COMMISSION

COMMISSION DECISION

of 4 June 2008

concerning the State aid scheme that France intends to implement in favour of the processing and marketing of fisheries and aquaculture products (Fonds d'Intervention Stratégique des Industries Agro-Alimentaires *(agri-food industries strategic intervention fund)*)

(notified under document number C(2008) 2257)

(Only the French text is authentic)

(Text with EEA relevance)

(2008/738/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 that Article [1],

Whereas:

1. PROCEDURE

(1) On 24 April 2007 France notified the Commission of its intention to implement an aid scheme to subsidise undertakings processing and marketing fisheries and aquaculture products. In the framework of the preliminary examination provided for in Article 4 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty [2], a request for additional information was sent to France on 7 June 2007, in order to obtain further information about the beneficiaries of the aid and the legal basis of the scheme. The French authorities replied on 11 July 2007. The Commission sent them a further request for additional information on 11 September 2007, to which France replied on 26 October 2007.

(2) On the basis of the documents in its possession, the Commission considered that the aid scheme notified raised doubts as to its compatibility with the common market. It informed France, on 16 January 2008, of its decision to open the formal investigation procedure provided for in Article 88(2) of the Treaty and Article 6 of Regulation (EC) No 659/1999.

(3) The decision of the Commission to open the formal investigation procedure was published in the *Official Journal of the European Union* [3]. The Commission invited interested parties to submit their comments on the measures in question within a month.

(4) France submitted its comments in the form of a note sent in a letter dated 18 February 2008. The Commission did not receive any other comments from interested parties.

2. DESCRIPTION

(5) According to the information contained in the notification, the aid scheme in question aims to subsidise, through the use of purely public funds, undertakings which process and market fisheries and aquaculture products.

(6) The purpose of this scheme is to grant aid to undertakings other than small and medium-sized undertakings, so that they can enjoy the same support as that available to the SMEs under Council Regulation (EC) No 1198/2006 of 27 July 2006 on the European Fisheries Fund [4].

(7) The aid would come from the Fonds d'Intervention Stratégique des Industries Agro-Alimentaires (FISIAA) *(agri-food industries strategic intervention fund)*. This fund set up by the French authorities consists of a budget entry in the State budget which is managed by the Ministry of Agriculture and Fisheries. All undertakings which process and market products included in Annex I to the Treaty may benefit from the subsidies granted from the FISIAA. Consequently, both undertakings in the agriculture sector and those in the fisheries and aquaculture sector could

[1] OJ C 61, 6.3.2008, p. 8.
[2] OJ L 83, 27.3.1999, p. 1.
[3] See footnote 1.
[4] OJ L 223, 15.8.2006, p. 1.

be involved. It is foreseen that in 2007 aid will be reserved solely for undertakings with more than 750 employees or with a turnover of more than 200 million euro. According to the explanations submitted by France, it seems likely that this priority will be maintained in respect of aid granted after 2007. This hypothesis is supported by the text of a new call for projects launched in December 2007 (see recital 9).

(8) The notification is accompanied by a call for projects which was launched on 2 March 2007 with a view to selecting the projects meeting the objectives of the FISIAA. According to the French authorities, this call for projects only involves undertakings in the agricultural sector and the specifications are only given 'as an example' of the conditions on which aid would be granted to undertakings in the fisheries and aquaculture sector.

(9) A new call for projects was launched on 17 December 2007 for tenders which are eligible for selection for 2008. This call for projects does not explicitly mention undertakings processing and marketing fisheries and aquaculture products, but refers to all products included in Annex I to the Treaty (including fisheries and aquaculture products). It also mentions the new eligibility rules with a view to receiving support from the European Fisheries Fund (EFF).

(10) The Commission only became aware of this new call for projects, which was announced on the Internet site of the French Ministry of Agriculture and Fisheries ([5]), after it had decided to open the formal investigation procedure. This new call for projects is not mentioned in the reply from the French authorities dated 18 February 2008. The latter merely observe that 'the delay in receiving approval has already prevented packaging undertakings from participating in the FISIAA 2007 call for projects [launched on 2 March 2007 but notified on 24 April 2007].'

(11) According to the French authorities, the FISIAA is currently defined by its intervention framework, that is the aid scheme applicable to undertakings in the agricultural sector, registered under number N 553/2003 and approved by a Commission Decision of 28 July 2004 ([6]). The purpose of notifying the aid scheme which is the subject of this Decision is therefore to extend this framework of intervention to include undertakings in the fisheries and aquaculture sector.

(12) The budget indicated for the FISIAA is 13 million euro for 2007 for all of the beneficiary sectors (both agriculture and fisheries and aquaculture). To the extent to which it is open to all of the undertakings engaged in these two sectors, it is not possible at this stage, according to the French authorities, to predict the share of the sum which would actually be given to undertakings in the fisheries and aquaculture sector.

(13) As for the spending which may be covered by the subsidy, the call for projects specifies that the aim of the FISIAA is to support projects from undertakings which can combine tangible and intangible investments and which have a 'highly structure-creating character' and/or a 'strong commercial positioning' and/or are 'innovative in nature'. All investments for the purpose of implementing storage, packaging, processing and/or marketing processes are potentially eligible. In particular, these investments may consist of spending on acquiring new equipment, the acquisition and fitting out of immovable property linked to the project, and on staff dedicated to the project or intangible services such as patents, studies and consulting. The intensity of the FISIAA aid is not to exceed 15 % of eligible spending on tangible investments and EUR 100 000 on intangible investments.

3. REASONS FOR OPENING THE PROCEDURE

(14) The aim of this aid scheme is to grant aid to companies other than small and medium-sized undertakings, so that they can enjoy — from purely national funds — the same support as that available to SMEs under Regulation (EC) No 1198/2006. The aid would be financed by the FISIAA.

(15) The examination of this aid scheme in the light of the guidelines for the examination of State aid to fisheries and aquaculture ([7]) (hereinafter referred to as the guidelines) was undertaken with reference to the criteria laid down in Regulation (EC) No 1198/2006. However, the measures eligible for support from the EFF as regards the processing and marketing of fisheries and aquaculture products only cover SMEs, while this aid scheme is geared specifically to undertakings other than SMEs.

(16) Consequently, the Commission considered that there was some doubt as to the compatibility of the aid with the common market.

4. COMMENTS FROM FRANCE AND INTERESTED PARTIES

(17) France puts forward two arguments in support of the compatibility with the common market of granting aid under the FISIAA to undertakings processing and marketing fisheries and aquaculture products.

([5]) http://agriculture.gouv.fr/sections/presse/communiques/2eme-appel-projets-pour

([6]) OJ C 214, 1.9.2005, p. 4.

([7]) OJ C 84, 3.4.2008, p. 10.

(18) Firstly, France reiterates the observation it made in its reply of 26 October 2007, which is that, although processing undertakings in the fisheries or agricultural sector often carry out the same types of activities, the Commission did not conclude that granting aid to large undertakings in the agri-foods sector carried the risk of distorting competition and opened up the possibility for Member States to grant them State aid.

(19) Moreover, France is asking the Commission to specify why it considers that aid can be granted to large-scale undertakings in 2007 and 2008 under the Financial Instrument for Fisheries Guidance (FIFG), whilst similar aid from purely national funds may not be granted.

5. **ASSESSMENT**

(20) Firstly, the Commission notes that the call for projects under the FISIAA for 2007 was launched on 2 March 2007 with a deadline for responding of 2 May 2007, while the French authorities only notified the Commission of their intention to open this call for projects to undertakings in the fisheries and aquaculture sector on 24 April 2007. In other words, the call for projects was launched before the Commission was aware of an aid scheme for the benefit of undertakings processing and marketing fisheries and aquaculture products, and certainly before it was able to provide its opinion on the compatibility of such a scheme with the common market. This is why the Commission initially asked France whether the document attached to its notification (that is the text for the call for projects dated 2 March 2007) was addressed solely to undertakings in the agricultural sector, which France confirmed in its letter dated 11 July 2007 ('The first call for projects was limited to undertakings in the agricultural sector (…). Therefore the call for projects for the FISIAA will only mention processing and marketing undertakings in the fisheries and aquaculture sector once this aid scheme has been approved'). If this had not been the case, the aid scheme would have been reclassified as unlawful aid (unmodified) in the terms of Article 1(f) of Regulation (EC) No 659/1999.

(21) A similar question is raised by the new call for projects launched on 17 December 2007, of which the Commission only became aware after the formal investigation procedure had been opened (see recital 9). This new call for projects includes exactly the same terms as the call for projects of 2007, and therefore does not explicitly mention processing and marketing undertakings in the fisheries and aquaculture sector, but, as for the previous call for projects, it refers to both Annex I to the Treaty (which covers fisheries and aquaculture products) and Regulation (EC) No 1198/2006.

(22) The Commission stresses that the approval of a State aid scheme is not automatic and that a Member State cannot pre-empt the Commission's decision before the examination of the aid scheme has been completed. For these reasons the Commission cannot accept the claim that 'the delay in approval [of the aid scheme in question] has already prevented undertakings in the processing sector of the fisheries sector from participating in the call for projects for the FISIAA in 2007'. Neither can it accept that a second call for projects was launched without explicitly excluding the possibility for undertakings in the fisheries sector to benefit from FISIAA subsidies in 2008, or at least without stating that this possibility was subject to prior approval by the Commission.

(23) Under Article 87(1) of the Treaty, '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, insofar as it affects trade between Member States, be incompatible with the common market'.

(24) The aid in question, which consists of subsidies financed from the national budget (see recital 7), does indeed constitute aid granted by the State.

(25) As the decision to grant these subsidies is taken at a national level after selection by the Ministry of Agriculture and Fisheries of the projects submitted as part of a call for projects, the aid is attributable to the State.

(26) The measures notified are likely to affect the exchanges between Member States and risk distorting competition to the extent that they favour national production of processed fisheries products to the detriment of the production of other Member States.

(27) Consequently, aid which is the subject of this Decision constitutes State aid in the terms of Article 87(1) of the Treaty.

(28) Given that the aid is intended for the fisheries and aquaculture sector, it must be analysed in the light of the guidelines. Point 5.3 of the guidelines determines that they shall apply from 1 April 2008 'to any State aid notified or intended to be applied on or after that date'. As the French authorities stated that they were waiting to receive approval from the Commission before allowing undertakings in the fisheries and aquaculture sector to benefit from this aid scheme, the Commission considers that it has not been applied and that, consequently, it should be analysed in the light of the guidelines.

(29) The guidelines refer, in point 3.2, to the criteria laid down by Regulation (EC) No 1198/2006. Consequently, it is in the light of this Regulation that compatibility of the aid scheme in question must be examined.

(30) The Commission notes that the measures eligible for aid from the EFF for processing and marketing on the basis of Regulation (EC) No 1198/2006 only apply to SMEs. Therefore, the Commission considers that the aid scheme which is the subject of this Decision, which is only addressed to undertakings other than SMEs, does not meet the intervention criteria for the EFF.

(31) The French authorities do not contest this analysis as they state that 'the call for projects No 2 would be addressed to large undertakings in the marine products processing and marketing sector, that is to undertakings with more than 750 employees and a turnover of more than 200 million euro, as such undertakings are excluded from the EFF, as is the case for undertakings processing agricultural products. (…) The French authorities are aware that reading the 2004 fisheries and aquaculture guidelines in conjunction with Article 104 of Regulation (EC) No 1198/2006 relating to the European Fisheries Fund leads the Commission to state that large undertakings may not benefit from public aid.'

(32) This being the case, France justifies the aid scheme in question by saying it wishes to harmonise the situation of undertakings in the fisheries and aquaculture sector with regard to the granting of public aid with that of undertakings in the agricultural sector, for which a similar aid scheme was approved in 2004. However, given that the aid scheme is intended for the fisheries and aquaculture sector for which specific guidelines have been adopted, the Commission cannot accept the fact that an aid scheme of the same kind exists which has been approved for another sector of activity. Moreover, the Commission recalls that the scheme applicable to undertakings in the agricultural sector has been maintained until 31 December 2008 by way of derogation in accordance with point 196 of the Community guidelines for State aid in the agriculture and forestry sector 2007-2013 ([8]). However, this case involves a new aid scheme which applies to undertakings in the fisheries and aquaculture sector. It must therefore be examined with regard to the rules applicable to the sector, and not by analogy with an existing scheme in another sector of activity which has been approved on the basis of rules which differ from those applicable to State aid in the fisheries and aquaculture sector. Therefore, this argument is not acceptable.

(33) Similarly, the analogy with aid to large undertakings which may be granted in 2007 and 2008 within the framework of the FIFG cannot be accepted in order to justify implementing a new aid scheme, which is strictly national, for the benefit of these undertakings (see recital 19). Indeed the rules governing the administration of structural intervention programmes and aid granted within this framework and the rules governing State aid are independent of each other, unless explicit reference is made thereto (as is the case in the guidelines, which refer to criteria laid down in Regulation (EC) No 1198/2006). Consequently, the fact that, for reasons exclusively linked to budgetary constraints, aid may still be granted under the 1999-2006 EFF programming, has no effect on the rules which apply to this aid scheme.

6. **CONCLUSION**

(34) On the basis of the analysis in part 5 above, it must be concluded that the scheme for aid allocated from the FISIAA to undertakings in the fisheries and aquaculture sector, as notified by France on 24 April 2007, is incompatible with the common market,

HAS ADOPTED THIS DECISION:

Article 1

The aid scheme planned by France for subsidizing undertakings processing and marketing fisheries and aquaculture products from the Fonds d'Intervention Stratégique des Industries Agro-Alimentaires *(agri-food industries strategic intervention fund)* (FISIAA) is hereby judged incompatible with the common market.

Article 2

This Decision is addressed to the French Republic.

Done at Brussels, 4 June 2008.

For the Commission
Joe BORG
Member of the Commission

([8]) OJ C 319, 27.12.2006, p. 1.