



NOTAT

8. December 2016
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HT.4691 The Danish government's response to the Commissions second consultation on the targeted review of the general block exemption regulation.

PRELIMINARY REMARKS

The Danish government supports and welcomes the inclusion of airports and ports in the GBER. The Danish government, however, must once again express our deep concern for the proposal in article 2, paragraph 61a to include in the GBER regional investment aid for the relocation of undertakings and jobs from one Member State to another. In our view, the Member States should not use state aid, i.e. tax payers' money, to move jobs around in the EEA. Thus the Danish government cannot support this proposal.

AID FOR RELOCATION

The second draft of the GBER contains no alterations in respect to the proposed definition in article 2, paragraph 61a of "closure of the same or similar activity". Only aid resulting in "substantial" job losses, i.e. losses of at least 100 jobs in an establishment or a job reduction of at least 50% of the workforce are to be notified to the Commission. In the Danish Government's view any job losses can in principle be "substantial." It is therefore our position that all aid which is granted for the purpose of relocating jobs in the Union should undergo scrutiny of the Commission. We are convinced that by maintaining this type of aid subject to notification, it is possible to preserve the deterrent and preventive effect on undertakings, given that they will have to provide detailed information to the Commission, as well as await the approval of the Commission.

Including this type of very distortional aid in the GBER will eliminate the deterrent of the notification process and Commission control, and lead to unfair competition especially in countries where the workforce is mostly engaged in SMEs.

Furthermore the Danish Government finds that the proposal to include regional investment aid for relocation of jobs is out of line with the existing regional aid guidelines (RAG). According to these guidelines there is a presumption of incompatibility of this type of aid and it is therefore subject to notification.

If a threshold for “substantial” job losses is inevitable we find that the fixed threshold of 100 jobs should be set significantly lower, as should the relative threshold of 50 % of the workforce. This will ensure that the scope for exemption is kept at an absolute minimum and thereby minimize the distortive effects.

GBER ARTICLE 12 – MONITORING FISCAL STATE AID

The Danish government has noted that the Commission has clarified that no further monitoring obligations will be imposed on Member States than already applicable under the current GBER, article 12.

In Denmark, fiscal aid schemes are already subject to ex post control on a sample basis and as the GBER compatibility conditions is (among other conditions) implemented in the relevant legal basis for declaring the tax, the control of the GBER compatibility conditions is an integrated part of the ex post control of the tax scheme. We therefore welcome the Commissions clarifications of the proposed article 12, i.e. that it will be sufficient that Member States once per fiscal year, ex post and on a sample basis, verify that all GBER compatibility conditions are met.

The Danish government has in this respect noted that it will not be necessary to carry out separate “ex post compatibility controls” if the control of the GBER compatibility conditions is carried out as an integrated part of the ex post control of the tax declarations submitted with reference to the specific fiscal aid scheme. The Danish tax authorities will, however, need to ensure that an ex post control is carried out for each fiscal aid scheme once per fiscal year. The Danish government has further noted that the Danish tax authorities has the discretionary power to decide the exact number of tax declarations to be included in each yearly ex post control.

As set out in the proposed article 12, the Danish tax authorities will have to draft detailed records of the ex post controls where it is explained spe-

cifically how the GBER compatibility conditions are complied with. However, the Danish government understands that it is not necessary to draft separate GBER compatibility control records if the tax authorities' conclusions in this respect is included in the records drafted as part of the ex post control of the tax declarations.

AID FOR AIRPORTS

We are generally pleased with the Commission's proposal to include aid for airports in the GBER.

Smaller airports in same catchment area

We welcome that the Commission has taken on board the proposal to increase the threshold for block exemption of aid to smaller airports. The Danish Government is positive towards the proposal on including aid to airports with annual passenger traffic under 150.000 in the GBER, despite being located within another airports catchment area and despite investment exceeding what is necessary to accommodate the medium-term expected traffic on the basis of reasonable traffic forecasts.

Definitions on airports

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

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

Investment aid to airports with an annual number of passengers of 3-5 million

We propose that the GBER also include aid for airports with annual passenger numbers of 3 – 5 million passengers with a maximum aid intensity

on 25 %. This will ensure coherence between the GBER and the aviation guidelines.

Operating aid

According to the airport guidelines, under the current market conditions, airports with annual passenger traffic of up to 700 000 may face increased difficulties in achieving the full cost coverage during the 10-year transitional period allowed for operating aid. The Commission will therefore reassess the need for continued specific treatment and the future prospects for full operating cost coverage for this category of airports. We propose to include operating aid for airports in the GBER to airports with annual passengers up to 700.000.

AID FOR PORTS

We are generally pleased with the Commission's proposal to include aid for ports in the GBER.

Notification thresholds

The Commission underlines in the draft that the proposed conditions for exempting aid to ports should aim at limiting competition distortions that would undermine a level playing field in the internal market in particular by ensuring the proportionality of the aid amount.

Even though the Danish Government finds it positive that aid to ports is included in the GBER we find that the proposed thresholds for aid subject to notification are too high. The Danish Government is convinced that the thresholds should be lowered significantly to ensure proportionality of the block exempted aid.

Notification thresholds on the currently proposed levels would in our view require an impact assessment to assure that this level of thresholds will not have substantial distortive effects on the market.

The Danish Government suggests that the thresholds in article 56b paragraph 5 could be lowered to the following levels:

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

- (a) 50% of the eligible costs where eligible costs are up to EUR 10 million;*
- (b) 35% of the eligible costs where eligible costs are above EUR 10 million and up to EUR 25 million;*
- (c) 20% of the eligible costs where eligible costs are above EUR 25 million and up to EUR 50 million;*
- (d) 20 % of the eligible costs where eligible costs are up to EUR 60 million for the maritime ports included on the core network of the trans-European transport network as referred to in Regulation (EU) No 1315/2013”.*

In our view aid granted above these thresholds should remain subject to the notification requirement.

Article 56 b TEN-T Network

The Danish Government finds it important that article 56 b paragraph 5 d does not discriminate between core network ports and ports included in the work plan of a core network corridor on the Trans-European Transport Network (TEN-T). As an illustrative example Denmark has two ports on the core network, i.e. Aarhus and Copenhagen, but only Copenhagen is located on the corridor. A reference to maritime ports on the core network would clarify that the Commission does not intend any discrimination between such two ports in respect to article 56 b.

We refer to our proposal on redrafting article 56b, paragraph 5, above.

Definitions

The Danish government finds that there should be consistency in the way definitions are used in EU regulations for ports, as to obtain legal clarity across EU regulation in the maritime sector.

We also find in general that the proposed definitions on ports in the GBER should align with the Regulation on Trans-European transport network (1315/2013).

Definition of vessel:

The definition of a ‘vessel’ is too broad as it will also cover e.g. tunnel elements, wind turbine foundations and trout farm.

We suggest the following definition instead:

“‘Vessel’ means a ship or craft designed for transportation on water whether self-propelled or not.”

Definition of sea-going vessel:

As regards ‘sea-going vessel’ the term ‘sheltered waters’ is, in our view, problematic. Using this term in the definition will cause a gap between ‘sea going vessel’ and ‘inland water vessel’ in the way that the Commission has defined it in its proposal.

We suggest the following definition instead:

“‘Sea-going vessel’ means vessels other than those which navigate exclusively in inland waters;”

Definition of inland water vessels:

We suggest deleting ‘mainly’ as it does not seem to add any value to clarifying the definition. E.g. a sea going vessel may sail in inland water, but not the other way around.

We suggest the following definition instead:

“Inland water vessels’ means vessels intended solely for navigation on inland waterways.”

Definition of (maritime) port:

The definition of a ‘port’ in the GBER is the exact same as the definition of a ‘maritime port’ in the port regulation. Furthermore, there is a specific definition for a ‘maritime port’ in the GBER.

This inconsistency in the two set of rules does not constitute legal clarity.

We propose that the Commission maintain the definition of a maritime port in accordance with the port regulation and draw up a new definition of an inland port.

Inland ports

Regarding inland ports, it seems unclear whether an inland port is defined in terms of being geographically situated along an inland waterway. An ‘inland waterway’ is e.g. defined as ‘a stretch of water not part of the sea, open to navigation’ in the Directive on the recognition of professional qualifications in inland navigation regulation.

Denmark does not have inland waterways. However, by applying the proposed definitions it is unclear whether for example the Danish port of Aalborg is a maritime port or an inland port. In terms of the TEN-T regulation the port is a maritime port (on the comprehensive network).

COHERENCE BETWEEN THE RULES ON STATE AID AND STRUCTURAL FUNDS

We very much welcome the proposed addition to art. 7(1) a in the GBER. We consider the proposed changes to be the result a dialog with the Commission pursuant of the implementation of simplified cost options under Regulation 1303/2013. We appreciate the Commission's effort to ensure a greater coherence between the rules on state aid and the rules on structural funds.

AID FOR CULTURE

The Danish Government continuously supports the proposal to extend the quantitative limits for the cultural clauses in Art. 53 and find it very positive that the Commission proposes to include aid to cinemas in the GBER.

FINAL REMARKS

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