



EUROPEAN COMMISSION

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**Subject: State aid SA.39403 (2014/N) – Netherlands  
Investment aid for Lauwersoog port**

Sir,

**1. PROCEDURE**

- (1) On 18 December 2014, the Netherlands notified public support for a port infrastructure investment project in the port of Lauwersoog. The project had been pre-notified to the Commission on 22 August 2014. The Commission requested additional information on 17 February 2015. The Dutch authorities replied on 23 February 2015.

**2. DESCRIPTION**

**2.1. The objective of the notified project**

- (2) The port of Lauwersoog is located in the municipality of De Marne in the Province of Groningen. The port is administered by the *Exploitatiemaatschappij Havencomplex Lauwersoog* ("EHL"), which is the Port Authority of the Port of Lauwersoog.

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- (3) The port's main economic activity is fishing, with the majority of fish handled in Lauwersoog being shrimp. While in 2012 Lauwersoog was the main port for shrimp fishing in the Netherlands, in absolute terms it, according to the information provided by the Dutch authorities, nevertheless had the lowest market share (between 5-8%) of fish auctions in the Dutch fishing ports. Besides being a fishing port, the port also has a very small marina for recreational vessels, comprising of only 60 berths.
- (4) The main objective of the investment project is to eliminate bottlenecks in the port, which will in particular be done by lengthening the fishing quay by 200 metres. The Dutch authorities explained that the current quay in the fishing port is not long enough, meaning that fishing boats sometimes have to wait for hours before they can unload their catch. In addition this congestion caused by waiting fishing boats leads to safety issues for recreational vessels. Thus, a better separation between the marina and the fishing port is necessary to ensure that all port users, including recreational users, can continue to use the port's facilities safely.
- (5) The Dutch authorities further explain that more sustainable fishing methods make certain changes to the fishing fleet necessary. The implementation of these changes, however, requires more space in the commercial fishing port and in particular a longer quay. Thus, the lengthening of the quay is also intended to facilitate changes to fishing methods that are necessary to make fishing more sustainable.

**2.2. Planned investments**

- (6) The total cost for the notified project is EUR 4.161 million, out of which EUR [...] million are foreseen for planning and inspection costs.
- (7) The project consists of three main parts, namely (1) the lengthening of the fishing quay (EUR [...] million), (2) the updating of the marina (EUR [...] million) and (3) the construction of a floating platform for sport fishing to ensure that the port's recreational and commercial activities can be kept apart and that the new quay will be used exclusively for commercial fishing and not in combination with other (recreational) activities (EUR [...] million).
- (8) The breakdown of the total cost of the project is, thus, as follows:

<b>Measure</b>	<b>Costs (EUR)</b>
Lengthening of the quay	[...]
Updating of the marina	[...]
Construction of floating platform	[...]

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\* Confidential information.

<b>Subtotal 3 measures</b>	[...]
Planning and inspections	[...]
<b>Project Total</b>	<b>4 161 300</b>

### 2.3. Financing of the investment project

- (9) The project will be financed through a grant by the Province of Groningen amounting to EUR 3 329 040 (80% of the total investment costs). The remaining part of the investment cost, amounting to EUR 832 260 will be co-financed by EHL from own funds. The notification clarifies that the public grant is conditional upon the co-financing by EHL.

### 2.4. The beneficiary

- (10) The infrastructure will be owned by the Port Authority EHL, which also administers and operates the port. EHL was established in 1996 by the provinces of Friesland and Groningen, the municipalities of Dongeradeel and De Marne and the fish auction business Visafslag Luwersoog BV. EHL's shareholders are the municipality of De Marne and the municipality of Dongeradeel (45% each) and Visafslag Lauwersoog BV (10%). EHL has an annual turnover of around EUR 750 000.
- (11) The fees charged to the users of the port are market prices, ensuring that no advantage will be granted to the users (fishermen). In particular, the Dutch authorities submitted data showing that the user fees charged in the port of Lauwersoog are in line with fees charged in comparable fishing ports. In fact, according to the submissions of the Netherlands, the fees charged by the port of Lauwersoog are the highest in the market.<sup>1</sup> In spite of these high fees, the port and quay charges will be increased by [...] % per year to ensure that any increase in the economic value of the port through the investment project is charged to the fishermen. The Dutch authorities explain that given the current level of the fees it is not possible to increase them even more without compromising the attractiveness of the port.

### 2.5. Competition context

- (12) According to the Dutch authorities, the upgrading of the Port of Lauwersoog will not significantly affect competition on the Dutch or on the European market for fishing. The Dutch authorities further explain that the capacity for recreational use of the port will not be increased by the project.
- (13) As regards the fishing port the Dutch authorities stress that fishing boats generally choose the port closest to the relevant fishing grounds, meaning that the geographical catchment

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<sup>1</sup> The Dutch authorities provide an example of the different prices charged for the same vessel in the port of Lauwersoog and the port of Harlingen, according to which the fees charged in Lauwersoog are 37% higher.

area of a fishing port is restricted. As a result, competition between fishing ports is limited as such ports are associated with certain fishing grounds.

- (14) In this regard Lauwersoog is ideally located for shrimp fishing, as it is the nearest port to the relevant fishing grounds. According to the notification Lauwersoog, therefore, differentiates itself substantially from other Dutch ports, which are primarily used for round and flat fish found close to them.
- (15) In addition the Dutch authorities explain that the distance fishermen will travel is limited by the price of fuel (fuel costs represent 25% of the turnover of Dutch cutters, according to the notification). In other words, the distances fishermen are willing to travel and, consequently, the degree of competition between the relevant ports is significantly restricted by the price of fuel.
- (16) Furthermore, according to the notification, the port of Lauwersoog is, due to its limited depth, only suited for smaller fishing boats. Upgrading of the port will not change the depth, meaning that there will be no change in the ability of the port to attract larger vessels.
- (17) Lastly, the Dutch authorities argue that given that, in light of the above, the effect on competition and trade of the investment project in relation to other Dutch ports is non or barely existent, any potential effect on competition with ports in other EU Member States, which are all even further away from Lauwersoog than its Dutch neighbouring ports, and on intra-EU trade, would be insignificant at most. In this regard, the Dutch authorities explain that the closest Dutch fishing ports are between 50 and 70 km away from Lauwersoog and that the distance from Lauwersoog to the Dutch/German border is around 90 km, meaning that the closest German fishing port is further away than the neighbouring Dutch ports.
- (18) This is further substantiated by data provided by the Dutch authorities, according to which out of 3361 landings in the year 2014 (until 23 November 2014) only 172 were made by ships registered as foreign (19 ships accounted for these 172 landings). Thus, the proportion of landings by foreign ships amounts to roughly 5% of all landings. In this regard, the Dutch authorities further explain that a significant proportion of these foreign ships are in fact owned and operated by Dutch nationals, but choose to sail under a foreign flag for, amongst others, tax reasons. As such, the foreign ships landing in Lauwersoog are, to a very large degree, not ships coming from other Member States and calling in Lauwersoog to land their fish, but are rather mostly owned by local residents. The Dutch authorities further explain that this is substantiated by the fact that EHL sends its invoices for port fees almost exclusively to local addresses in the region, showing that the fishermen operating the fishing boats are local residents.

## **2.6. Form and duration of the public funding**

- (19) As indicated above, the public funding of the project takes the form of a direct grant by the Province of Groningen. The money shall be disbursed, subject to prior approval by the Commission, in three tranches during the year 2015. The last tranche shall be paid out on 1 December 2015.

### 3. ASSESSMENT

#### 3.1. Existence of State aid

- (20) Public support to undertakings is prohibited under Article 107(1) TFEU if it "distorts or threatens to distort competition" and only insofar as it "affects trade between Member States". In that respect, the Union courts have ruled that "where State financial aid strengthens the position of an undertaking as compared with other undertakings competing in intra-[Union] trade, the latter must be regarded as affected by the aid".<sup>2</sup>
- (21) Public support can be considered capable of having an effect on intra-Union trade even if the recipient is not directly involved in cross-border trade. For instance, the aid may make it more difficult for operators in other Member States to enter the market by maintaining or increasing local supply,<sup>3</sup> or to exercise their right of establishment.
- (22) It is settled case-law that the Commission is not required to carry out an economic analysis of the actual situation on the relevant markets, the market share of the undertakings in receipt of the aid, the position of competing undertakings or trade flows between Member States.<sup>4</sup> In the case of aid granted unlawfully, the Commission is not required to demonstrate the actual effect which that aid has had on competition and on trade.
- (23) Nevertheless, an effect on intra-Union trade cannot be merely hypothetical or presumed. It must be established why the measure distorts or threatens to distort competition and it is liable to have an effect on trade between Member States, based on the foreseeable effects of the measure.<sup>5</sup>
- (24) In that respect, the Commission has in several cases<sup>6</sup> considered that certain activities have a purely local impact and no such effect. It seems appropriate to check in particular whether the beneficiary supplies goods or services to a limited area within a Member State and it is unlikely to attract customers from other Member States, and whether it can be foreseen that the measure will have more than a marginal effect on the conditions of cross-border investments or establishment.

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<sup>2</sup> Case T-288/97 *Regione autonoma Friuli-Venezia Giulia v Commission* EU:T:1999:125, paragraph 41.

<sup>3</sup> See for instance Case C-280/00 *Altmark Trans and Regierungspräsidium Magdeburg* EU:C:2003:415, paragraph 78; Joined Cases C-197/11 and C-203/11 *Libert and Others* EU:C:2013:288, paragraph 78; and Case C-518/13 *Eventech* EU:C:2015:9, paragraph 67.

<sup>4</sup> See for instance Case C-279/08 P *Commission v Netherlands* EU:C:2011:551, paragraph 131.

<sup>5</sup> See Joined Cases T-447/93, T-448/93 and T-449/93 *AITEC and others v Commission* EU:T:1995:130, paragraph 141.

<sup>6</sup> See for instance, the Commission decisions in State aid cases N 258/2000 *Leisure Pool Dorsten*, OJ C 172, 16.6.2001, p. 16; C10/2003 *Netherlands – Non-profit harbours for recreational crafts*, OJ L 34, 06.02.2004, p. 63; N 458/2004 *Editorial Andaluza Holding* OJ C 131, 28.5.2005, p. 12; SA.33243 *Jornal de Madeira*, OJ C 16, 19.1.2013, p. 1; SA.34576 *Portugal – Jean Piaget North-east Continuing Care Unit*, OJ C 73, 13.3.2013, p. 1; and N 543/2001 *Ireland – Capital allowances for hospitals*, OJ C 154, 28.6.2002, p. 4.

- (25) In the present case, as regards the local zone within which the alleged beneficiary's services compete, the Commission observes that, as was submitted by the Dutch authorities, fishermen in general use the port closest to the relevant fishing grounds. This means that the attractiveness of a fishing port is defined by its proximity to the relevant fishing grounds rather than by its infrastructure such as the length of its quay. In addition, the Dutch authorities explain that this finding is supported by the fact that for the port in Lauwersoog invoices for port fees are sent by EHL almost exclusively to addresses in the region. As such, the fishermen using the port in Lauwersoog also come from a limited geographical area.
- (26) The finding of the limited geographical area catered by Lauwersoog port is further supported by the fact that the distance fisher boats are willing to travel to and from the fishing grounds is limited by costs of fuel.
- (27) As such, due to fact that the activity of a fishing port is by its nature closely linked to a given geographical foreland and the presence of certain fishing grounds within it, the service offered by EHL to fishermen can be regarded as a local service. This is confirmed by the data provided by the Dutch authorities, showing that only few foreign ships landed in Lauwersoog.
- (28) As regards the parts of the port linked to recreational activities, the Commission observes that also these are targeted at a local market.<sup>7</sup> According to data provided by the Dutch authorities,<sup>8</sup> there are around 1 135 marinas with around 188 000 moorings in the Netherlands. As regards Europe,<sup>9</sup> there are around 10 182 marinas with around 925 570 moorings. Furthermore, there are around 521 000 pleasure boats in the Netherlands and around 5 775 745 of such boats in Europe.
- (29) The marina in the port of Lauwersoog only has 60 moorings, which is insignificant both in relation to the Dutch market as well as the European market. The percentage of international landings in the marina is estimated to be roughly 5%. However, since the 60 moorings in the port of Lauwersoog only represent around 0.03% of the Dutch and only 0.006% of the European mooring market, it can be concluded that the impact of the port of Lauwersoog on the market is very limited.
- (30) In addition, the annual turnover of the marina amounts to around 3% of the total turnover of EHL, which, according to the notification, was EUR 744 000 (before audit) in 2013. Thus, the turnover related to the marina was only around EUR 22 320.
- (31) In the light of the above, the Commission concludes that the part of the port linked to recreational activities is not aimed at attracting international visitors but at a local market.

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<sup>7</sup> See also C 10/2003 *Netherlands – Non profit harbours for recreational crafts*, OJ L 34, 6.2.2004, p. 63, paras. 48 et seqq.

<sup>8</sup> Based on the report "*Nautica in cifre, Analisi del mercato per l'anno 2013*" by UCINA (Unione Nazionale Cantieri e Industrie Nautiche ed Affini).

<sup>9</sup> The following countries have been taken into account for the estimation: Sweden, Norway, Finland, Italy, United Kingdom, Netherlands, Germany, France, Spain, Greece, Poland, Portugal, Denmark and Ireland.

The very limited number of international landings in the marina and the very low market share mean that the impact of the investment on the market is limited to the local level.

- (32) In light of the above, the Commission considers that in the present case competition for the services offered by EHL occurs at a purely local level and that it is, thus, unlikely that the planned investment will attract customers from other Member States.
- (33) With regard to the effect on the conditions of cross-border investments or establishment, the Commission notes that, as already stated above, the attractiveness of a fishing port for fishermen is defined by its proximity to certain fishing grounds and is, therefore, limited by local circumstances. As such, the planned investment will clearly not have any significant effect on the patterns of trade between Member States in the sense that it would have a decisive and significant impact on the decision of fishermen from other Member States to use the Port of Lauwersoog rather than ports in other Member States.
- (34) The Commission also notes the very limited scope of the activities at the fishing port. According to the Dutch authorities, the annual income of EHL from commercial shipping in the port is only approximately EUR 275 000. The notified works would at best lead to a 20% increase of turnover (namely EUR 55 000), which means that even if that best case scenario would materialize, the total scope of the operations would remain very limited.
- (35) The objective of the notified investment project is rather to eliminate certain bottlenecks within the port, which lead to safety issues.
- (36) In addition the Commission notes that the planned investment will not lead to any significant increase in EHL's activities. In particular, since the notified project will not increase the depth of the port, its capacity to cater for larger fishing boats will not increase.
- (37) As regards the parts of the port linked to recreational activities, the Commission observes that, according to the notification, the investment project will not lead to any increase in capacities. In addition, the construction of the floating platform for sport fishing is merely intended to ensure that for safety reasons commercial fishing and recreational fishing can effectively be kept apart and will not have any impact on cross-boarder trade.
- (38) Lastly, the Commission observes that the relatively low amount of public funding (for an investment project in a port) of EUR 3.3 million gives an additional indication that the impact of said project will, if at all, only insignificantly affect cross-border trade.
- (39) Based on an overall assessment of the above indications, the Commission considers, in light of the available evidence, that the public support cannot reasonably be foreseen to have more than a marginal effect, if any, on the conditions of cross-border investment and establishment between Member States.

*Conclusion on the existence of aid*

- (40) Based on the above the Commission considers that neither the situation of the relevant market, the position of the undertaking in that market or the pattern of trade in the

services in question show that the public support could reasonably be foreseen to have more than a marginal effect, if any, on the conditions that determine trade between Member States.

- (41) It follows that the notified grant to be given to EHL does not qualify as State aid in the meaning of Article 107(1) TFEU.

#### **4. DECISION**

The Commission has accordingly decided:

- that the measure does not constitute aid.

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Yours faithfully  
For the Commission

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