

STAATLICHE BEIHILFE — VEREINIGTES KÖNIGREICH**Staatliche Beihilfe Nr. C 39/06 (ex NN 94/05)****Regelung zugunsten von Fischern, die erstmals eine Beteiligung an einem Fischereifahrzeug erwerben****Aufforderung zur Abgabe einer Stellungnahme gemäß Artikel 88 Absatz 2 EG- Vertrag**

(2006/C 291/04)

(Text von Bedeutung für den EWR)

Mit Schreiben vom 13 September 2006, das nachstehend in der verbindlichen Sprachfassung abgedruckt ist, hat die Kommission dem Vereinigten Königreich Großbritannien und Nordirland ihren Beschluss mitgeteilt, wegen der vorerwähnten Beihilfe das Verfahren nach Artikel 88 Absatz 2 EG-Vertrag einzuleiten.

Stellungnahmen hierzu können binnen einem Monat nach der Veröffentlichung dieser Zusammenfassung und des anschließenden Schreibens an folgende Anschrift gerichtet werden:

Europäische Kommission
Generaldirektion Fischerei
GD FISH/D/3 „Rechtsfragen“
B-1049 Brüssel
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Alle Stellungnahmen werden dem Vereinigten Königreich Großbritannien und Nordirland übermittelt. Die Beteiligten können unter Angabe von Gründen schriftlich beantragen, dass ihre Stellungnahme vertraulich behandelt wird.

ZUSAMMENFASSUNG

Im Juni 2004 wurde die Kommission über die Beihilfe unterrichtet, die der Shetland Islands Council, eine öffentliche Behörde der Shetlandinseln des Vereinigten Königreichs, dem Fischereisektor gewährt hat und bei der es sich möglicherweise um eine rechtswidrige staatliche Beihilfe handelt.

Im Rahmen der genannten Regelung wurden Fischern Zuschüsse gewährt, um den finanziellen Eigenbeitrag zum Erwerb einer Beteiligung an einem bestehenden oder einem neuen Fischereifahrzeug zu ergänzen. Personen über 18 Jahre, die noch nicht an einem Fischereifahrzeug beteiligt sind, erhielten eine Beihilfe in Höhe von 50 % der Kosten für den Erwerb einer Beteiligung, mit einem Höchstbetrag von 7 500 GBP im Falle eines bestehenden Fischereifahrzeugs und von 15 000 GBP im Falle eines neuen Fischereifahrzeugs (maximal 25 % des Wertes des Schiffes). Die Beihilfe wurde unter der Bedingung gewährt, dass das Fischereifahrzeug in den folgenden fünf Jahren ausschließlich für den Fischfang benutzt wird und der Begünstigte seinen Anteil an dem Fischereifahrzeug nach Erhalt der Beihilfe fünf Jahre lang behält.

Nach Artikel 88 Absatz 3 EG-Vertrag müssen die Mitgliedstaaten die Kommission von jeder beabsichtigten Einführung oder Umgestaltung von Beihilfen unterrichten. Laut Angaben des Vereinigten Königreichs fand das betreffende Programm von 1982 bis zum 14. Januar 2005 Anwendung. Das Vereinigte Königreich hat allerdings bestätigt, dass die Regelung niemals der Kommission notifiziert wurde, weshalb die Beihilfemaßnahme als neue Beihilfe betrachtet werden muss.

In der Verordnung (EG) Nr. 659/1999⁽¹⁾ des Rates ist keine Frist für die Prüfung rechtswidriger Beihilfen festgelegt. In Artikel 15 dieser Verordnung heißt es jedoch, dass die Befugnisse

der Kommission zur Rückforderung von Beihilfen für eine Frist von zehn Jahren gelten, d.h. die Frist beginnt mit dem Tag, an dem die Beihilfe dem Empfänger gewährt wird, und dass jede Maßnahme, die die Kommission ergreift, eine Unterbrechung dieser Frist darstellt. Daher ist die Kommission der Auffassung, dass es im vorliegenden Fall nicht erforderlich ist, die Beihilfe zu prüfen, die mehr als zehn Jahre vor Ergreifen von Maßnahmen durch die Kommission gewährt worden ist. Nach Ansicht der Kommission wurde die Frist durch das Auskunftersuchen unterbrochen, das sie am 24. August 2004 an das Vereinigte Königreich richtete. Somit gilt die Frist für Beihilfen, die den Begünstigten vor dem 24. August 1994 gewährt wurden, und die Kommission bewertet im Folgenden somit nur Beihilfen, für die die Entscheidungen zwischen dem 24. August 1994 und dem 14. Januar 2005 ergangen sind. Nach den der Kommission vorliegenden Informationen wurden in diesem Zeitraum im Rahmen der Regelung ca. 8 000 000 GBP gewährt.

Bei den Beihilfemaßnahmen handelt es sich offensichtlich um eine staatliche Beihilfe im Sinne von Artikel 87 EG-Vertrag. Eine staatliche Beihilfe kann als mit dem Gemeinsamen Markt vereinbar angesehen werden, wenn sie eine der im EG-Vertrag vorgesehenen Ausnahmen darstellt. Im Fischereisektor gilt eine staatliche Beihilfe als mit dem Gemeinsamen Markt vereinbar, wenn sie den Bestimmungen der Leitlinien für die Prüfung staatlicher Beihilfen im Fischerei- und Aquakultursektor entspricht, die zum Zeitpunkt der Gewährung der Beihilfe in Kraft sind⁽²⁾.

Was die Beihilfe zum Erwerb einer Beteiligung an einem gebrauchten Fischereifahrzeug anbelangt, so kann sie gemäß den Leitlinien von 1994, 1997 und 2001 als mit dem Gemeinsamen Markt vereinbar angesehen werden, wenn sie Seefischern ermöglichen soll, über Beteiligungen Eigentum zu erwerben oder ein Fischereifahrzeug nach Totalverlust zu ersetzen, das

⁽¹⁾ Verordnung (EG) Nr. 659/1999 des Rates vom 22. März 1999 über besondere Vorschriften für die Anwendung von Artikel 93 EG-Vertrag (ABl. L 83 vom 27.3.1999, S. 1). Geändert durch die Beitrittsakte von 2003.

⁽²⁾ ABl. C 260 vom 17.9.1994, S. 3, ABl. C 100 vom 27.3.1997, S. 12, ABl. C 19 vom 20.1.2001, S. 7, ABl. C 229 vom 14.9.2004, S. 5.

Schiff nicht älter als 20 Jahre ist und noch mindestens zehn Jahre benutzt werden kann. Die Leitlinien von 2004 sind strikter und verweisen auf Artikel 12 Absatz 3 Buchstabe d und Artikel 12 Absatz 4 Buchstabe f der Verordnung (EG) Nr. 2792/1999, die zusätzliche Anforderungen bezüglich des Alters des Begünstigten und die Gesamtlänge des Fischereifahrzeugs enthalten. Nach den Leitlinien von 1994 und 1997 darf der dem Antragsteller gewährte Gesamtbetrag der Beihilfe 30 % der tatsächlichen Kosten für den Erwerb des Fischereifahrzeugs nicht übersteigen. In den Leitlinien von 2001 wurde dieser Betrag auf 20 % herabgesetzt.

Zum gegenwärtigen Zeitpunkt scheint die für den Erwerb einer Beteiligung an einem gebrauchten Fischereifahrzeug gewährte Beihilfe den Bedingungen in den Leitlinien nicht zu entsprechen. Des Weiteren gestattet die Regelung Beihilfen bis zu einem Höchstbetrag von 25 % der tatsächlichen Kosten für den Erwerb eines Fischereifahrzeugs, was mit den Leitlinien von 2001 unvereinbar ist.

Was die Beihilfe zum Erwerb einer Beteiligung an einem neuen Fischereifahrzeug anbelangt, so ist unter Nummer 2.2.3.1. der Leitlinien von 1994 und 1997 vorgesehen, dass Beihilfen für den Bau neuer Schiffe als mit dem Gemeinsamen Markt vereinbar angesehen werden können, falls die betreffenden Bedingungen der Verordnung (EG) Nr. 3699/93 erfüllt sind. Die Fischereifahrzeuge müssen in Übereinstimmung mit den Zielen des Mehrjährigen Ausrichtungsprogramms (MAP) gebaut sein und den Verordnungen und Richtlinien über Hygiene- und Sicherheitsvorschriften sowie den Gemeinschaftsbestimmungen über die Abmessungen von Fischereifahrzeugen entsprechen. Die Fischereifahrzeuge müssen im Flottenregister registriert sein.

In den Leitlinien von 2001 wird auf die Verordnung (EG) Nr. 2792/1999 verwiesen, wo es heißt, dass Neuzugänge an Kapazitäten durch eine ohne öffentliche Zuschüsse erfolgte Stilllegung von Kapazitäten ausgeglichen werden müssen. Des Weiteren sollte in der Zeit bis zum 31. Dezember 2001 — soweit die Ziele nicht erreicht werden — die Stilllegung von Kapazitäten mindestens 30 % über den neu hinzugekommenen Kapazitäten liegen. Eine weitere Bedingung ist, dass eine Beihilfe nur gewährt werden darf, wenn der Mitgliedstaat gemäß Artikel 5 der genannten Verordnung die Informationen über die Anwendung des Mehrjährigen Ausrichtungsprogramms (MAP) übermittelt und die Auflagen im Rahmen der Verordnung (EWG) Nr. 2930/86 zur Definition der Angaben für Fischereifahrzeuge erfüllt hat sowie den Abmachungen gemäß Artikel 6 der Verordnung (EWG) Nr. 2792/1999 nachgekommen ist und insgesamt die MAP-Ziele verwirklicht hat.

Da in der Regelung nichts zu der Größe der Fischereiflotte und zu den Hygiene- und Sicherheitsvorschriften gesagt wird und keine Verpflichtung zur Registrierung des Fischereifahrzeugs im Flottenregister besteht, hat die Kommission zum gegenwärtigen Zeitpunkt ernsthafte Zweifel an der Vereinbarkeit der nach dem 1. Juli 2001 gewährten Beihilfe für den Erwerb einer Beteiligung an einem neuen Fischereifahrzeug.

Daher hat die Kommission beschlossen, keine Einwände zu dieser Beihilferegelung zu erheben, sofern es sich um eine vor dem 1. Juli 2001 gewährte Beihilfe für den Erwerb einer Beteiligung an einem neuen Fischereifahrzeug handelt. Bei Beihilfen, die im Rahmen der Regelung nach dem 1. Juli 2001 für den Erwerb einer Beteiligung an einem neuen Fischereifahrzeug gewährt wurden, sowie bei allen Beihilfen, die für den Erwerb

einer Beteiligung an einem gebrauchten Fischereifahrzeug gewährt wurden, hat die Kommission zum gegenwärtigen Zeitpunkt jedoch ernsthafte Zweifel an der Vereinbarkeit mit dem Gemeinsamen Markt.

Gemäß Artikel 14 der Verordnung (EG) Nr. 659/1999 kann eine rechtswidrige Beihilfe vom Empfänger zurückgefordert werden.

DAS SCHREIBEN

- „(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 UK of unlawful aid granted by the authorities of the Shetland Islands of the UK. By letters of 24 August 2004, 4 February, 11 May and 16 December 2005 the Commission has requested the UK authorities to provide information about these measures, to which the UK 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 so-called First time shareholders scheme. Under the First time shareholders scheme, which was applied from 1982 until 14 January 2005, grants could be given as contribution to matching own financial contribution for the purchase of a share in an existing or new fishing vessel. Aid was only granted to persons over 18 years old that did not yet own a share in a fishing vessel.
- (4) Aid was granted for 50 % of the acquisition costs of the share, with a maximum of GBP 7 500 in case of an existing vessel and GBP 15 000 in case of a new vessel. The other 50 % may only be financed by the beneficiaries own contribution, derived either from his own savings or from any interest-free family loan. The amount of aid may never exceed 25 % of the value of the vessel.
- (5) The aid was granted under the condition that the vessel is used for full time fishing for the next 5 years and that the beneficiary retained his share in the vessel for a period of five years from receipt of the aid.

3. COMMENTS FROM THE UNITED KINGDOM

- (6) 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.

(7) 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.

(8) 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.

(9) In addition, with regard to the First time shareholder scheme the United Kingdom states that the scheme was in operation until 14 January 2005, but that actually no assistance has been awarded during the financial years 2003/2004 and 2004/2005 as there were no applications. Furthermore, they state that they consider the aid to have been compatible with Guidelines for the examination of State aid to fisheries and aquaculture applicable at the times concerned.

4. ASSESSMENT

(10) 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.

(11) 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

(12) According to the United Kingdom, the two general schemes have been applied before the accession of the United Kingdom to the European Economic Community. However, the Commission notes that according to the provided information, the *First time shareholders* scheme was put in place only 1982. In any event, 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 addition, 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.

(13) 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

(14) 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.

(15) 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. It seems that during that time approximately GBP 8 000 000 have been granted under the scheme.

(16) 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 is thus to be assessed on the compatibility with the Guidelines of 1994, 1997 and 2001⁽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.

4.3. Used vessels

4.3.1. Guidelines of 1994, 1997 and 2001

- (17) With regard to aid for the acquisition of a share in a second hand vessel, according to point 2.2.3.3 of the 1994, 1997 and 2001 Guidelines, such aid may be deemed compatible with the common market when the vessel can be used for at least another 10 years. Under the 1994, 1997 Guidelines the vessel has to be at least 10 years old, under the 2001 Guidelines 20 years. According to all guidelines the aid should be intended to enable sea-fishermen to acquire part ownership or to replace a vessel after its total loss.
- (18) With regard to the aid rate, under the 1994 and 1997 Guidelines the total amount of aid to be granted may not exceed 50 % of the participation rate provided for in Annex IV to Regulation (EC) No 3699/93, applying the scale relating to construction aid set out in that Annex. As Shetland is an Objective I region, the maximum participation rate is set at 60 %. Thus the aid for sea-fishermen to acquire part ownership of a second hand vessel may not exceed 30 % of the actual costs of the acquisition of the vessel.
- (19) Under the 2001 Guidelines this provision is amended and it is stated that the rate of the aid may not exceed in subsidy equivalent 20 % of the actual cost of the acquisition of the vessel.

4.3.2. Compatibility

- (20) Under the scheme aid was granted for individuals who acquired for the first time a share in a second hand vessel. According to the Guidelines aid could only be granted with regard to vessels, not older than 20 years, that could be used for at least another 10 years. The scheme does not contain any conditions with regard to the age of the vessels. The fact that the beneficiaries of the aid are obliged to keep their share in the vessel for at least another five years and to use the vessel for fishing during those years seems to insure that aid is granted for vessels that are still operational and to be used for some years. However, this condition is insufficient to comply with the requirements established in point 2.2.3.3. of the 1994, the 1997 as well as the 2001 Guidelines.
- (21) In addition, according to the information provided, under the scheme the aid may not exceed 25 % of the value of the vessel. Under the 1994 and 1997 Guidelines, applicable until 1 July 2001, it is allowed to grant aid with a maximum of 30 % of the actual costs of the acquisition of the vessel and thus the aid rate of the scheme of 25 % is compatible with that condition.
- (22) However the 2001 Guidelines, which Member States were to apply as from 1 July 2001, require that the aid shall not exceed 20 % of the actual costs of the acquisition of the vessel. The aid rate of the scheme of 25 % therefore no longer complies with the conditions established under the Guidelines. Therefore, from 1 July 2001, the aid rate of the scheme of 25 % exceeds seems no longer compatible.

- (23) With regard to the above, the Commission at this stage has serious doubts on the compatibility with the common market of the aid granted for the acquisition of a share in used vessels.

4.4. New vessels

4.4.1. Guidelines of 1994 and 1997

- (24) With regard to aid for the acquisition of a share in new vessels, point 2.2.3.1 of the 1994 and the 1997 Guidelines apply. According to those guidelines, aid for the construction of new fishing vessels may be deemed compatible with the common market provided that it complies with the relevant conditions of Regulation (EC) No 3699/93 ⁽⁶⁾.

Regulation (EC) No 3699/93

- (25) According to the conditions laid down in Articles 7 and 10 and Annex III (paragraph 1.3) of Regulation (EC) No 3699/93, the vessels must be built in compliance with the objectives set for the size of the fishing fleet of the Member State concerned under the multiannual guidance programme (MAGP) and must comply with the regulations and directives governing hygiene and safety and Community provisions concerning the dimension of vessels. The vessels have to be registered in the fleet register.

4.4.2. Guidelines of 2001

- (26) With regard to aid for the acquisition of a share in new vessels, point 2.2.3.1 of the 2001 Guidelines applies. According to those guidelines, aid for the construction of new fishing vessels may be deemed compatible with the common market provided that it complies with the relevant conditions of Regulation (EC) No 2792/1999 ⁽⁷⁾.

Regulation (EC) No 2792/1999

- (27) Articles 6, 7, 9 and 10 and Annex III (point 1.3) of Regulation (EC) No 2792/1999 ⁽⁸⁾, as applicable until 1 January 2003, require that the 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 were not yet respected, the withdrawal of capacity should at least be 30 % more than the new capacity introduced.

⁽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⁾ 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.

- (28) The aid may only be granted where the Member State has submitted the information concerning the application of the Multi-annual Guidance Programme (MAGP) as required under Article 5 of that Regulation and furthermore, has complied with its obligations under Regulation (EEC) No 2930/86 concerning the characteristics of fishing vessels, has implemented the arrangements under Article 6 of Regulation (EC) No 2792/1999 and has complied with the overall MAGP-objectives.
- (29) When the vessel is deleted from the fishing vessel register of the Community, within 10 years from construction, the aid should be recovered pro rata temporis.
- (30) Finally, the vessels must be built to comply with the regulations and directives governing hygiene and safety and Community provisions concerning the dimension of vessels. The vessels have to be registered in the fleet register and must be entered in the Community fishing fleet register.
- (31) With regard to the compatibility of aid for the construction of new fishing vessels with the common market, the 2001 Guidelines aid also make reference to the provisions of Regulation (EC) No 2792/1999 as mentioned above.

Regulation (EC) No 2369/2002

- (32) However, on 1 January 2003 the relevant Articles and Annex of Regulation (EC) No. 2792/1999 were amended by Regulation (EC) No 2369/2002⁽⁹⁾. This amendment introduced the phasing out of aid for construction of new fishing vessels. According to the amended provisions, the conditions have been broadened in the sense that aid for the renewal of fishing vessels may only be granted until 31 December 2004 and for vessels of less than 400 GT.

4.4.3. Compatibility

- (33) Under the scheme grants can be given for the purchase of a share in a new fishing vessel. Aid can only be granted to persons over 18 years old that do not yet own a share in a fishing vessel. The beneficiary is obliged to use the vessel for fishing for the following 5 years and must retain their share in the vessel for at least the same period. In case of breach of the conditions under the scheme the authorities can require pro rata temporis repayment of the aid.
- (34) As the scheme seems to make no reference to the reference level for the size of the fishing fleet nor to the hygiene and safety requirement and there is obligation for the registration of the vessel in the fleet register, the Commission at this stage has serious doubts that the conditions for the acquisition of a share in a new vessel during the period starting from 1 July 2001 can be considered compatible with the Guidelines for the examination of State aid to fisheries and aquaculture.
- (35) Furthermore the scheme does not seem to contain any provisions with regard to the additional requirements introduced by Regulation (EC) No 2369/2002 (point 32), applicable as from 1 January 2003. Although the United Kingdom has stated that no aid has been granted under the scheme during the financial years 2003/2004 and

2004/2005, aid has been granted during the financial year 2002/2003 which could include aid granted after 1 January 2003. Therefore at this stage the Commission also has doubts whether the additional conditions established by Regulation (EC) No. 2369/2002 have been complied with.

- (36) With regard to the above, the Commission at this stage has serious doubts on the compatibility with the common market of the aid granted for the acquisition of a share in new vessels after 1 July 2001. Aid granted before that date however is deemed to be compatible with the guidelines in force at the time the aid was granted and thus compatible with the common market.

5. DECISION

- (37) 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 for the acquisition of a share in a new vessel granted before 1 July 2001.
- (38) With regard to the aid granted under the scheme for the acquisition of a share in a new vessel after 1 July 2001 and all aid granted for the acquisition of a share in second hand vessels, the Commission observes that 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 these aids with the Guidelines for the examination of State aid to Fisheries and aquaculture and, therefore, with the EC Treaty.
- (39) 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, 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.
- (40) 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.
- (41) 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.

⁽⁹⁾ OJ L 358, 31.12.2002, p. 49.