



HT.5524, Dutch response to a draft for a Commission Regulation declaring certain categories of aid in the rail, inland waterways and multimodal transport sector compatible with the internal market in application of Articles 93, 107 and 108 of the Treaty and to a draft of Guidelines on State aid for land and multimodal transport

The Hague, 20 September 2024

This response reflects the views of the Dutch 'Interdepartementaal Staatssteun 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 Minister of Economic Affairs is responsible for competition policy in the Netherlands and in that context chairs the ISO. The Minister of Infrastructure and Water Management is responsible for transport policy in the Netherlands.

This is the response of the Netherlands to a draft for a Commission Regulation declaring certain categories of aid in the rail, inland waterways and multimodal transport sector compatible with the internal market in application of Articles 93, 107 and 108 of the Treaty on the Functioning of the European Union (hereafter: "TBER") and to a draft of Guidelines on State aid for land and multimodal transport (hereafter "LMTG"). The TBER aims at achieving a major simplification in State aid procedures in the land and multimodal transport sector, which will enable Member States to quickly provide aid where conditions limiting the possible distortion of competition in the Single Market are met. As a result, a high proportion of currently notifiable State aid measures can in the future be implemented by Member States without the need for prior approval by the European Commission. By issuing the LMTG the Commission, amongst others, replaces the 2008 Railway Guidelines, codifies its decisional practice in applying State aid to the coordination of transport under Article 93 of the Treaty of the Functioning of the European Union and provides guidance on the State aid rules applicable to rail freight public transport services. According to the Commission these two sets of rules will form a comprehensive and up-to-date rulebook for aid to sustainable land transport.

Introduction

Robust State aid control is essential for a level playing field to ensure a well-functioning competitive internal market. At the same time, intervention with State aid may be needed to address certain market failures and/ or to accomplish the goals of European Union interests.

In general, the Netherlands welcomes both the TBER as the LMTG, because of its (necessary) contribution to sustainable transport. As regards the latter, although the Commission has shown flexibility in applying the rules of the 2008 Railways Guidelines to inland waterways transport and to multimodal transport, it is clear that these guidelines are not fit for reflecting market and technological developments and do not meet the current EU's strategic priorities. The TBER is welcomed as it allows certain State aid to be granted relatively easy and quickly, in particular as regards reaching a modal shift towards more sustainable modes of transport.

The Netherlands considers it important that the State aid opportunities based on the TBER and LMTG are determined in coherence. This combined public consultation is therefore welcomed. The Netherlands looks forward to be involved in the further drafting of the TBER and the LMTG.

This response does not contain any confidential information and will be sent to the Dutch parliament as well.

General comments

The Netherlands considers it important that the TBER and LMTG are well aligned and well suited for

practical application. This means, among other things, the definitions as formulated in these aid frameworks must be coherent. In that context, consistency with the definitions as used in secondary EU legislation is also important. We have noted that in addition to differences in the definitions as formulated in the TBER and LMTG, there are incorrect translations in the Dutch versions of these aid frameworks. Examples will be shared with the Commission.

Another important aspect that applies to both the TBER and the LMTG is that the Commission prefers aid schemes to ad hoc aid measures. According to the proposal, the TBER applies, with the exception of aid mentioned in sub c), to aid schemes. Ad hoc aid measures require the application of the LMTG in most cases. This does not correspond to the possibilities provided in the General Block Exemption Regulation (GBER), where ad hoc aid is more often allowed. The Netherlands questions whether in all cases the granting of ad hoc aid in the land transport sector is so market-distorting that excluding almost completely ad hoc subsidies from the scope of the TBER is really justified. The advantages of the TBER could be provided, taking duly into account the effects of such type of aid. This is particularly relevant to subsidize activities of first-movers and for local initiatives, for which the TBER may offer an added value. Therefore, the Netherlands would like the Commission to reconsider allowing more ad hoc measures under the TBER. As to the LMTG, although in point 50 it is stated that "The conditions set out in these Guidelines apply to aid schemes and to individual aid, whether based on an aid scheme or granted ad hoc, unless otherwise specified", throughout the text of the LMTG it is stated that aid should be, in principle, awarded in the form of aid schemes, an additional conditions are imposed on the granting of ad hoc subsidies. It is at the least questionable whether these additional conditions are proportional in alle cases.

Furthermore, as the TBER and LMTG could result in more aid measures in the land transport sector it is important to have a good insight into the use of the different aid categories and the actual aid amounts spent on the basis thereof. Sharing best-practices is also important for practical application of the aid frameworks. Such information is useful for public authorities to decide on their transport policy, including aid measures. We acknowledge the useful State aid scoreboard and the way we can web-search for State aid approval decisions and notifications. The current specific state aid reporting for expenditures in the rail sector, therefore seems to be redundant after adoption of the TBER and LMTG.

Finally, after adoption of TBER and LMTG different sets of rules apply to certain aspects of the transport sector, such as port infrastructure, noise reduction aid and aid for other environmental issues, to which the General Block Exemption Regulation (GBER) and/or the Guidelines on State aid for climate, environmental protection and energy 2022 (CEEAG) apply. The Netherlands suggests to formulate in the TBER and LMTG the demarcation of the scope with other aid frameworks as clearly as possible. This minimizes as much as possible complicated issues on which aid frameworks applies and leads to more user-friendly aid frameworks.

Specific comments

The Netherlands would like to draw the attention of the Commission to the following points in the TBER which according to the Netherlands should be adjusted and/or be clarified. Where relevant these comments are also applicable to the corresponding rules in the LMTG.

Article 1 Scope

Article 1, paragraph 2 sub e states that the TBER shall not apply to state aid measures where the grant of aid is subject to the obligation on the beneficiary to have its headquarters in the relevant Member State or to be predominantly established in that Member State. The Dutch authorities

seeks clarifications as to the question whether or not an obligation in a State aid measure that – for instance – an inland waterways vessel has to be active in Dutch inland waters for a certain minimum of days a year is allowed. The Netherlands would welcome further clarification from the Commission on these type of issues in the relevant articles and/ or recitals.

Article 2 Definitions

As noted in the general comments, the Netherlands will share examples of unclear definitions and incorrect translations with the Commission. For now, the Netherlands has the following – more substantive- comments.

It seems that the terminology of “combined transport”- as such is not defined in Article 2. However, please note that for instance in Article 10 intermodal transport and multimodal seem to be used interchangeably. In the LMTG a definition of “combined transport” is formulated in Article 2.2. Furthermore these notions need more clarification. For instance, under what circumstances can transport be considered as being multimodal in the meaning of the definition under Article 2, sub p? Is decisive whether a contract provides for two or more modalities or whether the actual transport service includes two or more modalities?

Furthermore, it is not clear how the definition of “sustainable multimodal transport” in particular the last phrase, should be read: “sustainable multimodal transport” means carriage of goods or passengers by at least two different modes of transport where at least one of the used transport modes is rail or inland waterways, *or road if the latter is combined with short-sea shipping*”. Does this mean that road transport can only be considered as being “sustainable multimodal” when it is combined with short sea shipping and not for instance with inland waterways transport?

Regarding Article 2, sub l: instead of the definition of ‘inland waterway vessel’, the definition as formulated in Directive (EU) 2016/1629 laying down technical requirement for inland waterway vessels should be applied as this puts beyond doubt that also, for instance, tugs and pushers and floating equipment fall within the scope of this definition.

Article 4 Notification thresholds

We note that for several aid categories listed in Article 1, paragraph 1, no notification threshold has been included in Article 4. The Netherlands considers it important that for the more-market-distorting forms of aid, the LMTG is applied. This means that notification thresholds should be included in the TBER for the various aid categories.

Article 9 Publication and information

According to Article 9, the Member State concerned shall ensure the publication of certain information on a comprehensive State aid website at national or regional level. The Netherlands would welcome an alignment with the General Block Exemption Regulation and other State aid frameworks, in that it should also be possible to use EU systems for the publication and information obligations. Article 9 in its current wording seems to exclude this possibility, as explicitly a reference is made to a State aid website, at national or regional level. This comment also applies to the LMTG.

Article 10 Operating aid to reduce the external costs of transport

Article 10, paragraph 5 mentions “combined transport operations”. Instead of combined transport the terminology of “intermodal transport” should be applied. Furthermore, what is the rationale of

the bonus percentages? A further substantiation of this percentage is welcome.

Regarding Article 10, paragraph 6: Could the Commission please clarify the rationale of the distances mentioned in this paragraph. Are these distances independent of the total length of the route? Furthermore, why is the distance for inland waterways transport so much shorter compared to short-sea shipping transport and rail transport. In short distance up to approximately 300 km any advantage in lower costs for transport does not outweigh the costs of extra transshipments costs. A limit set just above this 300 KM distance is not enough to be attractive to transport operators and/or transport organizers to choose inland waterways transport as a sustainable land transport solution. Therefore, we are not in favor of a shorter distance for inland waterways transport.

Article 11 Operating aid to launch new commercial connections

The Netherlands would welcome a further clarification in the recitals on the reason of the limitation to >400km for long distance passenger services, taking into account the size of the various Member States For smaller Member States the limitation of >400km means that based on Article 11 TBER only cross-border services can be subsidized. This entails additional costs that need to be taken into account in this aid category.

Article 14 Investment Aid for the acquisition of vehicles for rail or inland waterways transport

In paragraph 1 the terminology "vehicles", for inland waterways vessels this seems a bit odd, preferably the notion of inland waterways vessel should be used.

We would welcome a clarification of paragraph 3. Having regard to the definition in Article 2 sub v) a 'new entrant' by definition is a railway undertaking. But why is sub a) restricted to new entrants in the railway sector and does it not apply to new entrants in the inland waterways and short-sea shipping sector? And could the Commission please clarify the reason that sub b) does exclude short-sea shipping?

Article 16 Investment Aid for interoperability

For the Netherlands it is unclear why passenger applications are excluded from this aid category. The Netherlands, to the contrary, considers it important that aid for passenger telematics/rail ticketing is explicitly added to the list of technologies as mentioned in Article 16, paragraph 3 TBER.

Regarding Article 16, paragraph 5: there seems not to be a convincing reason behind the difference in aid intensity between a and b.

According to the Netherlands aid for on board units for ECTS should be eligible for 100% due to the fact that this is merely an additional cost for railway undertakings and the benefits arise at the network level.

Article 17 Investment Aid for the technical adaptation and modernisation of vehicles for rail or inland waterways transport and equipment for sustainable multimodal transport

In order to avoid any misunderstanding, Article 17, paragraph 4, sub b) should be amended as follows: "retrofitting and/or refurbishment of inland waterways vessels, for example, to reduce emissions or to improve hydrodynamics and efficiency";

Regarding Article 17, paragraph 3, sub g): do software and equipment to stimulate automated navigation and hence improving efficiency fall within the scope of this subparagraph?

Regarding Article 17, paragraph 5: the Netherlands considers an aid intensity of max 20% far too

low to have an effective aid category for Member States to stimulate technical adaptation and modernization of vehicles for rail or inland waterways transport and equipment for sustainable multimodal transport. To address possible negative effects on the internal market, a differentiation could be made according to the effects of the reduction of emissions – see the emission reductions as mentioned in the EU taxonomy, and to the size of the company.