The Hague, 27 September 2019

HT.5224 Dutch response to the Targeted review of the General Block Exemption Regulation: extension to national funds combined with certain Union programmes

This response reflects the views of the Dutch 'Interdepartementaal Steun Overleg (hereafter: ISO)'. The ISO is a central State aid coordination body composed of all Dutch ministries and representatives of the regional and local authorities. The ISO is chaired by the Ministry of Economic Affairs and Climate Policy. The Minister of Economic Affairs and Climate Policy is responsible for competition policy in the Netherlands.

According to the Dutch authorities robust State aid control is essential for a level playing field to ensure a well-functioning competitive internal market. At the same time, government intervention with State aid may be needed to address certain market failures and/ or to accomplish the goals of European Union interests. The focus of State aid enforcement on cases with the biggest impact on the internal market is an important principle that can be endorsed. The General Block Exemption Regulation (hereafter: GBER) is a good instrument to achieve this goal and is widely used in the Netherlands.

The Dutch authorities endorse the general objectives of the targeted revision of the GBER. A good interaction between the EU funds on the one hand and possible national co-financing on the other is key. This does not only apply to the EU funds for which a provision is currently being proposed but is also of a broader significance. For now, the Dutch authorities are generally satisfied with the proposed enlargement of the GBER.

Since there is an interplay between EU funds rules and State aid rules it is important that it is clear how public financial support options relate to each other and what the possibilities and impossibilities are. The State aid rules and EU funds constitute complementary but also distinct policies, each having specific objectives. The EU funds rules ensure that the funding contributes to socio-economic development while the State aid rules ensure that they do so without unduly distorting competition in the internal market. In designing the State aid rules, the European Commission has made a major effort to set up a framework that carefully balances the positive effects of State aid with the need to avoid potentially negative effects of State funding. This is an aspect that must be preserved, also with regard to the EU funds.

When the State aid rules relating to the EU funds are expanded, the Dutch authorities are of the opinion that it must be very clear which conditions for granting State aid must be met. Both from the perspective of the EU funds and from the perspective of State aid control. The Dutch authorities are in favor of the conditions for granting State aid being integrated as much as possible in the EU fund itself. The permitted additional public financing from an EU Member State and what the eligible costs are should appear from the EU funds. When the conditions are properly arranged in the EU funds itself a relative simple reference in the GBER might suffice. For example, with regard to the InvestEU fund conditions, aid intensities and aid amounts the Dutch authorities prefer clear and comprehensive InvestEU rules which also take into account the State aid rules. When State aid conditions in the EU funds are prescribed, the GBER can stipulate that all conditions from the relevant EU fund must be met. To put beyond doubt that the general conditions of the GBER are met, the Dutch authorities recommend clarifying this in the recitals of the GBER.

The Dutch authorities are of the opinion that it is essential to include adequate safeguards to ensure effective use of State aid. This is needed to counteract unfair competition between undertakings through fund financing and/ or national co-financing. An important aspect here is the prevention of relocation as a result of State aid. Since it affects the objectives of State aid control, relocation as a result of State aid is a disagreeable effect that must be prevented by definition. Therefore, the Dutch authorities are of the opinion that the conditions for State aid within the framework of the EU funds should not be less strict than 'regular' State aid. Consequently, State aid conditions with regard to State aid to undertakings in financial difficulties (Article 1, paragraph 4 point a and b GBER) and also with regard to the so-called Deggendorf clause (Article 1, paragraph 4 point c GBER) must be respected. Both for European Territorial Cooperation projects and financing and investment operations supported by the InvestEU Fund. It is also important that a decent private contribution remains necessary. The Dutch authorities believe that the GBER expansion should not lead to a crowding out effect of private financing.

In addition to the above, the Dutch authorities have the following specific comments with regard to the proposal.

The proposal includes a further extension of the anti-cumulation rules (Article 8 GBER). Could the Commission review this entire Article in the context of this targeted review or at least in the context of the fitness checks? It is important that these rules are user friendly and not open to interpretation.

With regard to European Territorial Cooperation (Articles 20 and 20a GBER) the Dutch authorities are of the opinion that the proposed changes are welcome improvements. The proposed changes lead to a simplification. With regard to the reporting obligation (Article 11 GBER), could the Commission clarify in the Dutch translation of the GBER that the reporting obligation is alternative and not additional when a management authority is involved?

As far as the Seal of Excellence projects are concerned (Articles 25a and 25b GBER), these projects are a good way for less research and innovation-intensive regions to build capacity and consequently contributes to narrowing the innovation gap. However, it is a point of attention that these projects do not push away other projects, such as European Regional Development Fund (ERDF) projects, since there is no tailor-made GBER category for these type of projects.

Furthermore, a note about the proposal concerning the Technological Readiness Level (hereafter: TLR) (Article 2 point 83a and points 84, 85 and 86 GBER). The TLR's are not only prescribed in the Articles linked to the Horizon program (Articles 25a and 25b GBER), but are also prescribed to regular State aid for RD&I. In the view of the Dutch authorities this additional condition to regular State aid should be part of the fitness check on the GBER. For now, the TLR's should at most be an indication, not a condition.

With regard to the InvestEU fund (Articles 56d, 56e and 56f GBER) the Dutch authorities ask further clarification by the Commission when there is State aid in this context. This is possible, for example, in the Communication on the notion on State aid in case the Commission does not consider the GBER recitals to be the right place. The Dutch authorities welcome the intention by the Commission to provide further guidance on the typical scenarios supported by the InvestEU fund (recital 7 GBER).

In general, the Dutch authorities agree with the different GBER categories linked to the InvestEU fund. However, the Dutch authorities would like to point out that the proposed exempted aid should not distort the competition in the EU internal market. Could the Commission – for example within five years after the entry into force of this GBER category – verify whether the proposed categories of aid have the desired effect?

The Dutch authorities ask the Commission to broaden the welcome extensions with regard to digitalization and broadband in the GBER to regular State aid that is not linked to the InvestEU Fund (i.e. Article 14, paragraph 10 GBER for broadband). With regard to InvestEU investments in broadband, the Dutch authorities would welcome a (reference to a) definition for clarification what can be understood by ‘premises passed’ as mentioned in Article 2 paragraph 178 GBER.

Concerning the proposed definitions of ‘Innovative SME’ (Article 2 point 183) and ‘Innovative midcap’ (Article 2 point 184), the Dutch authorities ask the Commission to clarify why there is no provision for an external expert to demonstrate by means of an evaluation that the enterprise will in the foreseeable future develop products, services or processes which are new or substantially improved compared to the state of the art in its industry, and which carry a risk of technological or industrial failure, as in the existing definition of ‘Innovative enterprise’ (Article 2 point 80 GBER).

Social services is a theme that is considered important by the Dutch authorities. In order to have the possibility to use financial instruments for this policy, Article 56e paragraph 6 GBER is a welcome addition. The proposed aid amounts are well usable. The Dutch authorities ask the Commission to clarify in Article 56 paragraph 6, point (a)(ii) GBER that the aid amount per undertaking per year applies.

With regard to the InvestEU Fund categories relating to infrastructure, the Dutch authorities would like to hear the reasons for the Commission to include only a (small) part of the Connecting Europe Facility (CEF) in this proposal.

Finally, since the Dutch authorities expect (partly) public financed investments in the future to be needed for heat and hydrogen, the Dutch authorities would like to ask the Commission to take this into account in the InvestEU Fund categories (Article 56e paragraphs 5, 8 and 9 GBER).