessels of five years of age or more may be deemed compatible with the common market only if it complies with the requirements of Article 25(2) and (6) of Regulation (EC) No 1198/2006 and provided that the amount of State aid does not exceed, in subsidy equivalent, the total rate of public contributions fixed by Annex II to that Regulation.

The Member State shall provide the Commission with a justification why this aid is not provided for by an operational programme co-financed by the European Fisheries Fund.

4.4. **Aid to make good damage caused by natural disasters, exceptional occurrences or specific adverse climatic events**

According to Article 87(2)(b) of the Treaty, aid to make good damage caused by natural disasters or exceptional occurrences is deemed to be compatible with the common market.

Once the existence of a natural disaster or exceptional occurrence has been demonstrated, an aid of up to 100 % to compensate for material damage is permitted.

The existence of a natural disaster or exceptional occurrence will be assessed on a case-by-case basis, by taking into account the criteria arising from the practice of the Commission and the case-law of the Court of Justice of the European Communities ⁽³⁾.

⁽¹⁾ OJ C 54, 4.3.2006, p. 13. See point 8.

⁽²⁾ OJ C 244, 1.10.2004, p. 2.

⁽³⁾ See Judgment of 11 November 2004 in the Case C-73/03, Spain v Commission, point 37, and Judgment of 23 February 2006 in the Cases C-346/03 and C-529/03, Giuseppe Atzeni e.a., point 79.

Not every adverse climatic event can be considered as natural disaster or exceptional occurrence. However, aid of up to 100 % to compensate damage caused by adverse weather conditions can however be deemed compatible with the common market on the basis of Article 87(3)(c) of the Treaty if the level of damages caused by the event concerned reaches the threshold of 30 % of the average annual turnover of the undertaking concerned in the previous three years. The level of damages must be calculated on the basis of the loss of turnover of the firm concerned in comparison with the average turnover of the three former years. Aid to compensate damage to buildings, vessels or equipment may be compensated only if the damage is linked to adverse weather conditions having resulted in a loss of production corresponding to the loss of turnover of at least 30 %.

Compensation should be calculated at the level of the individual beneficiary and overcompensation avoided. Amounts received under an insurance scheme or normal entrepreneurial costs not incurred by the beneficiary must be deducted. Damages which could be covered by an ordinary commercial insurance contract or represent normal entrepreneurial risk are not eligible for aid. In order to avoid overcompensation, compensation should be calculated at the level of the individual beneficiary. If the aid scheme notified does not provide for such method, the Member State must give a clear justification for that.

Aid measures under this paragraph must be notified to the Commission within one year of the event to which it relates.

4.5. Tax relief and labour related costs concerning Community fishing vessels operating outside Community waters

In order to discourage Community operators to register their fishing vessels on registers of third countries which do not ensure a proper control over the activities of their fishing fleet, especially in terms of illegal, unreported and unregulated fishing, tax relief measures concerning corporate tax in respect of Community fishing vessels operating outside Community waters and reduced rates of social contributions and income tax for fishers employed onboard thereof may be regarded compatible with the common market.

The vessels eligible for such measures are fishing vessels flying the flag of a Member State and registered in the Community fishing fleet register, fishing for tuna or tuna-like species exclusively outside Community waters and beyond 200 nautical miles from the baselines of the Member States.

In its notification, the Member State shall provide the Commission with the information showing the existing risk of de-registration from Member States' registers for the vessels concerned by the scheme.

Aid measures under this paragraph should provide that, in case a vessel in respect of which the aid has been granted under this paragraph is de-registered from the Community fishing fleet register, the beneficiary of the aid shall reimburse the aid granted under this paragraph during the three years preceding the de-registration.

4.6. Aid financed through parafiscal charges

State aid schemes funded by special charges, in particular parafiscal charges, imposed on certain fishery products irrespective of their origin, may be considered compatible with the common market where aid schemes benefit both domestic and imported products, and where the aid as such complies with the conditions of these guidelines.

4.7. Aid for marketing of fishery products from the outermost regions

Member States may grant aid for quantities of fishery products eligible in application of Article 4 of Council Regulation (EC) No 791/2007 of 21 May 2007 introducing a scheme to compensate for the additional costs incurred in the marketing of certain fishery products from the Azores, Madeira, the Canary Islands, and the French departments of Guiana and Réunion from 2007 to 2013 ⁽¹⁾, and exceeding those for which compensation has been paid in accordance with that Regulation.

⁽¹⁾ OJL 176, 6.7.2007, p. 1.

This aid can be granted only in accordance with the conditions laid down in Articles 3, 4 and 5 of that Regulation.

The annual amounts of such additional aid may not exceed the annual amounts provided for each Member State in the above Regulation.

4.8. Aid concerning the fishing fleet in the outermost regions

In order to fully implement the objective of Statement No 17 of the Commission and the Council adopted on 14 June 2006, Member States may grant aid until 31 December 2008 for vessels built in accordance with the conditions of Article 2, points 4 and 5, of Council Regulation (EC) No 639/2004 of 30 March 2004 on the management on fishing fleets registered in the Community outermost regions ⁽¹⁾, and with the relevant conditions of 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 ⁽²⁾.

4.9. Aid for other measures

Aid for measures for which there is no applicable provision in the paragraphs 4.1 to 4.8 is in principle not compatible with the common market.

If an aid scheme or an individual aid provides for such aid, the Member State shall demonstrate that it complies with the principles set out above in paragraph 3, in particular that it serves clearly the objectives of the Common Fisheries Policy.

5. PROCEDURAL MATTERS

The Commission recalls that the provisions of Regulations (EC) No 659/1999 and (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty ⁽³⁾ apply.

In particular, in accordance with Article 2 of Regulation (EC) No 794/2004, Member States are required to fill in the forms provided for in Part I and Part III.14 of Annex I to that Regulation.

5.1. Annual report

Member States are required to submit the annual reports to the Commission in accordance with Article 6 and Annex IIIC of Regulation (EC) No 794/2004.

5.2. Proposals for appropriate measures

In accordance with Article 88(1) of the EC Treaty, the Commission proposes that Member States amend their existing aid schemes relating to aid to fisheries and aquaculture to conform to these Guidelines by 1 September 2008 at the latest.

The Member States are invited to confirm that they accept these proposals for appropriate measures in writing by 1 June 2008 at the latest.

In the event that a Member State fails to confirm its acceptance in writing before that date, the Commission will assume that the Member State concerned has accepted these proposals, unless it explicitly indicates its disagreement in writing.

Should a Member State not accept the whole or part of these proposals by that date, the Commission will proceed in accordance with Article 19(2) of Regulation (EC) No 659/1999.

5.3. Date of application

The Commission will apply these Guidelines with effect from 1 April 2008 to any State aid notified or intended to be applied on or after that date.

⁽¹⁾ OJ L 102, 7.4.2004, p. 9. Regulation as last amended by Regulation (EC) No 1646/2006 (OJ L 309, 9.11.2006, p. 1).

⁽²⁾ OJ L 337, 30.12.1999, p. 10. Regulation as last amended by Regulation (EC) No 485/2005 (OJ L 81, 30.3.2005, p. 1).

⁽³⁾ OJ L 140, 30.4.2004, p. 1. Regulation as last amended by Regulation (EC) No 1935/2006 (OJ L 407, 30.12.2006, p. 1).

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 entered into force.

Reference in these Guidelines to Community Regulations or Commission guidelines or any other instrument adopted by the Commission must be interpreted as including a reference to any change in those instruments after the date of adoption of these Guidelines.
