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**Subject: State Aid SA.101089 (2022/N) – Denmark  
Compensation for loss of quota values due to Brexit (Kompensation  
for kvoteværditab som følge af brexit)**

Excellency,

## 1. PROCEDURE

- (1) By letter of 16 December 2021, registered by the European Commission on the same day, Denmark pre-notified aid for compensation for loss of quota values due to Brexit. On 7 January, 12 February, 7 and 16 March 2022, Denmark submitted additional information. By letter of 1 April 2022, the European Commission requested additional information. By electronic notification of 12 April 2022, Denmark notified aid (*Bekendtgørelse om kompensation til ejere af fiskefartøjer for tab af kvoteværdi som følge af brexit*; the “measure”) under Article 107(3)(c) TFEU and submitted replies to the Commission’s questions of 1 April 2022. On 15 May 2022, Denmark submitted additional information. On 15 July 2022, the Commission submitted a request for information. Following a meeting in the Commission premises on 12 September 2022, Denmark submitted additional information on 28 October 2022 and announced that this position was subject to a parliamentary reservation until a new minister has been appointed. On 9 and 22 December 2022 and 9 January 2023, Denmark provided additional clarification of its position.
- (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

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Article 3 of Regulation 1/1958 <sup>(1)</sup> and to have this Decision adopted and notified in English.

## **2. DESCRIPTION OF THE MEASURE**

### **2.1. Title**

- (3) Executive order on compensation to vessel owners for the loss of quota values due to Brexit (*Bekendtgørelse om kompensation til ejere af fiskefartøjer for tab af kvoteværdi som følge af brexit*).

### **2.2. Objective of the measure**

- (4) The Trade and Cooperation Agreement ('TCA') between the European Union and the European Atomic Energy Community ('Euratom'), on the one part, and the United Kingdom of Great Britain and Northern Ireland ('United Kingdom'), on the other part, set the respective fishing rights and the obligations of the EU and the UK. As a consequence of the reduced EU fishing rights, Danish fishing rights were reduced and the value of the quota shares held by the Danish fishing industry was reduced. The notified aid aims to support the Danish fisheries sector and to limit the negative consequences resulting from the reduction in Danish fishing rights due to Brexit, and the resulting reduced value of the Danish fishing industry's quota shares.
- (5) The objective of the aid scheme is to compensate part of the Danish fishing sector for the permanent loss of quota values resulting from Brexit induced reductions of EU fishing rights and compensate a financial loss for Danish quota holders.

### **2.3. Background of the measure**

- (6) 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 – hereafter referred together as the 'Union', entering a transition period. That time-limited period was agreed as part of the Withdrawal Agreement <sup>(2)</sup> and ended on 31 December 2020.
- (7) On 24 December 2020, the United Kingdom and the European Union reached a political agreement on a Trade and Cooperation Agreement (TCA), which includes a gradual transfer of TAC shares from the EU to the United Kingdom and rules on the access to the fishing grounds of the United Kingdom.
- (8) On 6 October 2021, the European Parliament and the Council adopted a Regulation establishing the Brexit Adjustment Reserve <sup>(3)</sup> ("BAR Regulation") in view of mitigating the economic impact of the withdrawal of the United Kingdom

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<sup>(1)</sup> Regulation No 1/1958 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

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

<sup>(3)</sup> Regulation (EU) 2021/1755 of the European Parliament and of the Council of 6 October 2021 establishing the Brexit Adjustment Reserve (OJ L 357, 8.10.2021, p. 1).

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.

#### **2.4. Nature and form of aid**

- (9) The measure provides aid in the form of direct grants.

#### **2.5. Legal basis**

- (10) The legal basis for the measure is the draft „*Bekendtgørelse om kompensation til ejere af fiskefartøjer for tab af kvoteværdi som følge af brexit*“ (Order on compensation to owners of fishing vessels for the loss of quota value due to Brexit).

#### **2.6. Administration of the measure**

- (11) The measure will be administered by the Danish Fisheries Agency (DFA) as granting authority.

#### **2.7. Budget and duration of the measure**

- (12) The estimated budget of the measure is DKK 840 800 000, which is currently equivalent to EUR 112 000 000. <sup>(4)</sup>
- (13) Aid may be granted under the measure for the period from 1 January 2021 until 31 December 2023 at the latest, from the moment of notification of the Commission's approval.

#### **2.8. Beneficiaries**

- (14) Regardless of the legal form and size chosen, the beneficiary must be a commercial fisher pursuant to Section 11(1)1-4 of the Fisheries Act at the time of the application. The beneficiary must own one or more vessels with associated quotas that have been permanently reduced as a result of the TCA. This concerns individual holdings to one or more of the 12 individual transferable quotas (ITQ) and vessel quota shares (VQS) per 31 December 2020, which have been reduced due to the TCA.<sup>(5)</sup>
- (15) The Danish authorities estimate the number of beneficiaries between 101 and 500.
- (16) The Danish authorities commit to suspend the award and/or payment of any aid under the notified aid scheme to any undertaking that has benefited from earlier unlawful aid declared incompatible by a Commission decision (either as an

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<sup>(4)</sup> [https://www.ecb.europa.eu/stats/policy\\_and\\_exchange\\_rates/euro\\_reference\\_exchange\\_rates/html/eurofxref-graph-dkk.en.html](https://www.ecb.europa.eu/stats/policy_and_exchange_rates/euro_reference_exchange_rates/html/eurofxref-graph-dkk.en.html)

<sup>(5)</sup> ITQs are held by active fishers (individuals) and include pelagic species, as well as species with industrial usage (e.g. fishmeal, fish oil, and animal feed). VQSs are allocated to vessels and include demersal species (e.g. cod, sole, plaice and nephrops).

individual aid or an aid under an aid scheme being declared incompatible), until that undertaking has reimbursed or paid into a blocked account the total amount of unlawful and incompatible aid and the corresponding recovery interest.

- (17) Undertakings in difficulty as defined in the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty <sup>(6)</sup> cannot benefit from the measure.
- (18) An application submitted by an operator shall not be admissible if it is not admissible pursuant to Article 11 of Regulation (EU) 2021/1139 <sup>(7)</sup> ('EMFAF Regulation'). At the time of the application and for a period of five years following the payment of the aid, the applicant must fulfil the conditions for admissibility pursuant to Article 11 of the EMFAF-Regulation.

## **2.9. Description of the measure**

- (19) According to the Danish authorities, the measure compensates for a permanent loss of quota value due to Brexit and helps enterprises in the Danish fishing industry adjust to the new situation with reduced fishing possibilities.

### *2.9.1. Relevant quotas*

- (20) The compensation for the individual vessel owner will be calculated on the basis of the reduction of the quota due to Brexit. Out of the 21 quotas that have been reduced by the TCA, 12 can be individually held as ITQ and VQS.. The remaining 9 quotas will not be included in the compensation scheme, as these are nationally held and therefore do not constitute an individual loss for the vessel owner. Inasmuch as TAC shares of the TCA that resulted in reduced ITQs and VQSs are not individually held by undertakings, they will not be included in the compensation scheme either.
- (21) In the calculation of the compensation, only the parts of ITQ's and VQS's that are held by an undertaking on a specific vessel on 31 December 2020 are included. The exact number of quotas will be established by the DFA.
- (22) Other TCA-reduced TAC shares that resulted in reduced quotas which are not individually held (e.g. rented volumes, or volumes assigned from the National Fish Fund), or any other quotas which have not been affected by TCA induced quota reductions, will not be included in the calculation of the compensation for the loss of quota value.

### *2.9.2. Relevant point in time for holding quota*

- (23) The calculation of the total individual loss of quota values due to Brexit is based on the reduction of the quotas held by the beneficiary on a specific vessel on 31 December 2020. Additional quotas that have been bought after 31 December 2020 will not be included in the calculation of the compensation.

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<sup>(6)</sup> OJ C 249, 31.7.2014, p. 1.

<sup>(7)</sup> 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.

- (24) Fishers who are no longer active at the date of the application will not be able to receive compensation for the quotas which they held per 31 December 2020. The new holders of these quotas will not be compensated for these quotas.

2.9.3. *Calculation of quota value losses per individual vessel*

- (25) The reduced quota value is calculated per individual vessel for each quota held by an enterprise. The calculation method is:

$$\text{SUM of loss per individual vessel} = \sum_{(Q=1)}^n \text{QRP}$$

Where:

Q = Quota in kilograms for each species and area for ITQ's and VQS's held by a vessel owner on a specific vessel, where 1 to n is the relevant quotas held.

$$\text{Q in kilograms per species} = ((\text{At} * \text{Dt}) / \text{qx}) * \text{q}$$

Where:

q = quota share in per mille held by a vessel owner on a specific vessel per 31 December 2020.

qx = total quota shares distributed to ITQ/VQS by 31 December 2020 (differs for each species, e.g. for cod 1045,53 per mille were distributed, while for mackerel 962,25 per mille were distributed).

At = Average DK-TAC (2015-2018 per 31 December in the reference years) in kilos for each TCA-reduced quota. For Norway pout which has a staggered quota year (1/11 – 31/10), the DK-TAC is calculated by 31. October in the reference years.

Dt = Share of DK-TAC distributed to individually held quota shares (ITQ/VQS) for the year 2020.

R = Quota reduction in percent for each species and area due to Brexit.

P = Market price per average in a reference period 2015-2018 in DKK per kilo for the quota share of each species and area.<sup>(8)</sup>

As for the quota reduction in percent for each species and area affected over the period of 5,5 years due to Brexit, the gradual phasing in of the reduction by the TCA is taken into account based on a simple average over a 15-year period.

The aid amount of the compensation paid to the beneficiary may not be lower than DKK 10.000.

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<sup>8</sup> For three species (Herring 1 and 2, Blue whiting and Norway Pout) there has been no reported trading from 2015-2018. Therefore, the market price is established in the following way: For Blue whiting and Norway Pout, the market price has been calculated as the average landing price for the species multiplied with 10 and multiplied with the average quota utilisation for the species in the years 2015-2018. For Herring 1 and 2, the market price is established as the average landing price in the years 2015-2018 multiplied with a factor (by way of example: 11,64). The factor is derived from the relation between the market price for herring (4AB – North Sea) and the average landing price for herring (4AB).

## 2.9.4. Choke species factor

### 2.9.4.1. Calculation method

- (26) For two species in Danish fisheries (cod and saithe) the average market price P has been multiplied with a specific factor of 1.42 calculated for the part of the quota reductions which exceeds full utilization of the quota. This is done in order to deal with the issue of “choke species” in mixed fisheries, i.e. the situation where fishing for other species is limited by the availability of quotas on cod and saithe. A choke species in mixed fisheries will, if the quota of the choke species is reduced, cause an additional loss of value, as the reduction of the quota of the choke species will reduce the landing opportunities of other species in the mixed fisheries, as landings must be stopped once the quota of the choke species have been fully used. The restriction means that the right to fish a choke species is worth more than only the right to fish the species in question.
- (27) The factor is applied to these two species whose quota utilisation in the reference period has historically been high, as the DFA estimated that the quota reductions due to Brexit will put an upward pressure on the price for quota shares for these two quota species, which according to the Danish authorities is reflected by the actual development in the market price of the quotas for the choke species after the Brexit related quota reductions had become known.
- (28) In the mixed demersal fisheries 95% quota uptake is seen as full utilization of the quota. For cod the average utilization have been 88% in the reference period while the reduction of the quota is 19% (rounded). The average market price 2015-2018 of cod without the choke factor is 156,05 DKK. In order to account for the fact that the choke species factor is based on estimates, the added choke value is reduced by 10 %.
- (29) The calculation for cod is:

	Calculation	Marketprice/kilo
Total price for cod (current)		192,75 DKK
Average market price 2015-2018:		156,05 DKK
Added choke value:	$((0,95-0,88)*156,05)+(((0,88+0,1863)-0,95)*156,05*1,42) =$	36,70 DKK
Reduction of the added choke value to 90%:	$36,70*0,9=$	33,03 DKK
New quota price	$156,05 + 33,03=$	<b>189,08 DKK</b>

The calculation means that the total quota price for cod is multiplied with a factor 1,2116 (189,08/156,05).

- (30) The calculation for saithe is:

	Calculation	Marketprice/kilo
Total price for saithe (current)		169,66 DKK
Average market price 2015-2018:		147,41 DKK
Choke factor for saithe	$((0,95-0,94)*147,41)+(((0,94+0,1030)-0,95)*147,41*1,42) =$	22,24 DKK
Reduction of the added choke value to 90%:	$22,24*0,9$	20,02 DKK
New quota price	$147,41 + 20,02=$	<b>167,43 DKK</b>

The calculation means that the total quota price for saithe is multiplied with a factor 1,1358 (167,43/147,41)

#### 2.9.4.2. Avoiding overcompensation

##### i. Alternative calculation method

- (31) The University of Copenhagen developed a model to measure a choke-species effect in mixed fishery, where the quota reduction of choke species (cod and saithe) will affect the possibility for fishing other species (referred to as primary species).
- (32) Based on this model, the Danish authorities made control calculations based on historical data of actual landings from North Sea fisheries with actual landings of cod and saithe. The calculation was made on the basis of all landings in the North Sea from mixed fisheries and vessels using trawls  $\geq 120$  millimeter in the years 2015-2018. According to the Danish authorities, this segment covers by far the largest part of the total landing values of cod and saithe from the North Sea landed by Danish fishing vessels. In this segment approximately 95 % of the landing values come from landings which include cod and/or saithe. In the calculation, only landings with cod and/or saithe were included.
- (33) All data on landings in the years 2015-2018 were then accumulated for each primary species. Where the TCA induced quota reductions for primary species were higher than the quotas for cod (<sup>9)</sup>, no choke species effect was accounted for. Where the quota reduction of the primary species was less than the quota reduction of the choke species, only the excess reduction was included in the

<sup>9)</sup> This is the case for hake, haddock, whiting and anglerfish.

calculation of the choke species effect. <sup>(10)</sup> The total of the choke species effect (loss in landing values for primary species) totaled approximately 35 million DKK per year. This was reduced by a variable cost factor (determined by the IFRO as 43 %), which resulted in net choke species effect of approximately 20 million DKK per year.

- (34) The calculated loss of 20 million DKK per year corresponds to a net loss of 16,45 DKK per kilo reduced choke species due to Brexit. According to the control calculation a factor of 1,73 should be added to the net price of the choke species to compensate for the additional choke related loss on the primary species.

*ii. Actual development of market prices of quota shares after Brexit*

- (35) The Danish authorities have submitted quota prices of the choke species which show that subsequent market prices after Brexit are higher than the average prices of the reference period 2015-2018, including the choke species factor.

	Average quota price 2015-2018 (without choke)	Average quota price 2015-2018 (including choke)	Price per 31/12/2020	Price per 1/10/2021
Cod	156,05 DKK	192,75 DKK	210 DKK	245 DKK
Saithe	147,41 DKK	169,66 DKK	195 DKK	235 DKK

- (36) The Danish authorities submit that based on the control calculations and the subsequent development of market prices after Brexit, the factor used by the Danish authorities (1,42) appears to underestimate the effect of choke.

*2.9.5. Reference period*

- (37) The Danish authorities explain that the choice of 2015-2018 as reference period is that it coincides with the reference period used by the Commission services when setting up an allocation method for the BAR reserve as regards the factor linked to the value of fish caught in the United Kingdom's exclusive economic zone.
- (38) As both the total allowable catch (TAC) per species and the quota prices fluctuate over time, reference values based on historical data have to be established in order to calculate the loss of quota value as a result of TCA induced quota reductions. If a reference value is used where either the TAC or the quota price is unusually high or unusually low, it could distort the calculation of the loss due to the TCA. In order to mitigate this, an average of the four years 2015-2018 has been used.
- (39) Regarding the average quota prices, the lower supply due to the TCA reduction could be expected to result in higher prices, especially for quotas with high utilization. Thus, in order to isolate the effect of Brexit to the TCA-reduction, year where the prices could be affected either by the withdrawal of the UK from the Union (2021 onwards) or by the knowledge of the forthcoming withdrawal

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<sup>(10)</sup> E.g., as sole is reduced by 13,04 % due to TCA, the extra choke effect was calculated as 18,63 % - 13,04 % = 5,59 %.



(2020) should, according to the Danish authorities, not be used in the calculation as this could distort the results. Furthermore, 2020 is not seen as a good reference year due to the effect of Covid-19 on the fisheries sector.

- (40) The Danish authorities submitted control calculations showing that calculated quota losses would be higher, if either the quota prices for the period of 2019-2021 or the quota prices as of 31 December 2020 were to be used in the calculation. They also note that the calculated quota price, including the choke species factor, is lower than the subsequent trading prices of the quota after Brexit (per 1 October 2021). The calculated quota price per kilogram for cod including the choke species factor was DKK 193 whereas the trading price per 1 October 2021 for cod was DKK 245. For saithe the calculated quota price per kilogram including the choke species factor was DKK 167 and the trading price per 1 October 2021 was DKK 235.

#### *2.9.6. Avoiding overcompensation*

##### *2.9.6.1. Alternative calculation method (University of Copenhagen)*

- (41) The Danish authorities have commissioned an independent expertise to set up an alternative calculation method in order to control the method as proposed under recital (25). The control calculation was carried out by the University of Copenhagen, Department of Food and Resource Economics (Institut for Fødevarer- og Ressourceøkonomi, IFRO).
- (42) Whereas the method proposed by the Danish authorities uses actual market prices of the quotas in a reference period 2015-2018 to calculate the loss of quota value, the IFRO model uses historical landing values in a reference period to calculate the loss of quota value based on future expected earnings. The IFRO model assumes that what a buyer would be willing to pay for a quota share is based on his or her expected earnings from fishing for the period during which the quota share can be used, and the value will therefore depend on the transfer price and the level of costs for the period, as well as the quantity of quota.
- (43) As a DKK today is more worth than a DKK tomorrow, the expected earnings of the coming years must be discounted to present value. This calculation is based on a 4 % discount rate, which is the one used by the Danish Ministry of Finance for socio-economic analyses.
- (44) According to the Danish authorities, both the DFA and the IFRO model result in an almost identical overall total loss of quota value. The calculated losses for each species differ, which is explained by the fact that none of the models can perfectly reflect the future market situation as variables such as quota prices, landing values and costs are unknown. Theoretically, if these variables were known, the two models would give the same result.

##### *2.9.6.2. Control calculations against alternative reference periods*

- (45) The Danish authorities have submitted control calculations of the total quota loss on the individually held ITQ/VQS shares of the Danish TAC when using

alternative reference periods. The total loss of quota value for the reference period chosen (2015-2018) was lower than that for other periods. <sup>(11)</sup>

2015-2018	2019-2021	Per 31/12/2020
925.448.074,03 DKK	1.207.737.513,68 DKK	1.182.921.756,88 DKK

### 2.9.7. Compensation rate

- (46) The loss of quota value will be compensated based on a decreasing and progressive compensation rate depending on the size of their overall loss of quota values as follows:

Loss of quota value	Compensation rate	Green top up
0 – 2 million DKK	100 %	0 %
2 – 7.5 million DKK	90 %	10 %
7.5 – 30 million DKK	80 %	10 %
> 30 million DKK	75 %	10 %

- (47) The Danish authorities justify the high aid rates by the fact that they represent the fishermen's loss of quota value and do not exceed 100 %. The DFA calculates the loss of quota value at individual level. The segment entitled to an aid rate of up to 100 % is the one representing small scale fisheries, thereby complying with the socio-economic objectives of the CFP and an overall goal to support the small scale coastal fisheries while at the same time avoiding overcompensation.

### 2.9.8. Green top up:

- (48) The compensation rate can be increased if the beneficiary at the time of application provides an action plan, which describes the environmentally sustainable initiatives for which the beneficiary commits to use the aid.
- (49) Together with input from sector experts and fisheries organisations, the DFA will develop a list of initiatives, which are considered green and environmentally sustainable.
- (50) In order to receive the green top up, the beneficiary has to commit to spending 15 % of his total compensation on green or environmentally sustainable initiatives (10 % if the total loss of quota value amounts to more than DKK 30 million). The beneficiary must declare that the compensation will be used for purposes which comply with the objectives of the CFP. Ineligible operations or expenditures under Article 13 of the EMFAF Regulation are also excluded.

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<sup>(11)</sup> For 2015-2018: 925.448.074,03 DKK; for 2019-2021: 1.207.737.513,68 DKK; as per 31/12/2020: 1.182.921.756,88 DKK

- (51) A control mechanism will be put in place consisting of a risk-based physical sample control of the completed initiatives. It is the responsibility of the beneficiary that the completed initiatives can be controlled (e.g. if the vessel has been sold).
- (52) The green and environmentally sustainable initiatives will have to be completed and notified to the DFA by the end of 2024 at the latest. When the initiative is completed the beneficiaries will have to notify the agency and document its completion.
- (53) If the finished initiatives are not in line with the beneficiary's action plan approved by the agency (or any other green or environmentally sustainable initiatives as described in the list of initiatives to be provided by the agency), if the beneficiary cannot document that the described initiative has been completed, or if the beneficiary has not notified it, the green top up will have to be re-imbursed.
- (54) Calculation example:

The owner of a vessel "DK1" has a loss of quota value of 10 million DKK. Based on the decreasing compensation rate, DK1 can receive 8.95 million DKK in compensation:

$$(2\,000\,000 * 1) + ((7\,500\,000 - 2\,000\,000) * 0,9) + ((10\,000\,000 - 7\,500\,000) * 0,8) = \mathbf{8\,950\,000\ DKK}$$

However, with the green top-up, DK1 can receive an additional 800 000 DKK:

$$(2\,000\,000 * 1) + ((7\,500\,000 - 2\,000\,000) * (0,9 + 0,1)) + ((10\,000\,000 - 7\,500\,000) * (0,8 + 0,1)) = \mathbf{9\,750\,000\ DKK}$$

The green top up is conditioned upon the commitment that DK1 spends at least 15 percent of the total compensation on green or sustainable initiatives. The 15 percent commitment is calculated as:  $9\,750\,000\ \text{DKK} * 0,15 = \mathbf{1\,462\,500\ DKK}$

If the owner of DK1 fails to spend money on the initiatives described in the action plan, or any other green or sustainable initiatives as described in the list of initiatives provided by the agency, he/she will have to repay the green top up (800 000 DKK).

If the owner of DK1 only spends 1 million DKK on green or sustainable initiatives, he will have to repay 462,500 DKK of the green top up:  $1\,000\,000 - 1\,462\,500 = -\mathbf{462\,500\ DKK}$

In that case the beneficiary will receive  $8\,950\,000 + (800,000 - 462,500) = \mathbf{9\,287\,500\ DKK}$

## 2.10. Safeguard of CFP objectives

- (55) The Danish authorities underline that the following mechanisms are in place in order to safeguard CFP objectives, coupled with monitoring and enforcement mechanisms.

- a) A system for transferable quota and a system for species not managed by quotas based on recommendations of the International Council for the Exploration of the Sea (ICES);
- b) A system that ensures compliance with the national capacity ceilings and entry/exit rules;

*a) Quota system*

Any transfer of quota shares can only be done through the DFA which at any time has a complete overview of who holds the Danish quotas. The Danish authorities emphasise that quota management in Denmark is monitored closely. Each landing in Denmark of sorted and unsorted fish is weighed and sampled according to Commission approved sampling plans. The results from the sampling and weighing are used for sales notes and landing declarations, which are the catch registration documents used for quota management.

Each Danish quota at national level, pool level and vessel level are updated with the present quota uptake every night. According to the Danish authorities, this ensures that the Danish fishing industry does not overfish allocated quotas. The system enables a flexible management of the individual quotas and ensures that the total allowable catch (TAC) allocated to Denmark is respected at all times.

Denmark has national legislation on concentration of quota shares, as well as control measures in place to avoid illegal concentration of fishing quotas. This seeks to ensure a diverse distribution of Danish fishing quotas.

*b) Non-quota species*

Some species in the EU fisheries management are not subject to quota management. For these species, EU management measures are put in place to support the CFP objectives, based on ICES advice and other relevant information from stakeholders, especially through the use of technical conservation measures (e.g. close regional cooperation on the management of the brown shrimp fisheries between Member States, scientific institutes and industry). Additional measures are often implemented nationally by Member States to manage non-quota species found in their fishing zones.

*c) Capacity ceilings*

Denmark explained that the situation of the fleet segments concerned is such that there is hardly any risk of bringing those segments into imbalance and that the notified measure, seen in conjunction in particular with the permanent cessation scheme SA.101091 (2022/N), is designed to facilitate the orderly adjustment to the reduced TAC share for Denmark, aiming to establish a viable balance between the fleet and the fishing opportunities after the UK's withdrawal from the Union. The permanent cessation scheme aims at reducing the fishing capacity of the fleet to the available fishing opportunities. The uptake of the scheme will depend on the voluntary decision of vessel owners to participate in the scheme and scrap or retrofit their fishing vessels. If one assumes a full uptake by the approximately 100 vessels which are potentially eligible, the capacity reduction would amount to 28 500 GT (100 x 285 GT). If one assumes uptake by the part of the fleet which depends to 50% or more on landings from TCA reduced quota, the

capacity reduction would amount to 11 400 GT (30 x 380 GT) + 600 GT (5 x 120 GT) = 12 000 GT.

In any case, the Danish authorities confirmed that in accordance with Article 22(7) the CFP-Regulation <sup>(12)</sup>, the fishing capacity of their fleets does not exceed at any time the fishing capacity ceilings set out in Annex II of that Regulation.

The national system that ensures compliance operates as follows:

Regarding fishing capacity, fleet management is governed by the national capacity ceiling and entry-exit rules. Since permits for new capacity are only issued if there has been a previous withdrawal of capacity, total physical capacity will never be higher than the ceilings. Operators' change of capacity must be declared to and approved by the DFA.

- *Entry/exit system*

In accordance with Article 23 of the CFP-Regulation, the DFA operates the IT-system *fiskerisystemet* ("the fisheries system") which includes a system for capacity management. Capacity is measured in terms of kilowatt (kw) and gross tonnage (GT). The capacity of either may not exceed the ceilings set by the EU.

Capacity is further subdivided into active capacity, which is capacity currently in use on active vessels, and passive capacity, which is 'owned' by a fisher or commercial fishing company, but not currently in use. Passive capacity may be bought and sold on market terms or given away. In compliance with EU regulations, the Danish active capacity does not exceed the ceilings set out by the EU, and transactions between capacity owners does not change total capacity.

All of the available Danish capacity is divided between the fishers and fishing companies, with the exception that the DFA holds a small fund of capacity which start-up fishers and small scale coastal fisheries can apply for.

Therefore, increasing one's active fishing capacity (capacity in use on an active vessel) is only possible through acquisition of capacity from other fishers. The DFA does not control the transactions through the market mechanism, but anyone seeking to increase their active capacity must get their plans to do so approved by the DFA.

- *Capacity management system*

In order to own fishing capacity, a Danish fisher or commercial fishing company must be licenced by the DFA. A fisher or fishing company, seeking to use more capacity than is currently conferred to it, must declare this to the DFA, indicating the expansion of GT or KW through retrofitting of an existing vessel or acquisition of a new vessel.

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<sup>(12)</sup> Regulation (EU) No 1380/2013 of the European Parliament and 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.

If this declaration, along with proof that capacity has been acquired corresponding to the planned expansion, has been accepted by the DFA, the operator may complete the measure within the following 9 months. Failure to comply with the rules and requirements are subject to sanction. In severe cases, the vessel in question may be deleted from the Danish vessel registry.

The adaptation to the new situation after Brexit may require adjustments of the vessel for which the enterprise has received compensation for loss of quota value. The adjustment may include the need for increase of capacity of the vessel. The capacity needed is bought on the market and subject to the availability under the national capacity ceiling, and has to be approved by the DFA. Such capacity increase is only allowed under the conditions spelled out below in recitals (61)-(65).

The adjustment needed may also include shifting from the reduced fishing possibilities to other fisheries where the Danish TAC is under-utilized or including non-quota species where the stock allows for further utilization (e.g. Danish whelk fishery, which is a new fishery in Danish coastal waters).

- (56) The national legal base states that a beneficiary may not use the compensation for purposes contrary to the objectives of the Common Fisheries Policy pursuant to Article 2 of the CFP-Regulation.

### **2.11. Cumulation**

- (57) The Danish authorities confirm that aid granted under the measure shall not be cumulated with other partially or completely overlapping aid for the same eligible costs.
- (58) It will not be possible to combine compensation for loss of quota values due to Brexit with compensation for income foregone in the first quarter of 2021 for the same quotas and on the same vessel.
- (59) It will not be possible to combine compensation for loss of quota values due to Brexit with compensation for the scrapping of the vessel (permanent cessation) to which the quota shares for which compensation of quota value loss is sought are linked.

### **2.12. Other commitments**

- (60) All documents relating to the project and the accompanying accounting documents shall be kept at the disposal of the DFA for at least 5 years from 30 September 2024, in accordance with Article 14(3) of the BAR-Regulation. Applicants must have a separate accounting system or an appropriate accounting code for all transactions relating to the aid application.
- (61) Beneficiaries must commit themselves not to increase their active fishing capacity (in GT or kW) from the date of opening the scheme for applications until three years after the payment of the aid. This commitment applies to all beneficiaries receiving more than EUR 30 000.

The cut-off date for establishing the capacity ceiling limit per individual beneficiary is the date of opening the scheme for applications. It is possible to use

31 December 2020 as cut-off date, if the use of the alternative date is justified by the beneficiary.

If a beneficiary increases active capacity before the three-year period has elapsed, the compensation will have to be repaid pro rata temporis.

- (62) Notwithstanding recital (61), beneficiaries may increase the gross tonnage of a fishing vessel to improve safety, working conditions or energy efficiency if the conditions of Article 19(1), (2)(a) and (d) and (3) of the EMFAF-Regulation are fulfilled. Increases in gross tonnage for other investments than those covered by Article 19(3) of the EMFAF-Regulation may be allowed in case of a positive assessment by the DFA on an individual basis. The DFA assessment will have to confirm:
- (a) The objective need for capacity increase for the proposed investment;
  - (b) The absence of a negative impact of the capacity increase on quota and non-quota species;
  - (c) The absence of a negative impact on the fishing in both other Member States' and third country waters.

This DFA assessment must for each individual case be based on an independent external expert assessment covering the points (a)-(c) above.

- (63) Capacity increases which are exceptionally allowed as described under recital (62) can only be envisaged for vessels that are part of fleet segments in balance in accordance with Article 22 of the CFP-Regulation.

Compensation may not be used to increase capacity to catch and store fish onboard.

- (64) Beneficiaries have to declare not to increase their capacity, save as provided for in recitals (61) and (62). This obligation applies to owners of the vessel and to indirect owners with controlling influence over the vessel for which compensation of quota value losses is received. The Danish authorities will control that this obligation cannot not be circumvented through changes in ownership structure and levels.
- (65) The Danish authorities commit to set up a system to manage active capacity increase and control its intended use by beneficiaries. This system will operate at the level of fleet segments rather than at individual beneficiary level and ensure that there will be no overall active capacity increase within any fleet segment during the three-year period mentioned in recital (61).
- (66) An application for a grant shall be inadmissible if the competent authority has established, in accordance with Article 11(1) of the EMFAF-Regulation, that the operator concerned has committed one or more of the infringements or offences referred to in Article 11(1) of that Regulation or fraud as referred to in Article 11(3) of that Regulation. The periods of inadmissibility set out in the delegated acts adopted on the basis of Article 11(4) of that Regulation apply.

- (67) The Danish authorities confirm that 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. If it is determined by the competent authority that a beneficiary has committed one or more of the infringements set out in Article 11(1) of the EMFAF-Regulation, has committed fraud within the meaning of Article 11(3) of that Regulation, or does not comply with the rules of the CFP during those periods, 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.
- (68) The Danish authorities state that no aid is granted for activities that correspond to ineligible operations under Article 13 of the EMFAF-Regulation.

### **2.13. Transparency**

- (69) The information specified in Section 3.9 of Guidelines for the examination of State aid to the fishery and aquaculture sector <sup>(13)</sup> of 2 July 2015 (hereinafter the Guidelines) will be displayed for the public on the Agency's website [www.fiskeristyrelsen.dk](http://www.fiskeristyrelsen.dk).

## **3. ASSESSMENT**

### **3.1. Applicability of Articles 107, 108 and 109 TFEU**

- (70) The European Parliament and the Council have determined in Article 8(1) of the EMFF-Regulation that Articles 107, 108 and 109 TFEU apply to aid granted by Member States to undertakings in the fishery and aquaculture sector. The derogation from the application of these provisions stipulated in Article 8(2) of the EMFF does not apply in the current context because the notified aid is not granted pursuant to that Regulation. Therefore, all measures financed in accordance with the present decision have to comply with State aid rules, including those related to the fishery and aquaculture sector.

### **3.2. Lawfulness of the measure**

- (71) By notifying the measure before putting it into effect, the Danish authorities have respected their obligations under Article 108(3) TFEU.

### **3.3. Existence of State aid**

- (72) 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.”
- (73) 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

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<sup>(13)</sup> Communication from the Commission – Guidelines for the examination of State aid to the fishery and aquaculture sector, OJ C 217, 2 July 2015, p. 1. as amended by the Communication published in OJ C 422, 22.11.2018, p. 1.



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.

- (74) The measure will be pre-financed first by the Member State budget, with a view to subsequent reimbursement by 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 the BAR Regulation, which will be assessed separately by the Commission. .
- (75) 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.
- (76) The measure is administered by the Danish Fisheries Agency and it is based on the draft "*Bekendtgørelse om kompensation til ejere af fiskefartøjer for tab af kvoteværdi som følge af brexit*". The measure is therefore imputable to the State.
- (77) The measure confers an advantage on its beneficiaries in the form of direct grants (recital (9)). The measure thus relieves those beneficiaries of costs that they would have to bear under normal market conditions.
- (78) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, in particular undertakings active in the fishery sector (recital (14)).
- (79) The measure is liable to distort competition, since it strengthens the competitive position of its beneficiaries. It also affects trade between Member States, since those beneficiaries are active in sectors in which intra-Union trade exists.
- (80) In view of the above, the Commission concludes that the measure constitutes State aid within the meaning of Article 107(1) TFEU.

### **3.4. Compatibility**

#### ***3.4.1. Application of Article 107(3)(c) TFEU***

- (81) Having established that the measure involves aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether the measure can be found to be compatible with the internal market on the basis of the compatibility grounds foreseen by Article 107 TFEU.
- (82) Pursuant to Article 107(3)(c) TFEU the Commission may declare compatible with the internal market aid "*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*".

- (83) Therefore, aid compatible 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.
- (84) The aid is granted to the fishery sector and the Commission will therefore assess its compatibility on the basis of the Guidelines.

#### ***3.4.2. Application of the Guidelines***

- (85) In their notification, the Danish authorities state that the aid does not correspond to one of the types of aid referred to in Sections 4 or 5.1 to 5.6a of the Guidelines. It will therefore be assessed in light of Section 5.7 of the Guidelines ('Aid for other measures').
- (86) According to Section 5.7 of the Guidelines, 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. If a Member State nevertheless intends to provide such aid or provides such aid, it must clearly demonstrate that the aid complies with the principles set out in Section 3. The Commission may declare the aid compatible with the internal market on the basis of a case-by-case assessment.

#### *Assessment under Section 3 of the Guidelines*

- (87) With regard to Sections 3.1. and 3.3. of the *Guidelines*, to assess whether an aid measure notified to the Commission can be considered compatible with the internal market, the Commission analyses whether the design of the aid measure ensures that the positive impact of the aid for the development of the activities which the aid is intended to support outweighs its potential negative effects on trade and competition.
- (88) The Commission will assess whether the measure may be considered compatible with the internal market on the basis of Article 107(3)(c) TFEU. In that assessment, the Commission will consider whether the measure facilitates the development of the sector in question by enabling the operators concerned<sup>(14)</sup> to adapt to the provisions of the TCA. Such extraordinary measures should thus enhance the development of a sustainable fisheries sector and the development of the aided activities and should not just preserve the status quo. Those measures should facilitate an orderly adjustment to the reduced quota shares.

#### ***3.4.3. Positive condition - the aid must facilitate the development of an economic activity***

- (89) Under Article 107(3)(c) TFEU, the measure must contribute to the development of an economic activity<sup>(15)</sup>.

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<sup>(14)</sup> Cf. Article 4(30) of the CFP-Regulation: 'operator' means the natural or legal person who operates or holds any undertaking carrying out any of the activities related to any stage of production, processing, marketing, distribution and retail chains of fisheries and aquaculture products

<sup>(15)</sup> C-594/18 P Austria v Commission - Planned aid for Hinkley Point C nuclear power station (United Kingdom), EU:C:2020:742, paras 20 and 24.

- (90) By enhancing the sustainability of the fisheries sector and its ability to adapt to new fishing and market opportunities arising from the new relationship with the United Kingdom, the aid measure genuinely facilitates the development of this sector, thereby contributing to the first objective of the CFP <sup>(16)</sup>, namely to “ensure that fishing and aquaculture activities are environmentally sustainable in the long term and managed in accordance with the objectives of obtaining positive economic, social and employment benefits and contributing to the security of food supply.”
- (91) With regard to Section 3.6 of the *Guidelines*, as a general rule, aid can be found compatible with the internal market if it has an incentive effect.
- (92) However, according to point 52 of the *Guidelines*, aid that is compensatory in nature, is not required to have an incentive effect. While the present aid measure does not fall under the exemplified cases of aid under Sections 4, 5.3., 5.4., 5.6. or 5.6a of the *Guidelines*, the Commission acknowledges the compensatory nature of the notified aid. It follows that the aid measure in question is not required to have an incentive effect.
- (93) In view of the above, the Commission considers that the notified measure facilitates the development of certain economic activities, as required by Article 107(3)(c) TFEU.

**3.4.4. Negative condition - the aid must not unduly affect trading conditions contrary to the common interest**

**i. Need for State intervention**

- (94) The consequences of Brexit are reflected in the establishment of a new relationship with the United Kingdom and affect the economic activity of a part of the Danish fishing industry. The reduction of quota rights through the TCA has translated into a reduction of fishing possibilities for holders of Danish quota rights. There is no immediate market mechanism to set off this reduction. As the loss of quota values negatively affects the individual fisher’s financial capacity to adapt to the new situation after Brexit, there is a need to increase the resilience of this sector in order to allow its members to adapt to the new lower level of activity post-Brexit or to settle part of their debt incurred e.g. in connection with the purchase of quota rights now reduced by Brexit.
- (95) The Commission considers that the requirements of points 39, 40 and 41 of the *Guidelines* are therefore met.

**ii. Appropriateness of the aid measure**

- (96) The aid measure consists of compensating part of the Danish fishing sector for the permanent loss of quota values resulting from the TCA-induced quota share reductions and hence compensate an actual financial loss for the quota holder.
- (97) By only providing compensation for losses of quota which can be individually held as ITQ and VQS and which were held by an undertaking on a specific vessel

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<sup>(16)</sup> Article 2(1) of the CFP-Regulation.

on 31 December 2020 (see recitals (20) and (21)), the proposed measure remains targeted at companies where the negative effects of the TCA were felt in an immediate and considerable fashion.

- (98) The Commission considers the requirements of points 45, 46 and 47 of the *Guidelines* met.

### **iii. Proportionality of the aid**

- (99) The aid compensates only companies that have been affected by TCA induced quota share reductions. It does not constitute export or trade aid. The method for calculating the aid is based on objective criteria that value losses per individual vessel based on historical, average market prices (see recital (25)). Historical prices are multiplied with a specific factor to take into account the situation in mixed fisheries where, for two so-called choke species (cod and saithe), a reduction in quota will have spill over effects on landing opportunities for other species as well (see recitals (26)-(30)). The valuation method does not result, as shown by control calculations and subsequent development of market prices after Brexit, in overcompensation for the beneficiaries (see recitals (31) to (36)).
- (100) With regard to Section 3.7. of the *Guidelines* and concerning the proportionality of the aid, the latter must be limited to the minimum needed. According to point 58 of the *Guidelines*, aid that is compensatory in nature, such as aid that meets the specific conditions set out in Sections 4, 5.3., 5.4., or 5.6. is deemed proportional. While the present aid measure does not fall under the exemplified cases of aid under Sections 4, 5.3., 5.4. or 5.6. of the *Guidelines*, the Commission acknowledges the compensatory nature of the notified aid. It follows that the aid measure in question is deemed proportional and that the requirements of points 54 to 57 of the *Guidelines* are met.

### **iv. Transparency**

- (101) With regard to Section 3.9. of the *Guidelines*, Denmark has committed in its notification to comply with the transparency requirements and will publish all the relevant information on the comprehensive State aid website <sup>(17)</sup>.
- (102) In light of the above, the Commission concludes that the aid facilitates the development of an economic activity and does not adversely affect trading conditions to an extent contrary to the common interest.

### **v. Specific principles for the fishery and aquaculture sector and the rules of the CFP**

- (103) Point 30 of the *Guidelines* provides that, in addition to the general compatibility criteria of section 3.1, the Commission also applies the specific principles for the fishery and aquaculture sector set out in its Section 3.2.
- (104) Points 31 and 33 of the *Guidelines* require that each beneficiary of a State aid measure must 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

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<sup>(17)</sup> <https://webgate.ec.europa.eu/competition/transparency/public/search/home/>

payment to the beneficiary. In its notification, Denmark has confirmed that the aid explicitly provides for the compliance with this requirement (see recital (18)). The Commission thus considers that, with regard to the type of the proposed aid measure, the requirements of this point are met.

- (105) In accordance with point 32 of the *Guidelines*, the Danish authorities have also confirmed in their notification that they will ensure the inadmissibility of applications from applicants having committed one or more of the infringements of CFP rules and that no aid is granted to an operator having committed a fraud as set out in Article 11(1) and Article 11(3) respectively of the EMFAF-Regulation during the period set out in the delegated acts adopted on the basis of Article 11(4) of that Regulation (see recital (66)). The Commission thus considers that, with regard to the type of the proposed aid measure, the requirements of this point are met.
- (106) Denmark confirmed that, in accordance with point 33 of the *Guidelines* the aid measure explicitly provides that if a beneficiary commits one or more of the offenses referred to in Article 11(1) of the EMFAF-Regulation, commits fraud within the meaning of Article 11(3) of that Regulation or does not comply with the rules of the CFP, throughout the period of implementation of the project and during a period of five years after final payment to the beneficiary, the beneficiary must repay all or part of the aid (see recital (67)). The Commission thus considers that, with regard to the type of the proposed aid measure, the requirements of this point 33 are met.
- (107) Denmark confirmed also that, in accordance with point 35 of the *Guidelines*, no aid will be granted for activities that correspond to ineligible operations under Article 13 of the EMFAF-Regulation (recital (68)). The Commission thus considers that, with regard to the type of the proposed aid measure, the requirements of this point are met.
- (108) According 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.
- (109) By enhancing the sustainability of the fisheries sector and its ability to adapt to new fishing and market opportunities arising from the new relationship with the United Kingdom, the aid measure contributes to providing “conditions for economically viable and competitive fishing capture and processing industry and land-based fishing related activity”<sup>(18)</sup>.
- (110) Potential negative effects and distortion of competition might arise if an aid measure indirectly leads to an increase in the fishing capacity, in particular when end-of-life capacity is replaced by new capacity.
- (111) In general, the measure does not put into question the rules established by the CFP Regulation that require to manage and adjust the fishing capacity and fishing opportunities over time.<sup>(19)</sup> The Danish authorities have demonstrated that

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<sup>(18)</sup> Article 2(5)(c) of the CFP-Regulation.

<sup>(19)</sup> Article 22 and Annex II of the CFP-Regulation.

mechanisms are in place in order to safeguard CFP objectives, coupled with monitoring and enforcement mechanisms, namely a system for transferable quota and a system for species not managed by quotas based on recommendations of the International Council for the Exploration of the Sea (ICES), and a system that ensures compliance with the national capacity ceilings and entry/exit rules (see recital (55)).

(112) For the case at hand, the potential negative effects mentioned in recital (110) are limited due to the following elements of the scheme (see recitals (61) to (65)):

- a) beneficiaries receiving more than EUR 30 000 must commit themselves not to increase their active fishing capacity (in GT or kW) from the date of opening the scheme for applications until three years after the payment of the aid (recital (61));
- b) capacity increases are only allowed if the specific conditions of Article 19(1), Article 19(2), points (a) and (d), and Article 19(3) of the EMFAF-Regulation are fulfilled. Increases in gross tonnage for other investments than those covered by Article 19(3) of the EMFAF-Regulation may be allowed in case of a positive assessment by the DFA on an individual basis (recital (62));
- c) capacity increases which are exceptionally allowed as described under recital (62) can only be envisaged for vessels that are part of fleet segments in balance in accordance with Article 22 of the CFP-Regulation;
- d) compensation may not be used to increase capacity to catch and store fish onboard (recital (63));
- e) beneficiaries have to declare not increase their active capacity (in GT or kW), save as provided for in recitals (61) and (62). This obligation applies to owners of the vessel and to indirect owners with controlling influence over the vessel for which compensation of quota value losses is received. The Danish authorities will control that this obligation cannot be circumvented through changes in ownership structure and levels;
- f) the Danish authorities commit themselves to setting up a system to manage active capacity increase and control its intended use by beneficiaries. This system will operate at the level of fleet segments rather than at individual beneficiary level and ensure that there will be no overall active capacity increase within any fleet segment during the three-year period mentioned in recital (61). This system reduces the risk of unmanaged capacity increases, which makes acceptable that beneficiaries receiving small aid amounts (of up to a maximum of EUR 30 000) do not have to commit themselves not to increase their active capacity in GT or kW (recital (61)).

(113) The potential negative effects are also limited as the duration of the measure is limited in time (recital (13)) and it is a one-time measure inherent in its nature.

(114) In view of recitals (112)-(113), the Commission considers that the measure does not undermine capacity-related CFP objectives. The Commission thus considers that the requirements of point 37 of the Guidelines are met.

(115) The Commission therefore considers that the aid respects the conditions set out in Section 3.1 of the *Guidelines* as well as the specific principles for the fishery and aquaculture sector set out in Section 3.2 of the *Guidelines*.

**3.4.5. Conclusion on the balancing of the positive and negative effects caused by the scheme**

(116) With regard to Section 3.8. and 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 the positive effects for the development of the activities which the aid is intended to support. Furthermore, according to points 64 and 65 of the *Guidelines*, the aid 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.

(117) The quota values will be compensated based on a decreasing and progressive compensation rate depending on the size of their overall loss of quota values (see recital (46)), and only in relation to the consequences of Brexit, thus enhancing the sustainability of the fisheries sector and its ability to adapt to new fishing and market opportunities arising from the new relationship with the United Kingdom, The aid is proportional (see recital 99) and in no case constitutes an advantage that allows beneficiaries to trade their products at a cheaper cost than their competitors.

(118) As pointed out in recitals (55) and (56), Denmark has put mechanisms in place in order to safeguard CFP objectives, coupled with monitoring and enforcement mechanisms. Moreover, the legal base states that a beneficiary may not use the compensation for purposes contrary to the objectives of the Common Fisheries Policy pursuant to Article 2 of the CFP-Regulation.

(119) Given that various safeguards have been put in place to prevent the increase in active fishing capacity (recital (112)) and in view of the limited duration of the scheme (recital (113)), the potential negative effects of the scheme (recital (110)) in terms of distortion of competition and impact on trade in the fisheries sector can be considered as limited and outweighed by the positive effects of the scheme,

(120) The Commission therefore finds that the positive impact of the aid measure outweighs its negative effects in terms of distortions of competition and impact on trade between Member States and hence considers, in line with point 23 of the *Guidelines*, that the requirements of points 60 and 64 of the *Guidelines* are also met.

(121) The Commission therefore considers that the measure is necessary, appropriate and proportionate to facilitate the development of certain economic activities or of certain economic areas of Denmark pursuant to Article 107(3)(c) TFEU since it meets all the relevant conditions.

**3.5. Conclusion regarding the compatibility of the scheme**

(122) In light of the above, the Commission concludes that the aid facilitates the development of an economic activity and does not adversely affect 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 on the relevant provisions of the Guidelines.

#### 4. 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 have agreed 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](mailto:Stateaidgreffe@ec.europa.eu)

Yours faithfully,

For the Commission

Margrethe VESTAGER  
Executive Vice-President