Ministerie van Economische Zaken
en Klimaat

The Hague, 5 July 2021
HT.5938 2021

Response of the Dutch authorities on the **Third EU SURVEY State aid in the Covid-19 crisis**

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.

Questions regarding the current set of COVID-19 related State aid rules

1. *Do you think that the Temporary Framework should be extended beyond 31 December 2021? Please explain why/why not and, if so, until when*.

In general the Dutch authorities would like to point out that the flexibility made possible for COVID support measures under the Temporary Framework was and – at this moment - is still necessary. However in the prospect of a recovery of the Union's economies in the fall of 2021 and easing of health emergency measures, **the Dutch authorities find it not necessary to prolong the Temporary Framework for 2022.** This could only be different if rigorous health emergency measures (e.g., in the case of lock-down) are needed.
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 available budgets of Member States. The Temporary Framework can also have the side effect that companies are now supported that would otherwise anyhow have collapsed under normal economic circumstances. This can be reflected in a lower number of bankruptcies in 2020 compared to 2019. This phenomenon entails the risk of creating and supporting so called "zombie firms" which are not able to cover debt servicing costs from profits over an extended period. This damages the structure of the European economy by reducing competition and long term necessary structural changes to the economy as these "zombie firms" crowd out investment in and employment at more productive firms. We should therefore carefully take into account that for a sustainable economic recovery of the Union, a longer prolongation of the (unmodified) measures set out in the Temporary Framework could prove harmful.
The sustainable recovery of the European economy should go hand in hand with a rebalancing of the internal market during the recovery period and the ensuring of the level playing field. We therefore should not only focus on the recovery of the European economies but also ensure a common European exit strategy to dismantle broad untargeted state support when time is right. Given the current economic forecasts the end of 2021 is, in our view, the right time to dismantle the Temporary Framework.

The Dutch authorities are interested in the assessment of the consequences of the application of the Temporary Framework on the level playing field in the Union. We therefore call upon the Commission to undertake such an assessment.

2. *If extended, do you think that the Temporary Framework should be phased out? If so, please explain which of the various types of measures set out in section 3 of the Temporary Framework should be maintained/removed. Please also explain whether there is a need to adapt the aid ceilings and/or other compatibility conditions of the various measures, and/or whether there is a need to limit the scope of eligible beneficiaries based on their size*.

If the Commission should propose an extension of the Temporary Framework, the Dutch authorities consider that such an extension should in any case be:
a) temporary;
b) allowing for - where necessary – only targeted temporary aid for still heavy affected undertakings or sectors (like tourism, hospitality (catering), retail, the travel- or cultural sector, public transport or undertakings in the social domain or providing specific services);
c) should not be possible for individual aid to large undertakings.

In order to recover the level playing field in 2022 and further, the Dutch authorities are not in favour of temporary limited amounts of aid for companies facing a sudden shortage of liquidity aid (title 3.1 of the TF) and are not in favour of aid for the uncovered fixed costs of companies (title 3.12 of the TF), or would like only to allow it for very small amounts. However the Dutch authorities would like to point out that for some COVID-19 crisis measures it could be necessary that for the handling of state aid applications - submitted in 2021 under an in 2021 approved state aid COVID-19 scheme – the state aid could only be granted in the first quarter of 2022 at the latest.
Aid in the form of a deferral of tax could prove necessary and could qualify as state aid if these measures are restricted for example to certain sectors, regions or types of undertakings. Tax relief measures under strict conditions could also still prove necessary.
However as long as this deferral is general it does not fall under the meaning of article 107 (1) TFEU so an extension of the temporary Covid-19 Framework would not be necessary to make this possible.

If the Commission considers a prolongation of the Temporary Framework, the measures in this Framework should only apply to SME's, non for profit entities, undertakings in the social domain or providing other specific services as defined in article 74 and annex XIV of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC and companies entrusted with an SGEI. Such an adjustment is acceptable from an internal market perspective as for these services the cross border provision of services is restricted and therefore the negative impact of the aid provided on the trade between Member States and on competition on the internal market is limited.
Similarly the Temporary Framework does not take into account the specific situation of companies which have been entrusted with a service of general economic interest. Like undertakings providing social and other specific services, companies entrusted with a service of general economic interest may not always have a direct sufficient causal link between the government measures and the decrease of the revenues which is necessary for establishing a decision based on article 107 (2) (b) TFEU, while such companies may be required to maintain the service level of the SGEI as required. In such circumstances crisis support measures may still be necessary to allow the continued operation of the SGEI. Such an approach is similar to the approach taken under chapter 5 of the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty.

Concerning Short Term Export Credits (STEC), the Dutch authorities believe it is too early to assess at this moment if an extension of the removal of the list of marketable countries is necessary after December 2021. We welcome inquiries by the European Commission at a later stage this fall to assess if the private market is picking up again on the short term export credits in the (formally) marketable countries. In that case the temporary measure could be ended. We see no need for a gradual phasing out.

3. *Do you think that the Temporary Framework should be further adapted to address the needs of small and medium enterprises? If so, what measures could be introduced and/or which measures could be adapted to achieve that result?*

We refer to the answer under question 2.

4. *Do you think that the Temporary Framework should be further adapted to prevent corporate insolvencies (e.g., by additional possibilities to enable debt restructuring and/or expanding the possibility to convert repayable aid instruments into other forms of aid such as direct grants)? If so, what measures could be introduced and/or which measures could be adapted to achieve that result? What would be the appropriate period of time to implement those measures?*

We refer to the answer under question 2. The Dutch authorities would like to point out that there appears to be an error in the current Temporary Framework, under section 3.11.6, point 78. Point 78 states that under no circumstances bonuses or other variable or comparable renumeration elements shall be paid. The Dutch authorities propose an adjustment which aligns this point with the purport of this condition. The Dutch authorities suggest the following adjustment: Under no circumstances, shall bonuses or other variable or comparable remuneration elements be *committed* or paid.

5. *Do you think that the current rules set out in the Temporary Framework are sufficient to address the needs of specific sectors of the economy and to facilitate their recovery from the COVID-19 outbreak? If not, please explain how existing rules could be adapted and/or new rules could be introduced to allow those sectors to restart. Please also explain which sectors should be covered by such new and/or amended rules, how to identify those sectors and why those sectors should be distinguished from other non-covered sectors*.

We refer to the answer under question 2.

6. *Taking into account the need for green and digital investments as well as the potential need for solvency support (e.g., with the involvement of private investors, involving State guarantees, as proposed in the Commission Solvency Support Instrument), do you see scope to further adapt the Temporary Framework and/or new measures to accompany and speed up recovery? If so, what measures could be introduced and/or which measures could be adapted to achieve that result? Please also explain why you would expect the revised State aid rules (e.g., GBER, State aid guidelines) to be insufficient in this regard*

The Dutch authorities think that if the Commission in the reviewing of the State aid rules reflects new policy priorities related to the European Green Deal and the European Industrial and Digital Strategies, with a view to ensuring that they are suitable to address the various challenges of the current economic environment, this will be sufficient to tackle solvency support. The revised block exemption regulation and guidelines - provided that changes in the CEEAG after the current consultation will lead to another revision of the block exemption regulation - will offer additional possibilities that Member States may use to support the economy and to contribute to the green and digital transitions while ensuring a level playing field between Member States. As the new proposed guidelines will enter into force in 2022, there will already be appropriate tools to support the green and digital transition. This means that the Temporary Framework should not be prolonged for these purposes.

New temporary aid in 2022 to tackle solvency support can be necessary. The Dutch authorities consider that 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. Recapitalisation measures should include the conversion of existing liquidity measures such as loans with lowered interest rates and repayable advances into equity and/or hybrid instruments. This limits the amount of public funding needed in order to restore viable balance sheets without adding to the total volume of public support for a given company. It is preferable that such an option – provided that strict conditions are applicable - would be included as transitory regime in the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty to facilitate the transition from the Temporary Framework COVID-19 to the regular state aid frameworks. This would need to include also – under conditions which take into account the level playing field – (ad hoc) aid in the form of suspension of tax debt recovery or debt restructuring. However as long as this deferral is general it does not fall under the meaning of article 107 (1) TFEU. But a general application might not always be appropriate and such measures -when restricted for example to certain types of undertakings or to certain sectors - might involve state aid.