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**Subject: SA.42476 (2015/N) –Netherlands**

**Betuweroute - compensation to rail during construction works 2016 -  
2020**

Sir,

## **1. PROCEDURE**

- (1) By letter dated 1 December 2015, the Netherlands notified to the Commission an aid scheme aimed at compensating railway undertakings for the increase of costs due to the necessary rerouting from Betuweroute, a rail freight line in the Netherlands. The measure was registered under the State aid case number: SA.42476.
- (2) The Commission requested further information on the measure by letter dated 1 February 2016. By letter dated 25 February 2016, the Netherlands provided the additional information requested by the Commission.

## **2. DESCRIPTION OF THE MEASURE**

### **2.1. Background**

- (3) The Betuweroute is the principal rail connection for freight transport between the Dutch ports, mainly the port of Rotterdam, and the rest of Europe that was opened in 2007. It leads from the port of Rotterdam to the Dutch/German border at Zevenaar/Emmerich.

**Zijne Excellentie de Heer Bert Koenders  
Minister van Buitenlandse Zaken  
Bezuidenhoutseweg 67  
Postbus 20061  
NL - 2500 EB Den Haag**

- (4) The line was constructed to allow the expected growth in freight transport, resulting in part from the expansion of the port of Rotterdam, to be handled as much as possible by rail. In addition, the Betuweroute relieves the burden on the rest of the Dutch rail network, ensuring that there is capacity to allow the growth of rail passenger transport.
- (5) The Betuweroute was designed to provide capacity for 160 trains a day in both directions. However, according to the Dutch authorities, the full capacity of this railway line cannot be used due to the capacity limitations on the German rail network leading to the Betuweroute. This has not presented a significant problem to date, as the rail freight transport market has stagnated owing to the economic crisis. Now, when the economy is recovering, the limit of 100 trains a day on the Betuweroute is likely to be reached within the foreseeable future.
- (6) To overcome these limitations, the German authorities intend to expand the capacity of the route from the Dutch/German border (Zevenaar/Emmerich) to Oberhausen by adding a third track to the existing double-track route.
- (7) As a consequence of the construction works in Germany the rail freight transport sector will be faced with reduced capacity on the Betuweroute until 2022. One of the two tracks leading to the Netherlands will be out of service for one week every month, with both being closed on certain weekends.
- (8) The use of the Betuweroute for rail freight transport between the Netherlands and Germany will be limited over these periods to a maximum of roughly 40 trains a day or the route will be completely unavailable. As the result, a number of trains will have to be rerouted, during these periods, to other lines, much longer. This means significant additional costs for the railway undertakings.

## **2.2. Objective of the aid scheme**

- (9) The objective of the compensation scheme is to ensure that the market position of the rail freight transport sector as a sustainable and safe mode of transport is at the very least maintained while the third track is being constructed in Germany. The aim is therefore to prevent shippers from switching to other modes of transport that are less sustainable and safe owing to the unavailability or partial availability of the Betuweroute. In this way an increase in negative external effects is to be prevented.

## **2.3. Legal basis**

- (10) The legal basis for the compensation is provided by Article 3(1)(a) of the Infrastructure and Environment Subsidies (Framework) Act and Article 2(1) of the Infrastructure and Environment Subsidies (Framework) Decree. On the basis of those provisions the Dutch authorities are authorised to grant subsidies for infrastructure-related activities. In accordance with this legislation a ministerial regulation will be drawn up that will be published in the Government Gazette and will be available online.

## **2.4. Duration and budget**

- (11) The Dutch authorities have reserved a budget of EUR 20 million for the whole construction period until the end of 2022. However, the assessed compensation covers only the first five years from the approval of the scheme by the

Commission. For this five-year period, the Dutch authorities reserved a total budget of EUR 13.2 million. The Dutch authorities estimate that the required aid will vary from one year to the next and can be presented as follows:

**Table 1. Budget foreseen for 2016-2020 (2015 price level)**

<b>Year</b>	<b>Budget in EUR millions</b>
2016	3.8
2017	1.5
2018	2.5
2019	2.7
2020	2.7
<b>Total for 2016-2020</b>	<b>13.2</b>
<b>Average per year</b>	<b>2.6</b>

## **2.5. Beneficiaries**

- (12) The compensation scheme is intended solely for railway undertakings that are authorised to use the railway infrastructure in the Netherlands.

## **2.6. Eligible costs and aid intensity**

- (13) The compensation will be allocated by offsetting the payments the railway undertakings make to the infrastructure manager ProRail. The amount to be offset will be determined on the basis of a compensation rate per kilometre linked to the additional kilometres that result from rerouting in the Netherlands.
- (14) The train paths requested by the railway undertakings within the annual timetable will be taken as a starting point. This annual timetable will already take into account the closures resulting from the construction work on the third German track.
- (15) Shortly before the train service in question is operated, ProRail will assess whether this train service can be run in accordance with the annual timetable and whether any rerouting applies as a consequence of the above-mentioned closures.
- (16) The rerouting is eligible for compensation in case the train service would have been operated on the Betuweroute if there had been no track closures due to the work on the third German track.
- (17) Where rerouting applies, the number of additional kilometres travelled on tracks within the territory of the Netherlands will be determined by calculating the difference between the number of kilometres for the rerouted train path and the number of kilometres for the train path via the Betuweroute.
- (18) The following routes may be used for rerouting:
- Maasvlakte – Kijfhoek – Breda – Eindhoven – Venlo border as an alternative to the route Maasvlakte – Kijfhoek – Elst – Zevenaar border; 35 additional kilometres (194 kilometres less 159 kilometres). This route is expected to be the most important one used for rerouting: an average of 52 trains a day.

- Maasvlakte – Kijfhoek – Breda – Eindhoven – Heerlen border as an alternative to the route Maasvlakte – Kijfhoek – Elst – Zevenaar border; 87 additional kilometres (246 kilometres less 159 kilometres). Very limited use is expected to be made of this route: an average of 2 trains a day.
  - Maasvlakte – Diemen – Amersfoort – Deventer – Oldenzaal border as an alternative to the route Maasvlakte – Kijfhoek – Elst – Zevenaar border; 140 additional kilometres (299 kilometres less 159 kilometres). Limited use is expected to be made of this route: an average of 5 trains a day.
  - Maasvlakte – Kijfhoek – Elst – Arnhem – Deventer – Oldenzaal border as an alternative to the route Maasvlakte – Kijfhoek – Elst – Zevenaar border; 108 additional kilometres (267 kilometres less 159 kilometres). Limited use is expected to be made of this route: an average of 5 trains a day.
- (19) The above routes are representative of most of the freight transport that takes place by rail, as the port of Rotterdam is a key departure point/destination for this transport. Trains from/to the ports of Amsterdam/Beverwijk and Vlissingen operating on the Betuweroute would also be rerouted via Venlo or Oldenzaal. In this case the additional kilometres would be comparable with those for the routes indicated above.
- (20) No compensation needs to be paid for any VAT levied. This means that the amount of compensation will not be increased to include compensation for VAT.
- (21) Compensation will be granted for the following additional costs<sup>1</sup>:
- (i) *Infrastructure charges*
- (22) The additional usage fee that is payable will be compensated fully. This is the usage fee for the additional kilometres travelled compared with the distance via the Betuweroute, provided that the latter would have been the shortest route.
- (23) The rate per kilometre is published annually in ProRail’s Network Statement. It depends on a number of train-related parameters, including the total weight of the train.
- (ii) *Locomotive*
- (24) Partial compensation will be paid at a rate of 66.7 % of the additional costs incurred for the use of a standard multi-system locomotive. This is a locomotive that is able to cope with the different safety and electrification systems in the Netherlands and Germany.
- (25) The compensation has been set at EUR 1.61 per kilometre. This amount has been determined on the basis of the average leasing rate for a multi-system locomotive of EUR 2.41 per kilometre (2015 price level) multiplied by the partial compensation factor of 66.7 %. The average leasing rate for a multi-system

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<sup>1</sup> The rates are based on data of the Royal Dutch Transport Federation (*Koninklijk Nederlands Vervoer (KNV)*), a sector organisation that represents companies in the rail freight transport sector.

locomotive is based on a monthly leasing rate of EUR 47,000 and an average monthly kilometrage of 19,500.

(iii) *Traction energy*

- (26) Partial compensation will be paid at a rate of 66.7 % of the additional costs incurred for the traction energy consumed.
- (27) The compensation has been set at EUR 1.21 per kilometre. This amount has been determined on the basis of the average rate of EUR 1.88 per kilometre (2015 price level) for energy consumed and the average energy consumption per kilometre of a standard multi-system locomotive multiplied by the partial compensation factor of 66.7 %. The average energy consumption per kilometre is 17.5 kWh per kilometre; the average energy tariff is EUR 0.1074 per kWh.

(iv) *Train driver*

- (28) Partial compensation will be paid at a rate of 50 % of the additional costs incurred for the deployment of the train driver.
- (29) The compensation has been set at EUR 0.47 per kilometre. This amount has been determined on the basis of the average labour costs for a train driver with the qualifications required to drive a standard multi-system locomotive on the Dutch railway network. These costs amount to an average of EUR 0.94 per kilometre (2015 price level). This average has been determined on the basis of average hourly labour costs of EUR 70.50 an hour (including social security contributions), an 8-hour working day and an average of 600 kilometres per working day. These costs have been multiplied by the partial compensation factor of 50 %.
- (30) Under the compensation scheme it will be permitted for the above rates to be adjusted annually in line with inflation.

## **2.7. Cumulation of aid and its suspension in the event of unlawful aid**

- (31) The Dutch authorities declare that the compensation scheme will not be combined with other forms of State aid, within the meaning of Article 107(1) TFEU, that serve the same purpose.
- (32) Furthermore, the payment of aid under the notified scheme will be suspended if an undertaking receives unlawful aid that has been declared incompatible by means of a European Commission decision. This suspension will remain in place until the undertaking has repaid the unlawful and incompatible aid, plus any interest owed at the time the aid is reclaimed, or deposited it in a blocked account.

## **3. ASSESSMENT**

### **3.1. Existence of aid**

- (33) Pursuant to Article 107 (1) TFEU "*any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods*

*is, in so far as it affects trade between Member States, incompatible with the internal market".*

(34) As the examined measure:

- confers an economic advantage as it relieves the beneficiaries, i.e. railway undertakings, of a part of the operational costs which they would normally have to bear,
- involves State resources given that subsidies are granted from the budget of the Dutch government,
- is selective in nature because it is confined to certain segments of the transportation services market, i.e. rail freight transport, and
- can potentially distort competition and affect trade between Member States since it concerns rail freight markets, which have been liberalised,

it is to be qualified as State aid within the meaning of Article 107(1)TFEU.

### **3.2. Compatibility of the aid**

#### *3.2.1. Legal basis*

(35) The Commission is of the opinion that the present aid has to be examined on the basis of Article 93 of TFEU.

(36) Article 93 of TFEU states that State aid shall be compatible with the Treaty if it meets the needs of coordination of transport. The concept of aid meeting the needs of coordination of transport refers to the need for public intervention arising notably in the presence of market failures. In this regard, the Commission notes that measures of coordination of transport may be needed when certain modes of transport do not bear the costs of the negative externalities which they impose to the society.

(37) As expressed in the Commission's White Paper on Transport Policy<sup>2</sup>, the fundamental charging principle for using infrastructure must cover not only infrastructure costs, but also external ones, that is, costs connected with accidents, air pollution, noise and congestion. This approach has been applied in a number of State aid decisions in recent years<sup>3</sup>. It also reflects the fact that, in view of

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<sup>2</sup> Roadmap to a Single European Transport Area–Towards a competitive and resource efficient transport system, COM(2011)144 of 28.03.11.

<sup>3</sup> See e.g. Commission's decision of 30 April 2010, N 678/2009, Belgium, *Mesure de soutien au transport intermodal par la navigation intérieure dans la région de Bruxelles-Capitale*, OJ C 158 of 18.06.2010; Commission's decision of 18 July 2007, N 720/2006, Belgium, *Octroi d'une subvention par le Port de Bruxelles aux lignes régulières de transport de conteneurs*, OJ C 307 of 18.12.2007; Commission's decision of 10 May 2007, Belgium, N 682/2006, *Mesure flamande visant à soutenir le transport intermodal par voies navigables*, OJ C 227 of 27.9.2007; Commission's decision of 5 July 2005, N 249/04, Belgium, *Régime d'aide pour le transport combiné*, OJ C 280 of 12.11.2005, p. 9; Commission's decision of 16 juin 2004, N 4/2004, Belgium, *Plan wallon d'aides au transport par voies navigables 2004-2007*; Commission's decision of 16 December 2003, N 464/2003, United Kingdom, *Company Neutral Revenue Scheme (CNRS)*; Commission's decision of 10 December 2003, N 810/2002, Italy, *Système de promotion du fret ferroviaire – Article 38 de la loi n° 166 du 1er août 2002*, OJ C 41 of 17.2.2004, p. 6; Commission's decision of 30 April 2003, N 623/2002, France, *Aides d'État à l'exploitation de services réguliers de transport combiné de marchandises alternatif au mode*

Articles 3, 6, 191 TFEU, the environmental objectives of the Treaty have to be pursued inter alia through the Common Transport Policy.

- (38) As regards railway undertakings, rules for the interpretation of Article 93 TFEU have been set out in Section 6 of the Community guidelines on State aid for railway undertakings<sup>4</sup> (hereinafter – the Guidelines).
- (39) According to point 98 of the Guidelines aid for the needs of transport coordination can take several forms, among them:
- aid for infrastructure use that is aid to railway undertakings to compensate them the infrastructure charges that do not have to be paid by other under undertakings providing transport services based on other modes of transport;
  - aid for reducing external costs that is designed to encourage a modal shift to rail because it generates lower external costs than other modes such as road transport.
- (40) Given the context of the scheme, the Commission finds it appropriate to assess separately the compensation for the additional infrastructure charges by applying the rules for aid for rail infrastructure use specified in section 6.3 of the Guidelines and the remaining compensations (additional costs related to locomotive, traction energy and train drivers) by applying rules for aid for reducing external costs, also specified in section 6.3 of the Guidelines.

### 3.2.2. *Necessity and proportionality of the aid*

#### (i) *Aid for infrastructure use*

- (41) According to Point 102 of the Guidelines the eligible costs as regards aid for rail infrastructure use are the additional costs for infrastructure use paid by rail transport but not by a more polluting competing transport mode.
- (42) In the case of the aid scheme in question, compensation is granted for the costs that have to be paid by rail transport but not by the road transport.
- (43) Only rail transport is rerouted and affected by infrastructure charges for the supplementary kilometres due to detours. The additional usage fee that is payable can therefore in this case be regarded as additional costs paid by rail transport but not by a more polluting competing transport mode and these additional costs can be regarded as eligible costs in the meaning of the Guidelines.

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*tout routier*; Commission's decision of 3 March 2003, N 335/2003, Italy (Friuli-Venezia Giulia), *Aide à la création de services d'autoroute ferroviaire*; Commission's decision of 1 October 2003, N 64/2003, Italy (Autonomous Province of Trento), *Octroi d'une aide en faveur du transport combiné*, OJ C 284 of 27.11.2003, p. 2; Commission's decision of 19 September 2001, N 500/2001, United Kingdom, Network grants to licensed heavy rail infrastructure managers; Commission's decision of 21 April 1999, N 588/98 - Denmark, OJ C 166 of 12.6.1999, p. 6; Commission's decision of 8 July 1999, N 121/99 - Austria, OJ C 245 of 28.8.1999, p. 2; Commission's decision of 8 December 1999, N 412/98 Italy (Marches), OJ C 55 of 26.2.2000, p. 11; Commission's decision of 22 December 1999, N 617/98 – Netherlands (Utrecht), OJ C 71 of 11.3.2000, p. 7.

<sup>4</sup> OJ C 184 of 22.07.2008, p.13

(<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:184:0013:0031:EN:PDF>)

- (44) According to points 107 (a) and 109 of the Guidelines, there is a presumption of necessity, proportionality and absence of overcompensation of the aid for rail infrastructure use when the intensity of the aid stays below the following values: up to 100 % of the eligible costs and up to 30 % of the total cost of the rail transport.
- (45) With regard to infrastructure costs, the Dutch authorities take the additional costs resulting from rerouting into account in so far as these relate to the usage fee for the additional kilometres travelled because of rerouting. These additional costs are subsidised in full. The subsidy ranges from 5 to 13 % of the total cost of the rail transport in the Netherlands; the weighted average is 7 %.

**Table 2. Proportionality of aid granted in respect of infrastructure costs**

Route	Total costs (in EUR)	Subsidy (in EUR)	Proportion (%)
Maasvlakte – Venlo	1901	97	5
Maasvlakte – Heerlen	2411	240	10
Maasvlakte – Diemen – Oldenzaal	2930	386	13
Maasvlakte – Elst – Oldenzaal	2616	298	11
<b>Weighted average*</b>	<b>2053</b>	<b>139</b>	<b>7</b>

\* Weighted based on the average expected number of trains per day.  
Source: 'Information submitted by the Dutch authority.

- (46) If the total cost of the rail transport is calculated only for additional kilometres due to deviation, the weighted average is 28%. The 30 % threshold is therefore met.
- (ii) *Aid for reducing external costs*
- (47) According to point 103 of the Guidelines, as regards aid for reducing external costs, the eligible costs are the part of the external costs which rail transport makes it possible to avoid compared with competing transport modes.
- (48) The Dutch authorities' aim with the subsidy scheme is to prevent other modes of transport, in particular the road transport, being used as a substitute for rail transport. Electrified rail freight produces significantly lower negative externalities in terms of social costs, when compared to road transport. It therefore offers an environmentally-friendly alternative to road transport.
- (49) The Commission has reviewed the studies on the external costs savings provided by the Dutch authorities based on the updated Handbook on estimation of external cost in the transport sector published by the Commission.<sup>5</sup> The Commission considers the calculations provided by the Dutch authorities as "transparent, reasoned and quantified comparative cost analysis between rail transport and the alternative options based on other modes of transport" as required in point 105 of the Guidelines.

<sup>5</sup> [http://ec.europa.eu/transport/themes/sustainable/studies/sustainable\\_en.htm](http://ec.europa.eu/transport/themes/sustainable/studies/sustainable_en.htm)



- (50) According to the calculation provided by the Netherlands, the external costs of road freight transport are higher by around EUR 42 per 1000 tonnes-kilometre (in 2010 prices<sup>6</sup>) than for the electric rail freight transportation.

**Table 3. Freight transportation external costs for the Netherlands, in EUR per 1000 tonnes-kilometre, 2010 prices**

<b>Cost element</b>	<b>Road</b>	<b>Electrified Rail</b>
Congestion costs	19.50	0.5
Accident costs	0.63	0.00
Air pollution costs	10.31	1.27
Noise costs	1.25	0.78
Climate change costs	7.45	0
Costs up- and downstream	3.21	5.20
Marginal infra costs	9.20	1.87
<b>Total in 2010 prices</b>	<b>51.55</b>	<b>9.62</b>
<b>Total in 2015 prices</b>	<b>54.18</b>	<b>10.11</b>

- (51) Based on the above calculations of external costs and on the information on the tonnage transported by rail in 2014 from and to countries for which rail transport via the Betuweroute is relevant (Germany, Italy, Austria, Czech Republic, Switzerland), the Dutch authorities calculated that the total external costs of the tonnage transported by rail in 2014 from and to the countries considered was estimated to be EUR 48 million. If road transport were to be used as a substitute for all of this tonnage, the external costs would amount to EUR 257 million – an increase of EUR 209 million.
- (52) It is, however, unlikely that the road transport would be used as a substitute for the whole transport in question in the absence of a subsidy scheme. The Dutch authorities assumed that 5 % of rail transport (in 2014 numbers) would be replaced by road transport. In such a case, the additional external costs of this substitution would be EUR 10.4 million.
- (53) According to points 107 (b) and 109 of the Guidelines, there is a presumption of necessity, proportionality and absence of overcompensation of the aid for reducing external costs when the intensity of the aid stays below the following values: 50 % of the eligible costs and up to 30 % of the total cost of the cleaner transport mode.
- (54) The Dutch authorities informed the Commission that if the average annual aid budget, which is expected to amount to around EUR 2.6 million, is adjusted for the compensation of infrastructure costs (usage fee), the aid in respect of external costs (i.e. compensation of a part of additional costs related to locomotive, traction energy and train drivers, as presented in recitals (24) - (30)) amounts to an average of EUR 1 million a year.

<sup>6</sup> 2010 values are used because the input data for the Handbook on estimation of external cost in the transport sector are in 2010 prices. When data are presented in 2015 prices the difference in the external costs between the road freight transport and the electric rail freight transportation is around EUR 44.

- (55) Firstly, the Commission finds reasonable and sufficiently conservative the assumption put forward by the Dutch authorities according to which the aid allows to prevent the replacement of 5% of rail transport on the Betuweroute to/from relevant countries by road transport. Consequently, the Commission considers as reasonable and sufficiently conservative the assumption that the aid allows avoiding additional external costs of EUR 10.4 million.
- (56) Secondly, based on the later parameter and taking the average aid of EUR 1 million a year, the Commission finds that, the aid intensity falls just below 10% of the total external costs which rail transport makes it possible to avoid. Besides, the Commission notes that even if it is assumed that without the aid only 1 % of freight transport would be moved to the roads (that would generate the additional external costs of slightly above EUR 2 million), the average aid intensity for aid for reducing external costs is still in line with the Guidelines, i.e. the aid stays below the ceiling of 50 % of eligible costs.
- (57) As to the share of total costs of the cleaner transport mode (i.e. rail transport), the Commission notes that while the aid is calculated based on the number of additional kilometres due to the detour, it prevents substitution of rail transport by road transport not only on the additional kilometres but on the whole train's route.
- (58) Therefore, the Commission considers that the total cost of the cleaner transport mode (i.e. of rail transport), referred to in the Railway Guidelines, should relate to not only to the additional kilometres due to the detour but to the whole train's route.
- (59) If the compensation to be granted - based on the saved external costs - is compared with the total transport costs of the concerned railway routes the share of the aid will vary between 6 and 16 %. The weighted average is 8 %. The subsidy remains below 30 % of the total transport costs.

**Table 4. Proportionality of aid for reducing external costs (share in the total transport costs)**

<b>Route</b>	<b>Costs (in EUR)</b>	<b>Subsidy (in EUR)</b>	<b>Proportion (%)</b>
Maasvlakte – Venlo	1901	115	6
Maasvlakte – Heerlen	2411	286	12
Maasvlakte – Diemen – Oldenzaal	2930	460	16
Maasvlakte – Elst – Oldenzaal	2616	355	14
<b>Weighted average *)</b>	<b>2053</b>	<b>166</b>	<b>8</b>

\*) Weighted based on the average expected number of trains per day.  
Source: 'Information submitted by the Dutch authority.

- (60) The Dutch authorities informed the Commission, that on the Betuweroute in 2015, the diesel locomotives accounted for 9 % of all locomotives used. Due to higher costs and less power, the share of these locomotives had decreased systematically over the recent years and this trend continues.

- (61) To simplify the compensation mechanism, the Dutch authorities have decided to pay the compensation to the redirected diesel locomotives at the same level as electric locomotives.
- (62) The Commission notes that the difference in the external costs between road freight transport and diesel rail freight transportation is significantly lower than when comparing road freight transport and electrified freight rail. Therefore, aid intensity for aid for reducing external costs, expressed as a percentage of eligible costs, will be higher in case of diesel locomotives. However, taking into account, the small share of diesel locomotives on the Betuweroute, the decreasing trend in use of that type of locomotive and a need to reduce administrative burden in terms of procedure and costs, the Commission considers that a compensation mechanism based on standardised subsidy rates without distinction between electric and diesel locomotives is in this case justified.
- (63) The Commission also notes that due to higher total transport costs, the shares of aid for infrastructure use and aid for reducing external costs in the total transport costs for trains with diesel locomotive will be, on the average, lower.
- (64) According to point 110 of the Guidelines, in principle, the aid has to be reflected in the price demanded from the shipper. To allow shippers to benefit from the compensation in question, under the scheme railway undertakings are obliged to ensure that the contribution to the costs is reflected in the rates charged for the services provided to shippers.
- (65) Moreover, railway undertakings will be obliged to cooperate as requested with any studies, checks and assessments carried out by or on behalf of the Dutch government in relation to the implementation and effects of the compensation scheme.
- (66) According to point 111 of the Guidelines, where aid is granted for the purposes of reducing external costs, there must be realistic prospects of keeping the traffic transferred to rail so that the aid leads to a sustainable transfer of traffic.
- (67) The Commission observes that the scheme has been designed in order to maintain levels of rail freight traffic during the period of disruption caused by the construction of the third track in Germany. There is a solid basis to believe that a temporary compensation of higher costs generated by the construction works will prevent not only a temporary but also a permanent transfer of freight from rail to the road transport.
- (68) In the light of the criteria examined above, the Commission considers that all the conditions related to the necessity and proportionality both of the aid for infrastructure use and of the aid for reducing external costs are met.

*3.2.3. The aid scheme is granted on non-discriminatory terms, the aid scheme is transparent and time-limited*

- (69) All railway undertakings that are operating in the rail freight transport sector and are authorised to use the railway network in the Netherlands by means of an access agreement with rail infrastructure manager ProRail are eligible for compensation. The scheme does not set out any restrictive conditions based on

the nationality of the undertaking. Therefore, the aid is granted on non-discriminatory terms.

- (70) The conditions applicable to compensation applications will be laid down in a ministerial regulation that will be published in the Dutch Government Gazette and will be available for anyone to consult online. In addition, the group of undertakings that are allowed to apply for the aid is clearly defined. Therefore, the scheme can be considered as fulfilling the general transparency requirements.
- (71) The Dutch limited the duration of the compensation scheme to period of five years. This period is in accordance with point 97 of the Guidelines. In the final year of the compensation scheme, the Dutch authorities are going to examine whether it is necessary to continue the scheme and whether any changes need to be made to it. If extending the scheme is considered desirable, the Dutch authorities will submit an application to the European Commission to extend it.

#### *3.2.4. No effect on competition and trade contrary to the common interest*

- (72) According to point 96 of the Guidelines, the distortion of competition which is inherent in any aid must not jeopardise the common interest of the European Union.
- (73) The Betuweroute forms part of the European Rhine-Alpine and North Sea-Baltic rail freight corridors (EC 913/2010). Maintaining rail transport on this route is therefore a matter of European interest.
- (74) The Commission considers that the compensation scheme in question does not distort competition to an extent contrary to the common interest and only reduces the imbalance between rail transport and road transport caused by the work on the third track in Germany.
- (75) The compensation scheme focuses on maintaining the price for rail transport, an environmentally friendly mode of transport, in line with the market price that would apply for rail transport via the shortest route if the construction work had not been taking place.
- (76) The Commission also notes that the scheme is neutral vis-à-vis inland waterway transport. On the one hand, since it aims only at maintaining the current freight volume transported by trains, the scheme does not give any incentives to replace inland waterway transport with rail transport. On the other hand, since the scheme is only temporary, it does not discourage from a permanent switch to inland waterway transport in rare cases where it is feasible and justified from the economic point of view.
- (77) Therefore, the Commission concludes that the aid scheme in question does not give rise to a distortion of competition to an extent contrary to the common interest according to point 96 of the Guidelines.

## **4. CONCLUSION**

The Commission has accordingly decided:

- not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 93 of the Treaty on the Functioning of the European Union

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Your request should be sent electronically to the following address:

European Commission,  
Directorate-General Competition  
State Aid Greffe  
B-1049 Brussels  
[Stateaidgreffe@ec.europa.eu](mailto:Stateaidgreffe@ec.europa.eu)

Yours faithfully  
For the Commission

Margrethe VESTAGER  
Member of the Commission