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(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

DECISIONS

COMMISSION

COMMISSION DECISION

of 13 November 2007

State aid C 39/06 (ex NN 94/05) — First time shareholders scheme implemented by the United Kingdom

(notified under document number C(2007) 5398)

(Only the English version is authentic)

(Text with EEA relevance)

(2008/166/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

mation by letters dated 10 December 2004, 6 April 2005, 8 September 2005 and 31 January 2006.

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having regard to Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty ⁽¹⁾, and in particular Article 6(1) and Article 14 thereof,

Having called on interested third parties to submit their comments pursuant to the provisions cited above ⁽²⁾,

Whereas:

(2) By letter dated 13 September 2006, the Commission informed the United Kingdom of the decision to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the aid. The United Kingdom provided its comments on the aid by letter dated 16 October 2006.

(3) The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* on 30 November 2006 ⁽³⁾. The Commission invited any interested parties to submit their comments on the aid. No comments were received.

I. PROCEDURE

(1) By letter dated 15 June 2004, the Commission was informed by a citizen of the United Kingdom of unlawful aid granted by the Shetland Islands Council, the public authority of the Shetlands Islands of the United Kingdom. By letters dated 24 August 2004, 4 February 2005, 11 May 2005 and 16 December 2005, the Commission requested the United Kingdom to provide information about such aid. The United Kingdom provided the Commission with further infor-

II. DETAILED DESCRIPTION

(4) The Shetland Islands Council 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 in force since the 1970s. One of these schemes was the 'First time shareholders scheme' (the scheme). Under that scheme, which was

⁽¹⁾ OJ L 83, 27.3.1999, p. 1. Regulation as last amended by Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p. 1).

⁽²⁾ OJ C 291, 30.11.2006, p. 5.

⁽³⁾ OJ C 291, 30.11.2006, p. 5.

in force 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 already own a share in a fishing vessel.

- (5) 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 % could only be financed by the beneficiaries own contribution, derived either from his own savings or from a family loan. The amount of aid could never exceed 25 % of the value of the vessel.
- (6) The aid was granted subject to the condition that the vessel would be used for full-time fishing for the following five years and that the beneficiary retained his share in the vessel for a period of five years from receipt of the aid.

Grounds for initiating the procedure

- (7) The Commission had serious doubts that the aid granted under the scheme for individuals who acquired for the first time a share in a second-hand vessel could to be compatible with the requirements established in point 2.2.3.3 of the Guidelines for the examination of State aid to fisheries and aquaculture of 1994, 1997 and 2001 respectively ⁽¹⁾. In particular, it had doubts on the compliance of the scheme with the condition to grant aid only with regard to vessels not older than 10 ⁽²⁾ or respectively 20 ⁽³⁾ years that could be used for at least another 10 years. In addition, the Commission had doubts on the compatibility of the aid rate of the scheme of 25 % of the actual cost of acquisition of the vessel, which seemed not to comply with the 2001 Guidelines, applicable to existing aid schemes as from 1 July 2001, allowing an aid rate up to 20 % only ⁽⁴⁾.

As regards the aid granted for the acquisition of a share in a new vessels the Commission considered that the scheme seemed to make no reference to the reference level for the size of the fishing fleet nor to the hygiene and safety requirements and the obligation for the registration of the vessel in the fleet register, in accordance with the conditions of Articles 6, 7, 9 and 10 of and Annex III to Council Regulation (EC) No 2792/1999 of 17 December laying down the detailed rules and arrangements regarding Community structural assistance

in the fisheries sector ⁽⁵⁾, as amended by Regulation (EC) No 2369/2002 of 20 December 2002 ⁽⁶⁾. In addition, the scheme seemed not to contain any provisions with regard to the additional requirements provided for in Regulation (EC) No 2792/1999 as amended by Regulation (EC) No 2369/2002.

III. COMMENTS FROM THE UNITED KINGDOM

- (8) In its reply dated 16 October 2006, the United Kingdom provided further information on the aid granted under the scheme. It pointed out that the total amount of aid granted under the scheme was GBP 581 750 rather than the GBP 8 000 000 referred to by the Commission in its decision to initiate the procedure laid down in Article 88(2) of the EC Treaty. The United Kingdom also pointed out that after 1 July 2001, no aid had been granted with regard to new vessels, and that, therefore, the question of the non-compatibility of the scheme after that date was of no relevance.
- (9) Concerning the aids for acquisition of a share in a second-hand vessel, the United Kingdom confirmed that the scheme did not contain any condition regarding the age of the vessel, nor a provision requiring that the vessels could be used for at least another 10 years. However, the United Kingdom argued that the scheme did contain a five-year grant condition and that this provision represented an implicit commitment that the vessel would at least continue to be used for fishing for that length of time.
- (10) The United Kingdom provided a list of all 78 individual aids, each amounting to GBP 7 500, granted between 25 April 1996 and 15 July 2003 for the acquisition of a share in a second-hand vessel, specifying the name of the beneficiary and the name and age of the vessel. The rate of the aid varied between 0,12 % and 25 %. After 1 January 2001, the aid rate was never higher than 3,75 %.
- (11) The United Kingdom pointed out that 36 of those 78 grants seemed to be non-compliant, but that 28 of those had been or were in the process of being recovered following the loss, sequestration, sale, or decommissioning of the vessel in question. In the case of two of the eight residual items, grant recovery had not been not pursued as the loss occurred after the expiry of the five-year grant period. The United Kingdom thus concluded that only six potentially non-compliant grants remained, concerning vessels that were still in operation or subsequent vessels to which the benefit of the grant in question had been transferred.

⁽¹⁾ 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.

⁽²⁾ Guidelines of 1994 and 1997.

⁽³⁾ Guidelines of 2001.

⁽⁴⁾ Point 2.2.3.3(c) of the Guidelines for the examination of State aid to fisheries and aquaculture of 2001.

⁽⁵⁾ OJ L 337, 30.12.1999, p. 10. Regulation as last amended by Regulation (EC) No 1421/2004 (OJ L 260, 6.8.2004, p. 1).

⁽⁶⁾ OJ L 358, 31.12.2002, p. 49.

- (12) Finally, the United Kingdom maintained that, should the Commission adopt a negative decision, recovery of aid granted prior to 3 June 2003 should not be required as that be contrary to the principle of the protection of legitimate expectations. In that respect, the United Kingdom made reference to Commission Decision 2003/612/EC of 3 June 2003 on loans for the purchase of fishing quotas in the Shetland Islands (United Kingdom) ⁽¹⁾ and Commission Decision 2006/226/EC of 7 December 2005 on Investments of Shetland Leasing and Property Developments in the Shetland Islands (United Kingdom) ⁽²⁾, stating that until 3 June 2003 the Shetland Islands Council legitimately considered the funds used for such aid to be private rather than public.

IV. ASSESSMENT OF THE AID

- (13) It must be determined firstly if the measure can be regarded as State aid and if so, if it is compatible with the common market.
- (14) The aid has been granted to a limited number of companies within the fisheries sector and is thus of a selective nature. The aid has been granted by the Shetland Islands Council from state resources and benefited companies which are in direct competition with other companies in the fisheries sector, both within the United Kingdom and in other Member States. Therefore, the aid distorts or threatens to distort competition and appears to be State aid within the meaning of Article 87 of the EC Treaty.

Legality

- (15) According to the United Kingdom, the two general schemes referred to in Recital 4 have been applied before the accession of the United Kingdom to the European Economic Community. However, the Commission notes that according to the information provided, the First time shareholders scheme was only put in place in 1982. In any event, due to the absence of past records, the United Kingdom has not been able to provide evidence that the aid existed already before the United Kingdom joined the Community. In addition, the United Kingdom confirmed that the aid schemes have been changed over the years and that these changes were never notified to the Commission in accordance with Article 88(3) of the EC Treaty (former Article 93(3)). As a result, the aid should be considered as new aid.

Basis for the assessment

- (16) Regulation (EC) No 659/1999 does not lay down any limitation period for the examination of 'unlawful aid', as defined in Article 1(f) thereof, namely aid implemented before the Commission is able to reach a conclusion as to its compatibility with the common market. However,

Article 15 of that Regulation stipulates that the power of the Commission to require the recovery of aid is subject to a limitation period of 10 years and that the limitation period begins on the day on which the unlawful 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, namely aid granted more than ten years before any measure taken by the Commission concerning it.

- (17) 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 has limited its assessment to the aid granted between 24 August 1994 and January 2005.
- (18) State aid can be declared compatible with the common market if it complies with one of the exceptions provided for in the EC Treaty. As regards 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 the Guidelines for the examination of State aid to fisheries and aquaculture. According to the second paragraph of point 5.3 of the Guidelines of 2004: '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 granting the aid has entered into force.' This is also in accordance with the general rules expressed in Commission notice on the determination of the applicable rules for the assessment of unlawful State aid ⁽³⁾. The aid thus needs to be assessed on the basis of its compatibility with the Guidelines of 1994, 1997 and 2001.

New Vessels

- (19) As regards the aid granted for the acquisition of a share in a new vessel, in its decision to initiate the procedure laid down in Article 88(2) of the EC Treaty, the Commission pointed out that the aid granted before 1 July 2001 could be regarded compatible with the common market. After that date, however, the conditions of the scheme seemed no longer compatible with the applicable conditions and therefore the Commission has had serious doubts that any such aid granted after that date would be incompatible.
- (20) From the information provided by the United Kingdom, it can be established that no aid has been granted after 1 July 2001 for the acquisition of a share in a new vessel and that since 14 January 2005 the scheme is no longer in force.

⁽¹⁾ OJ L 211 of 21.8.2003, p. 63.

⁽²⁾ OJ L 81 of 18.3.2006, p. 36.

⁽³⁾ OJ C 119, 22.5.2002, p. 22.

Used vessels

- (21) According to point 2.2.3.3 of the 1994, 1997 and 2001 Guidelines, aid may be deemed compatible with the common market only when the vessel can be used for at least another 10 years. In addition, under the 1994 and 1997 Guidelines the vessel has to be at least 10 years old, and under the 2001 Guidelines, at least 20 years old.
- (22) The scheme does not contain any conditions with regard to the age of the vessels and the United Kingdom has confirmed that no other conditions or actions could have ensured the compatibility with this condition. Moreover, the scheme did not require that the vessels be used for at least another 10 years. This makes the scheme clearly incompatible with the 1994, 1997 and 2001 Guidelines.
- (23) Such incompatibility cannot be removed by the requirement of the scheme to keep the share in the vessel for at least another five years and to use the vessel for fishing during those years. This provision merely ensured that vessels would be operational for the first five years, thus only for half of the time required by the Guidelines.
- (24) Therefore, it is considered that the aid granted under the scheme for the acquisition of a share in a second-hand vessel is incompatible with the common market.

Recovery of the aid

- (25) Under Article 14(1) of Regulation (EC) No 659/1999, where negative decisions are taken in the case of unlawful aid, the Commission is to decide that the Member State concerned must take all necessary measures to recover the aid from the beneficiary.
- (26) The United Kingdom has raised the issue that the Commission is not to require recovery of the aid if that would be contrary to the principle of the protection of legitimate expectations and claims that this principle applies to this case.
- (27) The funds used for the financing of the scheme are the same funds used for the aids subject to the negative decisions taken by the Commission in Decisions 2003/612/EC and 2006/226/EC, as referred to in Recital 12 of the present Decision. In those cases the Commission considered that these funds have to be regarded as State resources for the purposes of

Article 87(1) of the EC Treaty. At the same time, the Commission acknowledged that in the specific circumstances of the cases in question, legitimate expectations as to the private nature of the fund in question had been created on the part of the Shetland authorities and bodies involved through the combination of a number of elements taken together which precluded recovery of the incompatible State aid.

- (28) The Commission considers, however, that in this case the elements taken into account in the Decisions 2003/612/EC and 2006/226/EC cannot be applied in the same way and the legitimate expectations have not been created. The Commission notes, in particular, the actions and statements from the United Kingdom, clearly showing that, at the respective times of granting of aid, the responsible authorities were convinced that the scheme was in fact a State aid scheme and that the rules on State aid were applicable.
- (29) To reach that conclusion, the Commission observes that, unlike the aids the subject of Decisions 2003/612/EC and 2006/226/EC, the scheme in question has been set up as a normal aid scheme and concerns direct grants to fishermen, granted directly by the Shetland Islands Council. In addition, the specific circumstances of this case clearly show that the United Kingdom considered the State aid rules to be applicable, as they have continuously included the expenditure under the scheme in the annual UK State aid reports submitted to the Commission in accordance with Community obligations. In fact, in response to questions raised by the Commission, the United Kingdom stated in its letter dated 10 December 2004 that: 'payments under the schemes have been included in the Annual State Aid Inventory and sent to the Commission annually, as required, for many years' and in its letter dated 6 April 2005 that 'My authorities have, over many years, acted in good faith and in the belief that the Schemes were compliant with the State aid guidelines'.
- (30) With regard to those statements and the circumstances of the case, the Commission therefore considers that requiring the recovery of the aid cannot be considered to be contradictory to a general principle of Community law. Thus, in accordance with Article 14(1) of Regulation (EC) No 659/1999, the Commission considers that United Kingdom must take all necessary measures to recover the aid from the beneficiaries of the scheme (regardless of the actions already taken), without prejudice to cases falling within the scope 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 fisheries sector and amending Regulation (EC) No 1860/2004 ⁽¹⁾.

⁽¹⁾ OJ L 193, 25.7.2007, p. 6.

(31) In that respect, it should be pointed out that in accordance with Article 14(2) of Regulation (EC) No 659/1999, in order to ensure that effective competition be restored, the recovery should include interest. This interest should be calculated on a compound basis in accordance with Chapter V of Commission Regulation (EC) No 794/2004⁽¹⁾. The United Kingdom should therefore ensure that also the recoveries already undertaken or still in progress will comply with this condition and, where such interest has not been included in the recovery, take the necessary measures to recover also the concerned amount of interest from those beneficiaries.

(32) The Commission would ask United Kingdom to return to it the attached questionnaire concerning the current status of the recovery procedure and to draw up a list of beneficiaries to which the recovery relates.

V. CONCLUSION

(33) In the light of the assessment made in Section IV, the Commission finds that the United Kingdom has, in breach of Article 88(3) of the EC Treaty, unlawfully granted aid under the scheme.

(34) The Commission considers that the aid granted under the scheme is not compatible with the common market as far as it concerns aid granted for the first time acquisition of a share in a second-hand fishing vessel.

(35) As, after 1 July 2001, no aid has been granted for the first time acquisition of a share in a new fishing vessel, all such aid granted under the scheme is considered compatible with the common market,

HAS ADOPTED THIS DECISION:

Article 1

1. The State aid which the United Kingdom has implemented on the basis of the First time shareholder scheme (the scheme) is compatible with the common market as far as it concerns aid granted for the first time acquisition of a share in a new fishing vessel.

2. The State aid which the United Kingdom has implemented on the basis of the scheme is incompatible with the common market as far as it concerns aid granted for the first time acquisition of a share in a second-hand fishing vessel.

Article 2

Individual aid referred to in Article 1(2) of this Decision does not constitute aid if it fulfils the conditions of Commission Regulation (EC) No 875/2007.

Article 3

1. The United Kingdom shall take all necessary measures to recover from the beneficiaries the aid granted under the scheme referred to in Article 1(2), other than that referred to in Article 2.

2. The sums to be recovered shall bear interest from the date on which they were put at the disposal of the beneficiaries until their actual recovery.

3. The interest shall be calculated on a compound basis in accordance with Chapter V of Commission Regulation (EC) 794/2004.

4. The United Kingdom shall cancel all outstanding payments of aid under the scheme referred to in Article 1(2) with effect from the date of adoption of this Decision.

Article 4

1. The recovery of the aid granted under the scheme referred to in Article 1(2) shall be immediate and effective.

2. The United Kingdom shall ensure that this Decision is implemented within four months following the date of its notification.

Article 5

1. Within two months following notification of this Decision, the United Kingdom shall submit the following information to the Commission:

(a) the list of beneficiaries that have received aid referred to Article 1 of this Decision that does not fulfil the conditions laid down by Regulation (EC) No 875/2007, and the total amount of aid received by each of them;

(b) total amount (principal and interests) to be recovered from each beneficiary;

(c) a detailed description of the measures already taken and planned to comply with this Decision; and

(d) documents demonstrating that the beneficiaries have been ordered to repay the aid.

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

2. The United Kingdom shall keep the Commission informed of the progress of the national measures taken to implement this Decision until recovery of the aid granted under the scheme referred to in Article 1(2) has been completed.

It shall immediately submit any information which the Commission requests on the measures already taken and planned to comply with this Decision.

It shall also provide detail information concerning the amounts of aid and recovery interest already recovered from the beneficiaries.

Article 6

This Decision is addressed to the United Kingdom of Great Britain and Northern Ireland.

Done at Brussels, 13 November 2007.

For the Commission

Joe BORG

Member of the Commission
