COMMISSION DECISION

of 14 July 2004

concerning certain aid measures applied by France to assist fish farmers and fishermen

(notified under document number C(2004) 2588)

(Only the French text is authentic)

(Text with EEA relevance)

(2005/239/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

Having called on interested parties to submit their comments pursuant to the provision cited above,

Whereas:

I. PROCEDURE

(1) By letter dated 21 June 2000, France informed the Commission of the compensation measures it had adopted for fishermen and fish farmers affected by the oil pollution caused by the wreck of the *Erika* in the Bay of Biscay on 12 December 1999 and the extraordinarily violent storms of 27 and 28 December 1999. At the Commission's request, further information was provided by letters dated 28 November 2000, 6 April 2001 and 13 August 2001. Because they were implemented before the Commission could decide whether they were compatible with common market rules, these measures were registered as a non-notified aid scheme, under the number NN 80/2000.

(2) By letter dated 11 December 2001, the Commission notified France of its decision to consider certain of the planned measures compatible with the common market and to initiate the formal investigation procedure provided for in Article 88(2) of the Treaty in respect of the others. France made known its response by letter dated 5 March 2002.

(3) The Commission Decision to initiate the formal investigation procedure was published in the *Official Journal of the European Communities* [1]. The Commission invited interested parties to submit their comments. The Commission received no comments.

[1] OJ C 39, 13.2.2002, p. 6.

II. DESCRIPTION

(4) The formal investigation procedure was initiated in respect of the following measures:

1. exceptional aid for the fishermen and fish farmers of the departments of Finistère, Morbihan, Loire-Atlantique, Vendée, Charente-Maritime and Gironde on France's Atlantic coast (hereinafter referred to as the Atlantic coast departments from Finistère to Gironde).

   — exemption from social security contributions for the first quarter of 2000 (or an average quarter),

   — reduction of financial charges;

2. additional measures to assist fish farmers and fishermen throughout France:

   — additional measure reducing social security contributions for all fish farmers (from 15 April to 15 July 2000) and fishermen (from 15 April to 15 October 2000) of mainland France and the overseas departments,

   — exemption from State fees for the year 2000 for all fish farmers; when the formal investigation procedure was opened, the Commission understood that this exemption applied only to aquaculture undertakings in the Atlantic coast departments from Finistère to Gironde, but it subsequently transpired that the measure was an additional general measure applying to all producers in mainland France and the overseas departments.

(5) For the record, the Commission would point out that the measures that had been deemed compatible with the common market, about which France was informed in a letter of 11 December 2001, concerned the undertakings located in the Atlantic coast departments from Finistère to Gironde, and were the following:

— for fish farmers: application of the agricultural disasters scheme, aid for rebuilding equipment and stocks, advances on compensation to be paid by the International Oil Pollution Compensation Fund (IOPCF),

— for fishermen: aid for rebuilding vessels and equipment lost or damaged in the storm, advances on compensation to be paid by the IOPCF, flat-rate aid for loss of revenue resulting from damage suffered during the storm.

A. **Measures for fish farmers in the Atlantic coast departments from Finistère to Gironde**

1. *Exemption from social security contributions for the first quarter of 2000 (or an average quarter)*

(6) This measure was aimed at two categories of fish farmers: those whose stocks and equipment were damaged by the storm in December 1999 and who received aid for rebuilding stocks, and those who suffered damage by pollution from oil from the *Erika* and received an advance on compensation to be paid by the IOPCF.

(7) It was a targeted measure determined by the situation of the undertakings concerned. It was applied for one, two or three months, depending on the scale of damage suffered by the undertakings concerned. During that period, the undertakings concerned were totally exempted from social security charges.

(8) Applications were examined by the compensation units set up in each of the departments concerned under the authority of the prefect, with the participation of the administrations concerned, professional organisations, banks and insurance companies. The list of beneficiaries was drawn up by the Directorate for Sea Fishing and Sea-based Fish Farming at the proposal of the departments' prefects. It concerned 1 476 undertakings. The total value of the exemptions was EUR 0.87 million.

2. *Reduction of financial charges*

(9) This measure was applied to the same undertakings as those referred to in recitals 6 to 8. It consisted in paying, under individual debt adjustment plans, part of the interest falling due in 2000, 2001 and 2002 for medium and long-term loans and operational consolidation loans. The purpose of these measures stated by France in its letter of 13 August 2001 was to reduce the financial pressure on undertakings affected by the storm and/or the oil pollution.

(10) Application files had to be submitted by 1 April 2000. They were evaluated by the departments' maritime affairs directorates and presented to the compensation unit. The amount of the aid was determined according to criteria defined locally. The compensation units had to consider the scale of activity actually lost in the 1999/2000 winter, the debt situation and vulnerability of the undertaking, the operating revenue for the last two financial years, any external revenue to the undertaking over the same period, and the viability of the undertaking. The undertakings' creditors (banks and suppliers) were asked to make a particular effort. The amount of the aid could not exceed FRF 48 000 (EUR 7 317), except where the compensation unit judged the situation particularly critical and raised the ceiling to FRF 62 000 (EUR 9 451).

(11) The individual debt adjustment plans drawn up under this procedure were the basis for an agreement approved by all the parties and identifying the contribution of each party to its implementation. The decision to award the aid was taken by the department prefect. The total amount of the aid was approximately FRF 8 million (EUR 1,2 million) for 1 083 undertakings.

B. **Additional measures**

(12) In addition to the above measures — both those for which the formal investigation procedure was initiated and those which the Commission has already approved — the Minister for agriculture, fisheries and aquaculture decided to apply additional measures to assist these undertakings, in order, as France has stated, to deal with the difficulties facing the fisheries and aquaculture sector as a result of the cumulative effects of the storm and oil pollution, and take account of the damage suffered by undertakings in the sector because of the deterioration of the market.

1. *Exemption of all fish farmers from State fees for the year 2000*

(13) As France stated in its letter of 21 June 2000, i.e. before the formal investigation procedure was initiated, an exemption from State fees for fish farming concessions in public sea waters and water intake authorisations to supply parcels situated on private property was granted for the year 2000.

(14) In its letter of 5 March 2002, in which it gave its comments on the initiation of the procedure, France stated that this measure was part of the additional relief measures for all fish farmers in mainland France and the overseas departments.

(15) In response to a request from the Commission, France confirmed in its letter of 24 September 2002 that this exemption had been extended to all marine fish farmers by a decision of 12 September 2000.

(16) The total value of the exemption was EUR 3,81 million.

2. *Reduction of social security contributions for fish farmers and fishermen*

(17) The Minister for Agriculture and Fisheries decided (decisions issued in circulars of 15 April 2000 and 13 July 2000) to grant all undertakings in the sector a 50 % reduction in social security contributions for the period 15 April 2000 to 15 July 2000 for fish farmers and 15 April 2000 to 15 October 2000 for fishermen.

(18) This reduction applied to employers' and employees' contributions for all fishermen and fish farmers in mainland France and the overseas departments.

(19) The procedures for applying the reduction varied according to whether the contributions were paid to the ENIM (Etablissement National des Invalides de la Marine) or the MSA (Mutualité Sociale Agricole).

(20) The rate of reduction of contributions to the ENIM was 50 % for both employees' and employers' contributions. However, in the case of certain vessels for which the share payment system is not applied, the part of the employers' contributions taken over was increased to 75 %. France explained this different rate by the fact that in the case of share payment there is a close financial solidarity between the owners and the crew in the face of difficulties encountered in the course of fishing activities, particularly as regards reduced turnover, whereas in the case of industrial ship owners where this type of payment does not exist, the owners bear the greater part of economic difficulties.

(21) The procedures for the reduction of the contributions owed to the MSA for fish farmers covered by this scheme were defined in a circular issued by the Ministry of agriculture and fisheries on 25 April 2000. 50 % of the contributions payable by fish farmers and heads of undertakings were paid for them for three twelfths of the contributions required for 1999 and for the contributions due from them for their employees for the last three months of 1999.

(22) The total value of these exemptions was FRF 119 million (EUR 18,2 million).

C. **Reasons for initiating the formal investigation procedure**

(23) The measures described in sections A and B were adopted in response to the pollution caused by the wreck of the petrol tanker *Erika* on 12 December 1999 and the violent storm of 26 and 27 December 1999.

(24) They were analysed in the light of Article 87(2)(b) of the Treaty, which states that aid is compatible with the common market if it is granted 'to make good the damage caused by natural disasters or exceptional occurrences.' The pollution following the shipwreck of the *Erika* can be described as an exceptional occurrence within the meaning of this Article. Equally, the extreme and unaccustomed violence of the storm of 26 and 27 December 1999 qualifies it to be described as a natural disaster.

(25) The Commission's role in this context is to establish whether there was over-compensation for the damage caused by these events.

1. *Measures for fish farmers in the Atlantic coast departments from Finistère to Gironde*

(26) The measures for which the formal investigation procedure was initiated are the exemption from social security contributions for the first quarter of 2000 (or an average quarter), the reduction in financial charges and the exemption from State fees.

(27) The social security contributions exemption measure was applied after examination by the compensation unit of the situation of each undertaking that might qualify for it. The duration of the exemption was graded, from one to three months, depending on the damage suffered. This exemption measure was additional to other measures (application of the agricultural disaster scheme, aid for rebuilding equipment and stock and advances on compensation to be paid by the IOPCF). On the basis of the information provided, the Commission did not feel able to confirm that this exemption from social security contributions had not, overall, involved compensation over and above the damage suffered.

(28) The reduction of financial charges was also additional to the other measures adopted. Here too, the Commission could not be sure that this measure had not provided compensation over and above the damage suffered.

(29) The exemption from State fees was also additional to the other measures adopted. Also, according to the information available to the Commission, all fish farmers in the six departments concerned appeared to have benefited from this measure. France did not state the reasons why this measure had been extended to all those working in the sector in these departments. Therefore the Commission again could not be sure that, overall, the exemption from State fees had not provided compensation over and above the damage suffered.

(30) Since the Commission could not establish that there had not been over-compensation for the damage suffered, these measures could not be declared compatible with the common market under Article 87(2)(b) of the Treaty.

(31) As unnotified aid, these measures were analysed in the light of the Guidelines on the examination of State aid to fisheries and aquaculture [1], adopted in 1997 and in force at the time of the measures (hereinafter the 1997 Guidelines). Since the aid concerned was operating aid, the Commission applied the third indent of the fourth subparagraph of point 1.2 of the 1997 Guidelines, which states as a general principle that operating aid is incompatible with the common market. It found that on the basis of the information available it still had doubts about the compatibility of the measures with the common market.

2. *Additional measures reducing social security contributions for all fish farmers and fishermen*

(32) According to France, the additional relief measures for all fish farmers and fishermen in mainland France and the overseas departments were adopted to compensate for the adverse economic impact on the sector of the deterioration of the market caused by the poor image of fisheries and aquaculture products following the pollution caused by the wreck of the *Erika*.

Fish farmers

(33) Social security contributions were reduced for the period 15 April to 15 July 2000.

(34) According to France, the deterioration of the market led to a fall in retail sales (9 % by volume and 5 % by weight) of shellfish in the first half of 2000. The storm also had a negative impact on the economic situation of the entire shellfish industry as Charente-Maritime plays a key role in the marketing of oysters in France.

(35) However, France gave no information on the link between the amount of economic damage which it stated that the oil pollution had caused to all shellfish producers and the amount represented by the exemption from social security contributions over the period in question. The Commission was not therefore able to establish that the exemption measure corresponded in value to the damage suffered and did not over-compensate.

(36) Since the measure had the characteristics of operating aid, the Commission found, on the basis of the third indent of the fourth subparagraph of point 1.2 of the 1997 Guidelines that, on the basis of the information at its disposal, there were doubts as to the compatibility of the measure with the common market.

Fishermen

(37) Social security contributions were reduced for the period from 15 April to 15 October 2000.

(38) According to France there was a general downturn in the market for fisheries products, with a sustained fall in demand because of consumers' concerns about the health implications of the oil pollution.

[1] OJ C 100, 27.3.1997, p.12.

(39) Various retail sales statistics on fisheries products were provided by France in justification of this relief measure. The Commission took note of this information. However, in its letter informing France that the formal investigation procedure was being initiated, the Commission pointed out that other information indicated that during the first quarter of 2000 the value of auction sales rose by 3 % against the previous year and market withdrawals were less than 1,5 % of the quantities landed for all the main species, which was equivalent to the withdrawal rate in the same period in 1999. Furthermore, the exemption measure was applied to all French fisheries undertakings, included those established in the overseas departments.

(40) Moreover, the Commission had taken note of information distributed by *Agence France-Presse* and in the newspapers according to which the reductions in social security contributions were intended to compensate the rise in oil prices which had already been registered for several months.

(41) In view of all this information, the Commission found that France had not provided information establishing that the measure was compensation for the economic impact on undertakings of the deterioration of the market in fisheries and aquaculture products. Since the measure had the characteristics of operating aid, the Commission found, on the basis of the third indent of the fourth subparagraph of point 1.2 of the 1997 Guidelines that, on the basis of the information at its disposal, there were serious doubts as to the compatibility of the measure with the common market.

III. COMMENTS FROM FRANCE

A. Measures for fish farmers in the Atlantic coast departments from Finistère to Gironde

(42) France stated that the purpose of the reductions in financial charges granted under debt adjustment plans was to help the most vulnerable undertakings to deal with an exceptional situation associated with the natural disasters, and not to cover losses. Only the most vulnerable undertakings were eligible for this measure.

(43) France stated that the procedure put in place for the reduction of social security contributions and financial charges was precisely to avoid over-compensation for damage suffered. The compensation units set up in the departments affected evaluated the overall economic situation of each undertaking and validated the amounts granted in line with the damage suffered.

B. Additional measures for all fish farmers and fishermen

1. *Measures for fish farmers*

(44) France found that relief restricted to the fish farmers affected by the storm and the oil pollution was inadequate. The overall situation of the industry appeared sufficiently worrying to justify intervention for the industry as a whole. The media impact of the oil pollution on public opinion damaged the consumer image of fisheries and aquaculture products, and particularly farmed shellfish, whatever their origin. A study carried out for the *Office national interprofessionnel des produits de la mer et de l'aquaculture* (National Inter-trade Board for Sea and Fish-Farming Products - Ofimer), estimated that shellfish farming turnover fell by FRF 51 million (EUR 7,77 million) over a four-month period from 17 December 1999 to 16 April 2000.

(45) General measures were adopted to deal with this situation: a general reduction of social security contributions and exemption from State fees. The aid value of the social security contribution reductions was EUR 3,35 million. The value of the State fees exemption was EUR 3,81 million. The total amount was thus less than the EUR 7,77 million fall in turnover estimated by the study carried out for Ofimer.

2. *Measures for fishermen*

(46) France contests the Commission's grounds for initiating the formal investigation procedure. It states that the shock of the *Erika* oil pollution, and media coverage of its alleged or suspected consequences badly damaged the image of fisheries and aquaculture products; not a single sector or area escaped this effect.

(47) France further states that the relief period (15 April to 15 October 2000) in fact relates to fishing activity in the first six months of the year, since social security contributions actually relate to the activity of the three previous months. This lag made it possible to take into consideration the exact activity of fishermen when the greatest difficulties were experienced, i.e. over the six months following the two disasters of December 1999. France therefore considers that the Commission's analysis should not have referred to the Ofimer *Flash Eco* memo on the economy of 16 February 2001.

(48) It also considers that the Commission should not have referred to the Ofimer memo on the economy for January to April 2000 since it was based on estimates and a large part of the data for March and April was estimated. The discrepancies found by the Commission were not the result of different evaluations but of the normal statistical gap between raw instantaneous data and its definitive validation. The Commission should therefore have confined its analysis to the data in the memo of 6 April 2001 sent to the Commission by the France as part of the investigation of this case, this data being definitive for the period in question.

(49) France also states that Ofimer's monthly summaries indicate that the quantities landed over the first six months were stable in relation to the same period in 1999, although there were downturns, sometimes large-scale, over short periods which appear to correspond to the periods of greatest media coverage. However, during this period withdrawals increased by 28 % as against 1999, particularly during the first three months of the year (January: + 92 %, February: + 66 %, March: + 35 %). For some species the level of withdrawals was extremely high (Norway lobsters: + 175 %, monkfish: + 161 %, spider crab: × 5), which is evidence of the psychological impact of the oil pollution on consumer behaviour.

(50) During the first half of 2000, since the quantities landed were relatively stable but there was a very substantial increase in the quantities withdrawn, the quantities sold decreased. The consumption of fresh fisheries and aquaculture products fell by 7 % (6 % for fish, 9 % for shellfish and 6,5 % for crustaceans, particularly shrimps).

(51) Prices fell by 6 % against January 1999 and this decline persisted for the species essential to undertakings' equilibrium. It was found that of the 49 important species monitored by Ofimer, prices fell for 34 species in January 2000, 26 in February 2000 and 21 in March 2000. Similarly, a constant decline was recorded for all the main species fished over the entire period.

(52) France further states that consumers could not easily distinguish the origin of fisheries and aquaculture products and disaffection with those products was manifested irrespective of the production area. The suspicion generated by the oil pollution therefore affected products both from the mainland and from the overseas departments without differentiation. According to France, the customs data for the overseas departments shows that their products also suffered the effects of the oil pollution and there was therefore no reason to exclude them from the support provided by the Government.

(53) Lastly, France commented that the Commission had given little credit to the press articles submitted for illustrative purposes and yet had made much of the views journalists had garnered at trade fairs. It submitted with its comments a number of articles and additional documents showing the media hype that surrounded this event and the climate of suspicion that gave rise to consumer disaffection with fisheries and aquaculture products. It also refuted the Commission's suggestion in its letter notifying initiation of the formal investigation procedure that the reduction in social security contributions was really intended to compensate for the increase in fuel prices, which had already been registered for several months.

IV. **ASSESSMENT**

A. **Existence of State aid**

(54) Article 87(1) of the Treaty stipulates that '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 common market.'

(55) The various measures that are the subject of this Decision (reductions in social security contributions and financial charges, exemption from State fees) are measures that favour undertakings engaging in a certain activity, namely aquaculture or fisheries. These undertakings are relieved of certain charges which they would normally have to bear.

(56) The measures entailed a loss of State resources, either directly (reduction in financial charges and exemption from State fees) or indirectly, since the State had to compensate the losses borne by the body levying the social security contributions. These measures therefore constitute State aid within the meaning of Article 87(1) of the Treaty.

(57) Furthermore, since the products of the beneficiary undertakings are sold on the Community market, the measures adopted by France reinforce the position of those undertakings both on the French market in relation to undertakings from other Member States wishing to introduce their own products (fisheries and aquaculture products or other competing food products) on that market and on the markets of other Member States in relation to the undertakings active on those markets (for the same products). The measures therefore distort or threaten to distort competition and may affect trade between the Member States.

(58) Such measures are in principle prohibited under Article 87(1) of the Treaty. They may only be deemed compatible with the common market if they qualify for one of the derogations provided for in the Treaty. The aid to aquaculture and fisheries undertakings must be analysed in the light of the 1997 Guidelines, as was done in the course of the preliminary investigation.

B. **Measures for fish farmers in the Atlantic coast departments from Finistère to Gironde**

(59) The Commission initiated the formal investigation procedure for certain measures adopted to assist fish farmers after the events of December 1999 because it had not been able to establish that overall, with the cumulative effect of the different aid measures, including those which it had already approved, there had not been over-compensation for the damage suffered.

(60) The formal investigation procedure related to the following aid measures:

— exemption from social security contributions during the first quarter of 2000 (for one, two, or three months according to the damage suffered),

— reduction of financial charges for fish farmers directly affected by the storm or the oil pollution,

— exemption from State fees for the year 2000 for concessions in the six departments affected by the events (Atlantic coast departments from Finistère to Gironde).

(61) Going by the additional information provided, in the case of the exemption from social security contributions and the reduction of financial charges, the procedure set up by France, with the creation of a compensation unit in each department concerned, with representatives of the State services concerned, banking establishments and professionals, really was designed to avoid risks of over-compensation. France points out that investigating each case individually ensured that the aid was adjusted to the situation of each undertaking, thereby avoiding over-compensation.

(62) In view of this information the Commission finds that France established an appropriate procedure allowing over-compensation to be avoided. It therefore finds that the only objective of this aid was indeed to compensate for damage suffered as a result of the two exceptional occurrences, the storm of December 1999 and the wreck of the *Erika*.

(63) The exemption from social-security contributions and the reduction of financial charges must therefore be deemed compatible with the common market under Article 87(2)(b) of the Treaty.

(64) The exemption from State fees will be analysed in section C.1 below, since the measure was applied to all French fish-farmers, contrary to the information at the Commission's disposal prior to initiation of the formal investigation procedure. France informed the Commission in its letter of 21 June 2000 that the marine aquaculture concessions and the water intake authorisations in the departments concerned were exempt from payment of the State fee for the year 2000. Since France made no further mention of this exemption in its subsequent letters to the Commission, which described in detail the content of the measures implemented, the Commission asked France by letter of 21 June 2001 whether the exemption had in fact been applied, and if so asked France to supply the relevant information. In its reply of 13 August 2001 France stated that the fish farmers of the departments of Finistère, Morbihan, Loire-Atlantique, Vendée, Charente-Maritime and Gironde had in fact been granted exemption from the State fee payable in 2000, without mentioning that these departments were not the only ones to which the exemption had been applied. Not until it responded to the initiation of the formal investigation procedure did France state that the measure was a general one applying to all French fish farmers, like the reduction in social security contributions.

C. **Additional measures in favour of all fish farmers and all fishermen**

1. *Fish farmers*

(65) The exemption from State fees for the year 2000 and the reduction in social security charges from 15 April to 15 July 2000 were applied to all fish farmers of mainland France and the overseas departments.

(66) According to France these measures were introduced to compensate for the loss of turnover suffered by the whole industry throughout the territory as a result of the deterioration of the consumer image of farmed shellfish after the wreck of the *Erika*. A study carried out for the Ofimer concluded that, following this event, turnover had fallen by EUR 7,7 million against the previous year.

(67) The exemption from State fees, with a value of EUR 3,81 million, and the reduction in social security charges, with a value of EUR 3,35 million, would thus partially compensate for this loss of revenue. The total value of the aid for all France was thus EUR 7,16 million, less than the estimated loss (EUR 7,7 million).

(68) On the basis of the information provided the Commission does not contest that the farmed shellfish market suffered temporarily. However, as already noted in the Commission decision initiating the formal investigation procedure, this market deterioration must be put in perspective — there was no sudden and extreme customer disaffection.

(69) The Commission notes that in 1999 the value of aquaculture products (shellfish and fish) for the whole of France was EUR 502 million (2000 Ofimer report). The table giving this figure does not indicate the relative shares of fish and shellfish. According to another source ('aquaculture' page of the website of the Ministry of Agriculture ([1]), the value of farmed fish products (sea farming and freshwater farming) was EUR 221 million. This would make the estimated value of shellfish farming EUR 281 million.

(70) The loss of turnover following the deterioration of the image of shellfish can therefore be estimated as 7,7/281 or 2,7 % of the value of the previous year's production. The compensation of a value of EUR 7,16 million would therefore be 7,16/281 or 2,5 % of turnover.

(71) The Commission considers that small-scale losses must be categorised as costs to be borne by undertakings in the normal course of their activity. Any economic activity is subject to various greater and lesser risks (price fluctuation of production factors, fluctuation of the sales price of production, possible increase in charges, etc.) resulting from a wide variety of unforeseen circumstances. It considers that when such risks lead to small-scale losses they cannot give rise to an entitlement to compensation because that would mean that traders could claim compensation whenever they suffered the impact of any unforeseen event. For example, in line with this general approach, the Commission considers that in the agriculture sector losses must exceed a threshold of 30 % (20 % in less-favoured areas) for aid to be deemed compatible with the common market under Article 87(2)(b) of the Treaty.

(72) The social security contribution reduction and State fee exemption measures, intended to compensate for a loss of turnover of only 2,7 % cannot therefore in principle be deemed compatible with the common market under Article 87(2)(b) of the Treaty. Nor do these aid measures correspond to any of the derogations provided for in the 1997 guidelines. They must therefore in principle be deemed incompatible with the common market.

(73) However, the Commission notes that the measures applied to fish farmers in the Atlantic coast departments from Finistère to Gironde were intended to compensate for damage directly linked to one of the events of December 1999, the wreck of the *Erika* or the storm. These aid measures must be evaluated in conjunction with the other aid measures granted following those events. The Commission has already pronounced those other aid measures (application of the agricultural disasters scheme, aid for rebuilding equipment and stock, advances on the compensation to be paid by the IOPCF) compatible with the common market (letter of 11 December 2001), or is pronouncing them so in this decision (social security contributions relief for the first quarter of 2000 and reduction of financial charges — see Section B).

([1]) www.agriculture.gouv.fr/pech/aqua/.

(74) Since these measures have been or are now being pronounced compatible with the common market under Article 87(2)(b), an additional compensation worth 2,5 % of turnover must be incorporated in the total aid received by the fish farmers (the percentage of 2,5 %, corresponding to EUR 7,16 million/EUR 281 million, was calculated for France as a whole; the same percentage may be taken as the average for each farm). Given this low relative value and the fact that the other aid did not fully compensate for the damage suffered, the risk of over-compensation is avoided.

(75) Losses, and aid allocations to compensate for them, should have been assessed for each individual aquaculture holding to establish whether the value of damage suffered by each undertaking (with the addition of the loss of turnover resulting from the deterioration in the image of shellfish, estimated at 2,7 %) was significant. This was not the method France adopted, since the scheme applied to all producers in the area concerned (Atlantic coast departments from Finistère to Gironde). However, in this case the Commission finds France's method acceptable and considers that it was reasonable to use it to facilitate administration, given the large area and the number of undertakings affected by the events.

(76) Therefore the State fee exemption and social security relief cannot be deemed compatible with the common market under Article 87(2)(b) of the Treaty when applied to the aquaculture holdings outside the departments affected by the events. They can however be deemed compatible with the common market when applied to the undertakings in the Atlantic coast departments from Finistère to Gironde.

2. *Fishermen*

(77) The nationwide social security contribution relief applied to French fisherman was, according to France, intended to compensate for the depressed market for fisheries products. The relief was for the period 15 April to 15 October 2000.

Data used by the Commission

(78) The Commission was not convinced by the data submitted by France, particularly in view of other information derived from Ofimer (information on the website of this public institution [1]), and decided to initiate a formal investigation procedure.

(79) In a memo of 5 March 2002 responding to the initiation of the formal investigation procedure, France stated that the information provided in its memo of 5 April 2001 was the definitive data for the period concerned. It considered that the Commission should not have based its assessment on information found on the Ofimer website.

(80) The Commission rejects this argument. Ofimer is a public institution answerable to the Ministry of Agriculture and Fisheries, and one of its functions is, as the notice on its website states, the daily monitoring of developments on the fisheries and aquaculture market. For this purpose it has an economic observatory. The fish-auction network gathers sales data from all the French auctions in order to pass it on in summary form to the industry's operators. It was in just such summary data that the Commission was interested, since they allowed the partial data provided by France to be placed in their general context for the purposes of analysing the aid scheme.

(81) The Commission cannot accept that the Ofimer data differs significantly from the definitive data established some time later. The methodology used by the Ofimer economic observatory to gather this information is described in the institution's annual reports [2]. On the basis of the fish-auction network's contributions, Ofimer sends local operators (auctions, producers' organisations, wholesale traders) a daily memo and a weekly memo publishing quantity and price data for the main auctions and the most representative species of French supply. In addition, at the beginning of each month an 'advance' memo gives the accumulated sales data from the beginning of the year for the most representative auctions and the main species and at the end of each quarter a summary memo on sales is drawn up and made available on the institution's website. The method of collecting this information shows that Ofimer data is reliable. There is no concrete evidence that this data is misleading. Furthermore, the Commission has found nothing in the documents it has consulted on the website to correct or contradict the data it has used. Had it done so it would naturally have taken this into account. Further more by making this data available to the public on its website, Ofimer gives the data official status. There is no reason to doubt its credibility.

[1] www.ofimer.fr
[2] Annual Report for 2000, p. 39; Annual Report for 2001, p. 42.

(82) The information that France officially submitted, before the investigation procedure was initiated and in its memo of 5 March responding to the initiation of the procedure, was too partial and incomplete for the Commission to correctly assess the state of the market for fisheries products over the period concerned. It had to find other information in order to carry out its assessment. The Commission regrets that France did not send this data, or official data of the same kind, to the Commission directly.

(83) The available data should therefore be analysed to determine the exact situation of the market in fisheries products during the first half of 2000.

Supplies

(84) The memo from France of 6 April 2001 did not contain figures on supplies. It only said that 'the quantities actually sold and the value of those qualities were in reality lower than the data held by the Commission (indicate) and lower than in 1999.' On that date the Commission was already familiar with the data in the memo on the economy for January to April 2000 examined by the management board of Ofimer at its meeting of 24 May 2000, and it referred to this data in its request to France for additional information of 15 January 2001 (quoting an extract stating that 'the quantities landed during the first four months of 2000 are stable compared to the same period in 1999 and the value of auction sales has increased by 3 % compared to last year.')

(85) The memo from France of 5 March 2002, on the other hand, says that 'for all the main French auctions, … the quantities landed in the first six months of 2000 were stable compared to the same period in 1999, although there were downturns, sometimes major ones, over short periods, apparently corresponding to the greatest media activity.' This corresponds to what is said in the memo on the economy referred to and to Ofimer's *Flash Eco* of 16 February 2001, to which the Commission referred in its decision initiating the procedure (this document provides important information comparing production in 2000 with that in 1999 and stating that 'the results for 2000 show sales and volume stability compared with 1999.').

(86) The Commission therefore notes that supplies remained stable in 2000, and in particular during the first six months. There is no information to indicate that there was a downturn in supplies when media coverage was most intense. The downturns in supplies were more probably the result of other factors, mainly bad weather. It is not rare for a large proportion of fishing vessels to be unable to go to sea over relatively long periods (one to two weeks or more) in cases of persistent bad weather. The media influence cited does not have a direct impact on supplies — it does not prevent fishermen from going to sea. Its impact is, rather, to be observed at the next stage, on prices and quantities withdrawn from the market.

Quantities withdrawn

(87) According to the French memo of 6 April 2001, 'the withdrawal rate was much higher in the early part of 2000 than in the same period of the previous year: there was a rise of 25 % between January to April 1999 and January to April 2000, 35 % between January to March 1999 and January to March 2000, 92 % between January 1999 and January 2000 and 57 % between February 1999 and February 2000.' The memo of 5 March 2002 also quotes these figures, adding that for the period January to May withdrawals rose by 32 % and for the period January to June by 28 %. It went on: 'the level of withdrawals showed some very sharp peaks for species such as Norway lobster (175 %), monkfish (161 %) and spider crab (X 5) whose sensitivity to residual hydrocarbons [1] was highly publicised.'

[1] The French authorities sent 14 copies of the results of analyses designed to determine hydrocarbon concentrations in the products tested (various fish). The Commission was surprised to find that the test results were obtained from fish samples taken, in the case of three tests, on 22 February 2000 and received by the laboratory on 23 February 2000, in the case of another two tests, taken on 7 March 2000 and received by the laboratory on 10 March, and in the nine remaining cases taken and tested in September and October 2000. These tests showing the presence of hydrocarbons in the flesh do not prove that they came from the *Erika*, given the amount of time that had elapsed. To prove cause and effect between the *Erika*'s oil and hydrocarbon contamination, tests should have been carried out closer to the date of the wreck. The lack of such tests would lead to the conclusion that there was not any real organoleptic contamination immediately after the event. The presence of hydrocarbons three or nine months later may in some cases – those of February and March for example, be just as easily attributable, not to the *Erika*, but to the residues from the cleaning of tanks that ships often carry out in the open sea in breach of the rules. This alternative possibility is all the more probable for the samples taken in September and October.

(88) This data is incomplete and does not give a full picture of withdrawals. The quantities actually withdrawn are not given, so a doubling or tripling of the quantity would be insignificant if the reference quantity, namely the quantity withdrawn in the first year, was very small. Nor are there any figures for the quantities withdrawn from the market as a proportion of the quantities landed. Nor is it explained whether the increased withdrawals in January were of species whose sensitivity to hydrocarbons received the greatest publicity. The Commission will analyse the arguments concerning three species cited by France: Norway lobster, monkfish and spider crab.

(89) A study carried out by Ofimer on Norway lobster [1] reports that the peak production season for this species is from mid-April to August. Sizeable withdrawals may be seasonally determined. The study cites the case of abnormally high withdrawals in May and June 2001 as a result of large-scale supplies of live Norway lobster at a time of year in which they are harder to sell. Furthermore, according to information received by the Commission in the course of administering the rules governing common organisation of the market in fishery products (Council Regulation (EEC) No 3759/92 of 17 December 1992 on the common organisation of the market in fishery and aquaculture products and the implementing Regulations [2] applicable on the date of the events in question), these withdrawals for the first half of 2000 stood at 21 kg in January, 5 kg in February, 2 kg in March, 103 kg in April, 1 364 kg in May and 2 007 kg in June. So there is no conclusive data to show that the publicity surrounding the oil spill — which one supposes would be at its greatest in the weeks immediately after the accident — led to a significant increase in the quantity of Norway lobster withdrawn from the market.

(90) According to the figures in the Commission's possession, 454 kg of monkfish were withdrawn from sale in January 2000 against 84 kg in January 1999, which is a marked increase. However, withdrawals in February 2000 stood at only 59 kg against 221 kg in February 1999, and at 39 kg in March 2000 against 148 kg in March 1999; withdrawals in the following three months were again below 1999 levels (241 kg against 278 kg). The Commission cannot conclude from this conflicting evidence that the oil spill led to an increase in withdrawals.

(91) The Commission has no data concerning the quantities withdrawn of spider crab, the third species cited by France [3]. We can, however, look at the quantities notified to the Commission for crabs of the species Cancer pagurus, which are distributed and marketed in a similar way. The quantities withdrawn rose in the first months of 2000 in relation to 1999, but, in absolute terms, the quantities were small: a rise from 19 to 47 kg in January, 3 to 35 kg in February, 7 to 31 kg in March, none in April, and then from 31 to 164 kg in May and from 501 to 521 kg in June. So consumers did not shun the Cancer pagurus crab in the early months of 2000, and nothing indicates that things were any different for the spider crab over the same period.

(92) Therefore, although withdrawals in January 2000 rose by 92 % compared with January 1999 and rose by 28 % over the first half of that year, these withdrawals were not large in absolute terms. Nor is there any evidence to link this increase to the media coverage of the oil spill. Furthermore, the figures available to the Commission show that the large withdrawals recorded in January 2000 were of species such as spotted dogfish (from 11 423 to 16 362 kg), saithe (from 120 to 3 727 kg) and plaice (from 51 to 1 789 kg), species for which, given the way they are marketed, there is little or no link between increased withdrawals and the media coverage of the oil spill. And, according to Ofimer's sectoral report for January-April 2000, withdrawals remained below 1,5 % of the quantities landed of the main species; individual withdrawals were reported for sea bass, anchovy and spider crab.

(93) To sum up, the Commission finds that there is no evidence to link increased withdrawals to media coverage of the oil spill.

[1] 'The Norway lobster market' presented to the Ofimer board on 6 March 2002.

[2] OJ L 388, 31.12.1992, p. 1. According to Commission Regulation (EEC) No 2210/93 of 26 July 1993 on the communication of information for the purposes of the common organisation of the market in fishery and aquaculture products (OJ L 197, 6.8.1993), the Member States have to notify the Commission every six months of the quantities of fishery products listed in Annex 1 A, D and E to Regulation (EC) No 3759/92 that are withdrawn or unsold. Norway lobster and monkfish are on this list.

[3] The spider crab is one of the species referred to in Article 1 of Regulation (EC) No 3759/92 but is not listed in Annex 1 A, D or E. If a withdrawal price is set by the producers' organisation for such a species they are not obliged to send the withdrawal figures to the Commission.

Quantities sold and prices

(94) In its memo of 6 April 2001 France reported that retail sales of fishery products were down 2 % in volume over the first half compared with the previous year, with fresh products particularly affected, down 7 % in volume and 1 % in value, breaking down into a 6 % volume drop for shellfish and 6 % for fish (5 % for fish pieces and 7 % for whole fish). The memo of 5 March 2002 cites these figures (with a minor correction to 6,5 % for shellfish) as evidence that consumers were boycotting fishery products. It also states that, of 49 major species monitored by OFIMER, prices had fallen for 34 in January, 26 in January-February, 21 in January-March and 18 in January-June. Average price falls for some of these species were: sole (– 5 %), sea bass (– 6 %), hake (– 6 %), anchovy (– 6 %), squid (– 11 %), saithe (– 8 %), sardine (– 6 %), John Dory (– 11 %), mackerel (– 18 %), plaice (– 28 %), black scabbard-fish (– 20 %), black sea bream (– 11 %), red gurnard (– 4 %), octopus (– 23 %), spider crab (– 16 %), pink shrimp (– 20 %). According to France, 'all this data is quantifiable evidence of the slump in the market between January and June 2000 and shows, if proof were needed, the impact the wreck of the *Erika* had on consumers' behaviour.'

(95) The Commission notes that this data is not really quantifiable evidence of what happened. To give a true picture of the situation France should also have sent the Commission figures for the quantities marketed of each of the species in question, something it did not do.

(96) The Commission points out that price trends were inconsistent according to Ofimer's sectoral report for January to April 2000. Some prices fell as a result of plentiful supply (sea bass down 11 %, saithe down 8 % and hake down 9 %) whereas limited supplies led to price hikes for other species: red mullet (31 %), cod (27 %) and monkfish (13 %). This sectoral report also shows a change in the structure of supply, with expensive species (hake, monkfish, sole, sea bass, red mullet, Norway lobster) gaining market share from cheaper species (mackerel, saithe, whiting, cuttlefish, anchovies) and leading to a 3 % increase in the value of auction sales on the previous year.

(97) The value of auction sales minus sales costs represents vessels' turnover. The Commission therefore observes a slight increase in the overall turnover of fishing businesses. Accordingly, though prices for many species did fall, this fall did not reflect a decline in prices across the board but the contrasting situation described by Ofimer in its sectoral report. Though the oil spill may well have affected the market for fishery products, e.g. for certain specific species, evidence from a number of sources suggests that the impact was very marginal. Furthermore, if it had been significant, Ofimer would definitely have mentioned it in the various public documents it drew up.

Conclusion

(98) On the basis of the evidence, the Commission believes that the nationwide reduction of social security contributions granted to fishermen for the period 15 April to 15 October cannot be considered compatible with the common market under Article 87(2)(b) of the Treaty.

(99) As operating aid granted to all fishing businesses without any obligation on the part of the recipients, this aid is incompatible with the common market by virtue of the third indent of the fourth paragraph of section 1.2 of the 1997 Guidelines.

V. **CONCLUSIONS**

(100) The Commission finds that France has unlawfully implemented the aid in question contrary to Article 88(3) of the Treaty.

(101) On the basis of the arguments set out in sections IV-B and IV-C.1 of this Decision, the Commission believes that the aid given to fish farmers in the departments concerned (reduction of social security contributions and of financial charges and exemption from State fees) is compatible with the common market under Article 87(2)(b) of the Treaty.

(102) On the basis of the arguments set out in section IV-C.1 of this Decision, the Commission believes that the reduction of social security contributions for aquaculture producers for the period 15 April to 15 July 2000 and the exemption from State fees for the year 2000 granted to fish farmers in other departments are not eligible for the derogation provided for in Article 87(2)(b) of the Treaty.

(103) On the basis of the arguments set out in section IV-C.2 of this Decision, the Commission believes that the reduction of social security contributions granted to fishermen for the period from 15 April to 15 October 2000 is not eligible for the derogation provided for in Article 87(2)(b) of the Treaty,

HAS ADOPTED THIS DECISION:

Article 1

The reduction of social security contributions, reduction of financial charges and exemption from State fees granted by France to fish farmers in the departments of Finistère, Morbihan, Loire-Atlantique, Vendée, Charente-Maritime and Gironde are compatible with the common market.

Article 2

The aid granted by France to fish farmers of departments other than Finistère, Morbihan, Loire-Atlantique, Vendée, Charente-Maritime and Gironde in the form of a reduction of social security contributions for the period 15 April to 15 July 2000 and exemption from State fees for the year 2000 is incompatible with the common market.

Article 3

The aid granted by France to fishermen in the form of a reduction of social security contributions for the period 15 April to 15 October 2000 is incompatible with the common market.

Article 4

1. France shall take all necessary measures to recover from the beneficiaries the aid referred to in Articles 2 and 3 and unlawfully made available to the beneficiaries.

2. Recovery shall be effected without delay and in accordance with the procedures of national law provided that they allow the immediate and effective execution of the Decision. The aid to be recovered shall include interest from the date on which it was at the disposal of the beneficiaries until the date of its recovery. The rate of interest shall be calculated and applied in accordance with Chapter V of Commission Regulation (EC) No 794/2004 [1].

Article 5

France shall inform the Commission, within two months of notification of this decision, of the measures taken to comply with it.

Article 6

This Decision is addressed to the French Republic.

Done at Brussels, 14 July 2004.

For the Commission

Franz FISCHLER

Member of the Commission

[1] OJ L 140, 30.4.2004, p. 1.