

The Hague, 7 December 2016

Dutch response to the second consultation on the targeted review of the General Block Exemption Regulation: extension to ports and airports

HT. 4691

General remarks

The Dutch authorities welcome the opportunity to respond to the Commission's second draft extension of the General Block Exemption Regulation (hereafter: GBER).

Since the second draft to a large extent corresponds with the first draft, the Dutch authorities would like to refer to the Dutch response on this first consultation. In addition to this previous contribution and in response to the contributions made by other Member States the Dutch authorities would like to draw special attention to the following.

Maritime ports

The Dutch authorities believe that it is of great importance to have fair competition between maritime ports. Since the starting point is that State Aid is incompatible with the internal market, the Dutch authorities are of the opinion that the GBER should only exempt State Aid with the smallest distortive effect on the internal market from the obligation to notify.

To secure a level playing field the more distortive aid should remain subject to prior scrutiny by the Commission. According to the Dutch authorities this is in line with the aim of the State Aid Modernisation and the rationale for the GBER: to focus Commission *ex ante* scrutiny of State Aid measures on cases with the biggest impact on the internal market. The more distortive types of State Aid require an assessment on an individual basis taking into account the particularities of the competitive impact of the State Aid. Such an assessment preferably must take place on the basis of specific State Aid guidelines for this sector. Objective guidelines are needed to strengthen the internal market and earlier approved State Aid should be brought in line with a new and stable State Aid framework.

For that reason, the Dutch authorities are of the opinion that on the basis of the second draft the range of potentially distortive State Aid measures that fall within the scope of the GBER is too wide. The possibility to provide State Aid is facilitated even though it has distortive effects. This will have a negative impact on the market and should be avoided. Like with the category for airports the larger maritime ports - which are active in a highly competitive market - should be excluded from the GBER. Furthermore, the Dutch authorities would like to ask the Commission to significantly reduce the thresholds for the amount of aid and the percentage of the aid intensity. Substantial projects, like building quays are exempted from the obligation to notify with the proposed thresholds while these type of investments will have a considerable unintended negative impact on port competition. Furthermore, to avoid the circumvention of the already too high thresholds, the period for what is qualified as one single project should be extended.

The Dutch authorities welcome the exclusion from the GBER of aid for superstructures investments as they affect the competitiveness between ports. Furthermore the Dutch authorities welcome the distinction between dredging inside and outside the area of the port. State Aid to all kinds of dredging in the commercial area of the port should be excluded from the GBER exemption.

In order to be able to assess the effects on competition in the internal market, the Dutch authorities call upon the Commission to evaluate the introduction and the working of this new GBER category on ports at the end of 2020.

The Dutch authorities welcome the fact that the Commission introduced a possibility to use fixed aid intensity of 80% of eligible costs instead of calculating the funding cap for maritime ports for

aid not exceeding EUR 5 mio since this is in line with the aim of simplifying the rules and reducing the administrative burden for granting authorities.

Inland ports

With regard to inland ports the Dutch authorities would like to ask the Commission to explain why the approval of State Aid to inland ports is now based upon Article 107 TFEU instead of Article 93 TFEU. The Dutch authorities have doubts regarding this legal basis. The approval by the Commission of State Aid to inland ports is based on the transport title of the TFEU (Article 93). The Enabling Regulation makes no reference to this Article, only to Article 107 TFEU.

In case it is possible to add a category for inland ports in the GBER, the Dutch authorities would like to ask the Commission to focus this category on investments in sustainability – sustainable transport. Not only to investments in the inland ports, but also investments in inland waterway vessels. Could the Commission add these two specific types of investment aid to the GBER?

The Dutch authorities welcome the fact that the Commission introduced a possibility to use fixed aid intensity of 80% of eligible costs instead of calculating the funding cap for inland ports for aid not exceeding EUR 2 mio since this is in line with the aim of simplifying the rules and reducing the administrative burden for granting authorities.

Airports

The Dutch authorities are pleased with the addition of alternative fuel infrastructure for ports in the GBER (recital 5). Since investment in sustainability in airports is important as well, the Dutch authorities would like to see this category not only with regard to ports but also for airports. Preferably not only for airports with passengers up to the amount of 3 million, but also for the large airports. In aviation, the use of alternative fuel infrastructure and biofuels is one of the few possibilities to effectively stimulate sustainability. The costs for biofuels are high and the development of new innovative alternative fuel is needed. To stimulate the use and production of biofuels, investments are needed. Therefore the Dutch authorities would like to ask the Commission to broaden the environmental Articles in the GBER or to add this specific type of aid explicitly to the GBER category for airports.

In response to contributions by others on the first draft, the Dutch authorities would like to indicate that the Dutch authorities have no objection against the inclusion of operational aid to the smaller airports in the GBER. Such type of aid would only have a limited distortive effect on the market and is in line with the aim of simplifying the rules and reducing the administrative burden for granting authorities.

Undertaking in difficulty, Risk finance aid and start-ups

The Dutch authorities are pleased to see that article 21 under 16 has been expanded to include quasi-equity investments structured as debt. However: can the Commission explain why equity investments are still excluded from this article?

Under article 22, under 2 (c) we are pleased to see that the European Commission will further expand the possibilities to give aid to starters. However we do follow the remarks of some other Member States that a start-up undertaking by its nature is a new and developing undertaking and that the GBER should clarify that a start-up undertaking cannot unintentionally fall under the criteria of an undertaking in difficulty.

Broadband

The Dutch authorities call upon the Commission to consider adding a new GBER category for aid for fast internet in grey areas. It is clear that this new GBER exemption must be subject to specific

and well-designed criteria which ensure its compatibility with the internal market. We respect the Commission's view that this cannot be done within this targeted review but we would like to engage in a discussion to explore the possibilities of such a new category.

Regional operating aid in outermost regions and sparsely populated areas

The Commission kept the proposed amendment already included in the first draft proposal. The Dutch authorities would like to point out once more that it does not seem appropriate to allow for operating aid for energy production unless it is limited to renewable energy production. This might affect the competitiveness in the sector of energy production to an undesirable extent.

We do follow the remarks of some Member States not to allow regional investment aid for the relocation of undertakings and workforce under the GBER. Distortional aid in the GBER should not lead to unfair competition of state budgets and relocations.

Monitoring (article 12)

Article 12 on monitoring is altered. The Dutch authorities find these alterations do slightly improve the article but would still like to request from the European Commission to further substantiate why this specific requirement is necessary. What developments in the application of the GBER have led to this proposal?

Other remark

Article 2(39), on the definition of operating profit. The Dutch authorities do not understand the last sentence of the definition, since this does not seem to entail a definition but a statement.