

## **Dutch response to the targeted review of the General Block Exemption Regulation; extension to ports and airports**

### **HT. 4691**

The Dutch authorities welcome the opportunity to respond to the Commission's draft extension of the General Block Exemption Regulation (hereafter: GBER).

#### **General remarks**

The Dutch authorities are pleased to see that the Commission is proactively addressing issues that have arisen in the application of the GBER. The recent Commission decisions with regard to local aid and the willingness to revise the GBER relatively soon after its entry into force are – in view of the Dutch authorities- very positive developments. Likewise, it is good to see that the eState aid WIKI is up and running, this will surely be of much help in the application of the GBER.

The Dutch authorities will study the recently published Commission Notice on the notion of State aid as referred to in Article 107 (1) of the Treaty on the Functioning of the European Union (hereafter: TFEU). Since this Notice will be important for all the stakeholders in the field of State aid, it is important that this Notion not only reflects the view of the Commission on the notion of State aid in the meaning of Article 107 TFEU but also takes into account the judgments of the European Courts. Especially in the field of tax measures and State aid control it is – in particular from a legal certainty perspective - important to know whether the European Courts support the recent view of the Commission on State aid and tax rulings, which is challenged by several Member States.

At the same time legal certainty for recipients of State aid and Member States in applying the GBER remains an important issue. The proposed alterations in this consultation are – in the view of the Dutch authorities- not always solely positive developments. Furthermore, the Dutch authorities would like to point out that some of the revisions which are addressed as technical issues in the memorandum, are considered by the Dutch authorities to constitute material changes rather than technical adjustments (as will be explained below). For some of these revisions, the Dutch authorities feel that the Commission has yet to substantiate why these are necessary.

Below, the Dutch authorities will comment on the revision. The comments are divided between specific sectors and sections of the GBER and other remarks.

#### **Specific sectors and sections of the GBER**

##### **1. Regional operating aid in outermost regions and sparsely populated areas**

How does the proposed new Article 1, paragraph 3, under a. work in relation to Article 13, paragraph b? They seem to contradict. Furthermore, Article 1, paragraph 4, under c. seems to imply that aid can now be given to undertakings in difficulty. The Dutch authorities do not agree with this substantial change in vision with regard to aid to undertakings in difficulty. Giving aid to these undertakings will keep inefficient undertakings afloat and will negatively affect European competitiveness.

The definition of regional operating aid is altered in such a way that giving regional operating aid related to an initial investment is no longer prohibited. In the view of the Dutch authorities this is not a positive development either since this could lead to unfair competition between Member States when trying to attract new undertakings to a certain region.

The definition of closure of the same or similar activity in Article 13 is now further clarified. The Dutch authorities are positive with regard to the attempt of the European Commission to provide the Member States with a norm, however the proposed norm is not clear. It will be difficult to verify whether this has indeed been fulfilled, and who is responsible for the verification?

In Article 13, several alterations are proposed. One of these changes will make it possible to bring operating schemes for aid to the transport sector as well as the related infrastructure and energy generation, distribution and infrastructure within the scope of regional aid for outermost regions and sparsely populated areas. The Dutch authorities do not think it is appropriate to allow for operating aid for energy production unless it is limited to renewable energy production.

The Dutch authorities are of the opinion that the proposed limitation of the scope of Article 14, paragraph 7, to only include large undertakings would be more effective if it also included medium enterprises.

## **2. SME and Start-up Aid**

The Dutch authorities are pleased to see that Article 21 will be expanded to include quasi-equity investments structured as debt in eligible undertakings. The European Commission also proposes to alter the eligible start-ups for aid under Article 22. The Dutch authorities would like to urge the European Commission to remove Article 22, paragraph 2, under a. since a start-up undertaking is by its nature a new and developing undertaking, the Dutch authorities feel that it is an unnecessary threshold to require also that the activity is new for the enterprise. This might hinder targeted aid that aims to stimulate high potential start-ups to make the next step. Also, this would increase administrative burdens for both start-ups and public authorities. Furthermore, the Dutch authorities would like to ask the European Commission to consider adding fiscal measures to paragraph 3 of Article 22. In Article 22 of the GBER three types of State aid to start-ups are mentioned: loans, guarantees and grants. A beneficiary can also receive support through a mix of the aid instruments mentioned. The Netherlands would like to suggest to add to article 22 the fiscal aid instrument, as long as the fiscal measures provide for a cap ensuring that the applicable threshold is not exceeded and the other conditions of Article 22 are met. Furthermore aid in the form of tax advantages is listed under Article 5, paragraph 2 and under d, of the GBER as category of aid that is considered to be transparent. Moreover it seems possible that fiscal measures take into account to set in advance a cap on the discounted value of the aid respecting the applicable aid intensity as well as a deduction mechanism to deduct the discounted value of each aid tranche from the overall amount of the cap.

## **3. Culture**

The Commission proposes several modifications regarding Article 4, 53 and 54 of the GBER. The Dutch authorities are pleased to see that the Commission suggests to increase the aid budget for culture and heritage conservation in Article 4 GBER. The Dutch authorities welcome this modification and agree with the Commission that the increase of the budget does not have any influence on the competition within the EU.

However the Dutch authorities do have sincere reservations concerning the suggested modification regarding Article 53, paragraph 2(a), and by its extension, Article 53 paragraph 9, first sentence, and Article 54, second subparagraph of paragraph 4, especially where the modification involves the incorporation of 'cinemas' within the scope of the GBER. For the Dutch authorities this modification raises several questions and we would like to invite the Commission to clarify some issues, such as what is meant with 'cinemas'? According to the Commission what kind of cinemas are intended to fall within the scope of the definition of cinemas? Do film festivals fall within the scope? And what about the kind of activities undertaken by these cinemas?

The Dutch authorities do believe that not all sorts of cinemas (such as the big commercial cinema groups) and not all sorts of activities (such as the screening of 'blockbuster films') should be brought within the scope of the GBER. The Dutch authorities do not finance commercial cinemas and activities done by these cinemas. The Dutch authorities believe that these activities should be left to the market and believe that the proposed modification will lead to unfair competition between Member States.

Furthermore the Dutch authorities wish to point out that these negative effects on competition will also occur in case that film festivals will be brought within the scope of the GBER. The Dutch authorities asks the Commission to keep this in consideration. The Dutch authorities believe that solely the cultural cinemas (so-called 'filmhuizen') and cultural screenings (so-called 'filmhuis films') should be covered by the definition and interpretation of 'cinemas'.

In conclusion, in the view of the Dutch authorities the modification regarding the incorporation of 'cinemas' within the scope of the GBER needs clarification and will lead to unfair competition between Member States.

#### **4. Regional airports**

The Dutch authorities are pleased to see that the European Commission intends to include an exemption for investment aid to regional airports in the GBER. This in addition to and in line with the Guidelines on State aid to airports and airlines (OC J C 99, 4.4.2014, p. 3.) in which is specified under which conditions public financing constitute or not State aid under the meaning of Article 107 (1) of the Treaty, and when it constitutes State aid, under which conditions it can be declared compatible with the internal market.

The Dutch authorities agree with the draft proposal regarding investment aid for regional airports, with the following remarks.

The draft proposal meets the need of Member States to provide investment aid to regional airports. Regional airports, with a passenger threshold limited to 3 million passengers per year, do in general not compete with other airports and consequently have a limited distortive effect to the competition on the internal market. Profitability is not a natural given and therefore investment aid might be necessary.

To effectively ensure that the State aid does not distort the competition to a large extent, the Dutch authorities would like to suggest the European Commission to complement the criteria of annual passenger traffic volume and tonnage, with criteria on the basis of flight movements and annual turnover, on the basis of which it is determined if airports can be exempted from the requirement to notify the European Commission. Also the Dutch authorities prefer to involve tonnage in the calculation of the maximum aid intensity, since this is a determining factor for the size of airports and therefore relevant in determining the proportionality of the amount of State aid.

Notwithstanding the former, it is preferable that airports are run based on private investments. However, this is not possible in practise all circumstances. Therefore the Dutch authorities support the limitation of State aid to investment aid and to aid to smaller airports. These types of airports have – if any- a (very) limited effect on the internal market. Could the Commission provide an economic analysis for the GBER thresholds?

Because the GBER should be in line with the Guidelines, the Dutch authorities have no objections against the unavailability in the GBER for aid to airports located within 100 kilometres distance or 60 minutes travelling time from an existing airport with scheduled air services. The discussion about the scope of the catchment area should be dealt with in the Guidelines.

The Dutch authorities agree that the GBER should not be available for the relocation of existing airports or for the creation of new passenger airports. According to the Dutch this should be dealt with in the Guidelines as well.

Aid intensity based on the size of airports is supported by the Dutch authorities. Defining a maximum State aid amount seems arbitrary. The safeguards laid down in Article 56 bis paragraph 5 and 6 should provide sufficient protection from State aid being used to increase the capacity of an airport in an improper manner.

## **5. Maritime ports**

### *Introduction*

The Dutch authorities endorse the view of the Commission that maritime ports are of strategic importance for achieving major Union objectives such as the smooth functioning of the internal market and the strengthening of economic, social, and territorial cohesion<sup>1</sup>. As highlighted in the Communication "Ports: an engine for growth"<sup>2</sup>, the Union needs ports which operate efficiently in all maritime regions. However, the Dutch authorities do not share the view that this requires both public and private investments for all maritime ports. In order to establish growth, jobs, and investments within the EU, the Dutch authorities believe that it is of great importance to have fair competition between maritime ports. Therefore, the Dutch authorities welcome the ongoing initiatives from the Commission, like the proposed Regulation establishing a framework on market access to port services and financial transparency of ports<sup>3</sup>. Especially, the transparency of financial relations will allow a fair and effective control of State aid, hence preventing market distortion. The Dutch authorities share the Commission's view that a GBER category for maritime ports should aim at limiting competition distortions that would undermine fair competition on the internal market. Therefore, according to the Dutch authorities, the scope of the GBER should be limited. If the particularities of competitive impact of an aid measure in maritime ports are taken into account, the inclusion of exemption provisions for maritime ports to the GBER could strengthen fair competition.

### *Guidelines for State aid to maritime transport*

Since 1992, the Commission, European Parliament, and Member States are discussing State aid to maritime ports<sup>4</sup>. There is no doubt about the importance of maritime ports for the EU, which is the reason why the EU should strive for fair competition between them. Maritime ports are complex logistic hubs performing both public and commercial activities in various different models. In recital 2 the Commission states it has now gained the necessary case experience to inter alia propose the inclusion of exemption provisions for maritime ports in the GBER<sup>5</sup>. Moreover in the Roadmap<sup>6</sup>, the Commission explains that the criteria of the GBER, in particular, eligible beneficiaries, maximum aid intensities and eligible expenses are derived from the Commission's market experience and decision making practice. The Dutch authorities consider that if the Commission gained the necessary case experience to inter alia propose the inclusion of exemption provisions for maritime ports in the GBER, it also has enough experience to propose State aid Guidelines for maritime ports.

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<sup>1</sup> White Paper Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system, COM/2011/144.

<sup>2</sup> Communication from the Commission, Ports: an engine for growth, COM/2013/295.

<sup>3</sup> Proposal for a Regulation of the European Parliament and of the Council establishing a framework on market access to port services and financial transparency of ports, COM/2013/0296 final.

<sup>4</sup> Communication from the Commission – The Future Development of the Common Transport Policy - A global to the construction of a Community framework for sustainable mobility, COM/92/494 final.

<sup>5</sup> Commission Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty.

<sup>6</sup> Roadmap Inclusion of exemption provisions for ports and air ports in the Commission Regulation declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty ("General Block Exemption Regulation - GBER") – REFIT.

According to the Dutch authorities, it is important for Member States to have legal certainty with respect to the Commission's assessment of State aid to maritime ports. Therefore, the Dutch authorities are in favor of Guidelines in which is specified under which conditions public financing does or does not constitute State aid under the meaning of Article 107(1) of the Treaty, and when it constitutes State aid, under which conditions State aid with more impact on the internal market can be declared compatible. The more because the Commission's decision making practice with respect to maritime ports seems to be not entirely clear and consistent (i.e. unclear which port activities are considered to be (non-)economic) and in some cases not completely reliable (numbers used to determine the effect on intra-EU trade are not based on objective information or benchmarks). The recently published Commission Notice on the notion of State aid as referred to in Article 107 (1) TFEU does not provide any additional guidance. Therefore, in order to obtain clarity, consistency, reliability and transparency, the Dutch authorities request the Commission to propose specific Guidelines for State aid to maritime transport.

#### *Assessment of the inclusion of exemption provisions for maritime ports in the GBER*

The Dutch authorities agree with the Commission that the competitive impact of an aid measure may differ between different transport hubs, i.e. airports, maritime ports, and inland ports. Moreover, as for aid measures to airports, the competitive impact of an aid measure between different maritime ports may differ as well. Could the Commission please explain the competitive impact of an aid measure to a maritime port, especially the differentiation between maritime ports ?

If the Commission would decide to propose the inclusion of exemption provision for maritime ports to the GBER without taking Guidelines into consideration, in the view of the Dutch authorities it is important that the GBER contains a framework in which the notion of aid with respect to State aid to maritime ports is explained and the competitive impact of an aid measure can be assessed. According to the Dutch authorities, the competitive impact of an aid measure depends on the hinterland served by a maritime port. Moreover, when a maritime port serves a large (intra-EU) hinterland, it will probably have a significant size and hence State aid will have a bigger impact.

#### *Hinterland*

Generally, ship owners, shippers, and passengers are looking for the route with the lowest transport costs. For long distance cargo, shipping is the most efficient form of transport. Because of the large amount of maritime ports along the EU coast, ship owners and shippers often have various options to choose from. Therefore, different maritime ports may serve the same hinterland on an intra-EU level. Maritime ports need to compete on port charges and efficiency in order to attract more cargo.

Sometimes a maritime port is only involved in short distance cargo or passenger transport, because it serves a specific local or regional hinterland. These types of short distance transport are often competing with other transport modes like road and rail. However, in some cases, i.e. the connection between the mainland and an island, there is no reasonable alternative, whereby cargo and passenger transport depend on an efficient ferry connection. Considering the relatively short distances, maritime ports predominantly involved in short distance cargo and passenger transport serve a local or regional hinterland and are therefore limited in size. Despite the fact that it cannot be excluded that these types of maritime ports are involved in intra-EU trade, the effect will probably be non-existent or at most marginal.

#### *Size of the maritime port*

According to the Dutch authorities the size of the maritime port is a good representation of whether a maritime port is competing on an intra-EU level. If a maritime port attracts large amounts of (long distance) cargo, it will probably serve an intra-EU hinterland. If the hinterland is limited to a certain region, the size of the maritime port will be limited as well.

In draft Article 56(b)(4) and (5), the Commission proposes different maximum aid intensities allowing investment aid in maritime ports. In particular, the Commission suggests to allow the largest amount of investment aid, 50% of the eligible costs up to €120 million, to go to maritime ports included in the work plan of a core network corridor<sup>7</sup>, which are pre-dominantly the largest maritime ports involved in intra-EU trade. The Dutch authorities question whether this is in line with the aim of adding a maritime port category to the GBER, considering it is the most generous in situations where the competitive impact is the highest. According to the Dutch authorities the proposal could lead to an increase of inefficient allocation of scarce public funds, which according to the Netherlands will disturb the functioning of the internal market. Instead, the Commission should look at the competitive impact of an aid measure depending more on the size of the maritime port instead of the size of the investment.

#### *Reduction of administrative burden and focus on the potentially most distortive cases*

The Dutch authorities agree with the Commission that State aid rules should be simplified and clarified. This is one of the reasons why the Dutch authorities are in favor of State aid guidelines for maritime ports. However, the Commission concludes that the inclusion of maritime ports to the GBER will result in the reduction of the administrative burden. Considering investment aid to maritime ports is exceptional in the Netherlands, the reduction of the administrative burden for the Netherlands with respect to maritime ports will be null. However, the Netherlands foresees that the inclusion of maritime ports to the GBER could reduce the administrative burden for other Member States. Moreover, it will probably reduce the administrative burden for the Commission itself, making it possible to focus on the potentially most distortive case as explained in the Roadmap and recital 2. Could the Commission please clarify what this means for its commitment on State aid to maritime ports cases in the near future? Does the Commission intend to take more decisions in ex officio cases if the inclusion of maritime ports in the GBER is adopted?

#### *Compatibility*

According to the Dutch authorities State aid measures should be compatible as long as it has an objective of common interest, is necessary and proportionate, and is not distorting competition and affecting intra-EU trade contrary to the objective of common interest. According to the Dutch authorities, all these elements should be addressed in the GBER to assess whether certain aid measures can be exempted from prior notification to the Commission.

#### *Distortion of competition and effect on intra-EU trade contrary to the objective of common interest*

The Dutch authorities are in favor of a GBER category for maritime ports with a non-existent or at most marginal effect on intra-EU trade. This is consistent with the compatibility criteria, including the criteria whether the distortion of competition and effect on intra-EU trade is contrary to the objective of common interest. However, the Commission does not refer to this criterion in the roadmap nor the draft regulation. Firstly, the Commission cannot exclude that public investments in maritime ports which are involved in intra-EU trade will at least potentially have an effect on trade between Member States and competition<sup>8</sup>. Secondly, the Commission claims in the roadmap that the draft regulation will not have a significant impact on the economy, without quantifying the impact. Could the Commission please explain why it believes the proposal will not have a significant impact on the economy? It seems that the Commission ignores an essential criterion to assess whether certain aid measures can be compatible with the internal market and exempt from prior notification to the Commission; even though there are reliable benchmarks claiming the economic impact could be significant.

#### *Impact assessment*

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<sup>7</sup> as referred to in Article 47 of Regulation (EU) No 1315/2013 of the European Parliament and of the Council

<sup>8</sup> See e.g. judgment in Philip Morris v. Commission, Case 730/79, EU:C:1980:209, paragraph 11, and judgment in Italy v. Commission, C-372/97, EU:C:2004:234, paragraph 44.

In 2014, the Erasmus University together with Ecorys published an impact assessment with respect to State aid in the Hamburg – Le Havre range<sup>9</sup>. This impact assessment can be used to calculate the impact of the proposal of the Commission for the container market. Other forms of cargo are not calculated making this a very conservative estimation.

In the case of the draft Article 56b (4)(d), the Commission proposes to allow investments with a maximum of €120 million to be financed by public funding up to 50%, which is € 60 million. The Dutch authorities consider that if every year just one of the maritime ports in the Hamburg – Le Havre range would receive € 60 million of public investments, this will cost the Port of Rotterdam about 200.000 containers a year. Calculating the added value of these containers, it is estimated that the Netherlands will lose €80 million/year. According to the Dutch authorities this constitutes a significant economic impact. Unfortunately, the Dutch authorities do not have data to calculate the loss of EU added value. However, the Dutch authorities assume it to be even larger at the expense of EU growth, jobs, and investments. Adding the potential loss in added value to the non-existing reduction in regulatory costs, this proposal potentially has a significant negative impact on the Netherlands and the EU.

#### *Proposal*

The Dutch authorities would like to suggest a GBER category for State aid respecting the wish of the Commission to allow aid measures in the common interest of the EU and to reduce the administrative burden, respecting the differences between maritime ports and the competitive impact of an aid measure on intra-EU trade, and which is in line with the Commission decisions on state aid to maritime ports.

#### *Article 56b (1a)*

*This Article shall apply to maritime ports which do not meet the criteria in point (b) of Article 20(2) of Regulation (EU) No 1315/2013.*

#### *Article 56b (4)*

*The maximum aid intensity for the investments defined in paragraph 2 (a) shall not exceed:*

- a. if eligible costs are up to EUR [20] million: [100]% of the eligible costs;*
- b. if eligible costs are above EUR [20] million and up to EUR [100] million: [80]% of the eligible costs;*

*The maximum aid intensity for the investments defined in paragraph 2 (b) shall not exceed [100]% of the eligible costs;*

#### *Explanation*

This proposed Article will apply to all maritime ports of which the total annual cargo volume – either for bulk or for non- bulk cargo handling – does not exceed 0.1% of the corresponding total annual cargo volume handled in all maritime ports of the Union. Because this category of maritime ports are limited in size, they are probably only limited involved in intra-EU trade. Therefore, more permissible aid intensities should be allowed in order for an aid measure to be compatible with the internal market and exempt from prior notification to the Commission if they meet the more permissible aid intensities.

According to Eurostat, the average gross weight of seaborne goods handled in all maritime ports between 2012 and 2014 is 3751.2 million tonnes. According to the proposed amendment by the Dutch authorities, all maritime ports with a total annual cargo volume of below 3.7512 million tonnes, which are 1195 maritime ports, could be exempted from prior notification. Because it still cannot be

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<sup>9</sup> RHV-Erasmus University / Ecorys, Level Playing Field: Study on distorted cross-border competition between seaports, February 2014.

excluded that public investments in these maritime ports will at least potentially have an effect on trade between Member States and competition and to prevent abuse, the eligible costs are maximized up to €100 million with a maximum aid intensity of 80%.

## **6. Inland ports**

The Dutch authorities endorse the view of the Commission that the development of inland ports and their integration into multi-modal transport is a major objective of Union transport policy.

Although a new GBER category for inland ports could have added value, the Dutch authorities have doubts about the legal basis. The approval by the Commission of State aid to inland ports is based on the transport title of the TFEU (Article 93 TFEU). Therefore the Dutch authorities question if State aid to inland ports could be added as a category in the GBER. The Enabling Regulation (Council Regulation (EC) No 1588/2015 of July 2015 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to certain categories of horizontal State aid, OJ L 248, 24.9.2015, p. 1) makes no reference to in Article 93 TFEU, but only to 107 TFEU next to Article 108 TFEU. Could the EC explain why inland ports could be added as a category in the GBER?

In case it is possible to add a category for inland ports to the GBER, the Dutch authorities would like to bring forward the following.

The Dutch authorities are of the opinion that the focus of the State aid to inland ports should be on strengthening the main waterway corridors (TEN-T core network). The effect of State aid and the social return are larger in inland ports which are located on major waterways. Therefore the Dutch authorities support a maximum amount of state aid of EUR 20 million for inland ports which are located on waterways where annually more than 20 million tons is transported. For inland ports which are located on waterways in which annually less than 20 million tons is transported a maximum amount of state aid of EUR 5 million up to EUR 10 million could be introduced.

In addition, the Dutch authorities are of the opinion that State aid should not have a cannibalizing effect. In the Netherlands private undertakings have large interests or made large investments in inland container terminals and inland ports. State aid for inland ports in the catchment area of these investments should be prevented because this could result in private disinvestments. Next, an oversupply of subsidized transshipment facilities could result in a suboptimal use of the inland waterway network. This may hinder the desired concentration of cargo on a select number of transfer points in the hinterland. Therefore, the Dutch authorities are in favor of a catchment area with corresponding rates of aid intensities as a condition for State aid.

The Dutch authorities support a maximum aid intensity of 100% for investments aimed at the functioning of an inland port as a whole (such as dredging). To ensure the continuity of a container terminal, the Dutch authorities would like to suggest to add the condition of business risk for parts in the port which should be primarily privately be operated, such as investments associated with the construction of a container terminal. Therefore the Dutch authorities support for those type of investments an aid intensity to the maximum 50% of the investment.

## **7. Broadband**

The way the Dutch authorities understand the proposed new paragraph in Article 52 is that it will allow for an alternative way to establish the eligible costs for investment in broadband network development, and that this will include different types of costs than the four limitative eligible costs that are currently listed in paragraph 2 a to d. The Dutch authorities are pleased to see that the European Commission created this alternative.

### **Other remarks**



#### *Transparency of aid (Article 5)*

Point (k) is added to paragraph 2 of Article 5 of the GBER. This point clarifies when the Commission will regard aid in the form of the sale or the lease in tangible assets below market rates transparent. This will be the case if the value is established either by an independent expert evaluation prior to the sale or renting or by reference to a publicly available, regularly updated and generally accepted benchmark. In the view of the Dutch authorities the proposed text by the European Commission is too narrow in application, hence we propose to add at the end of the sentence: "or other in the Member State recognized valuation methods."

#### *Aid intensity and eligible costs (Article 7)*

In Article 7, point 1, a reference to regulation (EU) nr. 1303/2013 is added. The amounts of eligible costs can be calculated in compliance with the simplified cost options set out in Articles 67 and 68 of Regulation (EU) No 1303/2013, provided that the operation is at least partly financed through an EU fund that allows the use of these simplified cost options and that the category of costs is eligible according to the relevant exemption provision. The simplified cost options already apply to expenditures (partly) financed through an EU fund. The specific rules regarding the simplified cost options are mentioned in articles 67 and 68 of regulation (EU) nr. 1303/2013. To the Dutch authorities, it seems unnecessary to add the reference to regulation (EU) nr. 1303/2103 to article 7 of the GBER.

The Dutch authorities are of the opinion that the current paragraph 4, related to aid granted by means of tax advantages, should be maintained since it allows discounting of the real tax burden.

#### *Monitoring (Article 12)*

A new monitoring requirement for fiscal aid schemes where aid is granted automatically based on tax declarations of beneficiaries is added in Article 12, paragraph 2. Member States will be required to set up an appropriate control mechanism for a regular verification once per fiscal year, at least ex post and on a sample basis, that all compatibility conditions are met, and to draw the necessary conclusions. Furthermore, Member States are to keep detailed records of the controls for at least 10 years from the date of the controls. The Dutch authorities are of the opinion that this proposal does not constitute a mere technical alteration. Therefore it would have been appropriate if the Commission had explained why this monitoring requirement is necessary, and the Dutch authorities urge the Commission to take the opportunity to do so. What developments in the application of the GBER have led to this proposal, and in what way has monitoring by the European Commission not reached the right results? For measures such as these, perhaps it can be useful to experiment with these measures with a few notified aid schemes.

The Dutch authorities do not regard this proposed measure favorably since it might increase the administrative burden for public authorities. The Commission seems to foresee that Member States can create this exact monitoring system immediately after the GBER alterations have come into force (20 days after publication), which is not a reasonable term. Furthermore, the proposed paragraph is not specific enough making it difficult to fully comprehend the scope of the envisaged verifications. With regard to State aid and monitoring, one size does not fit all because each Member State has its own institutional setup. The Commission is urged to keep this in mind when proposing new legislation. Furthermore, the Dutch authorities wonder how this monitoring is related to the transparency rules.