Ministerie van Economische Zaken
en Klimaat

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Response of the Netherlands on the draft proposal to amend the State aid Temporary Crisis Framework to support the EU economy in the context of Russia's invasion of Ukraine

This response reflects the views of the Dutch 'Interdepartementaal Staatssteun Overleg (hereafter: ISO)'. The ISO is a central State aid coordination body composed of all Dutch ministries and representation of the regional and local authorities. The ISO is chaired by the Ministry of Economic Affairs and Climate Policy. The Minister of Economic Affairs and Climate Policy is responsible for competition policy in the Netherlands.

The Dutch authorities would like to thank the European Commission for the opportunity to comment on the draft proposal to amend the State aid Temporary Crisis Framework to support the EU economy in the context of Russia's invasion of Ukraine (hereafter: the Temporary Crisis Framework or TCF). The proposed amendments to the Temporary Crisis Framework concern in particular a prolongation of the Temporary Crisis Framework, a new recital on recapitalizations (recital 30); an increase of the permissible aid levels in section 2.1; further alignment of the sections on loans and guarantees including more flexibility for guarantees for energy companies to cover their liquidity needs derived from the trading activities on the energy market (sections 2.2 and 2.3); a simplification and adjustment of section 2.4; and the introduction of a new section 2.7 on aid for additional reduction of electricity consumption.

1. General remarks

The Netherlands welcomes the swift action undertaken by the Commission to enable Member States to tackle the challenges caused by the Russian aggression in Ukraine. The adjustments made thus far in the TCF can provide a useful tool to support our companies during the energy crisis.

However, the Dutch authorities would like to point out that keeping competition and innovation as the basis of the single market requires a strict State aid policy. For these reasons, if State aid is necessary and appropriate to tackle the problems of certain companies or industries affected by the current crisis, the possibilities under the regular State aid frameworks should be explored first. The Regular State aid frameworks have safeguards to protect the level playing field, to ensure that there is no overcompensation and often are conditional on green requirements. A Temporary Crisis Framework should be the exception for targeted aid to very specific cases or most affected undertakings. Furthermore, the Dutch authorities see the need for (large) investment aid – where necessary – to speed up the energy transition.

Varying amounts of State aid across Member States leads to race to the bottom and competitive disadvantages for industries of Member States with fiscal constraints. This might lead to European divergence.

In our view, the TCF should be used as a momentum to support the acceleration of the energy transition, to ensure energy security and to reduce our dependency on Russian energy. Especially in case of a risk of disruption of gas supply, Member States should prioritize gas savings whenever possible through targeted gas demand reduction measures.

The Dutch authorities have concerns regarding the suitability, the proportionality and effectiveness of certain sections of the Temporary Crisis Framework. In particular the Temporary Crisis Framework does not seem to be aligned enough with the climate targets of the European Union and seems to lower the economic incentives to a transition to a sustainable economy. This is considered highly undesirable.

At the same time, the crisis is worsening and we see the need to support vulnerable groups, among which households and (energy-intensive) SMEs. Support may also be justifiable in case of energy companies that face high margin calls and need government guarantees or for those companies whose supply chains have been disrupted. There are also concerns for possible long-term effects on European industries if this situation continues in 2023, 2024 and beyond.

It is important to draft support measures in such a way that they are temporary and highly targeted to match the problems in specific value chains while giving perspective on long-term competitiveness and sustainability. Targeted support could include temporary measures facilitating temporary adjustment of supply to meet demand and more structural measures aimed at a quick shift to energy independence of Russia, within the right limitations to prevent distortions of the single market and to prevent harming the climate targets. For such measures, e.g. measures included in a national gas emergency plan aimed at lowering gas demand on the short run or any other long run measures that stimulates diversification of fuel usage, additional State Aid support under the TCF may be desirable.

2. Specific remarks on the amendments to the Temporary Crisis Framework

- New recitals on recapitalisations (recitals 29, 30 and 31);

The Commission states in these new recitals that solvency support might be considered compatible based on Article 107 (3)(b) TFEU, when undertakings would in all likelihood cease operations without such solvency support and when ceasing operations would likely create significant additional disturbances especially in energy markets and therefore also in the whole economy. Recital 31 provides for general principles which would be relevant in the case-by-case assessment.

The Dutch authorities welcomes these recitals as due to major price effects, not only the energy suppliers and energy traders have increased costs, but also transmission system operators and distribution system operators might potentially face problems. With regard to their balancing task, it might be required to urgently buy gas. However, the market where in this situation gas should be bought is extremely expensive, as the price regulation is not flexible enough to quickly respond to price shocks. The Dutch authorities welcome the approach by the Commission that she would assess such recapitalizations measure in line with principles set out in de 2014 Rescue and Restructuring Guidelines, while taking into account the specific nature of the current crisis.

- An increase of the permissible aid levels in section 2.1;

The Dutch authorities see the need for support for vulnerable groups, such as households and (energy-intensive SME's). The Netherlands points out the disbalance between aid amounts for undertakings in general and undertakings active in primary production of agriculture and fisheries. However, for further increases of maximum aid amount the Netherlands points out that even higher aid amounts may hurt the level playing field and hamper the adjustment of enterprises and companies towards the new (geo)economic situation. Especially when no sustainability requirements are in place, this risk will increase.

- Further alignment of the sections on loans and guarantees including more flexibility for guarantees for energy companies to cover their liquidity needs derived from the trading activities on the energy market (sections 2.2 and 2.3);

The Dutch authorities welcome more flexibility for guarantees for energy companies to cover their liquidity needs derived from trading activities on the energy market (margin obligations) and the synergy between sections 2.3 and 2.2 in this regard.

- A simplification and adjustment of section 2.4;

The Dutch authorities welcome the clarifications in section 2.4 but remain critical on the overall design of this section, with regards to proportionality and effectiveness.

The Dutch authorities welcome the condition in recital 74 that Member States must include in their schemes, when the overall aid per undertaking exceeds EUR 25 million per calendar year, a requirement that the beneficiary must submit to the granting authority, within one year from the moment of granting the aid, a plan that specifies how the beneficiary will reduce the carbon footprint of its energy consumption or how it will implement any of the requirements related to environmental protection or security of supply described in point 31 of this Communication.

The Netherlands would like to point out that section 2.4 does not seem to take into account the ETS-facility which is also a compensation facility. Section 2.4. does not elaborate on the relation between these two systems and whether or not compensation based on these instruments can be cumulated. The Dutch authorities believe this to be problematic, as these compensation measures decrease the incentive to become more sustainable.

- The introduction of a new section 2.7 on aid for additional reduction of electricity consumption.

The Dutch authorities agree that aid for additional reduction for electricity consumption could be of added value next to existing possibilities available in accordance with Article 107(3)(c) TFEU and the possibilities set out in the Temporary Crisis Framework. However, there is a risk for long-term negative effects as such an aid measure might de-incentivize undertakings to invest in energy-efficiency and the transition to greener technologies. Speeding up energy efficiency measures and green investments should not be slowed down by the (untargeted) operational support.

For this reason the Dutch authorities would welcome a condition similar to recital 74 that would oblige Member States to include in their schemes a requirement for the beneficiary to provide a plan how to continue the reduction of electricity consumption after the date included in recital 72, iii), under n), by energy efficiency measures or investments. Similarly investment aid should be limited to loans and guarantees. Investments can be earned back relatively easy given the current high energy prices.

- A prolongation of the Temporary Crisis Framework;

The Dutch authorities point out the persistent volatility of the energy market in relation to costs of gas and electricity. The Dutch authorities take account of the possibility that price shocks with regard to crude oil and petroleum derivatives might occur, especially negatively impacting the market in the upcoming winter months. For these reasons, the Dutch authorities support prolongation of the Temporary Crisis Framework until 31 December 2023.

With regard to the kind of investments covered by sections 2.5 and 2.6 of the Temporary Crisis Framework, the lead time and authorization processes take time. In this regard, the Dutch authorities would like to point out that, with regard to these investments, it is unlikely that all the required steps can be fulfilled before the 30th of June 2023. As a result, the Dutch authorities support the extension of sections 2.5 and 2.6 of the Temporary Crisis Framework to, at least, 31 December 2023.

3. Other remarks:

Aid to gas storage

The Dutch authorities would like to propose the following adjustment for point 26ter (a).

“a. the use of a competitive process based on transparent criteria to minimize the aid, where appropriate;”

In the interest of being able to act speedily and decisively, it may under circumstances be necessary to more directly appoint a party to fill gas storage facilities, instead of using a competitive process like a tender. In case of time pressure, other safeguards to ensure the minimization of aid may be preferable.

Aid for accelerating the energy transition and decarbonization of industrial production processes

With section 2.5 and section 2.6 the Commission wants to support Member States in the faster roll out of projects for renewable energy, storage, and renewable heat relevant for REPowerEU. So that projects are implemented in the winter 2024 at the latest. A roll out more quickly than is possible under the more detailed existing State aid possibilities in the CEEAG or the GBER. The Netherlands understands this rationale, however we do ask the Commission to reconsider whether the proposed timelines in section 2.5 and section 2.6 could be extended. These timelines seem too short for the necessary national implementation, even when taking into account the scope and objective of the TCF. In addition to the activities listed in sub a, the Dutch authorities would welcome the possibility of granting aid for the import and infrastructure for green hydrogen, green ammonia and other green energy carriers. Also the replacement of fossil energy for e.g. bio based materials in the chemistry sector would be a desirable addition to the activities listed in sub a.

Tax deferrals

The Dutch authorities suggest to include a section on tax deferrals, insofar as they constitute aid, similar to section 3.9 of the COVID Temporary Framework. Aid schemes that consist in temporary deferrals of taxes which apply to undertakings (including self-employed individuals) that are particularly affected by the crisis, for example in specific sectors, regions or of a certain size, should be considered compatible with the internal market on the basis of Article 107(3)(b) TFEU during a limited period of time.

Possible emergency procedure

The crisis is unfolding and the situation remains highly unpredictable. For this reason, the Dutch authorities would like the Commission the possibility that emergency measures might be necessary, for instance based on the national Protection and Recovery Plan (BH-G) or constitutional emergency law (declaring a state of emergency). The Dutch authorities point out that in such a situation measures based on Article 107(2)(b) TFEU, which have to be notified and approved with extremely high urgency, might be necessary. The Dutch authorities ask the Commission to consider putting in place an emergency procedure to enable Member States to take decisions immediately.

3. Questions by the European Commission

1) In section 2.3 on subsidised loans, the Commission proposes to introduce the new reference date of 1 October 2022 or moment of granting to determine the base rate for subsidised loans. The rationale for this update is to ensure an alignment between section 2.2, where support is granted through public guarantees on loans provided by financial intermediaries, and section 2.3, where subsidised loans may be provided directly by Member States to beneficiaries. In case you disagree with this adjustment, please provide reasons to justify alternative dates.

The Dutch authorities welcome the synergy between sections 2.2 and 2.3.

2) Depending on how national health systems are organised, hospitals may fall outside the scope of State aid control. Alternatively, in many Member States, they may benefit from support as Service of General Economic Interest. Where they are undertakings, they can also benefit from the measures under the Temporary Crisis Framework. Would you see the need to introduce additional provisions for this sector in the Temporary Crisis Framework?

The Dutch authorities see no need for additional provisions for this sector, as the Temporary Crisis Framework provides sufficient possibilities for support.

3) If you consider that certain sectors should be included in the list of particularly affected sectors and subsectors in Annex I, please indicate the NACE code and the relevant justification for inclusion, including data on energy intensity and trade intensity.

At this moment, the Dutch authorities do not see the need to add sectors that have not yet been included.

4. Proposal for prolongation of section 3.13 COVID Temporary Framework until 31 December 2023

Finally, the Commission also intends to propose to prolong the application of section 3.13 of the COVID Temporary Framework until 31 December 2023, considering labour shortages and continued disruptions in supply chains following the COVID-19 outbreak and the fact that the economies of Member States are seriously disturbed by the effects of the unprovoked attack by Russia on Ukraine. In view of these facts, the Commission considers that more time may be needed for the measure allowing for investment support for a sustainable recovery.

The Dutch authorities consider that decisions on aid for economic development and for the recovery, including green and digital investments, should be approved based on the regular state aid rules – not under the temporary framework. The revision of the regular state aid rules, such as the Guidelines on Climate, Environmental Protection and Energy (CEEAG) should enable these necessary investments while contributing to the EU climate goals and the Paris Agreement.

Crisis emergency rules such as the COVID Temporary Framework should be used to address exceptional economic circumstances, and not to stimulate economic development, recovery or to boost necessary investments. The Temporary Framework should not be extended to aid beyond the acute crisis when the ongoing revision of state aid guidelines and regulations already take into account the latest technical, economic and political developments and priorities of the Union. Furthermore, the TCF also provides sufficient possibilities for investment aid.