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**Subject: State aid No N 586/2007 – Denmark
Prolongation and modification of relief from the waste water tax**

Sir,

1. PROCEDURE

By electronic notification dated 9 October 2007, registered as SANI 706 the same day, the Danish authorities notified the Commission according to Article 88(3) of the EC Treaty of the prolongation and modification of the relief from waste water tax for six sectors.

2. DESCRIPTION OF THE MEASURE

2.1 Background

The waste water tax, as well as the relief thereof, was introduced in 1997 with the aim to reduce discharges of polluting substances. It is levied on the discharge of nitrogen at a rate of 20 DKK (2.68 €) per kg, phosphorus at a rate of 110 DKK (14.72 €) per kg and organic materials, BI5, at a rate of 11 DKK (1.47 €) per kg. The tax is charged in respect of common purification plants, private industrial discharge pipes and property outside the sewer network. According to the Danish authorities the discharge of polluting substances clearly correlates with the amount of waste water generated and, therefore, the tax also enhances the reduction of the amount of waste water.

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The legal base is the Act on waste water tax, as follows from legal announcement (LBKG) No 636 of 21 August 1998¹. According to the Danish authorities, discharges of nitrogen, phosphorus and organic materials are very unevenly distributed among various industries and they consider that six sectors (cellulose, vitamin, organic pigment production, fish processing, sugar and pectin production) are particularly exposed to the waste water tax. Therefore, a relief from the tax has been provided for these sectors that generate particularly large quantities of waste water. Paragraph 11 of the waste water tax law lays down the provisions according to which certain sectors can benefit from a relief from the tax. Companies active in the sectors of fish processing, cellulose or sugar production, and registered in accordance with the VAT Law, qualify for a 97 % refund of the tax paid. Companies active in the sectors of organic pigment, pectin and vitamin production, and registered in accordance with the VAT Law, qualify for a 70 % refund of the tax paid. In addition, the refund only applies to the part of the fee paid exceeding DKK 20 000 (2,680 €) annually and only where 80 % of the fee is attributable to the activities mentioned above.

The Commission approved the initial scheme on 2 May 1997² and a prolongation of the scheme on 3 April 2002.³ In those decisions, the Commission considered that the tax exemptions were in line with the Community guidelines on State aid for environmental protection⁴ (the “Environmental Aid Guidelines”), in particular point 51.1(b), second indent, and 51.2 and the Commission Regulation No 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid.⁵

2.2. Description of the notification

The Danish authorities propose to modify the scheme by reducing the size of the tax refund from 97 % to 80 % for companies within the sectors fish processing, cellulose and sugar production, and registered in accordance with the VAT Law. For companies active in the sectors of organic pigment, pectin and vitamin production that are registered in accordance with the VAT Law the refund rate amounting to 70 % of the tax paid will remain.

The Danish authorities have submitted information showing the environmental effect of the tax in the form of reduced discharge of organic material (BI5 and COD), phosphor and nitrogen for the period 1997-2004. Over that period there has been a decrease of the discharge of BI5 by 18%, COD by 22%, phosphor by 35% and nitrogen by 17%.

¹ As modified by Law No 380 of 2 June 1999, Law No 165 of 15 March 2000, Law No 1029 of 22 November 2000 and Law No 428 of 6 June 2005

² State aid case No N 479/96, OJ C 172, 6.6.1997, p. 5-7.

³ State aid case No NN 30 a-c/2001, OJ C 292, 27.11.2002, p. 6

⁴ OJ C 37, 3.2.2001, p. 3.

⁵ OJ L 10, 13.1.2001, p. 30.

2.3. Beneficiaries

Ca. 11-50 beneficiaries are expected to benefit from the scheme.

2.4. Duration

The Danish authorities propose to prolong the tax reductions from 01.01.2008 until 31.12.2017.

2.5. Budget

The total aid amount is estimated to 100 m DKK (ca. 13.3 m€) for the years 2008-2017 and to DKK 10 m (ca 1.3 m€) annually.

3. ASSESSMENT

The modification of the scheme has been notified for the period from 1 January 2008 until 31 December 2017 in accordance with Article 88 (3) of the EC Treaty.

3.1 Presence of State aid under Article 87(1) of the EC Treaty

When approving the scheme in 1997 and 2002 the Commission considered the measure as State aid. The Commission sees no reason to change its view.

Hence, the scheme constitutes State aid in the meaning of Article 87(1) of the EC Treaty.

3.2 Compatibility of the aid under Article 87(3)(c) of the EC Treaty

In the previous decision, the scheme was partly approved under the Environmental Aid Guidelines and partly considered to fulfil the criteria for *de minimis* aid. The modification tightens the scheme so that all beneficiaries will pay at least 20 % of the full tax. The Commission finds, thus, no reason to take another position with regard to the compatibility of the scheme. In light of the modification of the tax rate paid by the recipients, the scheme fulfils the conditions of points 51.2 and 51.1(b), second indent, of the Environmental Aid Guidelines. The Danish authorities have submitted information showing that the total discharges of organic material, nitrogen and phosphor have decreased essentially since the waste water tax was introduced. Given that the tax apparently has a positive environmental effect and that the beneficiaries still are in sectors sensitive for competitiveness, the Commission can in accordance with point 23 of the same guidelines, authorise the scheme for a 10 year period starting 1 January 2008.

According to point 4.1.1 of the Guidelines for the examination of State aid to fisheries and aquaculture⁶ and point 62 of the Community guidelines for State aid in the agriculture and forestry sector 2007 to 2013⁷, State aid for environmental protection will be assessed in accordance with the Environmental Aid Guidelines, therefore no separate assessment for fisheries or agriculture is needed.

⁶ OJ C 229, 14.9.2004, p. 5

⁷ OJ C 319, 27.12.2006, p.1.

Therefore, the scheme can be approved on the basis of Article 87(3)(c) of the EC Treaty.

4. CONCLUSION

The Commission has accordingly decided that N 586/2007 "Prolongation and modification of relief from the waste water tax" (Denmark) constitutes State aid within the Article 87(1) of the EC Treaty and Article 61(1) of the EEA Agreement.

In addition, the Commission has concluded that such aid is compatible with the common market in accordance with Article 87(3)(c) of the EC Treaty and Article 61(3)(c) of the EEA Agreement, since it complies with the relevant provisions of the Environmental Aid Guidelines.

The Commission reminds the Danish Authorities that, in accordance with Article 88 (3) of the EC Treaty, plans to change this scheme have to be notified to the Commission pursuant to provisions of Commission Regulation (EC) No 794/2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 [*now 88*] of the EC Treaty (OJ L 140, 30.4. 2004, p.1). The Commission also wishes to remind the Danish Authorities that they may have to adapt the notified measures in accordance with any appropriate measures possibly foreseen in connection with adoption of future revised Environmental Aid Guidelines.

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http://ec.europa.eu/community_law/state_aids/index.htm

Your request should be sent by registered letter or fax to:

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For the Commission

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