The Hague, 7 October 2020
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Response of the Dutch authorities on the draft Communication from the Commission to the

4th Amendment to the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak

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This response reflects the views of the Dutch 'Interdepartementaal Steun Overleg (ISO)'. The ISO is a national State aid committee composed of all Dutch ministries and representatives of the regional and local authorities.

1. General remarks

The Dutch authorities would like to thank the European Commission for its work on the extension of the Temporary Framework. With this fourth amendment the Commission is proposing to prolong and further extend the scope of the Temporary Framework by enabling Member States:

(i) to prolong their COVID-19 Temporary Framework state aid measures until 30 June 2021
(ii) to introduce a new support measure to cover part of the 'uncovered fixed costs' of undertakings with reduced business activity due to the COVID-19 outbreak,
(iii) in the context of recapitalisations, provide that, under certain conditions, the exit of the State from previously State-owned entities may take place without public consultation and sale.

We support these proposals, however we do like to raise the following issues.

In general we would like to point out that the flexibility made possible for COVID support measures under the Temporary Framework was and still is necessary. It has proven to be effective but we should ensure a common European exit strategy to dismantle state support when time is right. For the European economy to recover, an extension of the Temporary Framework seems necessary but should work towards rebalancing the internal market during the recovery period and ensuring the level playing field. This means a prolongation should (a) be temporary, (b) show more flexibility towards heavier affected undertakings or sectors and (c) take into account incentives to boost public investments while at the same time stirring up private investments. Targeted liquidity support for undertakings that are viable may prove necessary to continue. As well as fiscal measures and aid for social security contributions in order to preserve employment. New temporary aid in 2021 should take into account the gradual phase-out of the COVID-19 aid. At the same time balanced public recapitalisation measures still are necessary for a sustainable and lasting recovery of the EU, to fight unfair competition of third countries, and to address possible national security concerns.

The Dutch authorities can support the proposal for a new **point 3.12 in the TF - Aid in the form of support for uncovered fixed costs** and follow the logic to impose conditions when large sums of aid or large aid intensities of the eligible costs are to be granted for uncovered fixed costs. However we can **only** support the introduction of point 3.12 in the TF when this **does not mean that the approval of schemes for fixed costs based on title 3.1 of the TF will be voided if the conditions of title 3.1 are met.** It is necessary to give member states enough leeway in order to be able to use title 3.1 of the TF for schemes which (partially) cover for fixed costs of (smaller) undertakings affected by the Corona crisis, if the conditions of title 3.1 are met. The Netherlands asks the Commission to clarify this or to insert a workable mechanism for smaller amounts of aid for small and medium-sized undertakings .

Since the exporting industry has never been so much dependent on legal certainty given these times of continuing uncertainty, the Dutch authorities would appreciate a decision to extend the current exemption of all marketable risks beyond 31.12.2020, preferably until 31.12.2021. We will further elaborate on the reasoning for this in the survey concerning on short-term ECA-cover for marketable risks under the exemptions of the Short-term Export-credit Communication (STEC)

2. Specific remarks

2.1 Remarks concerning the prolongation of the Temporary Framework

While the Temporary Framework has been useful as an instrument to address the economic consequences of the outbreak, the use of the Temporary Framework has also highlighted disparities in the Internal Market, mainly due to the differences in economic size and budgets of Member States. The Commission therefore considers that a limited prolongation of the measures set out in the Temporary Framework until 30 June 2021 is appropriate to ensure that national support measures effectively help affected undertakings during the outbreak, but also to maintain the integrity of the Internal Market and to ensure a level playing field..

The Netherlands finds the Temporary Framework a useful instrument to address the economic consequences of the outbreak. In light of the fact that the current COVID-19 outbreak is expected to have consequences well into 2021, a (limited) prolongation of the measures set out in the Temporary Framework until at least 30 June 2021 seems appropriate. In this proposal the Commission considers it appropriate to introduce the condition that aid should be granted no later than 30 June 2021. This however does not take into account the fact that COVID-19 aid may well need to cover the period until 30 June 2021. If this is the case, Member States may want to require information from the aid applicants or from authorities within their Member States on the aid necessity or to be able to establish the right amount of aid. This means aid can't be granted at the latest on 30 June 2021 but can only be granted at a later moment in 2021.

We would like to suggest to change this provision in: ' the aid should be applied for no later than 30 June 2021 and granted no later than 1 October 2021'.

It will depend on the development of the COVID 19 virus and the need for restriction whether it could be necessary to prolong the TF beyond 30 June 2021. We appreciate if the Commission would evaluate in an early stage the necessity for prolongation of the Temporary Framework after 30 June 2021. Given the current situation in several Member States and the unpredictability of future developments with regard to COVID-19, we suggest that the evaluation would take place in early spring 2021 to see if an even longer prolongation of the TF regime would be necessary.

We recommend to hold on to title 3.1 of the Temporary Framework **– liquidity support –in parallel and in line with the prolongation, as for example the Minimis aid can be all used in 2020.** Making use of title 3.1 can be necessary to meet with the need of undertakings that already have received or will receive aid up to the threshold in 2020 or in the beginning of 2021 and are still facing a shortage of liquidity due to Covid-19.

2.2 Remarks concerning the new support measure to cover part of the 'uncovered fixed costs' of undertakings with reduced business activity due to the COVID-19 outbreak

The Commission considers that Member States may envisage contributing to the uncovered fixed costs of undertakings, for which the adoption of public measures in response to the COVID-19 outbreak resulted in the suspension or reduction of their business activity. The Commission considers that aid granted under such measures is justified and can be declared compatible with the internal market on the basis of Article 107(3)(b) TFEU, for a limited period, to address the wider negative economic effects of the economic disturbance caused by the COVID-19 outbreak.

The Commission wants to introduce the following conditions:

a. The aid is granted no later than 30 June 2021 and covers uncovered fixed costs incurred during the period between 1 September 2020 and 30 June 2021, including such costs incurred in part of that period ('eligible period');

The Netherlands finds it **crucial** that member states should remain to have the possibility to (partially) grant liquidity aid for fixed costs of undertakings, affected by the Corona crisis, under section 3.1 of the Temporary Framework. This section is very useful in this crisis because it only has a few conditions to be complied with. The section may well prove more efficient to bridge the cap for the (uncovered) fixed costs of undertakings which are affected by the Corona crisis. Aid measures justified under section 3.1 can be implemented very fast, which can be crucial for the survival of certain undertakings. National aid schemes with a large amount of aid applications should be as lean and mean as possible and the administrative burden as low as reasonable possible. The overall maximum cap per undertaking, as set out in point 22(a) and point 23 (a and 23bis) of the framework, secures that no overcompensation can be granted.

b. The aid is granted on the basis of a scheme to undertakings in specific sectors, regions or of a certain size that suffer a decline in turnover during the eligible period of at least [30]% compared to the same period in 2019;

For the Netherlands it is crucial that the threshold for the decline of turnover should be set on at least 30%, which means a required *minimum* decline of turnover should not be higher than 30%. It is up to the Member States, depending on the economic situation in their country, whether they want to increase this threshold over time in the eligible period.

c. Uncovered fixed costs are the fixed costs incurred by undertakings during the eligible period which are not covered by their revenues during the same period and which are not covered by other sources, such as insurance. The aid intensity shall not exceed [50]% of the eligible costs, except for small and micro companies, where the aid intensity shall not exceed [70%] of the eligible costs. For the purpose of this point, the losses of undertakings during the eligible period(*) are considered to constitute uncovered fixed costs. The aid under this measure may be granted based on forecasted losses, while the final amount of aid shall be determined after realisation of the losses. Any payment exceeding the final amount of the aid shall be recovered;

The Dutch authorities are in favour of aid intensities which can be set higher.

In order to be able to implement national aid schemes, with small (er) amounts of aid than the overall aid and overall aid intensities provided for in this new point 3.12, as fast and lean and mean as possible, the amount of aid should not always have to reflect the fixed costs of *the individual* undertaking and should not always have to take into account other sources, such as insurance. For those national aid schemes with a small amount of overall aid, we propose to introduce a **second** possibility for member states to enlarge their flexibility. We propose to insert the following mechanism for the calculation of the amount of aid to cover for the fixed costs when only smaller amounts of aid are to be granted. To limit possible overcompensation this mechanism could only be used for aid amounts which will not exceed a maximum of 300.000,- - per undertaking.

The amount of the aid for the fixed costs is measured on the basis of the decrease in turnover in a certain period in 2020 or 2021 in comparison to the turnover over the same period in the year 2019. This can be done solely on the basis of the VAT declaration of the undertaking. The calculation of the amount of aid is done as follows. The loss of turnover (in EURO) x a sector specific constant x 0.5. The sector specific constants will be determined in the national scheme as the ratio between fixed costs and turnover for *an average* undertaking in a specific sector. This constant is calculated on the basis of statistical evidence from the Central Statistical Office per sector.
With the correction of only taking into account 50% of the turnover of the *average* undertaking in a specific sector, no overcompensation is likely and the 50% correction will make up for the fact that the aid amount is not based on the actual fixed costs of the individual undertaking.

d. In any event, the overall aid shall not exceed EUR [2] million per undertaking. The aid may be granted in the form of direct grants, guarantees and loans provided the total nominal value of such measures remains below the overall cap of EUR [2] million per undertaking; all figures used must be gross, that is, before any deduction of tax or other charge;

e. The aid under this measure shall not be cumulated with other aid for the same eligible costs;

The Dutch authorities find it useful that cumulation with other aid for the same eligible costs should be possible but only to the threshold mentioned under d of this provision.

2.3 Remarks concerning the adjustments on certain recapitalisation criteria

<u>General remark regarding section 3.11</u>

Could the Commission consider to give Member States more leeway and discretion when applying the conditions for recapitalization measures. The effectiveness of some conditions may depend on the specific circumstances of the case. For example in regard to international corporations having subsidiary companies in different Member States.

<u>Point 64 Remuneration and exit of the State</u>

The Temporary Framework sets out the criteria, on the basis of which Member States may provide compatible aid in the form of equity and/or hybrid capital instruments to undertakings facing financial difficulties due to the COVID-19 outbreak. The Commission now proposes to add certain adjustments to the mechanism in point 64 in order to ensure that the exit of the State from undertakings in which the State is an existing shareholder, *i.e.*, before the COVID-19 recapitalisation, takes place at conditions that can reasonably be considered equivalent to those applicable to private undertakings.

After two years have passed since the granting of COVID-19 recapitalisation and if the State is the only existing shareholder, for the redemption of COVID-19 recapitalisation, it is not required to follow the sales process referred to in point 64 and the public consultation may be replaced by an independent valuation of the beneficiary. If that independent valuation establishes a positive market price, the State is deemed to have exited from the COVID-19 recapitalisation, even if the beneficiary remains State-owned. Nevertheless, if the positive market price is less than the minimum price laid down in point 63, the governance rules laid down in section 3.11.6 shall continue to apply until four years after the grant of the COVID-19 recapitalisation measure.

After two years have passed since the granting of COVID-19 recapitalisation and if the State is one of several existing shareholders, for the redemption of the COVID-19 recapitalisation, the State doesn't have to follow a sales process and the public consultation may be replaced by an independent valuation of the beneficiary for the part of the COVID-19 equity that the State would need to retain in order to restore its shareholding. However for the rest of the COVID-19 equity it stays necessary to conduct a competitive process.

As the Dutch authorities were not supportive of the strict exit strategy obligations laid down in paragraph 3.11.5 and find it important that the Commission respects the principle of neutrality laid down in the TFEU as regards public versus private ownership (Article 345 TFEU), any flexibilization of those obligations is to be encouraged. So we can support these adjustments.

Point 54 Amount of recapitalisation

The Commission proposes to add to point 54 that hybrid instruments granted by the State should be counted as equity. This means that also for hybrid instruments, to be counted as equity, in order to ensure proportionality of the aid, the amount of the COVID-19 recapitalisation must not exceed the minimum needed to ensure the viability of the beneficiary, and should not go beyond restoring the capital structure of the beneficiary to the one predating the COVID-19 outbreak, i.e. the situation on 31 December 2019. In assessing the proportionality of the aid, State aid received or planned in the context of the COVID-19 outbreak shall be taken into account.

The Dutch authorities do not support this adjustment.

As stated in the Dutch position on the second amendment to the Temporary Framework, the limitation of recapitalization to the minimum needed to ensure viability, not going beyond restoring the capital structure of the beneficiary to the one predating the Covid-19 outbreak, is difficult to implement consistently and may increase the vulnerability of FDI-take-over or the collapse of the company.