



EUROPEAN COMMISSION

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PUBLIC VERSION

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**Subject: State Aid SA.108459 (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 - Second amendment to SA.103095**

Excellency,

The European Commission ('the Commission') wishes to inform Denmark that, having examined the information supplied by your authorities on the aid referred to above, notified as a scheme, it has decided not to raise any objections to the relevant scheme (hereafter, 'the 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').

The Commission has based its decision on the following considerations:

1. PROCEDURE

- (1) By electronic notification of 5 July 2023, registered by the Commission on the same day, Denmark notified, according to Article 108(3) TFEU, an amendment (the 'notified amendment') to the State aid scheme SA.103095 (2022/N) concerning the compensation to fish processing and wholesale undertakings for the loss of turnover caused by the reduction of supply in 2021 due to Brexit (the 'initial aid scheme'), which had been approved by Commission Decision C(2023) 1291 final of 24 February 2023 (the 'initial decision').

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- (2) The initial aid scheme was amended (the ‘existing aid scheme’) by State Aid SA.106893 (2023/N), Commission decision C(2023) 2662 final of 24 April 2023 (the ‘first amendment decision’).
- (3) Denmark exceptionally agrees to waive its rights deriving from Article 342 TFEU, in conjunction with Article 3 of Regulation 1/1958¹ and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE EXISTING AID SCHEME

- (4) Under the existing aid scheme, compensation can be granted for the loss of turnover caused by: (i) a reduction in supply caused by a decrease in landings by EU fishers in Denmark of quotas reduced following Brexit or (ii) a reduction in supply caused by limited access of Danish fishers to Norwegian waters in the first quarter of 2021 (recital (16) of the initial decision)².
- (5) The compensation may be granted to undertakings active in the processing and preserving of fish, crustaceans and molluscs and in the wholesale of fish, crustaceans and molluscs, irrespective of their size (recital (10) of the initial decision).
- (6) 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 (recital (20) of the initial decision).
- (7) The budget of the existing aid scheme is DKK 40 000 000 (EUR 5 377 720³). The scheme is planned to be funded under Regulation (EU) 2021/1755 establishing the Brexit Adjustment Reserve⁴ (‘BAR’) (recital (10) of the initial decision). The compensation is awarded to the beneficiaries in the form of direct grants and will be granted and paid out by 31 December 2023 (recitals (14) and (27) of the initial decision).

3. DESCRIPTION OF THE NOTIFIED AMENDMENT

- (8) The Danish Authorities intend to modify the measure by increasing its budget from DKK 40 000 000 (approx. EUR 5 377 720) to 150 000 000 DKK (approx. EUR 20 139 094)⁵, which is planned to be funded under the Brexit Adjustment Reserve Fund. The amendment is made in order to reflect the actual uptake of the measure by the sector and to making it possible for the sector to adjust to the situation after Brexit.

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

² 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 (recital 7 of the initial decision).

³ DKK 1 = EUR 0.134443, ECB exchange rate on 24 January 2023.

⁴ OJ L 357, 8.10.2021, p. 1.

⁵ 1 EUR = 7.45 DKK, ECB exchange rate on 5 July 2023.

- (9) Apart from the budget increase, Denmark confirms that no further amendments are proposed to the existing aid scheme and that all other elements of the scheme remain unaltered.
- (10) Denmark confirms that aid may be granted under the existing aid scheme as amended from the notification of the Commission's approval of the notified amendment.

4. ASSESSMENT

4.1. Existence of State aid

- (11) For a measure to be categorised as aid within the meaning of Article 107(1) TFEU, all the conditions set out in that provision must be fulfilled. First, the measure must be imputable to the State and financed through State resources. Second, it must confer an advantage on its recipients. Third, that advantage must be selective in nature. Fourth, the measure must distort or threaten to distort competition and be liable to affect trade between Member States.
- (12) The existing aid scheme constitutes State aid within the meaning of Article 107(1) TFEU for the reasons set out in recitals (42) to (51) of the initial decision and recital (13) of the first amendment decision. The notified amendment does not affect that conclusion. The Commission therefore refers to the respective assessment of the initial decision and concludes that the existing aid scheme, as amended, constitutes State aid within the meaning of Article 107(1) TFEU.

4.2. Compatibility

- (13) The existing aid scheme is compatible with the internal market pursuant to Article 107(3)(c) TFEU, since it meets the requirements of Section 5.7. (*'Aid for other measures'*) of the Guidelines for the examination of State aid to the fishery and aquaculture sector⁶ (the *'former Guidelines'*).
- (14) On 17 March 2023, the Commission adopted new Guidelines for State aid in the fishery and aquaculture sector⁷ (the *'current Guidelines'*) which entered into force on 1 April 2023. Pursuant to point (338) of the current Guidelines: *"The Commission will apply these Guidelines to all notified aid measures in respect of which it is called upon to take a decision after 1 April 2023, even where the aid was notified prior to that date."*
- (15) However, pursuant to point (342) of the current Guidelines: *"For approved measures, that were planned to be financed under the Brexit Adjustment Reserve, Member States may continue to grant aid until 31 December 2023 under the Guidelines for the examination of State aid to the fishery and aquaculture sector, adopted in 2015, in the version applicable at the time of adoption of the"*

⁶ 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.

⁷ Communication from the Commission Guidelines for State aid in the fishery and aquaculture sector, OJ C 107, 23.3.2023, p. 1.

Commission decision, in accordance with the conditions set out in the respective Commission decisions.”

- (16) The Commission introduced this exception in point (342) of the current Guidelines to enable the continued application of the former Guidelines in order to facilitate the implementation of approved aid measures to be funded under the BAR during the short reference period of the BAR Regulation (until 31 December 2023). The Commission therefore considers that the same rule should apply to amendments to Commission-approved aid measures to be financed under the BAR Regulation. Therefore, by derogation from point (342) of the current Guidelines, the Commission applies the former Guidelines in all future cases which relate to amendments of an existing aid measure approved under the former Guidelines that is to be funded under the BAR Regulation⁸.
- (17) The existing aid scheme was found compatible with the internal market pursuant to Article 107(3)(c) TFEU, meeting the requirements of Section 5.7. (‘Aid for other measures’) of the former Guidelines for the reasons set out in recitals (53) to (107) of the initial decision and recitals (14) to (23) of the first amendment decision. The Commission therefore refers to those respective assessments.
- (18) The notified amendment does not affect those conclusions. In particular, recital (99) of the initial decision explained that although not negligible, the overall budget of the scheme, i.e., DKK 40 million (EUR 5.4 million), did not appear *prima facie* likely to have a significant effect on competition and trade, since this amount would represent only around 0.02 % of the intra-EU trade of fishery and aquaculture products in 2021 (EUR 26.8 billion)⁹. The budget increase up to approximately EUR 20 million does not alter that assessment, the scheme amounting only to 0.075 % of the intra-EU trade of fishery and aquaculture products in the same year.
- (19) Apart from the notified amendment, Denmark confirms that no further amendments are proposed to the existing aid scheme and that all other elements of that scheme remain unaltered (recital (9)).
- (20) The Commission therefore considers that the notified amendment does not alter the Commission’s conclusion on the compatibility of the existing aid scheme in the initial decision and the first amendment decision.
- (21) The notified amendment is without prejudice to the eligibility rules under the BAR Regulation, which will be assessed separately by the Commission.

5. CONCLUSION

The Commission has accordingly decided not to raise objections to the scheme, as amended, 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.

⁸ For similar cases, see Commission Decision C(2023) 2662 final of 24.4.2023; and Commission Decision C(2023) 4503 final of 3.7.2023.

⁹ See The EU Fish Market, 2022 edition, European Market Observatory for Fisheries and Aquaculture Products, p. 82.

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