



EUROPEAN COMMISSION

Brussels, 28.XI.2007
C(2007)5635 def.

In the published version of this decision, some information has been omitted, pursuant to articles 24 and 25 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus [...].

PUBLIC VERSION

WORKING LANGUAGE

This document is made available for information purposes only.

Subject: State aid No N 377/2007 – The Netherlands
Support to *Bataviawerf* – Reconstruction of a vessel from the 17th century

Sir,

I. PROCEDURE

- (1) By letter dated 4 July 2007, registered the same day, the Dutch authorities notified a support measure in favour of the Batavia shipyard (*Bataviawerf*). The Commission requested additional information on 31 August 2007, which was provided by the Dutch authorities on 28 September 2007.
- (2) The Dutch authorities consider the measure is not an aid and notified the measure for reasons of legal certainty.

II. DESCRIPTION OF THE MEASURE

- (3) **Legal basis:** The measure in question is based among others on the following national legal acts:
 - (a) the General Regulation on Subsidies of the Municipality of Lelystad 2002 (*Algemene subsidieverordening gemeente Lelystad 2002*). This General Regulation, on its turn, founds its legal basis in the Municipality Act (*Gemeentewet*);
 - (b) the General Regulation on Subsidies of Flevoland 1999 (*Algemene Subsidieverordening Flevoland 1999*).
- (4) **Objective:** The primary objective of the measure is to promote culture and heritage conservation, while its secondary objectives are employment and training.
- (5) **Granting authority and form of the measure:** The measure in question involves the remission of the remaining debt concerning certain loans previously provided by the Province of Flevoland and the Municipality of Lelystad.

Zijne Excellentie de Heer Maxime VERHAGEN
Minister van Buitenlandse Zaken
Bezuidenhoutseweg 67
NL - 2500 EB Den Haag

(6) **Budget and duration:** The overall amount of debt waived reaches [amount over EUR 200.000]*, of which EUR [...] relates to the remission of debt by the Municipality of Lelystad and EUR [...] to remission of debt by the Province of Flevoland. The intended measure will be granted in one go, and will be put into effect after Commission approval

(7) **Beneficiary:** The beneficiaries of the measure are Stichting Scholingsproject Batavia and Stichting Nederland bouwt VOC retourschip. Those two foundations are involved in the exploitation of the Batavia shipyard (hereinafter *Bataviawerf or the beneficiaries*) in Lelystad, the Netherlands (approximately 60 km north-east from Amsterdam). Bataviawerf is located close to Bataviastad Outlet Shopping ("BOS") – as the name indicates an outlet shopping centre – and Nieuw Land Erfgoedcentrum ("NLE") – a museum explaining the creation of the polder. BOS and NLE are separate legal entities that are not related to the Bataviawerfgroep

(8) Created in 1985, Bataviawerf is a shipyard whose activities encompass the authentic reconstruction of 17th century Dutch shipping vessels and a few supporting activities. To achieve a result as close as possible to the original vessel, the workers of Bataviawerf make use of original material and traditional handicraft processes. After the "*Batavia*", Bataviawerf is currently working on its second reconstruction project: "*De 7 Provinciën*". Bataviawerf is also an open air living museum dedicated to 17th century Dutch shipping vessels. Visitors can watch the building process at close hand. In 1999, The Netherlands Institute for Maritime Archaeology (NISA) moved to Lelystad and built a new research centre next to the Batavia Yard. As explained on their Internet page, the idea is to create in Lelystad a centre where archaeological research and historical shipbuilding exist side by side and are easily accessible to visitors. The visitors will be able to follow both research and reconstruction activities. As ancillary activities, Bataviawerf operates a museum shop (130 articles) and a restaurant and rents its rooms for among others weddings. These commercial activities, however, only represent a relatively small percentage of Bataviawerf's revenues and any profit is reinvested into the reconstruction project. In addition thereto, the shipyard pursues a social reintegration objective as it provides work places and training for, among others, young unemployed people and handicapped people to offer them better chances for a good social integration¹. Bataviawerf employs 20 full-time equivalent workers and can count on the assistance of around 300 benevolent people.

(9) All the activities in Bataviawerf are conducted by the Bataviawerfgroep, encompassing three foundations. The first foundation, *Stichting Nederland bouwt VOC retourschip*, is in charge of the actual exploitation of Bataviawerf and tries to make it a real tourist attraction. The foundation has also been responsible for the reconstruction of the ship *Batavia* and foresees in its maintenance and its exploitation as a museum exhibit. The second foundation, *Stichting Scholingsproject Batavia* conducts all the activities related to the reintegration and training of workforce at the Batavia shipyard. The third foundation, *De 7 Provinciën i.o.* is involved in the reconstruction of the vessel *De 7 Provinciën*.

(10) As a museum, Bataviawerf is open for visits by the public during predefined times. The number of visitors achieved over the past years was as follows: [...] in 2004, [...] in 2005 and approx. [...] until July 2006 included, with [...] visitors foreseen for the whole year 2006. For the years 2007-2010 the management of Bataviawerf expects an increase in the number of visitors, which should reach [...] by 2010. According to the business plan provided (dating from 2006), the entry ticket price of EUR 9 per (adult) person was seen as reasonable². These figures include, however, the people giving donations to Bataviawerf who enter the shipyard free of charge. Considering the fact that the numbers of visitors actually achieved were lower than projected

* Confidential – business secret

¹ For more information on Bataviawerf's activities, see <http://www.bataviawerf.nl/>

² The present price is EUR 9.75.

until July 2006, the average revenue per visitor thus generated was also approx. [...] % lower at EUR [...].

- (11) As far as the financing structure is concerned, the main source of revenues (approx. 80%) for Bataviawerf (i.e. the shipyard serving as a public attraction and run by Stichting Nederland bouwt VOC retourschip) as projected for the period 2007-2010 are the entry tickets. Other revenue sources comprise among others fees paid for renting of rooms (e.g. for weddings), revenues from the organisation of events, lotteries, merchandising and food and beverage sales. The main costs relate to personnel charges. The profit (or loss) achieved by Bataviawerf will then be transferred to the budget of the foundation *De 7 Provinciën* for the construction of the vessel carrying the same name (among others to buy the wood necessary for this construction). According to the business plan, the profit (or loss) of the Bataviawerf mainly influences the rhythm of the reconstruction project. The main revenue sources for the construction will be, however, the donations and sponsoring.
- (12) It should also be noted that for the time being Bataviawerf is mostly financed by loans provided by [...] Bank (€ [...] end 2005), as well as the Municipality of Lelystad and the Province of Flevoland.

III ASSESSMENT OF THE MEASURE

Existence of State aid within the meaning of Article 87 (1) of the EC Treaty

- (13) The Commission has to assess whether the notified measure can be characterised as State aid within the meaning of Article 87(1) of the EC Treaty, according to which "*save as otherwise provided in the Treaty, 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 shall, in so far as it affects trade between Member States, be incompatible with the common market*".
- (14) To qualify as State aid a measure must meet the following cumulative conditions: 1) the measure must confer an economic advantage granted through State resources, 2) the advantage must be selective in that it favours certain undertakings and 3) the measure at stake must distort or threaten to distort competition and affect trade between the Member States.
- (15) **Advantage granted through State resources:** The authorities decide to renounce to their claim on Bataviawerf, resulting from loans previously awarded to the shipyard. At first sight, this relieves the beneficiaries from charges they would normally bear from their budget which is an economic advantage for them. This advantage is granted through State resources, the State being embodied, in this case, by the local and provincial public authorities who renounce to the remaining amount of their claim.
- (16) **Selective economic advantage to certain undertakings:** Considering the fact that the notified measure benefits specific beneficiaries, being Stichting Scholingsproject Batavia and Stichting Nederland bouwt VOC retourschip, the advantage is at first sight selective.
- (17) **Distortion of competition and effect on trade between Member States:** As already mentioned, the activities of Bataviawerf should be considered as cultural conservation and/or museum activities and not as typical shipyard activities. In this context the Commission notes that Bataviawerf is targeted to a very local demand and it is very unlikely that tourists would come from abroad to visit Bataviawerf.
- (18) Bataviawerf addresses a very local demand and it is not aimed at attracting international visitors. Bataviawerf is visited by the inhabitants of the town and the surrounding area. The scientific and cultural activities of Bataviawerf are dedicated to the local and national Dutch maritime history.

Unlike certain big national museums³, Bataviawerf does not enjoy an international reputation. It is very unlikely that tourists would choose to travel abroad to The Netherlands only in order to visit Bataviawerf. This is confirmed by the fact that [between 75 and 85%] of the tourists coming to Bataviawerf live in the radius of 75 kilometres around Lelystad. Moreover, the targeted group of sponsors for the museum is composed of individuals and local undertakings. This shows that sponsoring is only expected to generate commercial benefits on a local rather than international scale.

(19) It can therefore be concluded that given the specificities of the case, the measure in question will not have an effect on intra-community trade.

IV CONCLUSION

(20) In view of the above and taking into account the current situation of Bataviawerf, the Commission considers that the measure at stake does not constitute State aid within the meaning of Article 87(1) of the EC Treaty.

V DECISION

(21) The Commission has accordingly decided not to raise any objections to the abovementioned measure on the ground that, according to article 87, paragraph 1 of the treaty, it does not constitute State aid.

(22) 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/community_law/state_aids/index.htm

Your request should be sent by registered letter or fax to:

European Commission
Directorate-General for Competition
State Aid Greffe
SPA3 6/5
B-1049 Brussels
Fax No: +32 2 296 12 42

Yours faithfully,
For the Commission

Neelie KROES
Member of the Commission

³ It is worth mentioning in that respect that replicas of old Dutch ships can be visited in Amsterdam.