

**STEUNMAATREGELEN VAN DE STATEN — VERENIGD KONINKRIJK****Steunmaatregelen van de Staten Nr. C 37/06 (ex NN 91/05)****Steunregeling voor de modernisering van vissersvaartuigen****Uitnodiging om opmerkingen te maken overeenkomstig artikel 88, lid 2, van het EG-Verdrag****(Voor de EER relevante tekst)**

(2006/C 293/05)

Bij brief van 13 september 2006, die op de bladzijde na deze samenvatting in de authentieke taal is weergegeven, heeft de Commissie het Verenigd Koninkrijk van Groot-Brittannië en Noord-Ierland in kennis gesteld van haar besluit tot inleiding van de procedure van artikel 88, lid 2, van het EG-Verdrag ten aanzien van bovengenoemde steunmaatregel.

Belanghebbenden kunnen hun opmerkingen kenbaar maken door deze binnen één maand vanaf de datum van deze bekendmaking aan het volgende adres te zenden:

Europese Commissie  
Directoraat-generaal Visserij  
Directoraat FISH/D/3 „Juridische aangelegenheden”  
B-1049 Brussel  
Fax: (32-2) 295 19 42.

Deze opmerkingen zullen ter kennis van het Verenigd Koninkrijk van Groot-Brittannië en Noord-Ierland worden gebracht. Een belanghebbende die opmerkingen kenbaar maakt kan, met opgave van redenen, schriftelijk verzoeken om vertrouwelijke behandeling van zijn identiteit.

## SAMENVATTING

In juni 2004 is de Commissie in kennis gesteld van steun die door de Shetland Islands Council, de overheidsinstantie van het Verenigd Koninkrijk voor de Shetland Islands, aan de visserijsector werd verleend en mogelijk onrechtmatig was.

In het kader van de steunregeling voor de modernisering van vissersvaartuigen werd steun verleend voor moderniseringswerkzaamheden die tot grote verbeteringen leidden zoals bijvoorbeeld een betere opslag van de vangsten, de vervanging van de motor, verbeteringen van de arbeidsomstandigheden of de veiligheid van de bemanning; deze steun bedroeg telkens maximaal 10 % van de totale kosten van het project met een maximum van 40 000 GBP per vaartuig. Indien de kosten van het project meer bedroegen dan 50 % van de kosten van een nieuw vaartuig van dezelfde soort, waren ze niet subsidiabel; ook de kosten van werkzaamheden aan vaartuigen van minder dan vijf jaar oud werden niet in aanmerking genomen.

Overeenkomstig artikel 88, lid 3, van het EG-Verdrag moeten de lidstaten de Commissie van elk voornemen tot invoering of wijziging van steunmaatregelen op de hoogte brengen. Volgens het Verenigd Koninkrijk werd de steunregeling minstens vanaf de tachtiger jaren tot 14 januari 2005 toegepast. Door het ontbreken van documenten met betrekking tot het verleden kon het Verenigd Koninkrijk evenwel niet bewijzen dat de steunregeling reeds bestond vóór het Verenigd Koninkrijk tot de Unie toetrad en dus beschouwd moest worden als een bestaande steunregeling. Bovendien bevestigde het Verenigd Koninkrijk dat het de steunregeling in de loop der jaren heeft gewijzigd zonder de Commissie hiervan in kennis te stellen, zodat de steunregeling als een nieuwe steunregeling moet worden beschouwd.

Bij Verordening (EG) nr. 659/1999 <sup>(1)</sup> is geen verjaringstermijn vastgesteld voor het onderzoek naar onrechtmatige steun. In artikel 15 van die verordening is evenwel bepaald dat de bevoegdheden van de Commissie om steun terug te vorderen, verjaren na een termijn van tien jaar, dat deze termijn ingaat op de dag waarop de onrechtmatige steun aan de begunstigde is verleend en dat de verjaring wordt gestuit door elke maatregel van de Commissie. Bijgevolg oordeelt de Commissie dat in dit geval een onderzoek naar steun die méér dan tien jaar vóór door de Commissie enige maatregel werd genomen, is verleend, niet nodig is. De Commissie is van oordeel dat de verjaring werd gestuit door het verzoek om informatie dat zij het Verenigd Koninkrijk op 24 augustus 2004 heeft toegezonden. Bijgevolg is de steun die de begunstigde vóór 24 augustus 1994 werd verleend, verjaard en evalueert de Commissie hierna slechts de steun die werd verleend bij beschikkingen die werden genomen in de periode van 24 augustus 1994 tot en met 14 januari 2005. Volgens de gegevens waarover de Commissie beschikt, zou van 1994 tot en met 14 januari 2005 ongeveer 11 673 514 GBP in het kader van de steunregeling zijn uitgekeerd.

Bij deze maatregelen lijkt het te gaan om steunmaatregelen van de staten in de zin van artikel 87 van het EG-Verdrag. Staatssteun kan als verenigbaar met de gemeenschappelijke markt worden verklaard, indien hij onder één van de uitzonderingen valt waarin in het EG-Verdrag is voorzien. Staatssteun voor de visserijsector mag als verenigbaar met de gemeenschappelijke markt worden beschouwd indien is voldaan aan de voorwaarden van de Richtsnoeren voor het onderzoek van de nationale steunmaatregelen in de visserij- en aquacultuursector die golden op het ogenblik dat de steun werd verleend <sup>(2)</sup>.

<sup>(1)</sup> Verordening (EG) nr. 659/1999 van de Raad van 22 maart 1999 tot vaststelling van nadere bepalingen voor de toepassing van artikel 93 van het EG-Verdrag, PB L 83 van 27.3.1999, blz. 1. Verordening laatstelijk gewijzigd bij de Toetredingsakte van 2003.

<sup>(2)</sup> PB C 260 van 17.9.1994, blz. 3; PB C 100 van 27.3.1997, blz. 12 en PB C 19 van 20.1.2001, blz. 7; PB C 229 van 14.9.2004, blz. 5.

De Richtsnoeren verwijzen naar de voorwaarden van Verordening (EG) nr. 3699/93 en Verordening (EG) nr. 2792/1999. Overeenkomstig Verordening (EG) nr. 3699/93 moeten de subsidiabele investeringen gericht zijn op de verbetering van de kwaliteit van de gevangen en aan boord bewaarde producten, de verbetering van de vangst- en bewaringstechnieken, de toepassing van de wettelijke en bestuursrechtelijke gezondheidsvoorschriften en de verbetering van de werkomstandigheden en de veiligheid en/of de zich aan boord bevindende apparatuur voor controle op de visserij. De werkzaamheden mogen slechts betrekking hebben op vaartuigen die minder dan 30 jaar oud zijn tenzij het investeringen betreft die betrekking hebben op de verbetering van de werkomstandigheden, de veiligheid en/of de apparatuur voor controle op de visserij.

Krachtens Verordening (EG) nr. 2792/1999 die sedert 1 juli 2001 op bestaande steunregelingen van toepassing is, moet nieuwe ingebrachte capaciteit worden gecompenseerd door, zonder overheidssteun, aan de vloot een capaciteit te onttrekken die ten minste gelijk is aan de in de betrokken vlootsegmenten ingebrachte nieuwe capaciteit. Tot en met 31 december 2001 gold bovendien dat, indien nog niet aan de doelstellingen voor de betreffende vlootsegmenten was voldaan, de onttrokken capaciteit ten minste 30 % groter moest zijn dan de in de betrokken vlootsegmenten ingebrachte nieuwe capaciteit. Voorts mag steun slechts worden verleend indien de lidstaat zijn verplichtingen in het kader van het meerjarige oriëntatieprogramma zoals vermeld in artikel 5 van die verordening, is nagekomen. In artikel 9 van bedoelde verordening tenslotte is bepaald dat de steun voor de modernisering van vissersvaartuigen slechts mag worden verleend wanneer het niet gaat om in tonnage of motorvermogen gemeten capaciteit.

In dit stadium van het onderzoek lijkt de steun die wordt verleend voor de modernisering van vissersvaartuigen, niet te voldoen aan de voorwaarden van artikel 9 van Verordening (EG) nr. 2792/1999. De Commissie heeft er in dit stadium derhalve ernstige twijfels over of de regeling voldoet aan de voorwaarden die sedert 1 juli 2001 gelden.

Overeenkomstig artikel 14 van Verordening (EG) nr. 659/1999 van de Raad kan onrechtmatige steun van de begunstigde worden teruggevorderd.

#### TEKST VAN DE BRIEF

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

#### 1. PROCEDURE

(2) By letter of 15 June 2004 the Commission was informed by a citizen of the United Kingdom of unlawful aid granted by the authorities of the Shetland Islands of the United Kingdom. By letters of 24 August 2004, 4 February, 11 May and 16 December 2005 the Commission has requested the United Kingdom authorities to provide information about these measures, to which the United Kingdom authorities responded by letters of 10 December 2004, 6 April, 8 September 2005 and 31 January 2006.

#### 2. DESCRIPTION

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

#### 3. COMMENTS FROM THE UNITED KINGDOM

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

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

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

#### 4. ASSESSMENT

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

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

##### 4.1. Legality

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

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

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

##### 4.2. Basis for the assessment

(17) Council Regulation (EC) No 659/1999<sup>(3)</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.

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

(19) State aid can be declared compatible with the common market if it complies with one of the exceptions foreseen in the EC Treaty. As regards the State aid to the fisheries sector, State aid measures are deemed to be compatible with the common market if they comply with the conditions of Guidelines for the examination of State aid to fisheries and aquaculture. According to point 5.3 of the current Guidelines<sup>(4)</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>(5)</sup>.

<sup>(3)</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>(4)</sup> OJ C 229, 14.9.2004, p.5

<sup>(5)</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.

#### 4.2.1. Guidelines of 1994 and 1997

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

#### Regulation (EC) No 3699/93

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

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

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

#### 4.2.2. Guidelines of 2001

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

#### Regulation (EC) No 2792/1999

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

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

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

#### Regulation (EC) No 2369/2002

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

#### Regulation (EC) No 1421/2004

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

#### 4.2.3. Guidelines of 2004

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

<sup>(6)</sup> 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.

<sup>(7)</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>(8)</sup> OJ L 358, 31.12.2002, p. 49.

<sup>(9)</sup> OJ L 260, 6.8.2004, p. 1.

#### 4.3. Compatibility

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

#### 4.3. Conclusion

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

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

#### 5. DECISION

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