

The Hague, 16 May 2019

Response of the Dutch authorities to:

- the draft Commission Regulation (EU) .../... of XXX on amending Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid and Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty as regards their period of validity, and
- the draft Communication concerning the prolongation of the Commission Guidelines on Regional State Aid for 2014-2020 referring to the national regional aid maps, Commission Guidelines on State Aid to Promote Risk Finance Investments, Commission Guidelines on State Aid for Environmental Protection and Energy, Commission Guidelines on State aid for rescuing and restructuring and Commission Communication on the Criteria for the Analysis of the Compatibility with the Internal Market of State Aid to Promote the Execution of Important Projects of Common European Interest

HT. 5594

The Dutch authorities welcome the opportunity to react to the Commission's draft regulation regarding the period of validity of the *de minimis* regulation, the General Block Exemption Regulation and the draft communication regarding the prolongation of various Commission Guidelines. This response reflects the views of the Dutch 'Interdepartementaal Steun Overleg (ISO)'. The ISO is a central State aid coordination body composed of all Dutch ministries and representatives of the regional and local authorities.

General remarks

The Dutch authorities support this initiative of the Commission, since legal certainty, predictability and stability is important in the application of the State Aid rules. However we do have some comments and concerns regarding this initiative.

The current envisaged fitness check will cover many State Aid communications, guidelines or frameworks. In order to handle these fitness checks and prolongation proposals in a coherent way in a relative short period, considerable effort of the State Aid coordination bodies of the Member States is required. We hope the Commission takes this into account when drafting the schedule for the evaluation and the possible update of the different sets of State Aid rules.

The envisaged fitness check does not seem to cover the State Aid Broadband Guidelines. According to the Dutch authorities the fitness check should also assess these State Aid rules, in order to see whether these State Aid rules are still fit for their purpose, taking into account the future challenges regarding the demands of the gigabit society. The Dutch authorities also would like a fitness check and an assessment of the State Aid rules for Maritime transport (which dates from 2004).

For the Dutch Authorities it is clear that the Commission envisages to prolong the validity of the GBER and the *De minimis* regulation by two years . It could be necessary, in view of future EU priorities, to amend the GBER or the *de minimis* regulation before this two years period ends. Therefore we would like the Commission to consider the possibility to amend these guidelines at any time, if this should be necessary for reasons associated with competition policy or to take into account of other Union policies and international commitments or for any other justified reason. This could be the case for instance with regard to measures that contribute to a climate neutral society or new funding opportunities made available under the Multiannual Financial Framework.

The Commission seems to envisage a broad public consultation, not only Member States will be consulted but also other stakeholders such as local public authorities or industry and consumers' associations. Furthermore the Commission envisages targeted questionnaires to the main stakeholders and interested parties on specific issues related to the individual rules. For the Netherlands it is important that all questionnaires are made public and are also made available to the Member States at central government level.

We understand that some questionnaires are only send to specific Member States. We would like to know the reasoning of the Commission why some Member States will receive specific

questionnaires and other Member States will not. The Dutch authorities would appreciate if the Commission could provide us with some explanation or clarification.

We find it important that Member States are able to comment on all of the State Aid rules concerned - not only for the draft prolongation proposals but also for the fitness checks of all the State Aid rules - by way of a targeted consultation especially for the Member States through the common channels of the Permanent Representation of the Member States. Could the Commission acknowledge this?

Specific remarks

In anticipation of the review of the above-mentioned regulations and guidelines the Dutch authorities would like to ask the Commission to take into consideration the following remarks.

Enabling regulation

The Dutch authorities would like the Commission to take into consideration the extension of article 1 (a) of the Enabling Regulation (EU) 2015/1588 with aid in favour of the conservation and protection of nature.

De minimis regulation

The Dutch authorities propose an increase of the amount of de minimis aid up to € 500.000,-. The amount of € 500,000 over a 3-year period will not quickly lead to disruption of trade between states.

General Block Exemption Regulation

In light of the GBER revision, the "undertaking in difficulty" criteria continue to cause problems for our granting authorities. Some of these criteria seem to exclude from state aid economically healthy undertakings which - from an economic point of view - ought not to be considered as an "undertaking in difficulty". The Dutch authorities propose to adjust these criteria in accordance with these economic insights.

Furthermore the Dutch authorities propose an extension of the scope of risk finance aid (article 21) and aid for start-ups (article 22) with ad hoc aid, which would be consistent with the scope of the other block exemptions in this regulation. The Dutch authorities consider that the limited nature of this amendment, can be achieved without requiring an impact assessment. This can be considered a quick win and be realized at the same time as the prolongation of the regulation.

The Dutch authorities also propose that aid for start-ups (article 22) can also take the form of tax measures.

The Dutch authorities also propose an extension of the GBER with funding opportunities for small mid-caps and innovative mid-caps as defined in the Guidelines on State aid to promote risk finance investments.

The Dutch authorities would like to point out some difficulties the granting authorities face when applying Article 27 (2) GBER. This article sets out that aid for innovation clusters shall be granted exclusively to the legal entity operating the innovation cluster (cluster organisation). The Commission has clarified that Article 27 (2) requires that the legal entity exists, i.e. that the cluster organisation could not be merely a collaboration of different entities. In the case of a project in which several undertakings carry out activities and two of these undertakings qualify as cluster organisations, it should be possible to grant aid to both cluster organisations as each of these form a legal entity operating an innovation cluster. In the context of the review of the GBER, the Dutch authorities would like to suggest that the Commission clarifies whether Article 27 puts a limitation on the amount of cluster organisations that carry out activities in a project

Guidelines on State Aid for Environmental Protection and Energy

The Dutch authorities support a reform of the State aid framework so that it contributes to and do not counteract a climate neutral society and the implementation of the Paris Agreement. This includes enabling Member states with better tools to combat climate change and enabling investments in (large scale) energy storage and flexibility, carbon capture and storage (CCU), cross-border infrastructure and transport of CO2 involved with the carbon neutral economy, production processes that use biobased feedstocks (circular economy), other sustainable energy carriers like hydrogen and ammonia, taking into account competition outside the EU while safeguarding fair competition in the EU internal market.

Furthermore the Dutch authorities would like to point out that there are increasingly complex projects in the climate and energy transition that do not always clearly show who the environmental benefits are. There are cases where the environmental benefit does not fall on the person making the investment and is therefore the beneficiary, while without the investment the environmental benefit is not realized. Could the GBER extended for such complex cases that would allow support to be given to projects where the beneficiary is not the one where the environmental benefit is achieved? This can play a role in particular for large heat infrastructure projects.

Article 46 (6) (Investment aid for energy efficient district heating and cooling) states:

The aid amount for the distribution network shall not exceed the difference between the eligible costs and the operating profit. The operating profit shall be deducted from the eligible costs *ex ante* or through a claw-back mechanism.

The definition of operating profit in the GBER is: 'operating profit': the difference between the discounted revenues and the discounted operating costs over the economic lifetime of the investment, where this difference is positive. The operating costs include costs such as personnel costs, materials, contracted services, communications, energy, maintenance, rent, administration, but exclude depreciation charges and the costs of financing if these have been covered by investment aid. Discounting revenues and operating costs using an appropriate discount rate allows a reasonable profit to be made.

That means that when calculating the maximum support you have to include the support itself and that is somewhat complicated. The Dutch authorities would like to suggest that the Commission clarifies whether for example bank fees or legal costs can be considered as operating costs? Since there is no definition of "operating costs" in the GBER.

Important projects of common European interest

When it comes to the development of an EU industrial policy, the communication on "important projects of common European interest" ("IPCEI") plays a crucial role. However the Dutch authorities propose that the procedure for granting aid to IPCEI projects should however be simplified by building on the Commission and Member States' recent experience from the microelectronics project.