

HT.4691 The Danish government's response to the Commissions consultation on the targeted review of the general block exemption regulation.

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PRELIMINARY REMARKS

The Danish government welcomes the inclusion of airports and ports in the GBER. The Danish government, however, must express its deep dissatisfaction with the proposal in 61a to set out thresholds for "the closure of the same or similar activity", which has the direct effect of including in the GBER regional investment aid for the relocation of undertakings and workforce from a Member State to another, which has so far been subject to notification. The Danish government cannot accept this proposal.

AID FOR RELOCATION

As preliminary stated the Danish Government cannot accept the Commission's proposal in 61a to include regional investment aid for the relocation of undertakings and workforce in the GBER. This is a significant change from past practice in which the Member State is obliged to notify such aid pending approval from the Commission before aid could be implemented. By maintaining this type of aid to be subject to the notification process, it is possible to preserve the deterrent and preventive effect on undertakings, given that they will have to provide detailed and in some cases sensitive information to the Commission, as well as awaiting the approval of the Commission. Including this type of very distortional aid in the GBER will eliminate this deterrent effect and most definitely lead to more unfair competition of state budgets and relocations, where aid is involved, especially in countries where the occupation force is mostly engaged in SMEs. The Commission can hardly agree that this effect will further creation of growth and opportunity in the economy of the EU.

GBER ARTICLE 12 – MONITORING FISCAL STATE AID

The Danish government has noted that the Commission is proposing to impose further monitoring obligations on Member States besides those inserted in the recently adopted revision of the GBER. First of all we must state that in Denmark, fiscal aid schemes are already subject to ex post control on sample basis. In order for Member States to assess whether the control mechanisms they already have in place are adequate, the Commission must provide guidance for Member States to determine to which degree the ex post control Member States are obligated to carry out will be sufficiently satisfying for the Commission. In that context it would

be highly appreciated if the Commission could provide some explanatory notes on the background and rationale behind this draft amendment.

If the Commission would require an additional monitoring exercise besides the ones already in place in Denmark the estimated expenses to perform this monitoring exercise will amount considerably with the latest estimations for DK reaching a number of at least EUR 500.000 a year.

AID FOR AIRPORTS

We are generally pleased with the Commission's proposal to include airports in the GBER as this will make the rules more employable when granting aid.

Compatibility and the airport guidelines

We acknowledge that the proposed rules on airports in the GBER are very much a reflection of the rules on airports in the airport guidelines with some deviations. One substantial deviation is that the proposed rules in the GBER contrary to the guidelines pinpoint some instances where aid is considered to be incompatible. It is our understanding that the intention of the Commission can't be to deem this type of aid incompatible but simply to exclude it from the GBER and make it subject to notification according to the airport guidelines. This should be clarified as to prevent any misunderstandings. Otherwise the rules in the airport guidelines on moving existing airports and granting aid to airports with an annual number of passengers exceeding 3 million would become futile, as these two instances are deemed incompatible in the GBER proposal.

Smaller airports in same catchment area

We welcome the Commission proposal to include smaller airports with annual passenger traffic under 50.000 in the GBER, even though they are located within another airports catchment area. This can have a specific impact on the granting of aid to the Danish airport, Sønderborg airport, as this airport located within the same catchment area as another Danish airport, Hans Christian Andersen airport, would otherwise be subject to notification. Even though we appreciate the Commission including a threshold for this, we would very much like to see the threshold at 100.000 annual passengers instead of 50.000 passengers.

Definitions on airports

We acknowledge that many of the proposed definitions regarding airports stem from existing rules. We, however, note that the definition of 'centralised groundhandling infrastructure' do not exist in the current Directive 96/67/EC on access to the groundhandling market at Community airports. The Commission proposed to include a definition in the directive in a revision of the directive in 2011 but retracted it. Considering that the Member states and the Commission have not yet come to an agreement on the definition as regards the directive, it seems premature and detrimental to this process to include a definition in the GBER. If anything the Commission should apply a definition closer to that in the groundhandling-directive art. 8.

We also propose to include in the GBER a definition of investment aid similar to the one in the airport guidelines.

Specific comments on commission proposals to airports

Threshold for the application of state aid rules

We support the proposal in the position paper by France and Germany to exclude airports with 100,000 passengers annually or below from the state aid rules. This would eliminate a relatively high administrative burden.

Airports with an annual number of passengers above 3 million

We propose that the GBER also include aid for airports with annual passenger numbers of above 3 million just as this is possible in the airport guidelines. This will ensure coherence between the GBER and the guidelines.

Operating aid

We propose to include operating aid for airports in the GBER to airports with annual passengers up till 700.000. According to the guidelines operating aid will be dissolved towards 2024 (but with a revision clause for airports with less than annual 700.000 passengers).

AID FOR PORTS

We are generally pleased with the Commission's proposal to include ports in the general block exemptions regulation (henceforth the GBER) as this will make the rules more employable when granting aid.

Notification thresholds

The large Member States have a history of large granting schemes for ports and more specifically aid schemes for the expansion of infrastructure for ports. These schemes have so far had to be notified and the aid recipients and authorities in question have had to provide the Commission with a great deal of information in this context. This has allowed the Commission to preserve the power to make an assessment fully informed of the specificities of each case.

If ports are included in the GBER subject to such high thresholds as those proposed, there will be a likelihood of a severe distortive effect on ports located in smaller Member States, where there aren't access to these types of large granting schemes. We see a need for an impact assessment to assure that these thresholds will not have substantial distortive effects on the market. We do not consider it sufficient for the Commission to justify these thresholds as a codification of jurisprudence.

Guarantees

We are very adamant that other types of aid than investment aid such as guarantees are included in the GBER and more specifically in art. 56b. In Denmark as in other Member States as well ports are financed through municipal guarantees. It is therefore essential that this type of financing will be made accessible in the GBER and that it is clearly stated that Member States must adhere to the Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees 2008/C 155/02 in the use of these rules.

Definitions

It is essential that it be clarified whether the percentages for aid intensity proposed in art. 56b (4) relates to the funding cap of the project or the cost of the project.

There are a number of proposed definitions on ports in the GBER that do not align with the Regulation on Trans-European transport network (1315/2013). These definitions should be further clarified in the Commission's proposal so they align with the regulation. It is paramount that there is a reference to ports on the main network (core network) on the Trans-European Transport Network (TEN-T) and not just to ports in the core network corridor. As an illustrative example: Denmark has two ports

on the core network, respectively. Aarhus and Copenhagen, but it only is Copenhagen, located on the corridor. Not applying the right definition will effectively lead to discrimination between the two ports, which is probably not the intention of the Commission and should be rectified.

COHERENCE BETWEEN THE RULES ON STATE AID AND STRUCTURAL FUNDS

We very much welcome the proposed addition to art. 7 in the GBER. We consider the proposed changes in art. 7 the result of the dialog with the Commission pursuant of the implementation of simplified cost options under RFO nr. 1303/2013. The proposed addition in the GBER will ensure a greater coherence between the rules on state aid and the rules on structural funds. A flat rate will make the rules much easier to handle and ease the administrative burdens for recipients of EU-aid under the structural funds.

AID FOR CULTURE

We believe that the proposal to extend the quantitative limits for the cultural clauses in Art. 53 will be very useful in the organization of support schemes for cultural purposes. We also find it very positive that the Commission proposes to include movie theaters in the GBER.

AID FOR ACCESS TO FINANCE FOR SMES

We do not find the amendment in article 22 (2a) clearly justified. It states that eligible undertakings shall be unlisted small enterprises up to five years following their registration, provided that the newly registered small enterprise starts an activity that is new for this enterprise. This does not seem reasonable since unlisted small enterprises (and up to five years after their registration or start of economic activity) is per se new. The exclusion from eligibility of new enterprises which have solely been established to continue an activity of an “old enterprise” in order to be eligible for aid for start-ups is however justified.

FINAL REMARKS

Please do not hesitate to contact the Danish authorities for clarification and elaboration on any of the above stated comments.