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(¹) Text with EEA relevance

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DECISIONS

2012/287/EU:

★ Commission Decision of 11 January 2012 on State aid C 21/10 (ex E 1/10) — Finland following the non-acceptance of the appropriate measures for the Fisheries Insurance Scheme after the adoption by the Commission of revised Guidelines for the examination of State aid to fisheries and aquaculture (notified under document C(2011) 10065) ⁽¹⁾	7
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⁽¹⁾ Text with EEA relevance

II

(Non-legislative acts)

INTERNATIONAL AGREEMENTS

Notice concerning the entry into force, between the European Union and the Swiss Confederation, of the Arrangement between the European Union and the Republic of Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the Swiss Confederation on the participation by those States in the work of the committees which assist the European Commission in the exercise of its executive powers as regards the implementation, application and development of the Schengen *acquis*

The abovementioned Arrangement ⁽¹⁾ was signed in Brussels on 22 September 2011. As the procedures necessary for the entry into force of this Arrangement between the European Union and the Swiss Confederation have been completed on 26 March 2012, this Arrangement entered into force, as far as the Swiss Confederation is concerned, in accordance with Article 7 of the Arrangement, on 1 May 2012.

⁽¹⁾ OJ L 103, 13.4.2012, p. 4.

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) No 466/2012

of 1 June 2012

amending the Annex to Regulation (EU) No 37/2010 on pharmacologically active substances and their classification regarding maximum residue limits in foodstuffs of animal origin, as regards the substance clorsulon

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 470/2009 of the European Parliament and of the Council of 6 May 2009 laying down Community procedures for the establishment of residue limits of pharmacologically active substances in foodstuffs of animal origin, repealing Council Regulation (EEC) No 2377/90 and amending Directive 2001/82/EC of the European Parliament and of the Council and Regulation (EC) No 726/2004 of the European Parliament and the Council⁽¹⁾, and in particular Article 14 in conjunction with Article 17 thereof,

Having regard to the opinion of the European Medicines Agency formulated by the Committee for Medicinal Products for Veterinary Use,

Whereas:

- (1) The maximum residue limit (MRL) for pharmacologically active substances intended for use in the Union in veterinary medicinal products for food-producing animals or in biocidal products used in animal husbandry should be established in accordance with Regulation (EC) No 470/2009.
- (2) Pharmacologically active substances and their classification regarding MRLs in foodstuffs of animal origin are set out in the Annex to Commission Regulation (EU) No 37/2010 of 22 December 2009 on pharmacologically active substances and their classification regarding MRLs in foodstuffs of animal origin⁽²⁾.
- (3) Clorsulon is currently included in Table 1 of the Annex to Regulation (EU) No 37/2010 as an allowed substance, for bovine species, applicable to muscle, liver and kidney, excluding animals producing milk for human consumption.

- (4) Ireland has submitted to the European Medicines Agency a request for an opinion for the extrapolation of the existing entry for clorsulon applicable to bovine milk.
- (5) The Committee for Medicinal Products for Veterinary Use (CVMP) has recommended the establishment of a provisional MRL for clorsulon for bovine milk and the removal of the provision banning the use of that substance in animals from which milk is produced for human consumption.
- (6) The entry for clorsulon in Table 1 of the Annex to Regulation (EU) No 37/2010 should therefore be amended to include the recommended provisional MRL for bovine milk and to remove the existing ban.
- (7) The provisional MRL for clorsulon set out in that Table should expire on 1 January 2014. The CVMP recommended a two-year period to allow for the completion of scientific studies required to respond to the list of questions addressed by the CVMP to Ireland.
- (8) It is appropriate to provide for a reasonable period of time for the stakeholders concerned to take measures that may be required to comply with the newly set MRL.
- (9) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Veterinary Medicinal Products,

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Regulation (EU) No 37/2010 is amended as set out in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 August 2012.

⁽¹⁾ OJ L 152, 16.6.2009, p. 11.

⁽²⁾ OJ L 15, 20.1.2010, p. 1.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 1 June 2012.

For the Commission
The President
José Manuel BARROSO

ANNEX

The entry corresponding to clorsulon in Table 1 of the Annex to Regulation (EU) No 37/2010 is replaced by the following:

Pharmacologically active substance	Marker residue	Animal species	MRL	Target tissues	Other provisions (according to Article 14(7) of Regulation (EC) No 470/2009)	Therapeutic classification
'Clorsulon	Clorsulon	Bovine	35 µg/kg 100 µg/kg 200 µg/kg	Muscle Liver Kidney		Antiparasitic agents/Agents against endoparasites'
			16 µg/kg	Milk	Provisional MRL shall expire on 1 January 2014	

COMMISSION IMPLEMENTING REGULATION (EU) No 467/2012**of 1 June 2012****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽¹⁾,

Having regard to Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors ⁽²⁾, and in particular Article 136(1) thereof,

Whereas:

- (1) Implementing Regulation (EU) No 543/2011 lays down, pursuant to the outcome of the Uruguay Round multi-lateral trade negotiations, the criteria whereby the

Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in Annex XVI, Part A thereto.

- (2) The standard import value is calculated each working day, in accordance with Article 136(1) of Implementing Regulation (EU) No 543/2011, taking into account variable daily data. Therefore this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 136 of Implementing Regulation (EU) No 543/2011 are fixed in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 1 June 2012.

*For the Commission,
On behalf of the President,
José Manuel SILVA RODRÍGUEZ
Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 157, 15.6.2011, p. 1.

ANNEX

Standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	AL	87,5
	MA	66,7
	TR	81,9
	ZZ	78,7
0707 00 05	MK	43,6
	TR	120,2
	ZZ	81,9
0709 93 10	TR	99,0
	ZZ	99,0
0805 50 10	TR	113,6
	ZA	143,0
	ZZ	128,3
0808 10 80	AR	108,9
	BR	83,7
	CA	161,4
	CL	104,5
	CN	87,3
	NZ	139,8
	US	189,2
	UY	67,3
	ZA	110,3
0809 29 00	ZZ	116,9
	US	577,9
	ZZ	577,9

⁽¹⁾ Nomenclature of countries laid down by Commission Regulation (EC) No 1833/2006 (OJ L 354, 14.12.2006, p. 19). Code 'ZZ' stands for 'of other origin'.

DECISIONS

COMMISSION DECISION

of 11 January 2012

on State aid C 21/10 (ex E 1/10) — Finland following the non-acceptance of the appropriate measures for the Fisheries Insurance Scheme after the adoption by the Commission of revised Guidelines for the examination of State aid to fisheries and aquaculture

(notified under document C(2011) 10065)

(Only the Finnish and Swedish texts are authentic)

(Text with EEA relevance)

(2012/287/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union and in particular paragraphs 1 and 2 of Article 108 thereof,

Having called on interested parties to submit their comments ⁽¹⁾ pursuant to the provisions cited above,

Whereas:

(3) A meeting was held between the Commission and Finland on 11 October 2005. Finland sent additional information by letter of 24 November 2005.

(4) The Guidelines were again revised in 2008 ⁽⁴⁾ and the Commission requested also Member States, by letters of 15 April 2008, to modify their existing schemes by 1 September 2008 at the latest ⁽⁵⁾.

(5) Finland replied by letter of 30 May 2008 that it was still prepared to amend its Fisheries Insurance Scheme as proposed in 2005 but not to the extent required by the appropriate measures. A new meeting was held on 6 March 2009 between the Commission and Finland.

1. PROCEDURE

(1) In 2004, the Commission adopted revised Guidelines for the examination of State aid to fisheries and aquaculture (hereafter 'the Guidelines') ⁽²⁾. By letter of 21 October 2004, pursuant to point 5.2 of these Guidelines, the Commission requested Member States, inter alia Finland, to modify their existing aid schemes in order to make them compatible with these new Guidelines at the latest for 1 January 2005 and to confirm in writing that they accept the proposals for appropriate measures no later than 15 November 2004 ⁽³⁾.

(2) By letters of 15 November 2004, 20 January 2005 and 14 June 2005, Finland indicated that they did not agree to amend the aid scheme 'Fisheries Insurance Scheme' in order to make it compatible with these new Guidelines. That scheme was notified to the Commission on 27 April 1995 on the basis of Article 144 (a) of the Treaty of Accession of the Republic of Finland to the European Union, and subsequently was deemed to be existing aid within the meaning of Article 88(1) of the EC Treaty (now Article 108 TFEU).

(6) A last request for information was sent by the Commission on 1 October 2009, indicating that, in case Finland does not accept the proposed appropriate measures, the Commission would be obliged to follow the procedure of Articles 19(2) and Article 4(4) of Council Regulation (EC) No 659/1999 ⁽⁶⁾ and initiate the formal investigation procedure laid down in Article 108(2) TFEU. Finland replied by letter of 18 November 2009.

(7) As Finland has not accepted in its entirety the proposal for modification in respect of this scheme, the Commission decided to initiate that procedure. That decision was notified by letter of 15 September 2010 which was published in the Official Journal ⁽⁷⁾.

(8) Finland replied by letter of 15 November 2010. In addition, following the publication of the decision in the Official Journal, the Commission received

⁽¹⁾ OJ C 273, 9.10.2010, p. 6.

⁽²⁾ OJ C 229, 14.9.2004, p. 5.

⁽³⁾ Acceptance of the 2004 Guidelines was published in OJ C 278, 11.11.2005, p. 14.

⁽⁴⁾ OJ C 84, 3.4.2008, p. 10.

⁽⁵⁾ Acceptance of the 2008 guidelines was published in OJ C 115, 20.5.2009, p. 15.

⁽⁶⁾ OJ L 83, 27.3.1999, p. 1.

⁽⁷⁾ See footnote 1.

comments by three interested parties: two letters sent by two associations representing Finnish professional fishermen, *Suomen Ammatikalastajaliitto SAKL ry* (letter of 8 November 2011) and *Kalatalouden Keskusliitto* (letter of 16 November 2010) and a letter sent by the six fisheries insurance associations existing in Finland (letter of 16 November 2010). Copies of these letters were sent to the Finnish authorities on 6 December 2010. Later, representatives of these associations came to meet the Commission services on 13 January 2011 and provided complementary documents.

- (9) As the Commission needed some clarification on the information contained in the letter sent by on 15 November 2010, a meeting was held with the Finnish authorities in the Commission premises on 4 April 2011. The Finnish authorities sent also additional information by messages of 13 April and 13 May 2011.
- (10) Finally, as it stemmed from the information sent by Finland that it was ready to amend the scheme in such a way that it would bring it compatible with the internal market, the Commission requested Finland, by letter of 6 July 2011, to confirm its official commitment to amend the legislation which constitutes the legal basis of that scheme. Finland replied positively by letter of 19 September 2011.

2. DESCRIPTION OF THE AID

- (11) This aid scheme is based on Law No 331 of 23 July 1958, last amended by law No 1236 of 29 January 1999⁽⁸⁾. Finland communicated this scheme to the Commission just after it joined the European Community, on the basis of Article 144 (a) of the Treaty of Accession of Finland to the European Union. Since then, this aid scheme has been deemed to be existing aid in the meaning of Article 88 of the EC Treaty (now Article 108(1) TFEU).
- (12) The beneficiaries of this insurance scheme are the fishing enterprises permanently exercising the fishing activity in Finland. This insurance is provided by six fisheries insurance associations covering the whole of Finland. Each association covers a determined geographical area.
- (13) According to Article 7 of that law, an annual State aid payment is made to the fishery association amounting to a part of the claims which the association has paid out under insurance contracts covered by this law. According to Article 2, the claims may cover the following damages:
- damages to nets, salmon-lines, longlines and to the anchors attached thereto, ropes and other ancillary gear,

— damages to fishing vessels registered in Finland,

— damages to transport and haulage vehicles used for winter fishing on the ice, fishing huts and seine floating or trawling gear.

- (14) The law describes also the conditions required for the claims to be considered. The following conditions are particularly relevant for the Commission's assessment: the items insured must be sufficiently well-made and fully serviceable; the equipment must have been insured at application for its full value; the damage must be reliably shown.
- (15) In its letter of 15 November 2004, Finland has explained how this aid scheme works in relation with the damages suffered by the fishing enterprises. First, there is a franchise linked to the amount of the eligible claim, corresponding to 25 % in the case of damages not exceeding EUR 504,56 or a maximum of 5 % in the case of damages exceeding that figure; the subtraction of this franchise gives the amount of the compensation paid to the enterprise by the fisheries insurance association concerned. The reimbursement paid to the fisheries insurance association by the State is then equal to 40 % of the compensation paid out when the amount of damages is up to EUR 504,56 and 90 % when this amount is beyond EUR 504,56.
- (16) In its subsequent letter of 24 November 2005, Finland proposed that this scheme be amended so that State aid would be paid only to compensate for damages caused by the particular conditions pertaining in Finland, including the condition that the damage occurs north of the 59th parallel.
- (17) Finland described in its letter of 15 November 2004 what it considers as specific conditions pertaining to Finland for the fishing activity. These conditions are caused by the climatic conditions with inter alia ice formation which can cause damage to both vessels and gear and freezing temperatures which can affect the engine of the vessel. These specific conditions are aggravated by factors such as the marine topography of Finland with shallow waters and uneven sea bottom in a dense archipelago; in these conditions, the risks of shipwreck associated with storms and currents in icy conditions is rather high. In addition, there is a large seal population which cause significant losses to the fishing industry by damaging the gear; damages can also sometimes be caused to the gear (gill nets) by the cormorants.
- (18) From the year 2004 to the year 2009, the annual number of events which have resulted in compensation, the global annual compensation paid by the fisheries insurance associations and the part reimbursed by the State are as follows:

⁽⁸⁾ This last amendment is the only one having modified the law since the accession of Finland to the European Union. This amendment was due to the establishment of the Finnish Agency for the Monitoring of the Insurance Sector. It did not entail any consequence from the point of view of the State aid regime itself.

Year	Enterprises covered	Number of cases	Compensation paid (EUR)	Reimbursement by the State (EUR)
2009	472	470	1 296 961	1 026 132
2008	486	459	1 256 200	980 065
2007	503	530	1 564 340	1 197 217
2006	519	496	1 234 761	920 167
2005	543	539	1 333 027	992 826
2004	576	568	1 607 919	1 111 195

- (19) The payments made by the associations are related around 50 % to the gear, 45 % to the vessels and 5 % to the other equipment.

3. GROUNDS FOR INITIATING THE FORMAL INVESTIGATION PROCEDURE

- (20) As indicated above ⁽⁹⁾, this aid scheme was notified to the Commission in 1995 on the basis of Article 144 (a) of the Treaty of Accession of the Republic of Finland to the European Union and subsequently was deemed to be existing aid within the meaning of Article 88(1) of the EC Treaty. The Guidelines which were applying until the 2004 revision contained a specific provision on aid for insurance premiums and it was on that basis that this aid scheme was considered compatible with the internal market. That provision was taken out with the 2004 revision.
- (21) The Commission considered in the initiating of this procedure that the damages covered by the Fisheries Insurance Scheme cannot be considered caused by an exceptional occurrence or a natural disaster but rather caused by a permanent and structural situation, that is to say the permanent and structural context within which fishing activity is exercised in Finnish waters.
- (22) For that reason, in accordance with the Guidelines ⁽¹⁰⁾, the Commission considered that this aid was an operating aid which is in principle incompatible since it has the effect to increase the business liquidity of the enterprises which benefit from it and was granted without imposing any obligation on the part of recipients.
- (23) The Commission did not agree with the argumentation of the Finnish authorities which justified this aid scheme by qualifying it as a service of general economic interest in the sense of Article 106(2) of the TFEU. Finland did not provide any specific argument justifying that the provision of insurance to fisheries undertakings could be qualified as a service of that kind and the Commission did not find, with regard to the characteristics of that

scheme, that it could be qualified as such. In particular, the Commission observed that the fisheries insurance associations provide insurance services to only a specific group of enterprises having an economic activity consisting in the production of goods sold on the market, those active in the fishing sector. The Commission had therefore strong doubts that the providing of commercial insurance to a selected group of economic undertakings might qualify as a service of general economic interest.

4. COMMENTS FROM THE FINNISH AUTHORITIES AND FROM THE THIRD PARTIES INTERESTED

4.1. Comments from the Finnish authorities

- (24) The Finnish authorities have reminded the main characteristics of the functioning of this insurance system. They have also brought a thorough description of the specific conditions that the fishing industry is facing in Finland: specific climatic conditions with ice and darkness in winter, the topography of the coastal waters with shallow waters and uneven sea-bottom, the existence of a large seal population.
- (25) They have also brought information on the lack of offer for coverage insurance from the private insurance sector to the fishing industry with the same level of coverage for this kind of damages. To support their position, they have attached to their reply a letter from the Finnish Confederation of the Financial Sector *Finanssialan Keskusliitto*.
- (26) In addition, they have indicated that the value of the imports corresponds to 6,8 times the value of the exports. In 2009, Finland has imported 95 046 tonnes of fish for a value of EUR 244,5 million while it has exported 59 905 tonnes for a value of EUR 36 million. Only 30 % of the fish consumed is originating from Finland. The annual consumption of Finnish fish has decreased between 2000 and 2009 from 6,1 to 4,5 kg while the one of imported fish has increased from 6,6 to 11,2 kg. According to the Finnish authorities, this shows that this State aid scheme cannot have any negative effect on competition.
- (27) The Finnish authorities remind that the Commission, in its decision for the initiating of the procedure, observed that the deletion of the provision on aid for insurance premiums in the Guidelines 2004 meant that this kind of State aid was not anymore allowed. The Finnish authorities do not agree with that position. First of all, this insurance scheme remains fully justified by the specific climatic and geographic conditions occurring to Finnish waters. In addition, this scheme was considered compatible in 2000, although such aid was not among those listed as allowed to be considered compatible by the Guidelines 1997 ⁽¹¹⁾ which were applying at that time, in a context which is similar to the one existing from 2004 with the Guidelines 2004 and 2008.

⁽⁹⁾ See recital 2.

⁽¹⁰⁾ See paragraph 3.7 in Guidelines 2004 and paragraph 3.4 in Guidelines 2008.

⁽¹¹⁾ OJ C 100, 27.3.1997, p. 12.

(28) However, in these comments, Finland indicates that it is ready to modify its scheme as follows:

- exclusion of the vessels exercising fishing in open sea, which means in practice the exclusion of the vessels over 12 metres long,
- eligibility only for damages suffered in territorial waters of Finland or in its economic exclusive zone,
- coverage of the damages which are caused only by the specific conditions of Finland and thus caused by the adverse climatic or geographical conditions (ice, snow, strong storms, reefs in shallow waters) or by the seals and cormorants, and suffered by the vessels and fishing gear as well as transport and haulage vehicles and other specific equipment used for winter fishing.

(29) Finland considers that this modification could be done within 31 December 2012. This delay is necessary for two reasons: first, the need to amend the current legislation in force and constituting the legal basis of this scheme (Law No 331 of 23 July 1958) and, second, the need to terminate the current contracts under the existing scheme. The new Fisheries Insurance Scheme would then enter into force on 1 January 2013.

(30) As indicated above ⁽¹²⁾, the Finnish authorities confirmed by letter of 19 September 2011 their commitment to amend the legislation which constitutes the legal basis of that scheme. They indicated that, if the Commission takes its final decision within a reasonable period of time, they will be able to present a proposal to its Parliament early enough in 2012 to enable the law to come into force on 1 January 2013. However, they stressed that a transitional period is needed for introducing the new rules because changes in the terms of the insurance contracts in force will be required. For that purpose, they consider that these changes in these contracts could be done by 1 January 2014 and the amended conditions be applied to the aid granted to the insurers from that date onwards.

4.2. Comments from third parties

(31) Two fishermen's associations sent comments to the Commission: *Suoman Ammattikalastajaliitto* and *Katata-louden Keskuliitto*. On the same line than the Finnish authorities, both associations put the emphasis on the specific conditions of fishing in Finland and the unavailability of insurance offer for the damages covered. One of them (*Suoman Ammattikalastajaliitto*) observed that the Commission has not provided any evidence that this aid scheme is likely to affect competition between Member States, noting in particular that professional fishing is currently the source of only 7 % of the fish

consumed in the country and Finland's fishing industry and fish market are therefore dependent on imported fish. For that reason, this association regards the preliminary conclusion expressed in the initiating of the procedure as unfounded.

(32) The Fisheries Insurance Associations support also the position expressed by the Finnish authorities. They point out that fishing industry in Finnish waters is facing very specific climatic and geographic conditions. They indicate that this insurance system was established because of the lack of offer from the private insurance sector which was not ready to cover such risks for the fishing activity which is an activity of marginal importance. In addition, the Fisheries Insurance Associations are obliged to insure all fishermen established in the region of their competence.

5. ASSESSMENT OF THE AID

5.1. Existence of State aid

(33) Article 107(1) of the TFEU states that 'Save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market'.

(34) The compensation paid to the fishing enterprises by the fisheries insurance associations comes partly from monies granted to these associations by the State. These monies come from the State budget. As this compensation brings a financial advantage to the enterprises of the fishing sector, it is a sectorial advantage granted through State resources.

(35) According to the case law of the Court of Justice, the mere fact that the competitive position of an undertaking is strengthened compared with other competing undertakings, by giving it an economic benefit which it would not otherwise have received in the normal course of its business, points to a possible distortion of competition ⁽¹³⁾. Further, aid for an undertaking that operates in a market open to intra-Union trade is liable to affect trade between Member States ⁽¹⁴⁾.

(36) Given that there is substantial trade in fisheries products inside the European Union, this measure reinforces the position of these enterprises on the Union market and hence is liable to distort or threatens to distort

⁽¹²⁾ See recital 10.

⁽¹³⁾ Judgment of the Court of 17 September 1980 in Case 730/79 *Philip Morris Holland BV v Commission of the European Communities* [1980] ECR 2671.

⁽¹⁴⁾ See, in particular, the judgment of the Court of 13 July 1988 in Case 102/87 *French Republic v Commission of the European Communities* [1988] ECR 4067.

competition and affect intra-Union trade⁽¹⁵⁾. The fact that the imports are higher than the exports or that most of the fish consumed comes from other countries is not relevant. On the contrary, this shows that the market for fisheries products in Finland is indeed very open and suggests then that aid to the Finnish undertakings supports their position with regard to the undertakings established in the other Member States and distorts or threatens to distort competition. Even the fact that the quantity of imported fish consumed may have increased compared to the one of non imported fish consumed does not change anything from that point of view; it could only suggest that the Finnish undertakings have not made the adaptations which were necessary to follow the evolution of the economic conditions pertaining to the market of fisheries products in Finland. In any event, these undertakings benefit from aid which supports their position on the internal market with regard to foreign undertakings.

- (37) In the light of the foregoing, it can be concluded that the conditions set out in Article 107(1) are fulfilled and that the compensation paid to the fisheries enterprises and coming from the State budget is a State aid in the sense of Article 107(1) of the TFEU.

5.2. Compatibility with the internal market

5.2.1. Nature of this aid scheme

- (38) The Fisheries Insurance Scheme is aimed at covering expenses which are partially covered by insurance premiums. It is not per se an aid for insurance premiums; it is not aimed at covering a part of insurance premiums, but at covering a part of the claims for compensation submitted by the enterprises to the fisheries insurance associations.
- (39) However, as these claims are submitted to these associations which have to pay out for the eligible amount of damages suffered, the Commission considers that the effect of this aid is to lower the premiums that the fishing enterprises should have paid if the fisheries insurance associations concerned had not expected to get monies from the State. Thus, it has the same effect as an aid scheme for insurance premiums. This scheme can therefore be considered as an aid scheme for insurance premiums.

5.2.2. Compatibility with the internal market

- (40) The Commission cannot concur with the opinion of the Finnish authorities when they say that the situation with

regard to the Guidelines 2004 and 2008 is comparable to the one with the Guidelines 1997 by considering that no provision on aid for insurance premiums has been laid down in any of them. The deletion in 2004 of the specific provision on such aid which was beforehand enshrined in the Guidelines 2001⁽¹⁶⁾ shows that the Commission, with the 2004 revision, has clearly considered that such aid could not anymore benefit of a derogation from the principle of incompatibility of State aid with the internal market and be considered compatible with it from the date of entry into force of the Guidelines 2004. That policy decision has remained unchanged with the next revision, i.e. the Guidelines 2008.

- (41) Moreover, the overall framework within which the Commission is assessing State aid for insurance premiums has changed. This State aid scheme was considered compatible by the Commission in 2000⁽¹⁷⁾ for the compensation resulting from the 'exceptional conditions specific of Finnish weather and coastal zones'. To reach that decision, the Commission referred in its reasoning to the situation in the agriculture sector for which no provision in the Guidelines applying to the agriculture sector neither existed, but where the Commission had a practice to decide positively on a case-by-case basis for aid measure in connection with insurance against natural disasters and exceptional insurances. In 2000, for both agriculture and fisheries sector, the Commission has clarified its policy by laying down criteria to be followed for the assessment⁽¹⁸⁾ of such kind of aid in the respective Guidelines. Since then, such criteria still exist in the agriculture Guidelines⁽¹⁹⁾ while they do not exist anymore in the fisheries Guidelines. Thus, while the Commission, in the agriculture sector, has laid down precise criteria for considering aid for insurance premiums compatible with the internal market, those criteria have been deleted in the fisheries Guidelines. For the fisheries sector, the Commission is then obliged to revert to the general principle of incompatibility of State aid and assess the compatibility or incompatibility of a scheme of that kind on the basis of the provisions which may apply.

- (42) The provision of the current Guidelines which may apply is paragraph 4.9 which says that the aid measures for which there is no applicable provision in the other paragraphs listing the different categories of aid which may be considered compatible with the internal market cannot in principle be considered compatible.

⁽¹⁶⁾ OJ C 19, 20.1.2001, p. 7.

⁽¹⁷⁾ Decision communicated to Finland by letter of 11 May 2000.

⁽¹⁸⁾ For the agriculture sector, OJ C 28, 1.2.2000, p. 2 (see paragraph 11.5.1); for the fisheries sector Guidelines 2001 (see above footnote 14).

⁽¹⁹⁾ OJ C 319, 27.12.2006, p. 1; see point 140 which refers to Article 12 of Commission Regulation (EC) No 1857/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to State aid to small and medium-sized enterprises active in the production of agricultural products and amending Regulation (EC) No 70/2001 (OJ L 358, 16.12.2006, p. 3).

⁽¹⁵⁾ It appears from the Eurostat data that Finland imported from other Member States an average of 30 000 tonnes of fisheries products per year during the years 2007 to 2009 for an average value of EUR 90 million per year and exported to other Member States an average of 20 000 tonnes per year during the same period for an average value of EUR 15 million per year.

- (43) By exception, an aid scheme can however be considered compatible if the Member State demonstrates that it complies with the various principles set out in those Guidelines and serves the objectives of the common fisheries policy.
- (44) In its reply to the initiating of the procedure, Finland has made concrete proposals to amend the scheme in a restrictive manner⁽²⁰⁾. In addition it has justified its continuation by the existence of a market failure in the insurance market for the coverage of a significant part of these damages.
- (45) In its letter attached to this reply, the Finnish Confederation of the Financial Sector *Finanssialan Keskusliitto* recognises that they would not be able to cover all the damages as it now stands with the Fisheries Insurance Associations. This coverage would be a very partial coverage or even in some cases, for instance for the damages to gear, would not be possible. Insurance companies cannot consider such damages as insurable or, to consider them so, the insurance premiums would be beyond a reasonable rate.
- (46) This shows that the fisheries insurance associations are not in a position to distort competition with respect to the private insurance companies. This characterises the existence of a market failure in Finland for the coverage of these damages by private companies.
- (47) The Commission considers that a State aid measure which addresses a market failure can be considered compatible with the internal market when it fulfils objectives of common interest. This meets the requirements of point 4.9 of the Guidelines concerning compliance with the principles set out in the Guidelines and with the objectives of the common fisheries policy.
- (48) The objectives of the common fishery policy are to ensure the exploitation of living aquatic resources that provides sustainable economic, environmental and social conditions⁽²¹⁾. The Commission considers that this scheme, as amended in accordance with the modifications described by Finland, would contribute to provide such conditions. Along with the application of the conservation and management rules for the exploitation of these resources, it would allow continuation of fishing in conditions which are those specific to the coastal waters of Finland, including damages caused to the equipment (fishing nets) by seals and, sometimes, cormorants. This would help providing them sound economic, environmental and social conditions to the fishing enterprises facing the specific constraints of the exercise of fishing in these waters. This would also help maintaining the socioeconomic fabric of the coastal communities concerned.
- (49) The Commission observes in addition that this aid scheme, when amended, will not in any event offer a full compensation for the damages concerned. The current system, with first a franchise and, second, only a partial reimbursement of the compensation paid⁽²²⁾, will remain in place. Thus, the existence of a counterpart needed from the beneficiaries of this aid scheme, as requested by point 3.3 of the Guidelines, still remains.
- (50) Finally, the Commission considers that the period that Finland considers necessary to amend the scheme⁽²³⁾ is acceptable. Taking into account the necessary legislative procedure, the deadline of 1 January 2013 for the entrance into force of the law amending the current legal basis of this scheme is a reasonable one. In addition, at that time, the insurance contracts in force between the fishing enterprises and the fisheries insurance associations will have been renewed during the year 2012 under the conditions applying at that date, with expiration during the year 2013. It is reasonable to allow these contracts to run until their expiration under the terms agreed. They will then be renewed again in 2013 in accordance with the new conditions applying at this time. Therefore, the ultimate deadline of 31 December 2013 with entry into force of such adapted contracts the day after, i.e. 1 January 2014, is justified.

6. CONCLUSION

- (51) In the light of the foregoing analysis, the Commission concludes that the 'Fisheries Insurance Scheme' can be considered compatible with the internal market when it is amended in accordance with the following principles:

- exclusion of the vessels exercising fishing in the open sea, which means in practice the exclusion of the vessels over 12 metres long,
- eligibility only for damages suffered in territorial waters of Finland or in its economic exclusive zone,
- only coverage of the damages which are caused by the specific conditions of Finland and thus caused by the adverse climatic or geographical conditions (ice, snow, strong storms, reefs in shallow waters) or by the seals and cormorants, and suffered by the vessels and fishing gear as well as transport and haulage vehicles and other specific equipment used for winter fishing.

⁽²⁰⁾ See above recital 28.

⁽²¹⁾ Article 2 of Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy (OJ L 358, 31.12.2002, p. 59).

⁽²²⁾ See above recital 15.

⁽²³⁾ See above recital 30.

(52) The Commission takes note of the commitment of the Finnish authorities to amend the legal basis of that aid scheme at the latest by 1 January 2013 in order that the terms of the insurance contracts be changed at the latest by 1 January 2014,

HAS ADOPTED THIS DECISION:

Article 1

1. The existing aid scheme 'Fisheries Insurance Scheme' which was subject to a proposal for appropriate measures after the revision of the Guidelines for the examination of State aid to fisheries and aquaculture is compatible with the internal market when it is amended in accordance with the following commitment made by Finland:

- exclusion of the vessels exercising fishing in the open sea, which means in practice the exclusion of the vessels over 12 metres long,
- eligibility only for damages suffered in territorial waters of Finland or in its economic exclusive zone,

— only coverage of the damages which are caused by the specific conditions of Finland and thus caused by the adverse climatic or geographical conditions (ice, snow, strong storms, reefs in shallow waters) or by the seals and cormorants, and suffered by the vessels and fishing gear as well as transport and haulage vehicles and other specific equipment used for winter fishing.

2. The legal provisions amending this scheme shall enter into force at the latest by 1 January 2013 and the relevant insurance contracts concluded on their basis shall enter into force at the latest by 1 January 2014.

Article 2

This Decision is addressed to the Republic of Finland.

Done at Brussels, 11 January 2012.

For the Commission

Maria DAMANAKI

Member of the Commission

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