

# FITNESS CHECK OF STATE AID RULES - GENERAL QUESTIONNAIRE

## **INTRODUCTION:**

The modernization of state aid rules launched by the Commission in 2012 had three main, closely linked objectives: 1) Foster growth in a strengthened, dynamic and competitive internal market; 2) Focus enforcement on cases with the biggest impact on the internal market; 3) Streamlined rules and faster decisions. In view of these objectives, since 2013 the Commission has revised a number of State aid rules. The aim of this Fitness check is to evaluate whether the State aid rules remain fit for purpose and whether they have contributed to achieving the EU 2020 policy objectives.

The Fitness check will cover the General Block Exemption Regulation, De Minimis Regulation, Regional Aid Guidelines, Research, Development and Innovation Framework, Important Projects of Common European Interest Communication, Risk Finance Guidelines, Airport and Aviation Guidelines, Energy and Environmental Aid Guidelines, Rescue and Restructuring Guidelines but also the Railways Guidelines as well as the Short Term Export Credit Communication (the two latter were not included in the 2012 State aid modernization package).

The purpose of this consultation is to collect your views to assess the effectiveness, efficiency, coherence, relevance and EU added-value of the State aid rules subject to the current Fitness check.

A summary report of the public consultation will also be published in Q3 2019 on the European Commission's public consultations page of the ([https://ec.europa.eu/info/law/better-regulation/have-your-say\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say_en)).

## **ABOUT YOU:**

- Language of contribution: English
- First name / surname: Dutch authorities: Interdepartementaal Staatssteun Overleg (ISO)
- I am giving my contribution as: Public authority
- Organization name: Dutch authorities: Interdepartementaal Staatssteun Overleg (ISO)
- Scope (International, National, Regional, Local): National, regional and local: The ISO is a central State aid coordination body composed of all Dutch ministries and representatives of the regional and local authorities.
- Organization size (Micro, Small, Medium, Large): Large, the ISO is a central State aid coordination body composed of all Dutch ministries and representatives of the regional and local authorities.
- Transparency register number: /
- Country of origin: The Netherlands
- E-mail (this won't be published): /
- Please describe the main activities of your organization, if applicable: 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.
- Please describe the relevance of State aid rules for you: The ISO is a central State aid coordination body composed of all Dutch ministries and representatives of the regional and local authorities who have to comply with the State aid rules. 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
- How would you best describe the nature of your understanding and involvement in matters related to State aid rules? The ISO is a central State aid coordination body composed of all Dutch ministries and representatives of the regional and local

- authorities who have to comply with the State aid rules and therefore have a broad knowledge and experience with the State aid rules.
- Publication privacy settings: Public
  - I agree with the [personal data protection provisions](#)

### **EFFECTIVENESS:**

**Have the objectives been met? In this section, we would like to have your opinion of the extent to which the State aid rules subject to the current Fitness check met their objectives.**

1. Based on your experience, has the State aid modernization package led to clearer rules (Yes, Partially, No, I do not know, The rules are not relevant for me)?
  - GBER: Yes
  - De-minimis: Partially
  - Regional Aid Guidelines: Partially
  - Research Development Innovation Framework: Yes
  - Important Projects of Common European Interest Communication: Partially
  - Risk Finance: Partially
  - Airport and Aviation Guidelines: Yes
  - Energy and Environmental Aid Guidelines: Partially
  - Rescue and Restructuring Guidelines: Partially
  - Railways Guidelines: Partially
  - Short Term Export Credit Communication: No

- 1.1) Please explain especially where you answered no or partially and please reference the rules in question (max 5000 character(s)):

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 European Union is facing an increased global competition, both in heavy industry and in developing new technological solutions and new business models. Our aim should be to strengthening the competitiveness of the European industry and businesses through stimulating innovation, a green transition and a circular economy. A strong Single Market is key and the European Commission should maintain striving for a global level playing field.

The Dutch authorities endorse the general objectives of the State aid modernization process as started in 2012. Focusing 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. Also improvement has been made in identification and definition of common State aid principles and in streamlining the State aid rules. The Dutch authorities welcome the commitment by the European Commission for a swift decision-making process. The instruments from the European Commission to further clarify the State aid rules, such as the Notion of State aid communication of the European Commission, the Analytical Grids and the State aid Wiki are very much appreciated as well. In that regard streamlining the different digital systems (State Aid Notification Interactive-2, State Aid Reporting Interactive and the Transparency Aid Module) and improving the completion process thereof, could also reduce the administrative burden.

According to the Dutch authorities more improvement in respect of the application of the State aid rules can be achieved in the coming period. This can be done by

further streamlining all the State aid frameworks and further clarifying the conditions. User friendly State aid rules are of great importance, both for granting authorities and for beneficiaries of State aid. This is mostly important for the GBER, since both central and regional/ local authorities benefit from the GBER there is a great responsibility for meeting the conditions in this framework. Therefore, an update of the Frequently Asked Questions on the GBER would be very welcome.

Since the GBER is in general an useful instrument for the granting of good State aid and given the fact that more experience is gained for certain types of aid under the guidelines, the Dutch authorities consider it appropriate to examine whether certain categories of State aid from the Guidelines can be included in the GBER.

Next, it is important to verify whether the Frameworks (both the GBER as the guidelines) are suitable for the (new) challenges that are set for the Member States. According to the Dutch authorities this should include investments required to achieve the environmental objectives (with regard to climate change and energy transition), for example for the infrastructure required for this. In this regard the Dutch authorities would welcome an extension of the GBER with a new category for investments in the installation of CO<sub>2</sub> capture technology.

The State aid framework needs to be reformed so that it contributes to and does 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 cross-border infrastructure and transport of CO<sub>2</sub> involved with the carbon neutral economy, taking into account competition outside the EU while safeguarding fair competition in the EU internal market.

The Railways guidelines and Short Term Export Credit Communication were not part of the State aid modernization process. However, further guidance for the railway sector was given in the Notion of Aid communication of the European Commission, and in particular as regards rail infrastructure by the Analytical Grid on Railway, metro, local transport infrastructure. The Dutch authorities are of the opinion that it is important that the Railways guidelines are also adapted to the new challenges, for example with regard to public investments in the European Rail Traffic Management System (ERTMS)/ European Train Control System (ETCS).

1.2) Which specific areas still remain unclear/ could be clarified to improve the implementation (max 3000 character(s))?

The Dutch authorities notice that not all State aid frameworks are part of the general questionnaire and targeted consultations. The Dutch authorities are calling on the European Commission to include the Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks. According to the Dutch authorities the fitness check should also assess these State aid rules, in order to see whether these are still fit for their purpose, taking into account the future challenges regarding the demands of the gigabit society.

In addition, the Dutch authorities are calling on the European Commission to modernize the Services on General Economic Interest (hereafter: SGEI) Package, especially with regard to social security, healthcare and social housing. The Dutch healthcare system has generally the character of a market with an open entry and exit system based on objective and transparent criteria. The system as such does not provide for SGEI as the services are provided by the market. For some specific services, however, there is a need to establish an SGEI. For example, when the market does not provide the services at all or in a way that does not meet the requirements of the Dutch authorities. In some cases a number of undertakings are imposed with the SGEI and on other cases the SGEI is open to all service providers. In the latter case, the Dutch authorities place a general call with criteria and conditions. Service providers who accept the call are entrusted with an SGEI and receive a compensation thereof. The Dutch authorities are calling on the European Commission to modernize the SGEI Package to enable and allow social security and healthcare systems where SGEI is imposed on all entrants following an open entry and exit system. According to the Dutch authorities a social security and healthcare system that provides for open access via a regulated form of competition to the market for private parties should not be unduly restricted by the SGEI Package in order for the European Commission to be able to approve of such measures.

Moreover, with regard to social housing there should be more possibilities to realize a social mix and entrust the SGEI for middle-income households. Besides the SGEI-package there should be also more possibilities for exemptions for SGEI within the Rescue and restructuring guidelines.

Because there is an increasing interplay between European funds rules and State aid rules it is important that it is clear how different support options relate to each other and what the possibilities and impossibilities are. State aid rules and European funds constitute distinct but complementary policies, each having specific objectives. European funds rules ensures that the funding contributes to socio-economic development while 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. The Dutch authorities call on the European Commission to align and harmonize both sets of rules, where possible, keeping in mind the different objectives.

According to the Dutch authorities the State aid rules could be further improved by focusing on the (social) benefits of the State aid as a whole (not only per actor/ per activity but also on projects with more than one beneficiary/ activity). Therefore the GBER should be expanded. For example, projects where the environmental benefits are realized through indirect stakeholders/ undertakings and not so much through the beneficiary of State aid itself. Moreover, a project can consist of activities that fall under different aid categories. Despite the fact that such public support is already possible, a provision could be introduced that would make it easier to support such a project. This also applies to projects in

which several parties are involved in a partnership/ cluster/ chain. An assessment at partnership level would be more appropriate, in case there is open access among other conditions. These type of conditions are needed to mitigate the negative side of the possible distortion of competition.

In general, the Dutch authorities are of the opinion that the State aid rules should also be more flexible when certain preconditions are strictly adhered to (transparency, objectivity, competition). For example, if there are subsidy tenders, where every EU undertaking is eligible for support or could compete for support, a more flexible approach is justifiable. In this way, for example, undertakings and knowledge institutions can be encouraged to come up with solutions to the challenges that the Member States and the European Union as a whole face. In that case, support for so-called disruptive innovations (the outcome of which is highly uncertain, but if successful the market can be entered quickly without further public support) can be considered. The existing categories, namely fundamental-, industrial- and experimental research and development, are not always suitable for this purpose.

The Dutch authorities have some specific wishes to improve the State aid rules:

- The Dutch authorities request the European Commission to review the definition of an undertaking in difficulty. For an explanation, see the response on question 5.10.
- Within the GBER the Innovation clusters (Article 27 GBER) is a useful category. It should be assessed whether this category can be improved with regard to the following conditions:
  - Operating the innovation cluster should not be reserved for the legal entity operating the innovation cluster (cluster organization), but also be open for a (lead) partner in the cluster organization as long as the conditions of the governance model of Article 27 GBER are met.
  - In respect of the fees charged for using the cluster's facilities and for participating in the cluster's activities Article 27 GBER states that the fees shall correspond to the market price or reflect their costs. Especially for start-ups it is hard to fulfil this requirement. Although aid for start-ups could be based on Articles 22 and 25 of the GBER it would be helpful if less strict conditions in respect of the fees charged for participating in the cluster's activities should be added in Article 27 GBER.
- The State aid rules could take even more account of the special characteristics of startups and scale-ups.
- With regard to the anti-cumulation rules, it would be helpful if the European Commission provides more (practical) guidance, for example by providing calculation tools or concrete examples. Furthermore, the definition of the "same eligible costs" could be further clarified, as well as the consequences for the situation when aid is not granted for specified costs but for a specific project as a whole.
- Railways guidelines: parts of the Railways guidelines could be transferred to the GBER, for instance the measures which satisfy the conditions of point 107 of the guidelines in which conditions are set for aid for rail infrastructure use, for reducing external costs or for interoperability to be presumed necessary and proportionate and so not to distort competition contrary to the common interest and therefore must be considered compatible under Article 93 of the Treaty on the functioning of the EU.

2. Based on your experience, did the factors below facilitate the compliance with the State aid rules by the Member States? (Yes, Partially, No, I do not know, These rules are not relevant for me)

- Clear definition of the scope of the rules by excluding sectors or types of aid and clear definitions of those sectors and types of aid that are excluded: Yes
- Clear definition of the scope of the rules by explaining the overlaps between the different rules: Partially
- Common principles to assess the compatibility of the State aid measures: Yes
- Clear rules to identify the need for State intervention: Partially
- Clear rules to identify the incentive effect of the aid measure: Partially
- Clear rules to ensure that the aid is limited to the minimum necessary: Partially
- Clear rules to identify the distortive effects of the aid measure: Partially
- Publication of aid awards above EUR 500,000 on a public website: Partially
- Evaluation of novel or large schemes with budgets above EUR 150 million: Yes
- Clear and simplified definition of a company in difficulty: No
- Simplified rules for projects that are financed with EU funds (including structural funds): Partially
- Simplified rules for SMEs? Partially

2.1) Please explain especially where you answered no or partially and please reference the rules in question (max 5000 character(s)):

The factors as mentioned in the response on question 1.1 have generally contributed to compliance with the State aid rules. However, this is an ongoing process that leaves room for further improvement.

The alignment between the different rules, especially with regard to European funds, is an important point of attention since questions are often asked about this. See in this regard the response to question 1.2.

With regard to compliance the Dutch authorities wonder whether the publication of individual aid awards above EUR 500,000 on a public website (on EU level), could be more efficiently be combined with other (national) publication of the aid award. In order to reduce administrative burdens for the Member States. see the response on question 7.

2.2) Please mention any other factors that led EU MS to being more compliant with State aid rules:

The Dutch authorities welcome the instruments the European Commission have introduced to further clarify the State aid rules, such as the Notion of State Aid, the Analytical Grids and the State Aid Wiki. Further improvement can be achieved in the coming period. User friendly State aid rules are of great importance, both for granting authorities and for beneficiaries of State aid. This is mostly important for the GBER, since there is a great responsibility for meeting the conditions in this framework.

The GBER has been widely used since the modernization process. This leads to an increase in GBER notifications to the European Commission instead of approval decisions by the European Commission. However legal certainty is key for our businesses. Consideration must be given how this gap can be closed and good State aid examples can be shared. Therefore, an update of the Frequently Asked Questions on the GBER would be very welcome.

3. Based on your experience, since 2014 has the Commission focused its scrutiny on cases having a significant impact on the internal market?

3.1) For SAM as a whole: (Yes, Partially, No, I do not know): Yes

3.1.1. Please explain why (max. 3000 characters)

The Dutch authorities endorse the objective of focusing enforcement on cases with the biggest impact on the internal market.

3.2) Have the scope and notification thresholds for the following types of aids allowed the Commission to focus its scrutiny on cases with a significant impact on the internal market? (Yes, Partially, No, I do not know, There rules are not relevant for me)

- Scope and amounts under the De-minimis: Partially
- Scope and notification thresholds GBER (in general): Partially
- Scope and notification triggers for aid for regional development in assisted areas: Partially
- Scope and notification thresholds for aid for research, development, innovation: Yes
- Scope and notification thresholds SME access to finance: Yes
- Scope and notification thresholds aid for airports and aviation: Yes
- Scope and notification thresholds Energy and environmental protection: Yes
- Scope and notification thresholds Important projects of common European Interest: Yes
- Scope for aid for Rescue and restructuring firms in difficulty: Yes
- Scope for aid for railways: No
- Short term export credit: Partially

3.2.2) Please explain especially where you answered no or partially and please reference the rules in question (max 5000 character(s)):

In the view of the Dutch authorities the thresholds for de-minimis aid can be raised, see response on question 5.2.

The Dutch authorities anticipate the added value of a widely applicable GBER for aid that can be of added value. However, according to the Dutch authorities category and aid thresholds for sea ports are too broad/high, this could lead to a distortion of competition. Guidelines for the more market-distorting State aid to sea ports are needed as an assessment framework. The State aid framework (GBER in combination with guidelines) should only allow State aid to (competing) sea ports if certain conditions are met. The starting point could be comparable to the aviation system, where the larger the airport, the more the aid is considered to be anti-competitive and the less State aid may be granted.

For aid for regional development in assisted areas it is of major importance that the aid does not result in negative effects on the internal market, in particular when this at the expense of non-assisted areas.

For aid for railways: the railways guidelines do not as such provide for fixed relevant thresholds.

4. Based on you experience, have the State aid rules reduced the risk of subsidy races in the EU? For example, by setting maximum ceilings for public support, by laying down the conditions at EU level to grant public support, or by increasing the transparency of public support? (Yes, Partially, No, I do not know).

- Rules for the categories of aid covered by the GBER: Partially
- De-minimis: Partially
- Aid for development in assisted areas: Partially
- Research, development, innovation: Yes
- IPCEI: Partially
- Access to finance for SMEs: Yes
- Aid for airports and aviation: Yes
- Energy and environmental protection: Yes
- Rescue and restructuring aid: Yes
- Aid for railway and coordination of transport: Partially
- Short term export credit: Partially

4.1) Please explain especially where you answered no or partially and please reference the rules in question: (max 5000 character(s)):

Despite the fact that IPCEI projects are of major importance on EU level, the IPCEI projects are also a point of attention since the aid amounts can be very high. This is why an upfront assessment of the European Commission stays necessary. The Dutch authorities refer to the response on question 5.5.

For aid for regional development in assisted areas it is of major importance that the aid does not result in negative competitive effects on the internal market, in particular when this is at the expense of non-assisted areas. Maintaining a competitive internal market means that the principle that State aid should not be granted for or linked to relocation of jobs or activities between Member States should be upheld.

In general, the GBER thresholds are the correct ones, given the objective of focus on cases with the biggest impact. However, according to the Dutch authorities question the category and aid thresholds for sea ports are too broad/high, this could lead to a distortion of competition. Guidelines for the more market-distorting State aid to sea ports are needed.

Aid for railways and coordination of transport: on the one hand the conditions and maximum percentage of State aid intensity do limit a subsidy race, on the other hand the guidelines as such give an incentive to Member States to subsidize up to the allowed maximum.

5. Based on your experience, to what extent have the State aid rules achieved the objectives listed below while maintaining a competitive internal market?

#### 5.1 Rules for lower amounts of aid under GBER

##### 5.1.1) Objectives

- Simplification of the rules: (To a large extent, to some extent only, not at all, I do not know): to some extent only

- Maintaining a competitive internal market: (To a large extent, to some extent only, not at all, I do not know): to some extent only

##### 5.1.2) What are the obstacles to achieving the objectives? (max 3000 characters):

The Dutch authorities anticipate the added value of a widely applicable GBER for aid that can be of added value. In general the GBER thresholds are the correct ones, given the objective of focus on cases with the biggest impact. However, according to the Dutch authorities the aid thresholds for sea ports are too high, this could lead to a distortion of competition.

User friendly State aid rules are of great importance, both for granting authorities and for beneficiaries of State aid. This is mostly important for the GBER, since there is a great responsibility for meeting the conditions in this Framework.

#### 5.2 De-minimis

##### 5.2.1) Objectives

- Simplification of the rules: (To a large extent, to some extent only, not at all, I do not know): To a large extent

- Maintaining a competitive internal market: (To a large extent, to some extent only, not at all, I do not know): To a large extent

##### 5.2.2) What are the obstacles to achieving the objectives? (max 3000 characters)



The current de-minimis ceiling is set at € 200.000,- for a single undertaking over any period of three years. We endorse the essence and objectives of this instrument. However, in practice the Dutch authorities still experience limitations by using it. The Dutch authorities suggest to raise the ceiling to enable Member States to grant more subsidies without being restricted by State Aid rules. The de-minimis ceiling could be brought in line with the de-minimis ceiling for SGEI and the Transparency Aid Module level. In our view, the de-minimis ceiling could be raised without having major negative consequences for competition on the internal market. Also, a higher ceiling would decrease the administrative burden for both Member States and beneficiaries. Consequently, this allows Member States to respond more adequately to situations that require limited public contributions.

To provide more legal certainty, the European Commission could clarify the definition of a single undertaking by integrating jurisprudence of the Court of Justice of the EU (C-110/13 and C-53/17) in its practice and translating the former jurisprudence in clear and specific criteria.

### 5.3 Development of disadvantaged areas in the EU

#### 5.3.1) Objectives

- Allow for the development of disadvantaged areas in the EU: (To a large extent, to some extent only, not at all, I do not know): to some extent only
- Maintaining a competitive internal market: (To a large extent, to some extent only, not at all, I do not know): to some extent only

#### 5.3.2. What are the obstacles to achieving the objectives? (max 3000 characters)

For aid for regional development in assisted areas it is of the utmost importance that the aid does not lead to negative effects on the internal market, in particular when this is at the expense of non-assisted areas. Distortional aid in the GBER should not lead to unfair competition of state budgets and relocations of jobs financed with EU budgets.

### 5.4. research, development and innovation

#### 5.4.1) Objectives

- Allow for more research, development and innovation: (To a large extent, to some extent only, not at all, I do not know): To a large extent
- Maintaining a competitive internal market: (To a large extent, to some extent only, not at all, I do not know): To a large extent

#### 5.4.2) What are the obstacles to achieving the objectives? (max 3000 characters):

The Dutch authorities refer to the response on question 1.2.

### 5.5. Important Projects of Common European Interest (IPCEI)

#### 5.5.1) Objectives

- Facilitate important projects of common European interest: (To a large extent, to some extent only, not at all, I do not know): to some extent only
- Maintaining a competitive internal market: (To a large extent, to some extent only, not at all, I do not know): to some extent only

#### 5.5.2) What are the obstacles to achieving the objectives? (max 3000 characters):

Important Projects of Common European Interest (IPCEIs) are of major importance on EU level. The Dutch authorities recognize the importance of identifying key value chains for Europe, that require joint, well-coordinated actions and investments by public authorities and industries from several Member States to ensure that Europe

stays or becomes a world industrial leader in such value chains and acknowledge the potential value that IPCEIs can add in this respect. The IPCEIs are also a point of attention since the high amounts of public support. Therefore an ex ante control mechanism by the European Commission, to assess the impact on the competition of the internal market, is of major importance. This will enable the European Commission to look into the spillover effects of the State aid. In this way it can be checked whether the potential large amounts of State aid also have beneficial effects (and not unduly negative effects ) on the internal market as a whole, in addition to the Member States providing the State aid. This does not alter the fact that for IPCEIs, a rapid state aid notification treatment is necessary.

## 5.6. Access to finance for SMEs

### 5.6.1) Objectives

- Facilitate the access to finance for SMEs: (To a large extent, to some extent only, not at all, I do not know): To a large extent
- Maintaining a competitive internal market: (To a large extent, to some extent only, not at all, I do not know): To a large extent

### 5.6.2) What are the obstacles to achieving the objectives? (max 3000 characters):

The Dutch authorities propose an extension of the scope of risk finance aid (article 21 GBER) and aid for start-ups (article 22 GBER) with ad hoc aid (as alternative to aid schemes), which would be consistent with the scope of the other exemptions in this regulation.

The Dutch authorities further propose that aid for startups (article 22 GBER) can also take the form of tax measures.

## 5.7. Connectivity between regions by using air transport

### 5.7.1) Objectives

- Allowing connectivity between regions by using air transport: (To a large extent, to some extent only, not at all, I do not know): To some extent only
- Maintaining a competitive internal market: (To a large extent, to some extent only, not at all, I do not know): To a large extent

### 5.7.2) What are the obstacles to achieving the objectives? (max 3000 characters):

The Dutch authorities refer to the response on the Targeted consultation on the ex-post evaluation of the 2014 Aviation Guidelines.

## 5.8. Clean and secure supply of energy and increased environmental protection

### 5.8.1) Objectives

- Allow for clean and secure supply of energy: (To a large extent, to some extent only, not at all, I do not know): To a large extent
- Allow for increased environmental protection: (To a large extent, to some extent only, not at all, I do not know): To a large extent
- Maintaining a competitive internal market: (To a large extent, to some extent only, not at all, I do not know): To a large extent

### 5.8.2) What are the obstacles to achieving the objectives? (max 3000 characters):

The Dutch authorities refer to the response on question 1.2 and the response on the Targeted consultation for the evaluation of the guidelines on State aid for environmental protection and energy 2014-2020.

## 5.9. Rescue and restructure ailing companies under specific conditions

#### 5.9.1) Objectives

- Allow to rescue and restructure ailing companies under specific conditions: (To a large extent, to some extent only, not at all, I do not know): To some extent only
- Maintaining a competitive internal market: (To a large extent, to some extent only, not at all, I do not know): To a large extent

#### 5.9.2) What are the obstacles to achieving the objectives? (max 3000 characters):

The Dutch authorities are pleased with the specific Guidelines for rescue and restructuring aid and consider these guidelines essential for State aid practice.

The scope of the rules on State aid for rescuing and restructuring non-financial undertakings in difficulty is very broad. As a consequence, also the semi-regulated markets / sectors (e.g. health care) are subject to these strict rules. For the social security and health sector, the Dutch authorities are calling on the European Commission for specific Rescue and Restructuring rules that take into account the particularities of these sectors.

The applicability of the definition of companies in difficulty causes a lot of problems and insecurity. The Dutch authorities have set out their concerns and suggestions in the response on question 5.10.

The Dutch authorities request the European Commission to review the conditions for temporary restructuring aid. Not in all cases these conditions should be formulated as strictly as they are now, for example with regard to the period of 18 months and with regard to newly created undertakings.

With regard to SGEI within the Rescue and restructuring guidelines, there should be more possibilities for exemptions for SGEI. In the field of social housing there should be more possibilities to realize a social mix and entrust the SGEI for middle-income households

### 5.10 Companies in difficulty by setting correct definition criteria

#### 5.10.1) Objectives

- Identify companies in difficulty by setting correct definition criteria: (To a large extent, to some extent only, not at all, I do not know): Not at all
- Maintaining a competitive internal market: (To a large extent, to some extent only, not at all, I do not know): To some extent only

#### 5.10.2) What are the obstacles to achieving the objectives? (max 3000 characters):

The Dutch authorities request the European Commission to review the definition of an undertaking in difficulty.

The definition of an undertaking in difficulty continues to cause problems for granting authorities. While the Dutch authorities fully support the concept of excluding failing firms from most forms of State aid with the exception of rescue and restructuring aid, the definition itself contains criteria, some of which have the unfortunate side-effect of excluding economically healthy undertakings from receiving aid, although - from an economic point of view - they should not be considered as an "undertaking in difficulty". Some of the conditions in the definition cause a disadvantage, especially for young Research and Development intensive and scale-up undertakings. Therefore, the Dutch authorities suggest to review these criteria and/or allow Member States to have more discretion in the assessment of this definition. The European Commission is requested to review the strong dividing line between equity and liabilities and the equity to share capital ratio.

In addition, certain types of forward-looking aid could be exempted from the "undertaking in difficulty" criterion, such as aid in favour of feasibility studies or aid for environmental studies. This type of aid would allow undertakings to identify sound projects in which they could invest and allow them to overcome their financial difficulties.

The Dutch authorities note that the interpretation of the current definition differ per Member State, because the interpretation of the current criteria are subject to national rules on (collective) insolvency proceedings. This is of particular importance with regard to European funds and projects involving undertakings from different Member States.

In the light of the aforementioned, the Dutch authorities specifically like to point out the concept of 'own funds' and the interpretation thereof. This causes inequality and results in problems in collaborative projects between Member States.

### 5.11 Railways sector

#### 5.11.1) Objectives

- Stimulate the railways sector: (To a large extent, to some extent only, not at all, I do not know): To a large extent
- Maintaining a competitive internal market: (To a large extent, to some extent only, not at all, I do not know): To a large extent

#### 5.11.2) What are the obstacles to achieving the objectives? (max 3000 characters):

By allowing compensation of the external costs which other modes of transport do not have to bear, a certain level playing field is promoted by the Railways guidelines. In that way the guidelines stimulate both the railways sector as the internal (transport) market. The Dutch authorities are of the opinion that it is important that the Railways guidelines will be adapted to new challenges, for example with regard to public investments in the European Rail Traffic Management System (ERTMS)/ European Train Control System (ETCS).

### 5.12. Short term export credit insurances in non-marketable countries

#### 5.12.1) Objectives

- Allow for short term export credit insurances in non-marketable countries: (To a large extent, to some extent only, not at all, I do not know): To some extent only
- Maintaining a competitive internal market: (To a large extent, to some extent only, not at all, I do not know): To some extent only

#### 5.12.2) What are the obstacles to achieving the objectives? (max 3000 characters):

State aid rules are a key component in the level playing field, both within and outside the European internal market. The Dutch authorities are of the opinion that the State aid rules in the context of export credits should aim at a fair market and a strong European competitive position. In addition, it is important to keep in mind that the playing field extends beyond the European Union.

### 5.13. Simplify State aid rules for projects funded from EU funds (structural funds)

#### 5.13.1) Objectives

- Simplification: (To a large extent, to some extent only, not at all, I do not know): To some extent only

- Maintaining a competitive internal market: (To a large extent, to some extent only, not at all, I do not know): to some extent only

5.13.2) What are the obstacles to achieving the objectives? (max 3000 characters):

Because there is an increasing interplay between European funds and State aid it is important that it is clear how different support options relate to each other. It must be obvious what the possibilities and impossibilities are.

6. Based on your experience, have the State aid modernization or the State aid rules under evaluation had any positive or negative impacts that were not expected or not intended? Please explain and reference the rules in question. (max 5000 character(s)):

The Dutch authorities are generally positive about the State aid modernization. It is beyond expectation that the GBER is used to this extent. A consequence is that unlike approval decisions by the European Commission, there is a degree of legal uncertainty for both granting authorities and aid beneficiaries. The position of the European Commission and good examples of approved State aid are also less clear. It must be examined whether this can be met in another way. For example, an update of the Frequently Asked Questions on the GBER would be very welcome.

7. Since mid-2016, the details of all individual State aid awards above EUR 500,000 are published on a public website.

7.1) Did the publication of individual awards above EUR 500,000 contribute to reaching the following objectives?

- To promote accountability and enable citizens to be better informed about public policies and spending: (To a large extent, To some extent, Not at all, I do not know): To some extent

- To enable companies to check whether legal aid was granted to competitors: (To a large extent, To some extent, Not at all, I do not know): To some extent

- To reduce the administrative burden of Member States as regards reporting to the Commission State aid expenditure: (To a large extent, To some extent, Not at all, I do not know): Not at all

7.1.1) Please explain: (max 3000 character(s)):

The Transparency Award Module has enhanced transparency in public spending in the European Union. At the same time the obligation to publish detailed information on all individual State aid awards above EUR 500,000 has increased the administrative burden on the Member States. This also applies with regard to the transparency compliance checks by the European Commission.

The Dutch authorities have doubts about the effectiveness of the publication obligation. Therefore, the Dutch authorities suggest to assess whether a national publication of the aid award in combination with a public notification to the European Commission/ or a public approval decision by the European Commission is sufficient in order to meet the transparency objectives.

o 7.2) Is the EUR 500,000 thresholds appropriate to achieve the desired objectives listed above? (Yes, No, it is too high, No, it is too low, I do not know/ no opinion): No, it is too low

7.2.1) Please explain: (max 3000 character(s)):

For an explanation of this answer, reference is made to the answer on question 7.1.1.

8. Since mid-2014, the largest (annual average budget above EUR 150 million) State aid schemes are subject to ex-post evaluation studies to assess their effectiveness. Do you

think that this threshold is appropriate? (Yes, No, it is too high, No, it is too low, I do not know/ no opinion): Yes

8.1) Please explain: (max 3000 character(s))

The Dutch authorities are of the opinion that ex post evaluation studies of large aid schemes to assess their effectiveness are important, however Member States have own responsibilities and competence to evaluate themselves their public spending.

## **EFFICIENCY**

**Were the costs involved proportionate to the benefits? In this section, we would like to have your view concerning the efficiency of the State aid rules analysed under the Fitness check. Were the costs involved in complying with the State aid rules proportionate to the benefits of having such rules?**

9. Based on your experience, to what extent have the following State aid rules ensured efficient State expenditure? (To a large extent, To some extent only, Not at all, I do not know, These rules are not relevant for me)

- GBER: To a large extent
- De-minimis: To a large extent
- Regional Aid Guidelines: To a large extent
- Research Development Innovation Framework: To a large extent
- Important Projects of Common European Interest Communication: To a large extent
- Risk Finance Guidelines: To a large extent
- Airport and Aviation Guidelines: Yes
- Energy and Environmental Aid Guidelines: To a large extent
- Rescue and Restructuring Guidelines: To a large extent
- Railways Guidelines: To a large extent
- Short Term Export Credit Communication: To a large extent

9.1) Please explain especially where you answered not at all or to some extent and reference the respective rules: (max 5000 character(s)):

If Member States can demonstrate that State Aid can be more efficient in ways other than based on the conditions of one of the guidelines, then these guidelines should not prevent this and therefore offer the European Commission the flexibility to grant approval.

10. Based on your experience, have the State aid rules subject to the current Fitness check reduced the administrative burden compared to the State aid rules in force before the State aid modernization? (Yes, Partially, No, I do not know, This question is not relevant for me)

- For the public authorities: Partially
- For the beneficiaries: Partially

10.1) Please explain especially where you answered not at all or to some extent and reference the respective rules: (max 5000 character(s)):

The Dutch authorities refer to the response on question 1.1, but also to the response on question 7.

## **RELEVANCE**

**Is EU action still necessary? In this section, we would like to understand if the State aid rules analysed under the Fitness check are still relevant considering the changes in EU priorities and/or new market and technological developments**

11. Based on your experience, how well do the objectives of State aid modernization and individual State aid rules still correspond to the current EU priorities?

11.1) On the State aid modernization as a whole: (Fully, Partially, Not at all, I do not know): Partially

11.1.1) Please explain: (max 3000 character(s)):

The Dutch authorities refer to the response on question 1.2.

11.2) On the individual rules: (Fully, Partially, Not at all, I do not know, These Rules are not relevant for me)

- GBER: Partially
- De-minimis: Partially
- Regional Aid Guidelines: Partially
- Research Development Innovation Framework: Partially
- Important Projects of Common European Interest Communication: Partially
- Risk Finance Guidelines: Partially
- Airport and Aviation Guidelines: Partially
- Energy and Environmental Aid Guidelines: Partially
- Rescue and Restructuring Guidelines: Partially
- Railways Guidelines: Partially
- Short Term Export Credit Communication: Partially

11.2.1) Please explain especially where you answered no or partially and specify which rules you refer to: (max 5000 character(s)):

The Dutch authorities refer to the response on question 1.2.

12. Based on your experience, how well adapted are the following State aid rules to recent developments in markets and technology? Fully, Partially, Not at all, I do not know, These Rules are not relevant for me

- GBER: Partially
- De-minimis: Partially
- Regional Aid Guidelines: Partially
- Research Development Innovation Framework: Partially
- Important Projects of Common European Interest Communication: Partially
- Risk Finance Guidelines: Partially
- Airport and Aviation Guidelines: Partially
- Energy and Environmental Aid Guidelines: Partially
- Rescue and Restructuring Guidelines: Partially
- Railways Guidelines: Partially
- Short Term Export Credit Communication: Partially

12.1) Please explain especially where you answered no or partially and please reference the rules in question: (max 5000 character(s))

The Dutch authorities refer to the response on question 1.2.

## **COHERENCE**

**Does the policy complement other actions or are there contradictions? In this section, we would like to understand the extent to which the State aid rules subject to the current Fitness check are coherent with each other and with other EU rules.**

13. Based on your experience, are the State aid rules subject to the current Fitness check coherent with each other? (Fully, Partially, Not at all, I do not know): Partially

13.1) Please explain especially where you answered no or partially please reference the rules in question: (max 5000 character(s)):

The Dutch authorities refer to the response on question 1.2 and to the response on the targeted consultations.

14. Based on your experience, to what extent are the State aid rules subject to the current Fitness check coherent with changes in EU legislation which have occurred since the State aid rules were adopted (such as for instance in the Cohesion and Regional policy, Research and Innovation, Energy Union and Climate, Environmental protection and Circular Economy, Entrepreneurship and SMEs, Capital Markets Union, Investment Plan for Europe)?

(Fully, Partially, Not at all, I do not know, These rules are not relevant for me)

- GBER: Partially
- De-minimis: Partially
- Regional Aid Guidelines: Partially
- Research Development Innovation Framework: Partially
- Important Projects of Common European Interest Communication: Partially
- Risk Finance Guidelines: Partially
- Airport and Aviation Guidelines: Partially
- Energy and Environmental Aid Guidelines: Partially
- Rescue and Restructuring Guidelines: Partially
- Railways Guidelines: Partially
- Short Term Export Credit Communication: Partially

14.1) Please explain especially where you answered no or partially and please reference the rules in question: (max 5000 character(s)):

The Dutch authorities refer to the response on the other questions of this general questionnaire and to the response on the targeted consultations.

### **EU ADDED VALUE**

**Did EU action provide clear added value? In this section, we would like to have your view concerning the EU added value of the State aid rules subject to the current Fitness check.**

15. Based on your experience, have the State aid rules subject to the current Fitness check helped to deliver EU policies more efficiently? (Yes, Partially, No, I do not know): Partially

15.1) Please explain especially where you answered no or partially please reference the rules in question: (max 5000 character(s)):

The Dutch authorities refer to the response on questions 1.1. and 1.2.

### **FINAL COMMENTS AND DOCUMENT UPLOAD**

Is there anything else that you would like to add? (max 5000 characters): This response is also sent to the Dutch parliament. As a result, adjustments can be made to this response.

You may attach relevant supporting documents to this questionnaire.

Please indicate whether the Commission services may contact you for further details on the information submitted, if required. Yes