

**POMOC PAŃSTWA — ZJEDNOCZONE KRÓLESTWO****Pomoc państwa nr C 40/2006 (ex NN 96/2005) — Program pomocy w postaci pożyczek****Zaproszenie do zgłaszania uwag zgodnie z art. 88 ust. 2 traktatu WE**

(2006/C 292/04)

(Tekst mający znaczenie dla EOG)

Pismem z dnia 13 września 2006 r., zamieszczonym w języku oryginału na stronach następujących po niniejszym streszczeniu, Komisja powiadomiła Zjednoczone Królestwo Wielkiej Brytanii i Irlandii Północnej o swojej decyzji dotyczącej wszczęcia postępowania przewidzianego w art. 88 ust. 2 traktatu WE w odniesieniu do wyżej wspomnianej pomocy.

Zainteresowane strony mogą zgłaszać uwagi w terminie jednego miesiąca od daty publikacji niniejszego streszczenia i następującego po nim pisma. Uwagi należy kierować do Dyrekcji Generalnej ds. Konkurencji Komisji Europejskiej na następujący adres lub numer faksu:

European Commission  
Dyrekcja Generalna ds. Rybołówstwa  
DG FISH/D/3 „Kwestie Prawne”  
B-1049 Bruksela  
(faks: (32-2) 295 19 42)

Komentarze te zostaną przekazane Zjednoczonemu Królestwu Wielkiej Brytanii i Irlandii Północnej. Zainteresowane strony zgłaszające uwagi mogą wystąpić z odpowiednio umotywowanym pisemnym wnioskiem o objęcie ich tożsamości klauzulą poufności.

## STRESZCZENIE

W czerwcu 2004 r. Komisja została poinformowana o pomocy przyznanej przez Shetland Islands Council, organ państwowy na Wyspach Szetlandzkich, dla sektora rybołówstwa, związanej najprawdopodobniej z nielegalną pomocą państwa.

Między 2000 a 2003 r. w celu ułatwienia dostępu do pożyczek kapitałowych dla indywidualnych przedsiębiorstw zajmujących się hodowlą łososia przyznano pomoc w postaci pożyczek na hodowlę łososia. Pożyczki wahały się od 87 000 GBP do 250 000 GBP, maksymalnie 75 %, łącznie w wysokości 3 477 130 GBP. Pożyczki podlegały stopom procentowym odpowiadającym stosowanej europejskiej stopie procentowej powyżej 2 %. W celu zabezpieczenia pożyczki, została ona przyznana pod warunkiem, że pożyczkodawca posiadał „prawo własności” („right of title”) w odniesieniu do łososia jednorocznego (młody łosoś).

Na mocy programu przydzielania pożyczek na przetwarzanie ryb przetworcom ryb udzielono 5 pożyczek między 1996 a 2002 r. Pożyczki wahały się od 73 000 GBP do 200 000 GBP, łącznie w wysokości 698 300 GBP.

Pożyczki ze środków publicznych muszą być uważane za zysk przedsiębiorstw, jeżeli podjęły one decyzję na podstawie okoliczności, które nie byłyby zaakceptowane przez prywatnych inwestorów działających na podstawie normalnych zasad gospodarki rynkowej. Na podstawie informacji dostarczonych przez Zjednoczone Królestwo nie można stwierdzić na tym etapie, czy pożyczki faktycznie można uważać za pożyczki komercyjne udzielone na warunkach, które mogłyby zostać przyjęte przez normalnych prywatnych pożyczkodawców. W związku z tym pożyczki stanowią pomoc państwa w rozumieniu art. 87 traktatu WE.

Pomoc państwa w sektorze rybołówstwa można uznać za zgodną ze wspólnym rynkiem, jeżeli spełnia ona wymogi wytycznych dla badania pomocy państwa w odniesieniu do

rybołówstwa i akwakultury mające zastosowanie w chwili przydzielania pomocy.

Ponieważ informacje dotyczące indywidualnych pożyczek nie są dostępne, nie można stwierdzić na tym etapie, czy pożyczki zostały przyznane na konkretne inwestycje przeprowadzone przez dane przedsiębiorstwa lub czy były one przyznane jako pożyczki ogólne na poprawę płynności przedsiębiorstwa. W pierwszym przypadku pożyczki muszą być uważane za pomoc inwestycyjną, w drugim za pomoc operacyjną.

Jeśli chodzi o daną pomoc operacyjną, taka pomoc, przyznawana bez nakładania jakiegokolwiek obowiązku służącego celom wspólnej polityki rybołówstwa ze strony otrzymujących, mająca równocześnie na celu poprawę sytuacji przedsiębiorstw i zwiększenie ich płynności gospodarczej, jest zgodnie z wszystkimi wytycznymi sprzeczna ze wspólnym rynkiem.

Jeżeli pożyczki można uznać za pomoc na inwestycje przeprowadzone przez beneficjenta, do obu programów, o których mowa mają zastosowanie różne warunki. W odniesieniu do pożyczek na hodowlę ryb, zgodnie z rozporządzeniem (WE) nr 3699/93, pomoc dotycząca akwakultury może wymagać materialnych inwestycji dotyczących budowy, wyposażenia, rozbudowy i modernizacji urządzeń w sektorze akwakultury i projektów mających na celu wykazanie, na skalę podobną do normalnych inwestycji produkcyjnych, rentowności technicznej i gospodarczej gatunków hodowlanych jeszcze niewykorzystywanych do celów handlowych w sektorze akwakultury lub innowacyjnych technik hodowli pod warunkiem, że są oparte na wiarygodnych pracach badawczych. Pomoc może być przyznana do 60 % kwalifikujących się kosztów. Zgodnie z rozporządzeniem (WE) nr 2792/1999 pomoc może być przyznana na inwestycje w sektorze akwakultury pod warunkiem, że promotorzy projektów intensywnej hodowli ryb przekazują informacje, o których mowa w załączniku IV do dyrektywy 85/337/EWG do organu zarządzającego wraz z ich wnioskami o przyznanie pomocy publicznej. Organ zarządzający decyduje, czy projekt należy złożyć do oceny na mocy art. 5 i 10 tej

dyrektywy. Koszty związane z tą oceną kwalifikują się do pomocy. Pomoc może być przyznana do 60 % kwalifikujących się kosztów.

W odniesieniu do pożyczek w zakresie przetwórstwa rybnego, kwalifikujące się inwestycje są związane z budową i nabyciem budynków i urządzeń, nabyciem nowego sprzętu i urządzeń niezbędnych do przetwarzania i wprowadzania do obrotu produktów rybołówstwa i akwakultury między wylądowaniem aż do etapu produktu końcowego i z zastosowaniem nowych technologii, przeznaczonych na zwiększenie konkurencyjności. Nie kwalifikują się inwestycje dotyczące produktów rybołówstwa i akwakultury przeznaczonych do celów innych niż spożycie przez ludzi. Pomoc może być przyznana do 60 % kwalifikujących się kosztów.

Na podstawie informacji dostępnych Komisji, Komisja nie jest w stanie ustalić, czy warunki zostały spełnione. Brakuje konkretnych informacji dotyczących rodzajów inwestycji na pożyczki oraz obliczeń w odniesieniu do zgodności ze stawką pomocy; Komisja zatem na tym etapie ma poważne wątpliwości co do zgodności programów pomocy w postaci pożyczek ze wspólnym rynkiem.

Zgodnie z art. 14 rozporządzenia Rady (WE) nr 659/1999, wszelka bezprawnie przyznana pomoc może podlegać windykacji od jej beneficjenta.

#### TEKST PISMA

„(1) The Commission wishes to inform the United Kingdom of Great Britain and Northern Ireland that, having examined the information supplied by your authorities on the 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, 31 January and 23 February 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 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. Amongst these schemes were the so-called Loan assistance schemes.

(4) Under Loan assistance schemes aid has been granted to fish processors, by way of aids granted through the Fish processors association, and to fish farmers, by way of aid granted through the Fish farming association.

(5) According to Article 88(3) of the EC Treaty Member State have to inform the Commission of any plans to grant or alter aid. The United Kingdom have until now not been able to provide evidence that the aid measures existed already before the United Kingdom joined the European Economic Community and thus would have to be regarded as existing aids. Moreover, the United Kingdom has confirmed to have altered the aids over the years without notification to the Commission.

#### *Salmon Farming Loan Assistance*

(6) The Salmon Farming Loan Assistance was established in 2000 for the purpose of providing working capital loans to individual salmon farming companies. The loans granted under the scheme vary from GBP 87 000 to GBP 250 000, with a maximum of 75 %. The total amount of the loans granted is GBP 3 477 130.

(7) The loans have been made to companies that could demonstrate viability through the productions of an acceptable business plan and financial projections for a period covering at least three years. The loans were subject to interests at rates corresponding to the applicable European reference rate plus 2 %. In order to secure the loan, it was granted under the condition that the lender took the “right of title” on the smolts (young salmon), thus securing the loan on the basis of the sale value of the adult fish

#### *Loan scheme for fish processing*

(8) Under the Loan scheme for fish processing 5 loans have been provided during the period from 1996 to 2002. The loans vary from GBP 73 000 to GBP 200 000, with a total of GBP 698 300. The loans have been made to companies that during the period of the loan undertook to provide professionally audited accounts, to work to the relevant national and EU standards on hygiene, health and safety, and to be a member of Shetland Fish Processor’s Association.

#### 3. COMMENTS FROM THE UNITED KINGDOM

(9) The United Kingdom states that the aid schemes “Aid to the Fish Catching and Processing Industry” and “Aid to the Fish Farming Industry” have already been applied 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 schemes at the time of accession.

(10) The United Kingdom confirms 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)]. The United Kingdom states however that the expenditure and application of the schemes 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 although the schemes and the amendments to the schemes have been applied without prior notification to the Commission, they have been applied in accordance with the conditions laid down in the Guidelines for the examination of State aid to fisheries and aquaculture applicable of the time aid was granted under the schemes. The United Kingdom contests therefore that the aids are incompatible with the common market.
- (12) The United Kingdom states that the Loan assistance schemes both must be considered not to fall under the scope of the State aid rules. The loans represent arms length, commercial, private investor transactions undertaken on an entirely commercial basis.

#### 4. ASSESSMENT

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

##### 4.1. State aid

- (14) According to Article 87(1) of the EC Treaty, "save as otherwise provided in this Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, insofar as it affects trade between Member States, be incompatible with the common market".
- (15) Four conditions are required for classifying a measure as a State aid: first, the measure must provide some advantage to the undertakings which benefit from it; second, the aid must be granted by the State or through State resources; third, it must distort or threaten to distort competition by favouring certain undertakings; and, finally, must affect trade between Member States.
- (16) Public loans must be regarded to benefit undertakings if they are decided upon in circumstances which would not be acceptable to a private investor acting under normal market-economy principles.
- (17) From the information provided by the United Kingdom it can at this stage not be established whether indeed, as stated by the authorities, that the loans can be deemed to be commercial loans, given under conditions that would be acceptable to a normal private lender.
- (18) For the Salmon Farming Loan Assistance it is stated that the loans are given at a rate of 2 % above the applicable European reference rate. No or insufficient information is provided concerning the duration of the loans and the value of the security taken. In order however to establish the exact conditions of the loan and to assess the value of the security taken on the smolts, it is necessary to obtain the precise conditions of each of the loans granted during the years 2000 to 2003.

- (19) With regard to the Loan scheme for fish processing even less information is provided. Apart from the general statement that the loans have been granted under similar conditions as the loans for the salmon farming and that they must be regarded to have been commercial loans, no further details are given.
- (20) Therefore at this stage, from the information available, the Commission is unable to verify whether the loans indeed have been granted in a way and under conditions which would have been acceptable to a normal private lender.
- (21) Loans that have been granted under more favourable circumstances or with more favourable conditions than would be acceptable to a normal private lender must be considered to give the undertakings to which these loans have been granted a benefit which they would not have received under normal economic circumstances.
- (22) As furthermore the companies concerned, salmon farms as fish processors, are in direct competition with other companies in the fisheries sector of both within the United Kingdom as in other Member States, the measures at this stage appear to be State aid in the sense of Article 87 of the EC Treaty.
- (23) This seems even more to be confirmed by the fact that the authorities of the United Kingdom have continuously included these measures in their annual State aid report, which confirms the that also the national authorities have always considered the measures to be State aid rather than commercial activities.

##### 4.2. Legality

- (24) 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 *Salmon Farming Loan Assistance* and *Loan scheme for fish processing* schemes were put in place only in 2000 and 1996 respectively. 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.
- (25) The United Kingdom has confirmed never to have notified the schemes to the Commission in accordance with 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) EC.

#### 4.3. Compatibility of the aid

- (26) 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 to 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 applicable at the time the aid was granted <sup>(1)</sup>.
- (27) As no information is available about the individual loans, it cannot be established at this stage whether the loans have been granted for specific investments made by the companies concerned or whether they have been given as a general loan to improve the liquidity of the company. In the first case the loans must be regarded as to be investment aids, in the second case they are operating aid.
- (28) As far as operating aid is concerned, such aid, which is granted without imposing any obligations serving the objectives of the Common Fisheries Policy on the part of the recipients and which is intended to improve the situation of the undertakings and increase their business liquidity, is according to all Guidelines incompatible with the common market.
- (29) As far as the loans could be deemed to be aid for investments made by the recipients different conditions apply for both schemes concerned:

##### *Salmon Farming Loan Assistance*

- (30) Fish farming loans have been granted from 2000 — 2003 and the aid thus needs to be assessed under the Guidelines of 1997 and 2001. For the compatibility of aid to aquaculture those Guidelines make reference to Regulation (EC) No 3699/93 <sup>(2)</sup> and Regulation (EC) No 2792/1999 <sup>(3)</sup> respectively.
- (31) According to Regulation (EC) No 3699/93 aid to aquaculture may involve physical investments in the construction, equipping, expansion and modernisation of aquaculture installations and concerning projects to demonstrate, on a scale approaching that of normal productive investments, the technical and economic viability of farming species not yet commercially exploited in the aquaculture sector or innovative farming techniques, provided that they are based on successful research work. Aid may be granted up to 60 % of the eligible costs.

<sup>(1)</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.

<sup>(2)</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>(3)</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).

- (32) As from 1 July 2001 Member States were to apply the 2001 Guidelines to all existing aid schemes and thus from that date the conditions of Regulation (EC) No 2792/1999 had to be applied to the existing schemes. According to this Regulation aid may be granted for aquaculture investments provided that the promoters of intensive fish-farming projects shall forward the information provided for in the Annex IV to Directive 85/337/EEC to the management authority together with their application for public aid. The management authority shall decide whether the project must be submitted for assessment under Articles 5 and 10 of that Directive. The costs for this assessment shall be eligible for assistance. Aid may be granted up to 60 % of the eligible costs.
- (33) From the information available to the Commission, the Commission is at this stage unable to establish whether the conditions of Regulation (EC) No 3699/93 and Regulation (EC) No 2792/1999 have been complied with. As specific information on the types of investments for which the loans have been granted and calculations with regard to the compatibility with the aid rate are lacking, the Commission therefore at this stage has serious doubts on the compatibility of the Salmon Farming Loan Assistance Scheme with the conditions of the 1997 and 2001 Guidelines.

##### *Loan scheme for fish processing*

- (34) As regards the loans to the processing sector, these aids have been granted between 1996 and 2002 and thus need to be assessed under the 1994, 1997 and 2001 Guidelines.
- (35) According to point 2.3 of the 1994, 1997 and 2001 Guidelines aid for investments in the processing and marketing of fishery products may be regarded compatible with the common market provided that they comply with the relevant conditions laid down in the respective regulations for the structural fund for fisheries (Regulations (EC) No 3699/93 and (EC) No 2792/1999).
- (36) According to both Article 11 and point 2.4 Annex III of Regulation (EC) No 3699/93 and Article 13 and point 2.4. of Annex III of Regulation (EC) No 2792/1999 eligible investments shall relate in particular to the construction and acquisition of buildings and installation, the acquisition of new equipment and installations needed for the time of landing and the marketing of fishery and aquaculture products between the time of landing and the end-product stage and the application of new technologies intended in particular to improve competitiveness.
- (37) Investments shall not be eligible for assistance when they concern fishery and aquaculture products intended to be used and processed for purposes other than human consumption, with the exemption of investments exclusively for the handling, processing and marketing of fishery and aquaculture wastes. Aid may be granted up to 60 % of the eligible costs.

(38) From the information available to the Commission, the Commission is at this stage unable to establish whether the conditions of Regulation (EC) No 3699/93 and Regulation (EC) No 2792/1999 have been complied with. As specific information on the types of investments for which the loans have been granted and calculations with regard to the compatibility with the aid rate are lacking, the Commission therefore at this stage has serious doubts on the compatibility of the Loan scheme for fish processing with the conditions of the 1994, 1997 and 2001 Guidelines.

#### 5. DECISION

(39) 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 aid schemes with the Guidelines for the examination of State aid to Fisheries and aquaculture and, therefore, with the EC Treaty.

(40) In the light of the foregoing conditions, the Commission, acting under the procedure laid down in Article 88 (2) of the EC Treaty and Article 6 of Regulation (EC) No

659/1999, requests the United Kingdom of Great Britain and Northern Ireland to submit its comments and to provide all such information as may help to assess the aid 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.

(41) 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.

(42) 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.”