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**Subject: State Aid SA.103095 (2023/N) – Denmark
Compensation to fish processing and wholesale undertakings for the
loss of turnover caused by the reduction of supply in 2021 due to
Brexit**

Excellency,

The European Commission ('the Commission') wishes to inform Denmark that, having examined the information supplied by your authorities on the State aid measure referred to above, notified as a scheme (see recital (44)), it has decided not to raise objections to the relevant measure (hereafter 'scheme') as it is compatible with the internal market pursuant to Article 107(3)(c) of the Treaty on the Functioning of the European Union ('TFEU').

1. PROCEDURE

- (1) Following the pre-notification procedure initiated on 23 May 2022, the Danish authorities notified to the Commission pursuant to Article 108(3) TFEU the above mentioned scheme by electronic submission of 24 January 2023. The file was registered on the same day under the number SA.103095 (2023/N). A request for additional information was sent to Denmark on 27 January 2023. The Danish authorities provided the additional information by letter dated 2 February 2023.

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- (2) Denmark exceptionally agrees to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union (“TFEU”), in conjunction with Article 3 of Regulation 1/1958⁽¹⁾ and to have this Decision adopted and notified only in English.

1.1. Objective

- (3) The measure aims to compensate fish processing and wholesale undertakings for the loss of turnover caused by the reduction of supply in the first quarter of 2021 or the whole of 2021 due to Brexit.

1.2. Background of the scheme

- (4) On 1 February 2020, the United Kingdom of Great Britain and Northern Ireland (‘United Kingdom’) left the European Union and the European Atomic Energy Community (‘Euratom’) – hereafter referred together as the ‘Union’, entering a transition period. That time-limited period was agreed as part of the Withdrawal Agreement ⁽²⁾ and ended on 31 December 2020.
- (5) On 24 December 2020, the United Kingdom and the European Union reached a political agreement on the Trade Cooperation Agreement (‘TCA’) ⁽³⁾, which includes a transfer of fishing quotas from the EU to the United Kingdom and rules on the access to the fishing grounds of the United Kingdom.
- (6) On 6 October 2021, the European Parliament and the Council adopted Regulation (EU) 2021/1755 establishing the Brexit Adjustment Reserve (‘BAR’) ⁽⁴⁾, in view of mitigating the economic impact of the withdrawal of the United Kingdom from the Union and to show solidarity with all Member States, especially those most affected in such unusual circumstances. According to Article 5(5) of that Regulation, the measures financed under the BAR must comply with Union and national law.
- (7) The Danish authorities explain that, as a consequence of Brexit, fish processing and wholesale undertakings experienced a loss of turnover due to the reduction of supply caused by quota share reductions. Additionally, undertakings encountered a reduction of supply from Danish fishers’ lack of access to Norwegian waters in the first quarter of 2021. As a result of Brexit, the trilateral fisheries arrangements between the EU, UK and Norway were renegotiated in the first quarter of 2021. The renegotiation meant that the access of Danish fishers to Norwegian waters was restrained until the fisheries agreement was finalised on 16 March 2021.

⁽¹⁾ Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

⁽²⁾ Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (‘Withdrawal Agreement’), OJ L 29, 31.1.2020, p. 7.

⁽³⁾ Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, OJ 149 L 149, 30.4.2021, p. 10.

⁽⁴⁾ OJ L 357, 8.10.2021, p. 1.

- (8) The Danish authorities explain that the objective of the aid is to mitigate the immediate consequences of Brexit, providing fish processing and wholesale undertakings with the opportunity to adjust to the new situation after Brexit.

1.3. Legal basis

- (9) The legal basis of the scheme is:
- Bekendtgørelse af lov om administration af tilskud fra Den Europæiske Regionalfond og Den Europæiske Socialfond (“Order on administration of grants from the European Regional Fund and The European Social Fund”);
 - Bekendtgørelse om administration, støtteberettigelse, regnskab, revision og kontrol m.v. i forbindelse med udbetaling af støtte fra brexittilpasningsreserven (“Order on administration, eligibility, accounting, audit and control etc. in relation to the payment of aid from the Brexit Adjustment Reserve”);
 - Bekendtgørelse om ændring af bekendtgørelse om administration, støtteberettigelse, regnskab, revision og kontrol m.v. i forbindelse med udbetaling af støtte fra brexittilpasningsreserven (“Order on the amendment of the order on administration, eligibility, accounting, audit and control etc. in relation to the payment of aid from the Brexit Adjustment Reserve”);
 - Draft revised Article 17(1) of the Order on the amendment of the order on administration, eligibility, accounting, audit and control etc. in relation to the payment of aid from the Brexit Adjustment Reserve.

1.4. Budget of the scheme

- (10) The overall budget of the scheme is DKK 40 000 000 (EUR 5 377 720 ⁽⁵⁾). The public body granting the aid is the Danish Fisheries Agency. The scheme is planned to be funded under the BAR.

1.5. Beneficiaries

- (11) The compensation may be granted to undertakings active in the processing and preserving of fish, crustaceans and molluscs and the wholesale of fish, crustaceans and molluscs, irrespective of their size.
- (12) The measure extends to operators within the meaning of Article 4(30) of Regulation (EU) No 1380/2013 of the European Parliament and of the Council on the Common Fisheries Policy ⁽⁶⁾, which are not covered by other forms of support, implemented by the Danish Fisheries Agency under the BAR, and which perform activities in the processing and wholesale of fisheries and aquaculture products.
- (13) The expected number of beneficiaries ranges between 11-50.

⁽⁵⁾ DKK 1 = EUR 0.134443, ECB exchange rate on 24 January 2023.

⁽⁶⁾ Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC, OJ L 354, 28.12.2013, p. 22.

1.6. Duration

- (14) The scheme will take effect from the notification of the Commission decision and apply until 31 December 2023. Article 5(2) of Regulation (EU) 2021/1755 establishing the BAR provides that only expenditure that is incurred and paid by public authorities in the Member States until 31 December 2023 is eligible for BAR funding.

1.7. Description of the measure

- (15) The Danish authorities explain that eligible beneficiaries will be processing or wholesale undertakings which following the withdrawal of the United Kingdom from the Union experienced a loss of turnover caused by a reduction of supply in the first quarter of 2021 or the whole of 2021.
- (16) More specifically, the Danish authorities explain that, under the scheme, the compensation can be paid for the loss of turnover caused by: (i) a reduction in supply caused by a decrease in landings by EU fishermen in Denmark of quotas reduced following Brexit or (ii) a reduction in supply caused by limited access of Danish fishermen to Norwegian waters in the first quarter of 2021.
- (17) In order to receive compensation, applicants must comply with a number of conditions, which include:
- the activity of the applicant primarily relates to the processing or sale of fish and fish products in Denmark;
 - the applicant demonstrates that it purchased fish caught on Brexit affected quotas, i.e., fish caught on quotas reduced following Brexit, as defined in the TCA, and landed by Danish and other EU fishermen in Denmark and fish caught on quotas fished in the Norwegian Exclusive Economic Zone by Danish fishermen, for more than 20 % of its total purchases in the reference years 2017-2019;
 - the applicant is not categorised as an undertaking in difficulty in accordance with the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty⁽⁷⁾;
 - the applicant's compensation amount is higher than DKK 10 000 (EUR 1 344).
- (18) Moreover, applicants must document the following:
- if the applicant's compensation period is the whole of 2021, then their turnover through audited accounts from 2017, 2018, 2019 and 2021; if the applicant's compensation period is the first quarter of 2021, then the audited accounts must be limited to the first quarter of 2017, 2018, 2019 and 2021;
 - that they purchased fish caught on quotas reduced following Brexit, as defined in the TCA, or fish caught in Norwegian Exclusive Economic Zone for more than 20 % of their total purchases in the entire period of 2017-2019 or in the first quarters of the individual years 2017-2019.

⁽⁷⁾ OJ C 249, 31.7.2014, p. 1.

- (19) The purchase of fish can be documented through sales notes or reports from auctions or fishers. The documentation must display the date of purchase, the price of the purchase, the specific TAC-code of the fish, the Exclusive Economic Zone, and the EU Member State, where the fishing vessel is registered.
- (20) The eligible costs of the measure are the loss of turnover caused by a reduction of supplies in the first quarter of 2021 or the whole of 2021 due to Brexit. Depending on each applicant's business, the applicant can choose whether their compensation will be calculated for the first quarter of 2021 or the entire year 2021. This is because the time needed to find alternative suppliers or implement other structural measures might differ for each applicant.
- (21) If the applicant's compensation period is the first quarter of 2021, the reference period will be the first quarters of the individual years 2017 to 2019. If the applicant's compensation period is the entire period of 2021, the reference period will be the entire period of 2017 to 2019. Year 2020 is excluded from the reference period, as it was an extraordinary year due to the COVID-19 pandemic.
- (22) The Danish authorities explain that the aid will be calculated in accordance with the methodology set out in point (100) of the Guidelines for the examination of State aid to the fishery and aquaculture sector ('the Guidelines')⁽⁸⁾. A standard rate for variable costs will be deducted from the loss of turnover. The standard rate will be specific to each subsector of the fish industry:
- for the fishmeal factory subsector, the standard rate will amount to 76 %;
 - for the subsector relating to fish intended for human consumption, the standard rate will amount to 78 %; and
 - for the fish wholesale subsector, the standard rate will amount to 90 %.
- (23) The standard rates are based on financial data for the industry, which are produced by Statistics Denmark. The standard rates express how much the variable costs make up in percent of the turnover. The variable costs include costs on raw material, energy, materials, etc. Personnel costs are not included in the standard rates, as they are treated as a loss of income.
- (24) The standard rates, relating to the fishmeal factory subsector and the subsector relating to fish intended for human consumption, are based on yearly average financial data from 2017-2019. The standard rate for the fish wholesale subsector is based on the latest financial data from 2015 (no data after 2015 has been published).
- (25) The eligible aid amount is therefore calculated as follows:
- (average turnover in the first quarter of 2017-19 or the entire period of 2017-2019 – turnover in the first quarter of 2021 or the whole of 2021) * (1 – standard rate for variable costs) = eligible aid amount
- (26) An applicant can at maximum receive 100 % of that amount.

⁽⁸⁾ OJ C 217, 2.7.2015, p. 1, as amended by OJ C 422, 22.11.2018, p. 1.

1.8. Form of aid, aid intensity and cumulation

- (27) The compensation is awarded in the form of direct grants.
- (28) The compensation will be granted and paid out by 31 December 2023.
- (29) The maximum aid intensity may reach up to 100 % of the eligible costs. Beneficiaries of a compensation amount up to DKK 1.5 million (approximately EUR 200 000) may receive 100 % of the compensation. Beneficiaries of a compensation amount exceeding DKK 1.5 million may receive 100 % of the compensation if they undertake to use 35 % of the compensation amount for investments for the greening of production as described in an action plan. If they do not undertake to carry out such investments, they may receive 65 % of the compensation amount. In other words, to receive the full amount of the compensation, beneficiaries of a compensation amount exceeding DKK 1.5 million must commit to spending 35 % of the aid on environment-friendly measures, which contributes to a green transformation of the production ('green top-up').
- (30) Aid granted under the measure cannot be cumulated with aid or *de minimis* aid to cover the same eligible costs. Moreover, the applicant cannot receive support under this scheme, if they received support under any other aid scheme administered by the Danish Fisheries Agency and funded under the BAR, or if they received support for the same loss, which is already covered by any other public aid or insurances.

1.9. Competent authorities and procedures

- (31) The measure will be administered by the Danish Fisheries Agency.
- (32) The granting authority will decide about granting the compensation upon receipt of an application and after verifying the fulfilment of the conditions laid down in the legal basis.
- (33) More specifically, applications for compensation or aid commitments must be submitted with the required information in the Danish Fisheries Agency's grant management system, which can be accessed from the Danish Fisheries Agency's website during the application period applicable to the scheme and which is advertised on the Danish Fisheries Agency's website.
- (34) The Danish authorities explain that the granting of aid is subject to strict requirements. Applicants must document their turnover through audited accounts and prove their eligibility through documentation regarding fish purchases such as sales notes or reports from auctions or fishers. The documentation must display the date of purchase, the price of the purchase, the specific TAC-code of the fish, the Exclusive Economic Zone, and the EU Member State, where the fishing vessel is registered. This would also ensure that two beneficiaries cannot receive support for the same fish.
- (35) Regarding the green top-up, the Danish Fisheries Agency intends to perform sample controls of the completed initiatives. The beneficiary will have the responsibility to ensure that the completed initiatives can be controlled. If the finalised initiatives are not in line with the action plan, or if the beneficiary cannot

document that the described initiative has been completed, the beneficiary must repay the green top-up.

1.10. Other commitments

- (36) The Danish Fisheries Agency will reject an application, among other reasons, if:
- the applicant does not fulfil the conditions for admissibility laid down in Article 11(1) of Regulation (EU) 2021/1139 of the European Parliament and of the Council establishing the European Maritime, Fisheries and Aquaculture Fund ('Regulation (EU) 2021/1139')⁽⁹⁾;
 - the applicant has committed fraud within the meaning of Article 11(3) of Regulation (EU) 2021/1139; or
 - the applicant does not comply with the rules of the Common Fisheries Policy pursuant to Article 1 and 2 of Regulation (EU) No 2013/1380.
- (37) In addition, the Danish Fisheries Agency will, among other things, decide on the repayment of the aid, if for a period from the date of application to five years after the final payment:
- the applicant does not fulfil the conditions for admissibility laid down in Article 11(1) of Regulation (EU) 2021/1139;
 - the applicant has committed fraud within the meaning of Article 11(3) of Regulation (EU) 2021/1139; or
 - the applicant does not comply with the rules of the Common Fisheries Policy pursuant to Article 1 and 2 of Regulation (EU) No 2013/1380.
- (38) The Danish authorities confirmed that no aid will be granted to operations or for expenditure that are ineligible pursuant to Article 13 of Regulation (EU) 2021/1139.
- (39) As noted in recital (17), undertakings in difficulty are excluded from the scheme. Moreover, the Danish Fisheries Agency will take a decision temporarily suspending payment of aid if the applicant has previously received aid which the European Commission has found by a previous decision to be unlawful and incompatible with the internal market and has not complied with a recovery order.
- (40) Information about individual aid exceeding EUR 30 000 granted under the scheme will be published on the following comprehensive website:
- <https://fiskeristyrelsen.dk/tilskud/brexittilpasningsreserven-i-danmark/>
- (41) The Danish authorities confirmed that no aid will be paid or granted pursuant to the stand-still clause set out in the legal basis until after the European Commission has authorised the scheme.

⁽⁹⁾ Regulation (EU) 2021/1139 of the European Parliament and of the Council of 7 July 2021 establishing the European Maritime, Fisheries and Aquaculture Fund and amending Regulation (EU) 2017/1004, OJ L 247, 13.7.2021, p. 1.

2. ASSESSMENT

2.1. Existence of an aid

- (42) Pursuant to Article 107(1) TFEU, “[s]ave as otherwise provided in the Treaties, 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, in so far as it affects trade between Member States, be incompatible with the internal market.”
- (43) The qualification of a measure as aid within the meaning of this provision therefore requires the following cumulative conditions to be met: (i) the measure must be imputable to the State and financed through State resources; (ii) it must confer an advantage on its recipients; (iii) that advantage must be selective; and (iv) the measure must distort or threaten to distort competition and affect trade between Member States.
- (44) Due to the fact that the measure is an act on the basis of which, without further implementing measures being required, individual aid awards may be made to undertakings defined within the act in a general and abstract manner, the Commission considers that it is an aid scheme within the meaning of point (22)(b) of the Guidelines.
- (45) The scheme is imputable to the State, since it is administered by the Danish Fisheries Agency (see recital (10)) and it is based on the legal acts mentioned in recital (9). The scheme is to be financed from the BAR. The budget allocated to the BAR will be implemented under shared management between the Member States and the Commission. In both cases, the measure is financed with public funds and therefore from State resources. Shared management gives Member States discretion in the use of these resources (in particular for the selection of beneficiaries). This Decision is without prejudice to the eligibility rules under Regulation (EU) 2021/1755, which will be assessed separately (see recital (6)).
- (46) The scheme in question confers an economic benefit on the concerned undertakings, which they would not have received under normal market conditions. In particular, the scheme compensates undertakings for a loss of turnover caused by a reduction of supplies in the first quarter of 2021 or the whole of 2021 due to Brexit. The advantage is granted in the form of direct grants (see recital (27)).
- (47) The scheme is selective because it only benefits certain undertakings in the fisheries and aquaculture sector (see recitals (11) and (13)). Undertakings in a comparable legal and factual situation, in the light of the objective pursued, in other sectors beyond fisheries and aquaculture are not eligible under the scheme and do not receive the same advantages.
- (48) The scheme has the potential to distort competition as it confers an economic advantage on its recipients which strengthens their position on the markets. According to the case law of the Court of Justice, the mere fact that the competitive position of an undertaking is strengthened compared to other competing undertakings, by giving it an economic benefit which it would not

otherwise have received in the normal course of its business, points to a possible distortion of competition ⁽¹⁰⁾.

- (49) Pursuant to the case law of the Court of Justice, aid to an undertaking is capable of affecting trade between Member States where that undertaking operates in a market open to intra-EU trade ⁽¹¹⁾. The beneficiaries of aid operate in the fishery and aquaculture sector, which is open to competition at EU level and therefore sensitive to any measure in favour of the production in one or more Member States. In 2021, intra-EU trade of fishery and aquaculture products amounted to 6 million tonnes and EUR 26.8 billion ⁽¹²⁾. Therefore, the scheme is liable to affect trade between Member States.
- (50) In light of the above, the conditions of Article 107(1) TFEU are fulfilled. It can therefore be concluded that the scheme constitutes State aid within the meaning of that Article.
- (51) It may only be considered compatible with the internal market if it can benefit from any of the derogations provided for in the TFEU.

2.2. Lawfulness of the aid

- (52) The Commission notes that the Danish authorities complied with their obligation under Article 108(3) TFEU. As noted in recital (41), the scheme is subject to a suspensive clause and will be implemented only following the Commission's authorisation.

2.3. Compatibility of the aid

2.3.1. Application of Article 107(3)(c) TFEU

- (53) Having established that the scheme involves aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether it can be found to be compatible with the internal market.
- (54) Article 107(3)(c) TFEU provides that aid which proves to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest, is considered to be compatible with the internal market.
- (55) Therefore, compatible aid under this Treaty provision must (i) contribute to the development of a certain economic activity or of certain economic areas and (ii) not distort competition to an extent contrary to the common interest.
- (56) For this derogation to be applicable, the aid must comply with the relevant Union State aid rules. In the case at stake, the aid will be granted to the fishery and aquaculture sector and must therefore be assessed under the Guidelines.

⁽¹⁰⁾ Judgment of the Court of 17 September 1980 in Case 730/79 Philip Morris Holland BV v Commission of the European Communities, ECLI:EU:C:1980:209.

⁽¹¹⁾ Judgment of the Court of 13 July 1988 in Case 102/87 French Republic v Commission of the European Communities, ECLI:EU:C:1988:391.

⁽¹²⁾ The EU fish market 2022, European Market Observatory for Fisheries and Aquaculture Products, p. 82.

2.3.2. *Application of the Guidelines*

- (57) The scheme aims to compensate undertakings active in fish processing and wholesale for their loss of turnover caused by a reduction of supply in the first quarter of 2021 or the whole of 2021 due to Brexit. It does not correspond to any of the aid categories explicitly mentioned in Guidelines and must therefore be assessed under Section 5.7 thereof ('Aid for other measures').
- (58) Point (115) of the Guidelines provides that where aid does not correspond to one of the types of aid mentioned in Sections 4 and 5.1 to 5.6a, it is in principle not compatible with the internal market.
- (59) Pursuant to point (116) of the Guidelines, the Commission may however declare aid compatible with the internal market on the basis of a case-by-case assessment, if the Member State clearly demonstrates that the aid in question complies with the principles set out in Section 3 of the Guidelines. Section 3.1 of the Guidelines sets out common assessment principles and Section 3.2 thereof sets out specific principles for the fishery and aquaculture sector.

2.3.3. *Assessment under Section 3 of the Guidelines*

2.3.3.1. *Positive condition: the aid must facilitate the development of an economic activity or of certain economic areas*

- (60) In order to be compatible under Article 107(3)(c) TFEU, an aid must contribute to the development of a certain economic activity or of certain economic areas.
- (61) The Commission notes that the objective of the scheme is to facilitate the development of certain economic activities referred to in Article 107(3)(c) TFEU, in particular by ensuring an orderly transition for fish processing and wholesale undertakings after Brexit. This is because the scheme facilitates the adjustment of the Danish fish processing and wholesale undertakings to the new situation following Brexit.
- (62) Point (49) of the Guidelines stipulates that aid can only be found compatible with the internal market if it has an incentive effect. Aid has an incentive effect if it changes the behaviour of an undertaking in such a way that it engages in additional activity which it would not have carried out without the aid or would have carried out in a restricted or different manner.
- (63) Under point (52) of the Guidelines, aid which is compensatory in nature is not required to have an incentive effect.
- (64) Although the measure is not among the examples mentioned in Sections 4, 5.3, 5.4, 5.6 or 5.6a of the Guidelines, the Commission recognises that it is compensatory in nature.
- (65) The Commission therefore considers that an incentive effect is not required in this case.
- (66) The Commission therefore considers that the scheme facilitates the development of certain economic activities, in particular, fish processing and wholesale as required by Article 107(3)(c) TFEU.

2.3.3.2. *Negative condition: aid must not unduly affect trading conditions to an extent contrary to the common interest*

Need for State intervention

- (67) Pursuant to point (39) of the Guidelines, State aid should be targeted towards situations where it can bring about a material improvement that the market cannot deliver on its own. This holds especially in a context of scarce public resources.
- (68) The Danish authorities explain that, in consequence of Brexit, undertakings active in fish processing and wholesale experienced instability in the supply chain and a reduction of supplies. This latter led to a decline in business activity and, as a result, those undertakings experienced a loss of turnover.
- (69) With Regulation (EU) 2021/1755 establishing the BAR, the EU legislator recognised the need for State intervention to support measures to assist undertakings that depend on fishing activities in UK waters. Moreover, the Commission notes that the scheme is not protective in its aim. On the contrary, it is intended to facilitate an orderly transition during the time needed for companies to find alternative suppliers or to implement other structural measures (e.g., reconversion to other raw materials or orderly reduction of business activity).
- (70) The Commission therefore considers that the scheme meets the principle of need for State intervention.

Appropriateness of the aid measure

- (71) Point (43) of the Guidelines requires that the proposed aid measure must be an appropriate policy instrument to contribute to achieving the objectives concerned.
- (72) The Danish authorities explain that the aid is granted as direct grants and is compensatory in nature. The scheme provides temporarily financial support for fish processing and wholesale undertakings in order to facilitate an orderly transition after Brexit. They note that other forms of aid would lead to further financial exposure in a post-crisis situation, where undertakings are already weakened.
- (73) The Commission notes that direct grants are generally the most effective form of aid, in particular following a situation in which undertakings are already facing financial difficulties. The Commission acknowledges that, in the present case, forms of aid other than subsidies would be less appropriate. Other forms of support, such as repayable advances, would not produce the same result because they might not provide a timely response or even lead to the accumulation of losses or exposures.
- (74) The Commission therefore considers that the principle of appropriateness of the aid measure is met.

Proportionality of the aid

- (75) Pursuant to point (54) of the Guidelines, aid must be limited to the minimum needed to induce the beneficiary to carry out an activity.

- (76) Under point (58) of the Guidelines, aid that is compensatory in nature is deemed to be proportional.
- (77) The Commission notes that the calculation of the loss of turnover is based on the method set out in point (100) of the Guidelines. The relevant reference period will be adjusted according to the particular situation of the beneficiary, and the compensation will be limited to the minimum.
- (78) Although the measure is not among the examples mentioned in Sections 4, 5.3, 5.4, 5.6 or 5.6a of the Guidelines, the Commission recognises that it is compensatory in nature.
- (79) The Commission therefore considers that the measure is deemed to be proportional.

Duration of the scheme

- (80) Pursuant to point (117) of the Guidelines, the Commission will only authorise aid schemes of limited duration. Aid schemes must in principle not apply for a period exceeding seven years.
- (81) As noted in recital (14), the scheme will apply until 31 December 2023. The Commission therefore considers that this requirement is fulfilled.

Specific principles for the fishery and aquaculture sector

- (82) Point (30) of the Guidelines provides that in addition to the common assessment principles, the Commission also applies the specific principles for the fishery and aquaculture sector set out in Section 3.2 of the Guidelines.
- (83) Point (32) of the Guidelines sets out that an application for aid or, if no application is foreseen, an equivalent act must be considered inadmissible, if the competent authority referred to in Article 10(1) of Regulation (EU) 508/2014 has determined that the operator concerned has committed one or more of the infringements or offences set out in Article 10(1) of that Regulation or a fraud as set out in Article 10(3) of that Regulation.
- (84) The legal basis refers to the relevant provision of Regulation (EU) 2021/1139, which succeeds Regulation (EU) No 508/2014. As noted in recital (36), the Danish Fisheries Agency will reject an application if the applicant does not fulfil the conditions for admissibility laid down in Article 11(1) of Regulation (EU) 2021/1139 or has committed fraud within the meaning of Article 11(3) of Regulation (EU) 2021/1139.
- (85) The Commission therefore notes that the requirements set out in point (32) of the Guidelines are met.
- (86) Under point (33) of the Guidelines, each undertaking, after submitting an application for aid, must continue to comply with the rules of the CFP throughout the period of implementation of the project and for a period of five years after the final payment to the beneficiary. Aid measures must explicitly provide that during those periods the beneficiary or beneficiaries must comply with the rules of the CFP. If it is determined by the competent authority that a beneficiary has

committed one or more of the infringements set out in Article 10(1) of Regulation (EU) 508/2014 during those periods and has, as a consequence, become inadmissible to apply for aid, the aid must be reimbursed by the beneficiary.

- (87) As noted in recital (37), the Danish Fisheries Agency will, among other things, decide on the repayment of the aid, if for a period from the date of application to five years after the final payment, the applicant does not fulfil the conditions for admissibility laid down in Article 11(1) of Regulation (EU) 2021/1139, has committed fraud within the meaning of Article 11(3) of that Regulation, or does not comply with the rules of the Common Fisheries Policy pursuant to Article 1 and 2 of Regulation (EU) No 2013/1380. In such a case, the beneficiary becomes inadmissible for future aid and must reimburse all or part of the past aid under the scheme in proportion to the non-compliance or offence.
- (88) The Commission therefore considers that the requirements set out point (33) of the Guidelines are met.
- (89) Under point (35) of the Guidelines, no aid must be granted for activities that correspond to ineligible operations under Article 11 of Regulation (EU) No 508/2014.
- (90) As noted in recital (38), the Danish authorities confirmed that no aid will be granted to operations or for expenditure that are ineligible pursuant to Article 13 of Regulation (EU) 2021/1139.
- (91) The Commission therefore considers that the requirement set out in point (35) of the Guidelines is met.
- (92) Overall, the Commission therefore notes that the aid scheme meets all specific principles for the fishery and aquaculture sector set out in Section 3.2 of the Guidelines.

Avoidance of undue negative effects on competition and trade and balancing test

- (93) Pursuant to point (60) of the Guidelines, for the aid to be compatible with the internal market, the negative effects of the aid measure in terms of distortions of competition and impact on trade between Member States must be limited and outweighed by its positive effects. Furthermore, according to points (64) and (65) of the Guidelines aid schemes must not lead to significant distortions of competition and trade and the Member States must demonstrate that the negative effects of the aid will be limited to the minimum.
- (94) Pursuant to point (37) of the Guidelines, each aid measure must identify the objectives of the CFP to the achievement of which it contributes and clearly demonstrate how it will contribute to achieving those objectives without negatively affecting other CFP objectives. The objectives of the CFP are set out in Article 2 of Regulation (EU) No 1380/2013.
- (95) The Danish Authorities explain that, as a direct result of the permanent quota reductions and the limited access to Norwegian waters in first quarter of 2021, the supply of raw materials to Denmark's processing and wholesale sectors were reduced. As the sectors were affected by lower supply levels and thereby economic losses, the negative effects of the scheme are expected to be minimal.

Moreover, the scheme will only compensate the loss of turnover caused by the reduction of supplies due to Brexit and will not result in a situation where undertakings are better off than before Brexit.

- (96) The Danish Authorities also note that the scheme will contribute to the objective set out in Article 2(1) of Regulation (EU) No 1380/2013, namely to “*ensure that fishing and aquaculture activities are environmentally sustainable in the long term and are managed in accordance with the objectives of obtaining positive economic, social and employment benefits and contributing to the security of food supply*”, as well as to the objective set out in Article 2(5)(c) of that Regulation, which aims at providing “*conditions for economically viable and competitive fishing capture and processing industry and land-based fishing related activity*”.
- (97) This is because the compensation for the loss of turnover suffered by the Danish fish processing and wholesale undertakings will reduce the financial loss, and thereby, contribute to maintaining the viability of the affected enterprises and the coastal communities, which is dependent of the fishing industry. The scheme will grant the beneficiaries the financial means to overcome the first and immediate impact of Brexit, thereby enabling them to re-organise themselves and adapt to the new situation after Brexit. Since the measure is compensatory in nature and contributes to maintaining the viability of the affected enterprises, the aid will not compromise any of the CFP objectives.
- (98) The Commission notes that the scheme provides temporary relief against the consequences of Brexit, and access is limited to undertakings affected by Brexit (see recitals (15)-(16)). The compensation will be limited to what is necessary depending on the specific situation of each beneficiary and subject to documentation requirements in that regard (see recitals (18)-(19)). The calculation of the loss of turnover is based on the method set out in point (100) of the Guidelines, and the reference period will also be adjusted accordingly (see recitals (20)-(25)). While beneficiaries with beneficiaries of a compensation amount of up to DKK 1.5 million (approximately EUR 200 000) may receive 100 % of the compensation, beneficiaries of a compensation amount exceeding DKK 1.5 million may only receive more than 65 % if they commit to the green top-up (see recital (29)). Therefore, the scheme also supports the greening of production in the sector.
- (99) Moreover, the Commission considers that, although not negligible, the overall budget of the scheme, i.e., DKK 40 million (EUR 5.4 million), does not appear *prima facie* likely to have a significant effect on competition and trade. In particular, that budget would represent only around 0.02 % of the intra-EU trade of fishery and aquaculture products in 2021 (EUR 26.8 billion) ⁽¹³⁾.
- (100) The Commission also notes that the scheme has, as a positive effect, a contribution the objectives of the CFP, in addition to facilitating the development of certain economic activities referred to in Article 107(3)(c) TFEU, as noted in recital (66).

⁽¹³⁾ See The EU Fish Market, 2022 edition, European Market Observatory for Fisheries and Aquaculture Products, p. 82.

- (101) Moreover, the Commission notes that undertakings in difficulty are excluded from the scheme, and compensation to undertakings which benefited from previous unlawful aid declared incompatible by a Commission decision will be temporarily suspended (see recital (39)).
- (102) The Commission therefore considers that the negative effects on competition and trade are limited to the minimum, and that the principle of avoidance of undue negative effects on competition and trade is respected.

Transparency

- (103) As regards the principle of transparency mentioned in point (24)(g) of the Guidelines and in more detail in Section 3.9 of thereof, Denmark informed the Commission that in order to comply with the transparency requirement it will publish the information set out in point (69) of the Guidelines on the following website:

<https://fiskeristyrelsen.dk/tilskud/brexittilpasningsreserven-i-danmark/>

- (104) The Commission therefore considers that the principle of transparency is respected.
- (105) Consequently, the Commission considers that the scheme under assessment meets all common assessment principles set out in Section 3.1 of the Guidelines.
- (106) Overall, the scheme respects all the principles set out in Section 3 of the Guidelines.

2.3.4. Conclusion regarding the compatibility of the scheme

- (107) In light of the above, the Commission concludes that the aid facilitates the development of an economic activity, without adversely affecting trading conditions to an extent contrary to the common interest. Therefore, the Commission considers the aid compatible with the internal market based on Article 107(3)(c) TFEU and the relevant provisions of the Guidelines.

3. CONCLUSION

The Commission has accordingly decided not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(c) of the Treaty on the Functioning of the European Union.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Your request should be sent electronically to the following address:

European Commission,
Directorate-General Competition
State Aid Greffe
B-1049 Brussels
Stateaidgreffe@ec.europa.eu

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President