II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 8 February 2006

State aid C 22/2004 (ex N 648/2001) on tax deductions for professional fishermen (Sweden)

(notified under document number C(2006) 265)

(Only the Swedish version is authentic)

(Text with EEA relevance)

(2006/269/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having regard to Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty [1], and in particular Article 14 thereof,

Having invited interested parties to submit their comments, in accordance with the first subparagraph of Article 88(2) of the EC Treaty,

Whereas:

I.

PROCEDURE

(1) On 4 September 2001 the Swedish authorities notified the Commission of a draft Bill amending the Income Tax Act (1999:1229). The Commission requested further information on the Bill by letters of 10 December 2001, 25 April 2002, 23 July 2002, 4 October 2002, 11 March 2003, 24 July 2003 and 3 February 2004, to which the Swedish authorities replied by letters of 26 February 2002, 7 June 2002, 29 July 2002, 19 December 2002, 19 May 2003, 19 December 2003 and 8 March 2004 respectively.

(2) The Commission informed Sweden by letter of 16 June 2004 of the decision to initiate, in relation to the draft Bill, the formal investigation procedure provided for in Article 88(2) of the EC Treaty.

(3) The Commission decision to initiate the formal investigation procedure was published in the *Official Journal of the European Union* on 20 October 2004 [2]. The Commission invited any interested parties to provide their observations on the case. The Swedish authorities responded by letter dated 9 November 2004. No other comments were received.

II.

DESCRIPTION

(4) The notified draft Bill, a Proposal to amend the Law on income tax (1999:1229), is aimed at compensating all licensed fishermen for the costs they incur fishing. It will modify the existing system of tax benefits.

Existing tax system

(5) In 2002 the Swedish National Tax Board introduced new general advice on tax deductions for professional fishermen that is still applicable and which in principle is the application to the fisheries sector of the general taxation system which also applies to all other sectors. The tax benefits for fishermen existing from that year are therefore not considered to be aid.

[1] OJ L 83, 27.3.1999, p. 1. Regulation as amended by the 2003 Act of Accession.

[2] OJ C 258, 20.10.2004, p. 2.

(6) According to the advice from 2002, for the fisherman to be able to benefit from the tax deductions the fishing trip must have involved spending the night away from home, as a night away from home is a general condition under the general taxation system. Also according to this advice, fishermen can make the same standard tax deductions for increased cost of living as other self-employed persons and with the same amounts. The Swedish authorities note that 99 % of professional fishermen in Sweden are self-employed and thus constitute one-man businesses.

(7) According to the present rules, when it comes to costs for accommodation the same rules apply for fishermen and self-employed persons. Normally, a standard tax deduction will be made for every night spent away from home. This means that fishermen or others do not have to provide specific proof of the actual expenses they have incurred to be able to make the standard deduction of SEK 95 per day.

(8) Self-employed persons from other sectors must provide a satisfactory explanation of their increased costs, including information on the dates, purpose and destination of the business trip and the time of the outward and return journeys.

(9) A similar requirement to provide such an explanation does not exist for fishermen, but a tax deduction can only be made if the fishing trips involve spending the night away from home. To enable the tax authorities to calculate the size of the standard deduction a fisherman is entitled to, the fisherman must provide information on the dates of the fishing trips and their duration. The Swedish authorities have chosen this criterion so as to not complicate the tax system and the application of it, as fishing trips already by nature constitute the business of a fisherman.

(10) If the increased living costs are considered to be higher than the lump sum amount of SEK 95 per day, both fishermen and self-employed persons can choose the option of proving that their increased cost of living exceeds the standard deduction by producing a report on all assignments/business trips in the taxation year. If this option is chosen it will be applied to the whole year and thus it is not possible to apply a lump sum for some trips and the actual expenses for others within the same taxation year.

Proposed scheme

(11) The new scheme notified to the Commission no longer requires a night to be spent away from home in order to benefit from the tax deduction for increased costs of living. Thus, this scheme, which is only applicable to fishermen, places the fishermen who do not spend the night away from home and those who do on an equal footing from a taxation point of view.

(12) The aim of the notified scheme is to create neutral conditions for competition between Swedish and Danish and Norwegian fishermen and to offset the imbalance between those fishermen who can benefit from this tax deduction and those who cannot.

(13) In addition, the administrative burden on the fisherman as well as on the taxation authorities will be reduced, as a deduction made with a certain percentage based on income is thought to be easier to manage and to verify than a deduction which is made on the basis of the number of fishing days.

(14) The effect of the new scheme will be to enable coastal and lacustrian fishermen to benefit from the system of tax deductions, which they cannot do at present. The new scheme thus benefits these fishermen, without there being any presumption of the fishermen having stayed away from home overnight (and possibly incurred expenses), as the only condition for payment is that the fishermen must have a licence to fish professionally.

(15) As is the case under the present scheme applicable to all sectors, fishermen who make use of the notified scheme would not be able to make use of other tax deductions for increased cost of living.

(16) The reduction in each fisherman's tax burden is changed from the SEK 95 per day applicable under the current scheme. It will be calculated on the basis of a percentage of income and may not exceed SEK 40 000 (EUR 4 444) per year. Furthermore, the deduction may not exceed 20 % of the yearly income. For example, this means that the deduction will amount to SEK 20 000 (EUR 2 222) for a yearly income of SEK 100 000 (EUR 11 111) and that the maximum deduction can only be made where the yearly income is SEK 200 000 (EUR 22 222) or more.

(17) By letter of 4 October 2002 the Commission asked the Swedish authorities if they could provide an estimate of how many of the 2 000 professional fishermen who will be eligible to benefit from the Bill's provisions will be able to benefit from the maximum deduction of SEK 40 000, i.e. fishermen who have a yearly income of at least SEK 200 000.

(18) By letter of 19 December 2002 the Swedish authorities replied that there are no available statistics on the income of professional fishermen derived just from fishing activity, so an answer to this specific question could not be provided.

Budget

(19) According to the data provided in the notifications, if the notified scheme were to be applied it would result in a loss to the Swedish Exchequer of SEK 34 400 000 (EUR 3 822 222) per year, that is SEK 18 200 000 (EUR 2 022 222) in national social contributions foregone and a reduction of SEK 16 200 000 (EUR 1 800 000) in the regional tax revenue of each region concerned.

(20) There are approximately 3 000 professional licensed fishermen in Sweden and of these approximately 2 000 are currently operating. At the time of opening of the formal investigation the Swedish authorities did not have available data which showed how many of the 2 000 operating licensed fishermen undertook fishing trips which involve spending the night away from home. It was therefore not possible to estimate how many fishermen were currently able to take advantage of the existing tax benefits for fishermen.

III.

GROUNDS FOR OPENING THE FORMAL INVESTIGATION PROCEDURE

(21) The Commission considered that the existing system of tax deductions applied equally to all sectors of the economy and thus was not a selective advantage for the fisheries sector but a general measure. By allowing the tax deduction without requiring an overnight absence from home by fishermen, the Commission considered that the system would provide a selective advantage for the fisheries sector which was not available to other sectors. This advantage seemed to be granted without imposing any obligation on the part of the recipients. The measures therefore appeared to be intended to improve the situation of undertakings, to increase their business liquidity and to have the effect of improving the recipient's income and thus, as operating aid, were incompatible with the common market.

IV.

COMMENTS FROM THE SWEDISH AUTHORITIES

(22) According to the Swedish authorities the measure has been proposed in order to offset the imbalance between those fishermen who may benefit from the present tax deduction system (i.e. who spend the night away from home) and those who may not (coastal/lacustrian fishermen), and to bring the applicable tax regime into line with neighbouring states.

(23) The Swedish authorities estimate that, of the 2 000 currently operating licensed fishermen, 1 500 currently undertake fishing trips which involve spending the night away from home and therefore 500 fishermen who do not currently receive tax deductions will benefit from the proposed scheme.

(24) The fishermen can under the present system deduct a fixed amount for meals and small expenses and accommodation. As stated above, the Swedish authorities argue that many professional fishermen in Sweden undertake long fishing trips, which under the present tax deduction system results in a great number of cases for the tax authorities concerning deductions for increased cost of living in connection with fishing trips.

(25) The Swedish authorities maintain that the scheme should be allowed because it equalises the tax position between professional fishermen who spend the night away from home and those who do not, in that they have similar costs and it is therefore reasonable to treat the two groups in the same way in relation to taxation.

(26) The Swedish authorities also argue that the special nature of the requirements of professional fishermen justify the special tax provision, and that, as the fishermen generally operate on a small scale, simplifying the deductions will make administration easier for both the tax authorities and the fishermen themselves. The Swedish authorities therefore maintain that the proposed regulation is necessary to the effectiveness of the Swedish tax system and justified by the nature or general scheme of the Swedish tax system.

(27) With regard to the budget, the Swedish authorities finally argue that the calculation of the loss for the Swedish Exchequer is incorrect and that the effect should be considered marginal. They state that the existing scheme results in a shortfall of SEK 41 100 000 (EUR 4 566 667) and that if all professional fishermen were to make use of the new notified scheme the tax shortfall would only amount to SEK 34 300 000 (EUR 3 811 111). Furthermore, as the scheme would be to the disadvantage of some of the fishermen who currently make use of the present rules, it is believed that around 500 fishermen would not make use of the next scheme and would continue to apply the existing rules.

(28) On that basis the Swedish authorities have calculated that the impact on public finances for 2005 would be calculated at SEK 49 700 000 (EUR 5 522 222), equivalent to SEK 41 100 000 (EUR 4 566 667) in deductions under the existing scheme and SEK 8 600 000 (EUR 955 556) in deductions under the proposed scheme.

V.

ASSESSMENT

A. **Existence of State aid**

(29) In order for there to be a State aid the measure must first confer on recipients an advantage which relieves them of charges that are normally borne from their budgets. The advantage may be provided through a reduction in the tax burden in various ways, including a reduction in the tax base, which is the case with the present notified scheme.

(30) Secondly, the advantage must be granted by the State or through State resources. A loss of tax revenue is equivalent to consumption of State resources in the form of fiscal expenditure. This is also the case with the present notified scheme.

(31) Thirdly, the measure must affect trade between Member States and distort or threaten to distort competition. By favouring a certain sector, aid in any form distorts or threatens to distort competition. The trade between Member States is affected when the sector concerned carries on an economic activity involving trade between those States, which is the case for the fisheries sector.

(32) The fact that a measure brings charges in the relevant sector more into line with those of its competitors in other Member States does not alter the fact that it is an aid [1].

(33) Lastly, the measure must be specific or selective in that it favours certain undertakings or the production of certain goods. However, the selective nature of a measure may be justified by the nature or general scheme of the system. However, it is up to the Member State to provide such justification.

(34) Firstly, it needs to be made clear that the existing system of tax deductions is applied equally to all sectors of the economy. It is thus not a selective advantage for the fisheries sector, and therefore not a State aid, but a general measure.

(35) By allowing the tax deduction without requiring an overnight absence from home by fishermen, the notified scheme would provide a selective advantage to the fisheries sector which is not available to other sectors and therefore the scheme constitutes State aid.

B. **Compatibility with the common market**

Article 87 of the EC Treaty

(36) As the notified measure constitutes State aid, it is necessary to determine if such aid is compatible with the common market under the exceptions laid down in Article 87(2) and 87(3).

(37) None of the exceptions under Article 87(2) EC can be applied in this case, as the reform of the tax system is not aimed at the objectives listed in those provisions.

(38) Similarly, the exceptions under Article 87(3)(a), (b) or (d) EC do not apply because the aid is not directed at a region where the standard of living is abnormally low or where there is serious underemployment. It is not intended to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of Sweden, nor is it intended to promote culture or heritage conservation.

(39) It is also necessary to examine the measure in the light of the Guidelines for the examination of State aid to fisheries and aquaculture [2]. According to point 1(2) of these Guidelines, State aid which is granted without imposing any obligation on the part of the recipients and which is intended to improve the situation of undertakings and increase their business liquidity and which has the effect of improving the recipient's income is, as operating aid, incompatible with the common market.

[1] Case 173/73 *Italy v Commission* [1974] ECR 709, paragraph 17.

[2] OJ C 19, 20.1.2001, p. 7.

(40) For the purposes of establishing compatibility with the common market, the Court of Justice has established that the Commission is bound by the guidelines and notices that it issues in the area of supervision of State aid where they do not depart from the rules in the Treaty and are accepted by the Member States [1]. Secondly, under Article 253 EC, the Commission must give reasons for its decisions, including decisions refusing to declare aid compatible with the common market under Article 92(3)(c) of the Treaty [2]. Since Sweden has provided further arguments, the Commission will examine those arguments, in accordance with its obligations under Article 10 of the EC Treaty, in its assessement of the compatibility of the scheme.

Equality in terms of taxation

(41) According to the Swedish authorities the scheme has been proposed to offset the imbalance between those fishermen who may have access to the present tax deduction (i.e. who spend the night away from home) and those who may not (coastal/lacustrian fishermen). Under the scheme the fishermen who spend the night away from home and those who do not will be placed on an equal footing from a taxation point of view. For other sectors the existing rules for the tax for increased cost of living remain the same.

(42) The Swedish authorities consider that fishermen who do not spend the night away from home on their fishing trips do not, generally speaking, have lower costs than those professional fishermen who undertake longer fishing trips involving an overnight stay. Therefore the authorities consider that it is reasonable to treat these two groups of fishermen equally in terms of taxation.

(43) In spite of this being one of the main arguments for the notified scheme, the Swedish authorities were only able to provide a rough estimate of how many of the 2 000 operating licensed fishermen undertake fishing trips which involve spending the night away from home. And more importantly they are unable to provide any data on what kind of costs are involved which would allow a comparison to be made between the costs involved for the two groups of fishermen.

(44) Without data showing that both groups of professional fishermen do in fact incur the same costs, whether or not their trips include an overnight stay, the proposed system must be considered to adversely affect trading conditions within the Swedish fisheries sector and thus to be incompatible with 87(3)(c) of the EC Treaty.

(45) The argument that the new system would create a neutral competitive situation for Swedish fishermen in relation to Danish and Norwegian fishermen is in this respect irrelevant as the scheme in itself adversely affects trading conditions within the Swedish fisheries sector.

(46) The Swedish authorities' argument that many professional fishermen in Sweden undertake long fishing trips in part because Sweden is a geographically long country with long coastlines both to the North Sea and especially to the Baltic Sea cannot be considered to support the argument that the system offsets the imbalance between sea and lacustrian fishermen as regards access to the tax deduction system. On the contrary, this aspect shows that there is a significant difference in fishing activities between the two groups of fishermen which would justify difference in treatment under the tax regime.

Better use of administrative resources

(47) Finally, the Swedish authorities state that the proposed tax deduction system will provide a better use of administrative resources as it will no longer be necessary to calculate the deductions on the basis of a calculation of the total number of fishing days, but by applying a yearly lump sum calculated on the annual income derived from fishing.

(48) It might indeed be expected that the system involving a lump sum amount for the year will provide a better use of administrative resources than a lump sum amount calculated per day. However, there are no specific rules in place for professional fishermen as regards accounting and bookkeeping and the Swedish authorities have not been able to provide statistics on the income of professional fishermen derived from just fishing. In view of the fact that most fishermen have income from more than one professional activity, it should therefore be considered that the lump sum amount for the year, based on the annual income derived from fisheries, is difficult to establish. In particular, as the number of fishing days is registered in line with the provisions under the Common Fisheries Policy and thus easily accessible, the Commission fails to see the advantage of changing the system to a calculation based on the yearly income.

[1] Case C 313/90 *Comité international de la rayonne et des fibres synthétiques v Commission* [1993] ECR I-1125.
[2] Case C 482/99 *France v Commission* [2003] ECR I-1487.

(49) Furthermore, in the letter of 9 November 2004 the Swedish authorities suggest that for around 1 500 fishermen it might remain more advantageous to apply for deductions of actual costs, as pointed out in point 10. Thus, the new scheme will most likely only be applied to the 500 fishermen who are not entitled to receive these deductions under the existing scheme. Therefore, even though the system applied might be more efficient, it would amount to an increase in overall administrative burden compared to the current situation where such a deduction is not applied for those fishermen.

Conclusion

(50) With regard to the foregoing the Commission considers the scheme to be State aid incompatible with Article 87 of the EC Treaty.

VI.

CONCLUSION

(51) In the light of the assessment made in Paragraph IV, the Commission considers that this aid scheme is incompatible with the common market to the extent that it provides certain tax deductions for the increased cost of living to professional fishermen regardless of whether their fishing activities include nights away from home.

HAS ADOPTED THIS DECISION:

Article 1

The draft Bill amending the Income Tax Act (1999:1229) 'Tax deductions for professional fishermen' as proposed by Sweden, is incompatible with the common market.

Sweden may not implement the aid scheme referred to in the first paragraph.

Article 2

This Decision is addressed to the Kingdom of Sweden.

Done at Brussels, 8 February 2006.

For the Commission
Joe BORG
Member of the Commission