HT. 6323 Response of the Netherlands to the consultation on a 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 P 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 a 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). In the consultation the Commission seeks the views of the EU-Member States on the proposal to transform TCF into a Temporary Crisis and Transition Framework (hereafter: TCTF) to facilitate and accelerate Europe's transition to a net-zero economy, also in the context of aid within other jurisdictions. This proposal is part of the second pillar of the Green Deal Industrial Plan and aims to boost investment for a faster roll-out or renewables, decarbonizing of the industry and the production of equipment necessary for the net-zero transition while preserving the integrity and level playing field on the single market. The Commission proposes in the TCTF to:

- further facilitate the roll-out of renewable energy and decarbonising the industry by including the possibility to: (i) support the deployment of all renewable energy sources; (ii) grant aid for less mature technologies, such as renewable hydrogen, without a competitive bidding provided that safeguards to ensure the proportionality of public support are in place; (iii) simplify the rules for the design of the competitive bidding procedures; and (iv) incentivise investments leading to a significant reduction of emissions by including higher aid ceilings and simplified aid calculations such as, the aid being simply determined as a share of investment costs;

- boost the European production of equipment necessary for the net-zero transition in order to accelerate the transition to a net-zero economy and overcome the current energy crisis. The Commission therefore proposes to support the production of batteries, solar panels, wind turbines, heat-pumps, electrolysers and carbon capture usage and storage as well as the related critical raw materials necessary for the production of such equipment. For projects that take place in 'a' areas or involve investments in several Member States, further aid may be allowed to match the level of support offered in third countries up to what is necessary to make the investment profitable in Europe. The Commission seeks feedback of the EU member states in particular on the possibility to match the aid to the level of subsidy offered by third countries introduced in the new section 2.8 on Aid for accelerated investments in sectors strategic for the transition towards a net-zero economy.

General remarks

The Netherlands welcomes the swift action undertaken by the Commission to enable the EU member states to tackle the challenges caused by the Russian aggression in Ukraine. The TC(T)F can be a useful tool to support our businesses during the energy crisis. For the transition to a net-zero economy, the following is important for the Dutch authorities.

As put forward in the response of the Netherlands to the letter of Vice-President of the European Commission Vestager[1] the Netherlands welcomes the European ambition to remain at the forefront of the climate transition and clean technologies. It is in our interest to maintain a leading position in clean tech. Therefore we need to assist our industries in the green transition and help addressing challenges such as high energy prices and global competition.

Strengthening our long-term competitiveness starts with a strong economic foundation. Therefore we need to step up our commitment to a strong and fair internal market, a level playing field, an open economy and international cooperation, a dynamic and agile workforce and strong EU Member States with sound public finances. But more is needed from the EU and its Member states to ensure a sustainable, resilient and competitive European Union

This means we need to deepen the single market, accelerate the energy transition and strengthen the EU investment climate. To do this we have a large toolbox with policy instruments available. The State aid rules are an important tool in this regard, but not the only one. Therefore the Commission should carefully assess which policy mix, for example relating to coordination, regulation or financial stimulation among others, is suitable to address our challenges. Another important element of the toolbox of EU instruments concerns the EU's trade treaties with other countries. WTO monitoring of these treaties is important for a level playing field.

Specifically with regard to the State aid instrument as part of the EU toolbox, the Dutch authorities are of the opinion that the regular State aid frameworks should be fit for their purpose and prevent disruption of the level playing field as much as possible. The TC(T)F should be used only if there is a clear link to its stated purpose: (temporarily) support the EU economy in the context of Russia’s invasion of Ukraine. As already stated above, we value all the efforts of the Commission under the TCF and the possibility to quickly address the challenges posed by the consequences of Russia's actions in Ukraine.

The Dutch authorities point out that because of the urgency and strict timelines of the consultation of the TC(T)F it is difficult for Member States to coordinate their

[1] https://www.tweedekamer.nl/kamerstukken/detail?id=2023Z01955&did=2023D04615

positions. Very far-reaching and distortive forms of aid are proposed and decided upon in a few weeks, which lacks the procedural due diligence necessary for such proposals.

The Dutch authorities are not in favor of further broadening the purpose of the TCF to a transition framework. The green transition requires a long-term strategy for which the regular State aid frameworks are the appropriate instrument. Crisis frameworks are not the right instrument to regulate State aid for longer-term and structural purposes as this would diminish adequate procedural and substantive safeguards. Nor is this in the interest of European industry, which needs long-term certainty. Crisis frameworks should be temporary in nature, focus on the temporary problem and provide for a clear exit strategy. Moreover, the legal basis of the TCF is mainly Article 107(3)(b) TFEU, which states that the Commission may declare compatible with the internal market aid 'to remedy a serious disturbance in the economy of a Member State'. Even though the high energy prices, the need to re-skill and up-skill workers and aid within other jurisdictions could have an impact on the competitiveness of European industry, they are insufficient at this time to lead to the conclusion that a serious disturbance in the economy of a Member State in the sense of Article 107(3)(b) TFEU has been created. The Commission proposes that aid for investment projects with strategic importance for the green transition towards a decarbonised economy in section 2.8 can be compatible with the internal market under Article 107(3)(c) TFEU if the conditions in that section are met. However, aid can only be declared compatible on this legal basis if such aid does not adversely affect trading conditions to an extent contrary to the common interest. Therefore, it is very important to include an assessment of the common EU interest in the conditions of this section.

The starting point of new State aid rules should be a problem analysis. This includes a thorough analysis of the current implications of the Inflation Reduction Act. A proper analysis further includes a public consultation in order to include insights from industry and other stakeholders. We refer to the Joint statement on State Aid TCTF by CZ, DK, FI, HU, IE, LV, NL, PL, SE and SK.[2] In our view, this problem analysis has not yet been sufficiently made and no substantiation is provided for the list of sectors in section 2.8. The Dutch authorities call on the Commission to exercise such an problem analysis in the follow-up of the communication of the Green Deal Industrial Plan, most notably in the design of a Net-Zero Industry Act.

Should the Commission be of the view that a further relaxation of State aid rules is justified in the context of the competitive challenge facing EU industry, the Dutch authorities are of the view that such review should not focus on the TC(T)F but on better targeted aid within the regular State aid frameworks, such as the

[2] As a response to Commission's consultation on the State aid Temporary Crisis Framework a group of six Member States sent a joint non-paper to the Commission on 23.12.2022. Following the ministerial consultation set out in the letter by Executive Vice-President Margrethe Vestager on 13 January 2023, the original joint statement by Denmark, Finland, Ireland, the Netherlands, Poland and Sweden was on 2.2.2023 co-signed also by the Czech Republic, Hungary, Latvia and Slovakia.

ongoing targeted review of the General Block Exemption Regulation (GBER) and the Important projects of Common European interest Framework (IPCEI). To this end, the Dutch authorities have made proposals for process simplification and targeted adjustment of regular State aid frameworks as set out in the response to the letter of vice-president Vestager. However, if the Commission does consider the TC(T)F to be the right instrument the Dutch authorities have specific remarks with regard to the proportionality and effectiveness of the proposed aid categories.

Specific remarks on the amendments to the TCF

Section 2.1 (limited amounts of aid):

The Dutch authorities welcome the simplification to allow a calculation of maximum aid thresholds on a per Member State basis, as this section is meant for relatively low and simple aid grants to undertakings affected by the crisis.

Section 2.4 (aid for additional costs due to exceptionally severe increases in natural gas and electricity prices):

The Dutch authorities do not agree that the simplification to allow a calculation of maximum aid thresholds a per Member State basis is necessary and proportionate for the type and amounts of aid granted under this section.

Section 2.5 (aid for accelerating the rollout of renewable energy and energy storage relevant for REPowerEU) and section 2.6 (aid for the decarbonization of industrial production processes through electrification and/or the use of renewable and electricity-based hydrogen fulfilling certain conditions and for energy efficiency measures):

The Dutch authorities welcome the simplifications in section 2.5 and section 2.6 but remain critical on the overall design of this section, with regards to proportionality and effectiveness. The Commission proposes to broaden this section to all renewable energy sources. The Dutch authorities consider that decisions on aid for economic development, including green and digital investments, should be approved based on the regular State aid rules – not under a temporary framework. Mainly the Guidelines on Climate, Environmental Protection and Energy (CEEAG) should enable these necessary investments long-term while contributing to the EU climate goals and the Paris Agreement. Therefore, an approval decision basis on the TC(T)F should be conditional on clarifying why the regular State aid frameworks, such as the CEEAG, are inadequate and justify a deviation in a specific case.

The Dutch authorities welcome the simplification of the rules for the design of the competitive bidding procedures and the possibility to grant aid for less mature technologies without a competitive bidding provided that safeguards to ensure the proportionality of public support are in place. Moreover, when applying competitive bidding, it should be possible to focus on the amount of emission reduction, rather than the amount of aid to achieve this goal.

Specifically for hydrogen, the Dutch authorities point out that the revision of the Renewable Energy Directive (RED) is still unclear with regard to stimulating hydrogen. Member States are already waiting 2 years for further clarification. This is another important bottle-neck. There should be a structural and simultaneous connection between the State aid rules and revision of RED through which maximum transparency on State aid rules could be achieved when applying the State aid frameworks. Additional possibilities in the TCTF on hydrogen will therefore not solve the problem that the RED is still under revision. We would welcome a solution for this problem in the CEEAG.

The possibilities of granting aid under section 2.5 and 2.6 is extended to 31 December 2025 at the latest. Given the rationale of the TC(T)F to provide a short term boost for the energy transition this extension does not seem proportionate. Moreover, continued extension of these deadlines in the TC(T)F again underlines the fact that the long term challenge of the energy transition cannot by addressed by a temporary framework. The regular State aid frameworks should be fit for purpose. However, it is important that if aid is granted that the deadlines for projects to be completed and in operation are realistic, because of for instance hick-ups in permitting and global supply chain issues. Therefore an extension of the deadlines for project to be completed by another 12 months and a possibility for unforeseen circumstances would be welcomed, instead of an extension of the section of the TC(T)F itself. Delays caused by supply chain issues should not be penalized.

With regard to section 2.6 crucial that circular economy and CCU can be supported too. It is important to note that large environmental gains in industry can be reached by supporting projects, which for example replace fossil feedstocks with biobased feedstock or chemical recycle plastic into virgin feedstocks. Furthermore, it contributes to the much needed diversification of feedstock supply. This will not necessarily decarbonize the production process of the beneficiary but will reach significant overall emissions reduction (and reduce the need for fossil feedstock (gas or oil)). Therefore, section 2.6 should also allow for investments in circular economy projects, such as (but not limited to) chemical recycling, biorefinery and CCU applications. The net-zero industrial transition is broader than sustainable energy alone. Without sustainable carbon sources such as biobased feedstock and recycled carbon industry remains reliant on fossil sources for feedstock. Circular economy projects can help prevent that. Therefore projects which reach environmental benefits over the whole value chain must be supported under (81, d), while safeguarding the additionality of CO2 reduction.

The Dutch authorities call on the Commission to pay sufficient attention to the position of SMEs. In that context, could the Commission clarify whether an increase of aid intensity for SMEs (point 81 sub p) also applies to point 81 sub r? In this regard, the Dutch authorities also note that for decarbonization, innovation has an important role to play. Therefore, the focus should not only on be on existing industry. The Dutch authorities see risk financing as potentially important in stimulating innovative disruptions and addressing strategic autonomy.

Sectie 2.7 (Aid for additional reduction of electricity consumption)

The Netherlands welcomes the flexibility of the rules for the design of the competitive bidding procedures under section 2.7.

Sectie 2.8 (Aid for accelerated investments in sectors strategic for the transition towards a net-zero economy):

The Dutch authorities consider it very important to prevent subsidy races, both in relation to third country jurisdictions and in particular within the internal market. State aid control and instruments have always played an important role in this regard. Instead of participating in a subsidy race reactively by providing possibilities for matching the aid granted by third countries, an EU long-term strategy should determine which investments in strategic sectors are needed for the green transition. The State aid frameworks play an important role and the need to prevent a harmful subsidy race in the internal market should automatically be taken into account in the Commission's assessment of the more market-distorting forms of State aid. This matter is not given sufficient consideration in the context of the TC(T)F which, moreover, is temporary in nature. Therefore, the Dutch authorities would urge the Commission to make use of other instruments if proven necessary.

The Commission does not provide a justification based on a problem analysis that (production) aid for sectors mentioned (batteries, solar panels, wind turbines, heat-pumps, electrolyser and CCUS as well as related critical raw materials necessary for production of such equipment) is necessary and to what extent. Aid should be targeted and temporary where possible. Even though the Dutch authorities do see the major importance of these sectors for the transition towards a net-zero economy it is important to analyze whether State aid policy in these sectors is an appropriate instrument for promoting the EU's competitiveness and preventing strategic dependencies, and whether other less distorting instruments, including existing instruments at EU level, would be a more appropriate way to achieve the intended results. Needs can also differ per sector. Such an analysis is currently still missing. Rather, the bottlenecks may lie in labor shortage or infrastructure, for example. Allowing possibilities for aid without solving those bottlenecks might result in wasting public resources. The same is true for ensuring sufficient demand exists for the goods produced. In this context, the Dutch authorities call upon the Commission to analyse not only why the activity is not or not sufficiently taking place in the EU, but also why it is successful in other jurisdictions.

If a problem analysis would lead to the conclusion that aid is necessary, economically preferable in the long-term and the regular State frameworks do not provide enough possibilities an European assessment framework with strict conditions is needed. For the sake of completeness it is important to state that operating aid would even be more distortive and unlikely to be effective. The Dutch authorities agree with the Commission that support for investments into production facilities could lead to tensions with overarching objectives of the integrity of the internal market and cohesion. Preventing diversion of new investments to third countries should not be the main objective, but preventing strategic dependencies. An European assessment framework for productive investments should ensure:

- that the activity in question is of strategic relevance based on a long-term strategy and it is necessary to produce in the EEA to prevent strategic dependencies;
- the value added at the level of the EU as a whole, taking into account the value chain, production efficiency and not crowd out private investment. The announced criteria in the Green Deal Industrial Plan to decide which projects are strategic can ensure this added value, both for multi-country projects and for strategic net-zero technologies. It is important to define those criteria at EU level before allowing this highly distortive type of aid;
- that the activity cannot be carried out profitably within the EEA at the moment but (especially in case of these temporary possibilities) is viable in the long term after receiving investment aid which also means there is expected to be sufficient demand;
- that the equipment cannot be imported from a reliable partner or a diverse portfolio of suppliers;
- the positive impact of aid and the contribution to the net-zero economy by limiting aid to projects that provide key technologies for the strategic sectors and not generic equipment where no strategic dependency will arise.

The Dutch authorities refer as an example to the Dutch assessment framework drafted for the consideration for which sectors an IPCEI may be of added value. The same considerations could be relevant for aid in this category and could be introduced in section 2.8, namely whether aid contributes to solving the problem, whether there is a major European impact, and whether there is willingness to invest in the private sector. Please see the annex for the full assessment framework.

The Commission states support under this section needs to be clearly limited to the defined strategic areas. However, in the proposal for the TC(T)F it is unclear if the section covers all relevant equipment for the green transition or is limited to technologies it specifically mentions namely batteries, solar panels (this should include photovoltaics), wind turbines, heat-pumps, electrolysers and CCUS as well as related critical raw materials necessary for production of such equipment. Furthermore, it is unclear which state of the art is required, it is undesirable to support the production of outdated technologies. With current wording, this section could lead to broad support for industry without a concrete result for the net-zero economy because the section covers all components of equipment and it is not guaranteed that all this equipment will only be used in strategic sectors. In the proposal for the TCTF the scope of equipment seems to cover everything, up until steel, cables and screws used. It is also unclear what is meant by the production of related critical raw materials, does this concern mining, refinery, recycling or even acquiring raw materials? Again, this could lead to aid where it is not guaranteed that it will only benefit strategic sectors. Specifically with CCS it is unclear how this would contribute to less reliance on fossil fuels, even though it could lead to zero emissions. Therefore, it is necessary to introduce conditions that ensure the impact of aid by preventing strategic dependencies and the contribution to the net-zero economy. Also to ensure this section complies with Article 107(3)(c) TFEU that states that aid may not adversely affect trading conditions to an extent contrary to the common interest.

The Dutch authorities welcome the strict conditions already proposed by the Commission, such as limited aid intensity and maximum aid amounts (point 86 (e)) which puts a cap on matching aid, prevention of relocation within the EU (point 86 (h) and transparency (point 86 (i)). However, point 86 (h) relies entirely on the interpretation of the Commission and the evidential standards to which granting authorities will be held. This condition should be more detailed. It is unclear whether 'in line with point 88' means that the same conditions are applicable. We would also welcome introducing in point 86 the conditions of point 87 (a) and (c).

Most of concern for the Dutch authorities in the proposal for the TCTF lies in the possibility to match aid from a third country in point 87 and further. For this section the Dutch authorities have serious concerns with regard to the integrity of the internal market. The necessity is not well argued, it may have great distortionary effects on the single market and the effectiveness is unclear. If the Commission is going to approve aid in such cases the Dutch authorities urge the Commission to provide very strict conditions and a heavy burden of proof for the beneficiary of the aid. The Dutch authorities have serious doubts whether the proposed conditions are adequate and suggest to further delineate and demarcate this aid to cases strictly necessary. Therefore, the Dutch authorities argue for additional conditions, such as the conditions mentioned above for point 86 in general and specifically:

- that demonstratable strategic dependencies arise or threaten to arise in the short term, for example with a certain amount of production outside the EEA;
- whether the product serves vital processes;
- whether there are substitution possibilities and/or trade diversification possibilities,
- whether there is a dependency elsewhere in the chain, for example certain raw materials, and
- whether production can be scaled up in the short term in the EEA in the event of geopolitical tensions necessary.
- matching aid should also be subject to a condition that it will be a one-time/ temporary aid, with the requirement to provide a sound argument as to how a project can eventually become viable without aid (in analogy to rescue and restructuring aid).

Within the framework of strategic autonomy, requiring the participation of certain areas and/ or involvement of several EU Member States should in itself not be a decisive element. While it is an indication for added value for the EU as a whole, the question is rather whether the product is strategic for the EU, whether it has or will have an EU value chain and whether the production location is chosen effectively.

The Dutch authorities welcome the conditions already proposed by the Commission in 87 (a), (c), (d) and (f) and 88 to limit aid amounts, ensure state-of-the-art production and to prevent relocation within the EU. Again, evidential standards will be crucial here.

Could the Commission clarify whether Just Transition Fund areas fall within the scope of point 87 (b)? The Dutch authorities would welcome an explicit reference.

Finally, aid may be granted until 31 December 2025. For such distortive aid a temporary nature is welcome but a two year period is not very limited at all and will likely lead to calls to extend these possibilities as we have seen with the Temporary Framework Covid. Because there is no problem analysis or impact assessment it is unclear whether these temporary aid possibilities are even sufficient to solve the identified problem and what would happen after this period. EU competitiveness is not a temporary challenge and therefore it seems unlikely that a temporary solution is effective to mature these markets. These temporary possibilities could have a big impact on the integrity of the internal market while not solving the underlying problem of EU competitiveness. Therefore, we call on the Commission to provide a clear exit-strategy after 2025 for the TC(T)F and to work on long-term solutions such as deepening internal market, effectively using trade policy instruments, skills and sufficient infrastructure. If some type of State aid, which is likely not matching aid, is still considered necessary we call on the Commission to work on possibilities in the regular State aid frameworks that have sufficient conditions on the level playing field on these topics as the net-zero industry will not be achieved in 2025.