Ministerie van Economische Zaken
en Klimaat

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HT.6323 Response of the Netherlands on the draft COMMUNICATION FROM THE COMMISSION for a Temporary Crisis Framework for State Aid measures to support the economy following the invasion of Ukraine by Russia

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.

1. General remarks

The Dutch authorities would like to thank the European Commission for the opportunity to comment on **a draft proposal for a State aid Temporary Crisis Framework to support the EU economy in the context of Russia's invasion of Ukraine (**hereafter: the Temporary Crisis Framework). With this draft proposal the Commission would like to enable Member States to grant state aid to companies affected by the current crisis in order to:

(i) allow Member States to grant temporary liquidity support to all companies affected by the current crisis. This support could take the form of guarantees and subsidised loans.
(ii) allow Member States to grant aid for additional costs due to exceptionally high gas and electricity prices following the invasion of Ukraine by Russia. This support could be granted in any form, including limited grants, to partially compensate companies, in particular intensive energy users, for energy price increases.
(iii) In addition, the Commission would also seek the views of the Member States on whether the targeted amendments to the ETS State aid guidelines, on which Member States were already consulted on 21 February 2022, are still warranted and whether additional amendments are necessary in view of the proposed Temporary Crisis Framework.

Summary of the Dutch position
The Dutch authorities have serious concerns regarding the suitability, the proportionality and effectiveness of this draft proposal. In particular this draft proposal doesn't seem to be aligned with the climate targets of the Union and seems to lower the economic incentives to a transition to a sustainable economy, which is undesirable. The Dutch authorities invite the

Commission to implement more possibilities to speed up or make easier sustainable (green) investments which could help European undertakings to move away from fossil fuels, also in order to become less dependent on Russia. In particular, the Dutch authorities would like to propose the following adjustments.

The Dutch authorities argue that this Temporary Crisis framework should in any case:

a) be more limited in scope and directed to the sectors and companies that are affected most by the specific characteristics of this crisis;

b) should be contingent on green conditionalities where possible, especially with regard to the large energy intensive industries;

c) should take into account the nature of the current economic impact, which no longer calls for liquidity support for most segments in the economy but rather for temporary targeted support for energy-intensive companies or companies whose supply chains have been disrupted and which need to reorganize their supply chains;

e) introduces more safeguards to prevent distortion of competition or the integrity of the internal market.

The Dutch authorities invite the Commission to closely look at the economic substantiation and expected economic impact of the proposal, also in relation to the level playing field, and invite the Commission to provide improvements and adjustments.

2. Specific remarks

The Netherlands would like to raise the following issues, please find below the description of the above adjustments in more detail.

The draft proposal states that the objective of the Temporary Crisis Framework is to remedy the economic effects following the invasion of Ukraine by Russia and the following economic sanctions adopted in this context. The Commission argues that undertakings in the EU may be affected in multiple ways, both directly and indirectly. This may take the form of shrinking demand, disruptions in the supply chain, in particular of raw materials and pre-products, or other inputs no longer being available or not being economically affordable. The current crisis results also in a disruption of supply chains for EU imports from Ukraine for certain products, especially cereals and vegetable oils, as well as for EU exports to Ukraine. That situation also affects the energy market, in particular electricity, gas and oil prices in the European Union, a major input for several economic activities, including those particularly hit by the COVID outbreak like travel and tourism. Could the Commission acknowledge that also transport is particularly affected by this crisis?

The Netherlands acknowledge that the current crisis has created significant economic uncertainties, disrupted trade flows and supply chains and corresponding transport movements and has led to exceptionally large and unexpected price increases, especially in natural gas and electricity and certain raw materials. However the Commission should clarify more why the economic impact of the current crisis would require a broad crisis state aid instrument which covers most segments of the economy. Especially as it is a common principle to all Member States and confirmed by the ECJ that under union law there is not a general principle requiring compensation to be paid in all circumstances when damages occur either by natural occurrences or measures taken by public authorities. Further the draft proposal lacks a clear connection to the RePowerEU communication from the Commission: the draft proposal has a broad scope and targets whole segments of the economy while RePowerEU identifies key areas where measures are needed to mitigate the effects of the current crisis, diminish risks and exposure of the Union and facilitate a speedy transition. Both documents do not seem to be aligned. The draft proposal should also take into account the instruments available under the Common Agricultural Policy for the regulation of the agricultural markets and its products (i.e. the first pillar which deals with some of the issues identified in this draft proposal). Furthermore the draft proposal could clarify more what other EU instruments - such as the Cohesion and structural funds - are available to mitigate the economic impact of this crisis.

Although the Netherlands acknowledge that in these exceptional circumstances State aid for (directly) affected companies in specific sectors can be necessary, we advocate a more targeted and limited approach than laid down in this draft proposal. For example to mention in the proposal which sectors and companies are affected most. The Dutch authorities have serious concerns that the broad approach of the State aid possibilities in this draft can harm fair competition and the level playing field in the European Union. There seem to be little safeguards in place to prevent misuse. This is especially a cause of concern as cumulation with regular State aid guidelines, the Temporary Covid-19 State aid framework and the possibilities to grant aid to make good the damage caused by exceptional occurrences under article 107(2)(b) TFEU, to a certain extent, are not ruled out.
Because cumulation to a certain extent is not ruled out, it is important that the Commission clarifies more in the text of the proposal what requirements should be taken into account to prevent overcompensation.

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 affected by the current crisis, the possibilities under the regular State aid guidelines should be explored first. Regular State aid guidelines have safeguards to prevent overcompensation and often are conditional on green requirements. A Temporary Crisis Framework should be the exception. Just to prevent any miscommunication, the Dutch authorities do see the need for (large) investment aid – where necessary – to speed up the energy transition.

Could the Commission further elaborate why this current crisis – compared to other crises in which EU sanctions are in place (e.g. first Gulf War) - requires a Temporary Crisis Framework (where do you draw the line) ? Could the Commission clarify how it can be monitored that overcompensation is prevented? Companies could for example pass on the higher electricity prices to their customers while benefitting from State aid.

Article 107 (2) (b) TFEU

Point 19 of the draft proposal states that Member States may also grant aid to make good the damage caused by exceptional occurrences under Article 107(2)(b) TFEU. Such State aid aimed at mitigating damage directly caused by the current and exceptional occurrences of the Russian military aggression against Ukraine may also cover certain direct effects of the economic sanctions taken in response or other restrictive measures negatively affecting the beneficiary from operating its economic activity or a specific and severable part of its economic activity. Could the Commission elaborate on this statement laid down in point 19 of the draft proposal ? This possibility could provide for one off liquidity needed to deal with one off shock effects without causing structural distortion of competition.

Point 22 of the draft proposal states that aid granted by Member States to banks under Article 107(2)(b) TFEU to compensate for direct damage suffered as a result of the current crisis, which does not have the objective to preserve or restore the viability, liquidity or solvency of an institution or entity would not be qualified as extraordinary public financial support under the BRRD nor under the SRM Regulation, and would also not be assessed under the State aid rules applicable to the banking sector. The Dutch authorities do not support this. As for point 24 of the draft proposal, could the Commission clarify why this would be justified? The financial frameworks and reserve requirements for banks are also meant to deal with so called “black swan events”.

Need for green conditionalities

It is also unclear why the Commission does not consider sustainable and green conditions to be necessary under this proposal. As this is also an energy crisis, State aid should be directed to the transition to the sustainable or low carbon economy. This means the Dutch authorities would consider it appropriate to make the 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. 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 under this draft proposal.

In line with this, the Dutch authorities can support the Commission in its reasoning that State aid is not suitable for staving off necessary responses of the wider economy to structural shifts in the energy market. Long-term trends of rising prices (as happened on the oil markets in the past) require adaptations of industry and other demand to the new situation. Furthermore, operational support for energy consumption could be both very costly and difficult to align with the objectives of the Green Deal. Therefore the Dutch authorities call upon the Commission to – if implemented - phase out this Temporary Crisis Framework as soon as possible and to redesign its broad liquidity measures.

To this end and as an answer to your question seven in the EU Survey, the Dutch authorities would like to remark the following. In the REPowerEU package the Commission proposed to increase our yearly import of LNG by 50bcm. In order to achieve this, extra LNG-import capacity is needed. The Netherlands is exploring ways to achieve extra import capacity in the short term. To achieve these adaptations to our LNG-network, financial support may be needed. We call on the European Commission to use the full flexibility of its State aid toolbox to allow Member States to implement such adaptations, and if necessary explore the need for additional possibilities under State aid rules.

ETS State aid guidelines
As the Commission is also seeking the views of the Member States regarding the targeted amendments to the ETS State aid guidelines, the Dutch authorities would like to point out the following. The Commission has proposed in an adjustment of the ETS Guidelines the possibility to expand the list of eligible sectors and a more gradual transition to the new CO2 emission factor in cases where the decrease in the standard CO2 emission factor compared to the one in the previous Guidelines for the period 2012-2020 is particularly large.

Firstly the Netherlands note that the ETS State aid Guidelines are designed to lower the risk of carbon leakage caused by the indirect ETS costs and not to compensate for generally high energy prices. We are not sure the targeted amendments to the ETS State aid guidelines set an appropriate precedent anyhow. To minimize the risk of a tilted playing field within Europe, the Netherlands called for the inclusion of a time cap on the current ETS guidelines extensions to ensure a more timely evaluation to avoid countries from over-compensating their industries. However since the Commission is proposing a new category 'Aid for additional costs due to exceptionally severe increase in gas and electricity prices' the Dutch authorities consider the proposed revision of the ETS Guidelines post-2021 not warranted. In any case the ETS Guidelines post-2021 (with or without the proposed revision or possible other revisions) should be aligned with this proposal of a Temporary Crisis Framework – if implemented - to prevent misuse and overcompensation.

For the (most affected) non ETS eligible sectors and particularly for SME's in sectors most affected by this crisis, point 39 of this draft proposal could be helpful (the Dutch authorities find a repayable advance instrument suitable). In order to minimize the risk of undermining necessary incentives for a faster transition to energy efficiency measures, this should be accompanied with green conditionalities.

Temporary Crisis State aid only for more targeted sectors and undertakings

As explained above, in the opinion of the Dutch authorities, this proposal should be more limited in scope and directed to the sectors and companies that are affected most by the specific characteristics of this crisis. Sectors that seem to be particularly affected by this current crisis are for example the transport and logistic sector and the agricultural and fishery sector. The agricultural and fishery sector, for example, requires a lot of energy and other resources, including man power and logistics, to help maintain the food security, for example the (food) horticulture, floriculture and agriculture. This sector could be affected by higher input costs. The higher input prices will affect all prices of agricultural products that can form a high risk for food security. So especially for this essential sector, we see a need to support farmers for other input costs (such as feed costs or fertilizer costs), to the extent they are subject to similar price movements as energy. For the affected sectors the possibilities under this draft seem therefore helpful. However the draft should also take into account the possibilities under the Common Agriculture Policy (first pillar) and align state aid with those possibilities to ensure an efficient and quick support of the sectors concerned while ensuring a level playing field.

Remarks concerning paragraph 2.1. LIQUIDITY SUPPORT IN THE FORM OF GUARANTEES and 2.2. LIQUIDITY SUPPORT IN THE FORM OF SUBSIDISED LOANS

The Commission proposes to ensure access to liquidity to undertakings affected by the current crisis, public guarantees on loans for a limited period and liquidity support in the form of subsidised loans.

Could the Commission clarify more what the link is between the need for this general liquidity support across the whole economy and the Ukraine crisis? Why does the Commission not require that companies should have a certain loss of revenue linked to the crisis benchmarked against 2021? Why does the Commission not look only at the year 2021 in point 34, point d sub (i) in order to take into account the Covid-19 effects and eliminate as much as possible those effects from the benchmarking exercise?

With regard to point 34, sub e, the Dutch authorities propose to shorten the duration of the guarantee as this proposed duration is not needed because the positive effects of the transition can be expected earlier. Also with regard to point 34, sub a, the guarantee premiums for large undertakings should be set higher. Could the Commission clarify more why large undertakings are not able to attract private capital from the markets, especially when listed?

The draft proposal states in point 34, sub c, that the guarantee is granted by 31 December 2022 at the latest. The Dutch authorities propose to shorten this duration as this long duration is not necessary to cover for the absorbing of the shock effect. The Dutch authorities find the end of Q3 more appropriate as most realignment of businesses and energy supply must occur before the onset of the winter 2022-2023.
Point 34, sub f, states that the guarantee shall relate to investment and/or working capital loans. The Dutch authorities propose to connect these investments or working capital loans more to the actions mentioned in the RePower EU communication from the Commission.

Point 46 of the draft proposal states that the Commission applies this Communication from [XX March 2022], having regard to the economic impact of the Russian aggression against Ukraine and following sanctions, which required immediate action. The Dutch authorities are not in favour of setting this date on 1 January 2022.

This draft proposal states that loans and guarantees may not be granted to: i) undertakings targeted by economic sanctions adopted by the EU; or ii) to undertakings owned or controlled by persons, entities or bodies targeted by restrictive measures adopted by the EU; or iii) undertakings controlled by Russian persons, entities or bodies. Could the Commission give guidance how to monitor or implement specifically point iii ?

Remarks concerning paragraph 2.3 AID FOR ADDITIONAL COSTS DUE TO EXCEPTIONALLY SEVERE INCREASE IN GAS AND ELECTRICITY PRICES

The Commission considers that, beyond the existing possibilities based on Article 107(3)(c) TFEU, temporary support could alleviate exceptionally severe increases in the price of gas and electricity, which undertakings may not be able to pass on or adapt to in the short-term.

Could the Commission align this paragraph more closely with the October Communication and her RePowerEU communication and explain when exceptions to the concepts laid down in those documents are warranted?

Could the Commission clarify how point 39, point f, could prevent negative incentives and clarify the impact on those companies that have hedged their energy or raw materials, while their competitors didn’t and may now profit from State aid?

Could the Commission elaborate how to prevent the economic negative effects of the introduction of point 40 ? Should large undertakings not be supported, if necessary, with aid under the RR guidelines or large investment support for the transition to a sustainable or low carbon economy?