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 increases of relevant thresholds for maximum aid amounts per beneficiary under section 2.1. as well as specific technical clarifications for section 2.4. The proposal also includes two new sections that should facilitate the uptake of renewable energy investments (section 2.5) and investments for decarbonisation of industrial production processes through electrification and/or renewable hydrogen and for energy efficiency measures (section 2.6).

1. General remarks

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. Just to prevent any miscommunication, the Dutch authorities do see the need for (large) investment aid – where necessary – to speed up the energy transition.

The Dutch authorities have serious concerns regarding the suitability, the proportionality and effectiveness 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.

In the context of the Russian aggression against Ukraine, it is of crucial importance to once again significantly accelerate and intensify the expansion of renewable energies in order to rapidly reduce dependence on imports of fossil fuels, particularly from Russia, and at the same time accelerate the energy transition. 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. It is of crucial importance to make the granting of aid under the TCF conditional on the requirement of gas savings where appropriate.

In principal, the nature of the current economic situation does not call for broad (liquidity) support for most segments in the economy. Liquidity support harms competition and distorts the level playing field disproportionately. That is why the Dutch authorities propose to limit the possibilities for liquidity support.

However, should the current situation worsen (e.g. immediate shortages of gas supply, rationing of gas supply and/or emergency measures being taken), temporary targeted support for energy(-intensive) companies might become necessary for those companies whose supply chains have been disrupted, and/or need to acquire relevant infrastructure and/or face liquidity problems due to substantial margin calls. 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 support, 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 proposed point 41 proposes to increase the limited amount of aid to EUR 500.000,- per undertaking. And new proposed point 42 proposes to increase the limited amount of aid in the primary production of agricultural products to EUR 62. 000 per undertaking and EUR 75. 000 per undertaking active in the fishery and aquaculture sectors.

In view of the Dutch authorities the current provisions of the Temporary Crisis Framework are too broad, especially with regards to liquidity support. Consequently, the Dutch authorities are critical with regards to the proposed increases of relevant thresholds for maximum aid amounts per beneficiary under sections 2.1. This 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 persist. The Netherlands invites the Commission to make the granting of aid conditional on the requirement of gas savings where appropriate.

The Commission proposes to insert new sections 26bis and 26ter. These sections make it possible to grant aid to incentivise voluntary reductions in gas demand in the context of the current crisis as well as aid for the measures to incentivise the filling of gas storage facilities to the extent that the market does not provide incentives to do so for the coming winter.

The Dutch authorities welcome these new sections.

In response to the threat of worsening gas supply scarcity, the Dutch authorities are working on measures to mitigate further possible energy shortages. Such measures include mandatory curtailment of gas consumption for a yet-to-be-defined group of non-protected gas users. In case of a need for mandatory curtailment of gas consumption, the Dutch authorities can grant compensation for the damage directly caused by the curtailment. In addition, the Dutch authorities are considering to provide incentives for voluntary reductions in gas demand via a subsidy scheme. The Dutch authorities are aiming to design such an instrument to stimulate a reduction in gas consumption and to avoid a mere shift in current gas demand from participants to non-participants. Therefore, the Dutch authorities are pleased by the proposal of amendments that supports these measures in the Temporary Crisis Framework.

Furthermore, the Dutch authorities have already implemented a measure to incentivize the filling of gas storage facilities, in particular for gas supply security for the upcoming winter. Article 26ter supports other Member States to adopt similar measures for gas storages which creates a level playing field. Moreover, the Dutch authorities expect that such measures will need to be implemented next year as well to secure gas supply. Having section 26ter added to the Temporary Crisis Framework supports this action.

However, 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.

The new proposed point 51 (section 2.4. Aid for additional costs due to exceptionally severe increases in natural gas and electricity prices) clarifies that against the background of further reductions in gas supplies, it is on the other hand also important to maintain incentives for demand reductions and gradually prepare undertakings to shift towards reducing gas consumption.

The Dutch authorities acknowledge these incentives are indeed needed and therefore welcome the mention of the negative effect of State aid on gas and electricity demand incentives. Unfortunately, the amendments do not propose additional measures to mitigate this effect.

According to the Dutch authorities section 2.4 is counterproductive in stimulating greening or adjustment of companies. In the current design it merely increases the demand for energy. That is why greening conditionalities should be applicable (see above). Furthermore, aid under section 2.4 results in the rewarding of companies that have failed to take (more) sustainable measures in time (with regard to the energy transition).

Since the amount of gas extracted and imported cannot be changed, subsidized companies will initially buy more gas financed party with State aid, while other non-subsidized companies in the EU will get less. This effectively results only in a different gas allocation within the EU.

Furthermore, due to the hardly elastic gas market, the market price will increase exponentially - so the subsidy will effectively mean a higher financial burden for all gas consumers and in the end support the gas exporter Russia.

However the Dutch authorities welcome the specific technical clarifications for section 2.4 such as the cap on eligible costs from September 1st 2022 onwards.

New proposed point 53 under a makes it possible to grant aid exceeding the values calculated pursuant to point 52(f) and (g) where, in addition to meeting the conditions in point 52(a) to (e) and (h), if the beneficiary qualifies as an ‘energy-intensive business’ within the meaning of the first limb of Article 17(1)(a) of Directive 2003/96/EC*, *i.e.* where the purchases of energy products (including energy products other than natural gas and electricity) amount to at least 3.0 % of the production value** or *upon appropriate justification to be provided by the Member State to the Commission for its assessment, the production value may be replaced by turnover.*

The Dutch authorities are of the opinion that the Temporary Crisis Framework should be limited in scope and directed to the sectors and companies that are affected most by the specific characteristics of this crisis.

The Dutch authorities would consider it appropriate to make the State aid, in particular for energy intensive business, contingent upon some form of green conditionality, for example as regards demand reduction, peak shaving, or other energy efficiency measures, or to incentivize green investment through the level of the aid intensities. This should not be voluntary, as is now the case, but required (where proportional and feasible) to protect the level playing field on the internal market. Also the “Do Not Significant Harm”-principle should be respected. As green incentives are important, the Dutch authorities remark that a permanent lowering of the energy tax would not be considered in line with the climate targets and would lower the economic incentives to the transition to a sustainable economic activity. Speeding up energy efficiency measures and green investments should not be slowed down by the (untargeted) operational support.

In light of the above, according to the Dutch authorities, the amount of support should be decreased and the criteria should be tightened. High(er) aid intensities and high(er) overall aid amounts, especially for large undertakings, can have a serious impact on the level playing field on the internal market.

The Commission proposes to insert a new section 2.5 ‘**Aid for accelerating the rollout of renewable energy, storage, and renewable heat relevant for REPowerEU’**

The Dutch authorities welcome this new section. In case targeted aid is needed this type of aid helps in accelerating the greening of the economies of the EU Member States and supports the phase out of the dependencies on Russian energy. With (new) section 2.5 and (new) 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.

Could the European Commission clarify further what the added value is comparing this section to the regular State aid frameworks in particular the CEEAG and the GBER?

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.

The Commission proposed to insert a new section 2.6 '**Aid for the decarbonisation of industrial production processes through electrification and/or the use of renewable hydrogen and for energy efficiency measures'.**

The Netherlands welcomes this new section. In case targeted aid is needed this type of aid helps in accelerating the greening of the economies of the EU Member States and supports the phase out of the dependencies on Russian energy. With (new) section 2.5 and (new) section 2.6 the Commission wants to support Member States to facilitate investments in the decarbonisation of industrial activities, notably through electrification and technologies using renewable hydrogen, and in energy efficiency measures in industry.

The Dutch authorities understand 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.

Could the Commission clarify further what the added value is comparing this section to the already existing State aid possibilities in the CEEAG and the GBER. Could the Commission also explain how additional carbon lock-in will be avoided when stimulating investment measures?

3. Preliminary view of the Netherlands on the set of questions

In addition, the Commission seeks the views of the authorities of the Member States on the following:

The Repower EU Communication refers in a few instances to fossil free hydrogen.

(i) *Do you consider necessary and appropriate to enlarge the scope of proposed new sections 2.5 and/or 2.6 in the Temporary Crisis Framework to the production or the use of hydrogen produced on the basis of electrolysers connected to other fossil-free sources than RES (in particular from nuclear power plants) that meet the requirements of the EU Taxonomy Complementary Climate Delegated Act (C(2022)631)) and under what methodology suitable to ensure a net decarbonisation effect.*

The Dutch authorities can support this as long as the electrolysers are connected to other fossil free sources (also from nuclear power plants) that are *new or still unused* in order to actually lower dependency on Russian energy. For the Netherlands the additionality as mentioned in point II hereafter is thus very important.

(ii) *Member States are also invited to provide feedback on possible conditions, notably: 1) to ensure that the electricity used for hydrogen production is effectively stemming from power plants (such as direct connections) in order to avoid to an increase in emissions from electricity production; and 2) to ensure that other consumers are not deprived from the electricity that would be dedicated to the hydrogen production (for instance through additionality requirements) resulting in potential increases in demand for fossil-based electricity (including gas-based).*

The Dutch authorities welcome these conditions. The fossil free sources for the use or production for hydrogen should be new or still unused in order to actually lower dependency on Russia and additionality is indeed necessary as a requirement. The conditionalities and the methodologies for additionality and GHG emissions reductions in accordance with the methodologies set out for renewable liquid and gaseous transport fuels of non-biological origin in Directive (EU) 2018/2001 seem in principle appropriate.

III. Member States are invited to provide feedback on whether the methodologies for additionality and GHG emissions reductions applicable to renewable fuels of non-biological origin under Directive (EU) 2018/2001 would be suitable for this purpose.

The Dutch authorities refer to the response under II.

IV. Would you see a need for specific provisions on State aid for insurance covering various modes of transport (trucks, trains, ships, etc.), or reinsurance thereof, in the context of the war in Ukraine, and if so please specify?

According to the Dutch authorities no further State Aid provisions are necessary for insurance covering the abovementioned modes of transport. Existing State aid rules (including the current Temporary Crisis Framework) provide sufficient opportunities to support those affected parties by providing guarantees. If further substantiated, there may be some gain to be achieved by coordinating conditions for insurance of modes of transports (such as longer tenor for coverage related to the war in Ukraine).