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**Subject: State aid SA.47821 (2019/N) – The Netherlands – Invest-NL**

Dear Sir,

The Commission wishes to inform the Dutch authorities that having examined the information notified on the matter referred to above, it has decided not to raise objections for the reasons set out below.

## **1. PROCEDURE**

- (1) Since the beginning of 2017, the Dutch authorities have explored different scenarios for setting up a development bank and asked - during that process - a number of times questions to the Commission.
- (2) On 31 July 2018, when the set-up of a new development bank became more concrete, the Dutch authorities sent a pre-notification document to the Commission. In follow-up of that document, a number of pre-notification contacts took place between the Dutch authorities and the Commission services.
- (3) On 8 April 2019, the Dutch authorities notified, pursuant to Article 108(3) of the Treaty on the Functioning of the European Union<sup>1</sup> ("TFEU"), the set-up of Invest-NL and the aid measures in Invest-NL's favour.
- (4) On 6 May 2019, the Dutch authorities clarified how they would evaluate the continued necessity of Invest-NL and committed to re-notify the aid by 31 December 2026.

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<sup>1</sup> OJ C 115, 9.5.2008, p. 47.

## **2. DESCRIPTION OF THE MEASURES**

### **2.1. Legal basis for Invest-NL's set-up**

- (5) Invest-NL will be established by an Act of Parliament, i.e. the 'Machtigingswet oprichting Invest-NL' (hereafter "the Act"). The Dutch government submitted the draft Act allowing for the set-up of Invest-NL to Parliament on 21 January 2019<sup>2</sup>, after which Parliamentary discussions on the Act started.

### **2.2. The objectives of Invest-NL**

- (6) Invest-NL will be a new State-owned development bank<sup>3</sup> targeting mainly three objectives.
- (7) The first objective of Invest-NL is to overcome market failures which impede important economic transitions notably in the field of energy, sustainability, mobility, food and digitalisation of the industry and other parts of society (such as health care, security and education). There is insufficient financing for such transitions because of their high uncertainty and market failures (such as co-ordination failures and externalities).
- (8) The second objective of Invest-NL is to facilitate Dutch participations in European investments such as those under the European Fund for Strategic Investments ("EFSI").
- (9) The third objective of Invest-NL is to address a risk capital financing gap in the field of venture capital for innovative start-ups and scale-ups and for long-term capital-intensive projects.

### **2.3. The operational set-up of Invest-NL and its remit**

- (10) Invest-NL will be established as a State-owned development bank. Its initial capital will be EUR 2.5 billion<sup>4</sup>.
- (11) Invest-NL will consist of a parent company ("Invest-NL Holding NV"), owning 100% of its subsidiaries, each performing a specific function. Invest-NL Holding NV will not hold a banking license, nor will any of its

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<sup>2</sup> The relevant Parliamentary Papers can be consulted publicly. The 'Machtigingswet oprichting InvestNL' itself is available via: <https://zoek.officielebekendmakingen.nl/kst-35123-2.html>

<sup>3</sup> The Netherlands have two State-owned banks focused on the domestic market, namely Bank Nederlandse Gemeenten ("BNG") and the Nederlandse Waterschapsbank ("NWB") with total asset of respectively EUR 140 billion and EUR 87 billion. BNG primarily finances public sector entities, social housing corporations and health care institutions. NWB predominantly lends to social housing corporations, water authorities, municipal authorities and healthcare institutions.

<sup>4</sup> Dutch GDP in 2018 amounted to EUR 773 billion (source: Eurostat, GDP at market prices, <https://ec.europa.eu/eurostat/web/national-accounts/data/main-tables>), which implies that total assets of Invest-NL are projected to be around 0.3% of GDP.

subsidiaries. Invest-NL currently foresees subsidiaries<sup>5</sup> for the following functions:

- (a) impact investing;
- (b) providing development and advisory services; and
- (c) executing financing schemes on behalf of the Dutch State.

#### 2.3.1. *Invest-NL Holding NV*

- (12) Invest-NL Holding NV will be the focal point for shareholder interaction with the Dutch State. The Act already deals with high-level issues with regard to ministerial supervision and corporate governance in general<sup>6</sup>. More detailed corporate governance issues will be dealt with through Invest-NL's Articles of Association and a bilateral agreement between Invest-NL and the Dutch State (setting out Invest-NL's strategic priorities, such as its investment policy goals).
- (13) Invest-NL Holding NV will also perform a number of tasks in the field of international cooperation (for instance cooperation with the European Investment Bank ("EIB") and the European Investment Fund ("EIF") or other national development banks) and also manage a number of strategic shareholdings held by the Dutch State.
- (14) Also, the following existing shareholdings of the Dutch State will be transferred to Invest-NL Holding NV:
  - (a) the shares of a regional development organisation<sup>7</sup> in two venture capital fund-of-funds (Dutch Venture Initiative ("DVI") 1 and 2)<sup>8</sup> established under the laws and regulations of the Grand Duchy of Luxembourg<sup>9</sup>;
  - (b) a loan to the EIF for a shared investment fund in scale-ups (the so-called Dutch State EIF-NPI co-investment scheme)<sup>10</sup>.

#### 2.3.2. *The impact investing function*

- (15) Invest-NL's investment subsidiary will act as an impact investor, i.e. when investing it will also take into account broader societal returns potentially at the expense of (private) financial returns. Concretely, Invest-NL will invest by means of both aided and *de minimis* measures, as well as MEO<sup>11</sup> ("market economic operator") measures. If possible, Invest-NL will prefer to invest on an MEO basis but it will deviate from this principle if this is necessary to

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<sup>5</sup> The Act of Parliament allows for the allocation of new functions to Invest-NL in the future, through Orders in Council (Algemene Maatregelen van Bestuur), initiated by the Minister of Economic Affairs and Climate Policy.

<sup>6</sup> See Articles 2, 6 and 7 of the Act.

<sup>7</sup> Oost NL N.V.

<sup>8</sup> The EIF has also invested in DVI 1 and DVI 2.

<sup>9</sup> See Article 19 of the Act.

<sup>10</sup> See Article 18 of the Act.

<sup>11</sup> The MEO activities are outlined in section 2.3.2.2.

achieve the targeted societal returns. Concretely, this entails for instance a longer duration of the financing/investment, a higher risk profile than other investors or a discount on the financing rate.

- (16) Invest-NL will be allowed to use the following instruments:
- debt;
  - junior/subordinated debt (including mezzanine);
  - guarantees; and
  - equity.
- (17) Invest-NL will use both direct measures (such as direct lending) and on-lending<sup>12</sup>.
- (18) In terms of the geographical scope of its activities, the impact investing subsidiary will not only invest in projects and companies in the Netherlands – and possibly in other EU member states to the benefit of the Dutch economy – but also in the Dutch overseas territories of Bonaire, St. Eustatius and Saba<sup>13</sup>.

#### 2.3.2.1. Aided measures and *de minimis* measures

- (19) Invest-NL's impact investment subsidiary will carry out financing activities which fall:
- (a) under the following block exemption regulations: the General Block Exemption Regulation<sup>14</sup> (“GBER”), the Agricultural Block Exemption Regulation<sup>15</sup> (“ABER”) or the Fisheries Block Exemption Regulation<sup>16</sup> (“FIBER”);
  - (b) under the *de minimis* Regulation<sup>17</sup>, the Agricultural *de minimis* Regulation<sup>18</sup> or the Fisheries *de minimis* Regulation<sup>19</sup>; or

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<sup>12</sup> Loans to financial intermediaries which then subsequently on-lend to the final beneficiaries such as SMEs.

<sup>13</sup> Those are overseas territories to which the provisions of part IV of the Treaty of the Functioning of the European Union apply.

<sup>14</sup> Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union, OJ L 187 26.6.2014, p. 1.

<sup>15</sup> Commission Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union, OJ L 193, 1.7.2014, p. 1–75.

<sup>16</sup> Commission Regulation (EU) No 1388/2014 of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union, OJ L 369, 24.12.2014, p. 37–63.

<sup>17</sup> Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union, OJ L 352, 24.12.2013, p. 1–8.

<sup>18</sup> Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the agriculture sector, OJ L 352, 24.12.2013, p. 9–17.

<sup>19</sup> Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the fishery and aquaculture sector, OJ L 190, 28.6.2014, p. 45–54..

- (c) (following a notification) under a positive Commission Decision: in particular measures assessed under the research and development and innovation (“RD&I”) Framework<sup>20</sup>, the Risk Finance Guidelines<sup>21</sup> or the Guidelines on State aid for environmental protection and energy<sup>22</sup>.

#### 2.3.2.2. MEO measures

- (20) When Invest-NL invests on MEO terms:
  - (a) It will either explicitly invite investees to obtain private sector finance and then invest on pari passu terms; or
  - (b) If pari passu investments are not possible, Invest-NL will use one of the alternative methodologies of the Commission Notice on the Notion of State aid<sup>23</sup>, such as benchmarking with private investments in a comparable situation. For loans for which there is not sufficient evidence to establish the precise level of their market-conform interest rate, Invest-NL will also use as market proxy the table with interest rates in the Commission Communication on the revision of the method for setting the reference and discount rates<sup>24</sup>. For guarantees, Invest-NL would use the Notice on Guarantees<sup>25</sup> and the safe harbour premiums included therein.
- (21) Invest-NL’s MEO activities will only take place in areas where market failures have been established *ex ante*. The Dutch authorities did not submit new market failure studies but relied exclusively on market failures already identified in the Commission’s State aid Guidelines, Communications and Frameworks. Those MEO measures and the associated market failures will often be linked to the GBER, ABER and FIBER or the Commission Guidelines on State aid for environmental protection and energy and the eligibility conditions therein (except for cumulation rules, maximum aid amounts (both in absolute terms as in percentages), aid intensities and aid amounts and publication and reporting requirements).
- (22) Concretely, Invest-NL’s MEO remit will include the following:
  - (a) Loans to Small and Medium-sized Enterprises (“SMEs”), small mid-caps, mid-caps or larger companies under the different articles in the GBER, ABER, FIBER and/or relevant State aid guidelines;

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<sup>20</sup> Communication from the Commission — Framework for State aid for research and development and innovation, OJ C 198, 27.6.2014, p. 1–29

<sup>21</sup> Communication from the Commission — Guidelines on State aid to promote risk finance investments, OJ C 19, 22.1.2014, p. 4–34

<sup>22</sup> Communication from the Commission — Guidelines on State aid for environmental protection and energy 2014-2020, OJ C 200, 28.6.2014, p. 1–55

<sup>23</sup> Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union, OJ C 262, 19.7.2016, p. 1–50

<sup>24</sup> Communication from the Commission on the revision of the method for setting the reference and discount rates OJ C 14, 19.1.2008, p.6

<sup>25</sup> Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees (OJ C 155, 20.6.2008, p. 10).

(b) Equity investments:

(b1) complying with all the conditions of Article 22 of the GBER on aid for start-ups (except for the total aid/financing amounts); or

(b2) directly in (eligible) final beneficiaries, while complying with all the conditions of Article 21 of the GBER on risk finance aid (except for the maximum financing amount and the conditions related to financial intermediaries); or

(b3) in SMEs and small mid-caps<sup>26</sup> provided that:

- they are RD&I intensive (15% of their total operating costs in minimum one of three years preceding the first investment relate to projects that are eligible under section 4 of the GBER or under the Framework for State aid for RD&I<sup>27</sup>); or
- they are engaged in projects related to renewable energy and environmental protection (meeting conditions of Articles in section 7 of the GBER or the Environmental Protection and Energy Guidelines);

(b4) in innovative mid-caps<sup>28</sup>.

- (23) Invest-NL's remit for investments on MEO terms would include undertakings in difficulty<sup>29</sup>. For reasons of guidance or legal security, Invest-NL could choose to notify such investments to the Commission for a 'no-aid' decision. Also it is not excluded that compatible aid (for example under the SDE+ scheme supporting investment in renewable energy<sup>30</sup>) has been or will be granted to the companies or projects where Invest-NL aims to provide financing under MEO terms.
- (24) When Invest-NL is created, the Energy Transition Facility – an existing MEO guarantee scheme<sup>31</sup> – will be transferred to Invest-NL<sup>32</sup>.
- (25) To avoid undue distortions of competition, Invest-NL – when performing MEO activities – will apply the following “no crowding-out” measures:

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<sup>26</sup> Small mid-caps as defined in recital 52 (xxvii) of the Risk Finance Guidelines (Communication from the Commission — Guidelines on State aid to promote risk finance investments, OJ C 19, 22.1.2014, p. 4–34).

<sup>27</sup> Communication from the Commission — Framework for State aid for research and development and innovation, OJ C 198, 27.6.2014, p. 1–29.

<sup>28</sup> Innovative mid-caps as defined in recital 52 (xviii) of the Risk Finance Guidelines.

<sup>29</sup> See Article 2 (18) GBER or par. 20 of the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (Communication from the Commission, OJ C 249, 31.7.2014, p. 1–28)

<sup>30</sup> See Commission Decision of April 7 2015, SA. 39399 Modification of Dutch SDE+ RES scheme, Netherlands, OJ C 234, 17.07.2015, p.2

<sup>31</sup> See Commission Decision of July 17, 2017, SA.47416 Guarantee scheme for Energy Transition (ETFF), Netherlands, OJ C 307, 15.09.2017, p.4-5.

<sup>32</sup> Article 20 of the Act.

- (a) Invest-NL will explicitly invite investees to obtain private sector financing. The investee will have to demonstrate that it tried to obtain the financing needed. Either the investee has to confirm that it had issued an open call for investment (which did not provide the funding needed), or the investee has to disclose which financiers (at least two) have been approached, but did not want to provide sufficient financing;
- (b) Invest-NL will not take majority stakes (in terms of voting shares) in undertakings;
- (c) Invest-NL will invest in business cases which can be assumed *ex-ante* to offer a sufficient return;
- (d) Invest-NL will establish an internal complaint mechanism under which any third party, be it companies or self-employed persons, can file complaints against the activities of Invest-NL<sup>33</sup>. Within two weeks after Invest-NL has received such a complaint, Invest-NL will notify the Minister of Economic Affairs and Climate Policy. Invest-NL will provide quarterly updates on whether complaints have been settled/dealt with;
- (e) With or without a complaint, Invest-NL will cease activities which have been found to have an undesirable effect on competition on the market as soon as possible but no later than within a year<sup>34</sup>.

### 2.3.3. *The development function*

- (26) The development subsidiary will provide advice to the Dutch authorities on the development or improvement of certain financing schemes.
- (27) More specifically, this subsidiary will:
  - (a) carry out and publish research and analysis to identify market failures in the financing market;
  - (b) advise on the functioning of existing financing instruments of the Dutch State, Invest-NL or third parties (such as the EIB and EFSI);
  - (c) advise the Dutch authorities on the functioning of existing schemes and the possible need for new or adjusted schemes;
  - (d) design new financing concepts and business models contributing to new investments (while making those concepts and models publicly available);
  - (e) analyse and investigate the development of relevant markets; identify trends that can increase or decrease uncertainty in business financing or financing of projects which intend to sort out societal challenges;

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<sup>33</sup> As included in article 10 of the Act.

<sup>34</sup> As included in article 11 of the Act.

- (f) engage with other national and international parties (such as the EIB or the Organisation for Economic Co-operation and Development) to advance knowledge of the Dutch market and Dutch investment opportunities.
  - (g) provide operational and advisory services to projects and businesses when they are developing new business cases.
- (28) Most of those services will be made freely available to all interested parties. In the cases where the provision of these services would provide a selective advantage to particular undertakings, the Dutch authorities will ensure compliance with either the *de minimis* Regulation or the GBER (e.g. with Articles 24 and 28 of the GBER, which deal respectively with ‘scouting costs’ and ‘innovation aid for SMEs’).

#### 2.3.4. *The execution of schemes*

- (29) At this stage, it is not foreseen that Invest-NL will execute schemes on behalf of the Dutch State (with both the budget and the risk remaining on the State’s balance sheet). However, the Act allows the Dutch State to require Invest-NL to execute such schemes in the future.
- (30) If this activity would start in the future, the schemes concerned would remain under the Dutch State’s full control and direction. Invest-NL would only provide administrative functions, with the ultimate decision-making and financial and legal responsibility for the schemes remaining within the Dutch State.

### 2.4. **State measures in favour of Invest-NL**

- (31) Invest-NL will benefit from the following State measures:
- (a) Its impact investment subsidiary will receive (at most) EUR 2.5 billion of capital. The capital injection will take place in different tranches. The current projections foresee five annual EUR 500 million tranches over the period 2019-2024. In return for its capital injection, the Dutch State will receive 100% of the shares in Invest-NL.
  - (b) Its development function subsidiary will receive a subsidy<sup>35</sup> of EUR 10 million per annum to pre-finance the development services it provides.<sup>36</sup>
- (32) Invest-NL will not benefit from any government guarantee nor from any tax measures. In principle, Invest-NL’s impact assessment subsidiary should – after the capital injection of EUR 2.5 billion – be financially self-sustainable without any further government funding (except for the annual development services subsidy grant of EUR 10 million), but no commercial return is expected on the EUR 2.5 billion capital injection in the impact investing subsidiary.

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<sup>35</sup> From the Minister of Economic Affairs and Climate Policy.

<sup>36</sup> For a detailed overview of Invest-NL’s development services, see recitals (26) to (28).



- (33) At this stage it is not foreseen that Invest-NL will attract additional market financing.

## 2.5. Evaluation<sup>37</sup>

- (34) Within three years after the Act will enter into force, the Dutch authorities will inform the Dutch Parliament about the effects of the law in practice. Every seven years, the Dutch authorities will submit to the Dutch Parliament a report on the effectiveness, efficiency and the effects of the Act in practice. The Dutch State will also re-notify the measures to the Commission before 31 December 2026.

## 3. POSITION OF THE MEMBER STATE

- (35) The Dutch authorities acknowledge that they do not expect a commercial return on the (at most) EUR 2.5 billion capital injection in Invest-NL, which involves State aid (Level I aid). However, a sufficient rate of return is expected.
- (36) The Dutch authorities believe that the Commission should take a positive State aid decision.
- (37) In terms of Invest-NL's remit, the Dutch authorities underlined that all interventions of Invest-NL's impact investment subsidiary take place - at the level of the final beneficiary (Level II aid) - either under existing block exemption regulations and State aid communications, or on MEO terms in areas where market failures have been identified in those exemption regulations and communications. Finally, the Dutch authorities are of the opinion that the non-crowding out measures in the MEO segment ensure that Invest-NL will not unduly distort competition.
- (38) As to the yearly subsidy grant to Invest-NL's development services subsidiary (EUR 10 million per year) to pre-finance the development services, the Dutch authorities believe that this subsidy grant does not qualify as State aid insofar as this subsidiary provides services that are non-economic in nature or do not provide a selective advantage to the end beneficiary. For those cases where these services would be State aid, the Dutch authorities ensure that they would be in line with the *de minimis* regulation or compatible aid pursuant to the GBER.
- (39) Finally, the Dutch authorities believe that the activities of the parent company Invest-NL Holding NV are non-economic in nature as Invest-NL Holding NV will not provide products or services on the market in competition with other finance providers.
- (40) If in the future, Invest-NL would administer existing schemes, the Dutch authorities argue that this does not make the subsidiary performing this task an undertaking as the administration of schemes does not constitute any change to

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<sup>37</sup> As included in article 17 of the Act.

the *status quo* but is merely a transfer and consolidation of administrative functions spread across the Dutch government into one single entity.

#### **4. ASSESSMENT OF THE PRESENCE OF STATE AID**

##### **4.1. Legality**

- (41) The Dutch authorities have notified the proposed measure before implementing it, thereby fulfilling the notification and standstill obligation of Article 108(3) TFEU.

##### **4.2. Existence of State aid**

- (42) By virtue of Article 107(1) TFEU "*any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.*"
- (43) To constitute State aid within the meaning of Article 107(1) TFEU, a measure has to fulfil four cumulative conditions. First, the aid has to be granted by a Member State or through State resources. Second, the measure has to confer a selective advantage to certain undertakings. Third, the measure must be liable to affect trade between Member States. Fourth, the measure must distort or threaten to distort competition in the internal market.

##### *Scope*

- (44) The present decision assesses only the presence of aid to Invest-NL related to the EUR 2.5 billion capital injection in the impact investment subsidiary and the annual development service subsidy of EUR 10 million to the development services subsidiary (Level I aid). Whether Invest-NL's financing activities involve State aid to the final recipients (Level II aid), financial institutions and co-investors, is not within the scope of this decision.

##### *Economic activities*

- (45) Invest-NL's impact investor subsidiary provides financing (by means of e.g. loans or equity), which constitutes an economic activity.
- (46) Most development services that Invest-NL provides can be non-economic in nature (e.g. when Invest-NL provides administrative functions to the Dutch State). However, the Dutch authorities also indicate that it cannot be precluded that some services would be economic in nature and can be deemed State aid (e.g. when it concerns operational and advisory services to projects and businesses)<sup>38</sup>.

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<sup>38</sup> While an entity that carries out both economic and non-economic activities is to be regarded as an undertaking only with regard to the former, it cannot be defined ex-ante how much of the yearly subsidy will be used for non-economic activities. Therefore, the Commission in this case (where it

- (47) Invest-NL Holding NV only holds shares and is therefore not economically active<sup>39</sup>. Moreover, if a new subsidiary would merely administer schemes on behalf of the Dutch State, this would not qualify as an economic activity.
- (48) On that basis, the Commission considers that Invest-NL, specifically its impact investment subsidiary and its development service subsidiary, performs economic activities falling under the scope of Article 107(1) TFEU.

*State resources and imputability*

- (49) The concept of State aid applies to any advantage granted directly or indirectly, financed out of State resources, by the State itself or by any intermediary body acting by virtue of powers conferred on it.
- (50) Invest-NL's impact investing subsidiary will receive up to EUR 2.5 billion in capital from the Dutch government as described in recital (31).
- (51) Next to that, Invest-NL's development services subsidiary will receive each year a EUR 10 million subsidy from the Dutch State to perform the functions described in recital (27).
- (52) Since the initial funding of the impact investing subsidiary of up to EUR 2.5 billion and the annual development service subsidy of EUR 10 million come from the Dutch State, that funding explicitly comes from State resources and the decision to provide the above support is imputable to the State. Therefore, the State resources and imputability condition is fulfilled.

*Selective economic advantage*

- (53) An advantage, within the meaning of Article 107(1) TFEU, is any economic benefit which an undertaking could not have obtained under normal market conditions, that is to say in the absence of State intervention.
- (54) The Dutch authorities acknowledge that no commercial return is expected on the capital injection of EUR 2.5 billion in the impact investing subsidiary.<sup>40</sup> By addressing market failures and by acting in a way which is additional to the commercial market, Invest-NL undertakes by definition projects which would not (or not to the same extent or under the same conditions) be undertaken by a private undertaking. Moreover, the Dutch authorities did not provide the Commission with detailed projections showing that Invest-NL would generate a return on equity on its EUR 2.5 billion capital injection that private investors would accept. Indeed, Invest-NL wants to be an impact investor which also takes into account broader societal returns when making investments.
- (55) As to the annual development service subsidy of EUR 10 million to the Invest-NL's development services subsidiary, it will be used for the activities

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only assesses the existence of aid at the level of Invest-NL) will rather base its assessment for the yearly subsidies (possibly or partly) supporting economic activities.

<sup>39</sup> Judgment of the Court of Justice of 10 January 2006, *Cassa di Risparmio di Firenze SpA and Others*, C-222/04, ECLI:EU:C:2006:8, paragraphs 107 to 118 and 125.

<sup>40</sup> See recital (35).

described in recital (27) without a market-conform remuneration on it. Therefore, that annual subsidy confers an advantage on Invest-NL's development services subsidiary (insofar as it is not used for government-to-government activities)<sup>41</sup>.

- (56) The advantages (both the capital injection of EUR 2.5 billion and the EUR 10 million annual subsidy) are selective in nature as they confer an advantage only on Invest-NL's impact investment subsidiary and its development services subsidiary and not on other financial intermediaries or consultancy companies.
- (57) Therefore, based on the analysis made in recitals (53) to (56), it can be concluded that the criterion of selective advantage within the meaning of Article 107(1) TFEU is met.

#### *Distortions of competition and effect on trade*

- (58) When State aid strengthens the competitive position of an undertaking compared to other undertakings competing on the internal market, the latter are affected by that aid. As the impact investing subsidiary provides financing to companies, it is in competition with other financial institutions in that market.
- (59) Furthermore, the development services might include certain economic activities such as operational and advisory services to projects and businesses. Through the yearly subsidies, Invest-NL also receives an advantage which competitors do not receive, thereby potentially distorting competition in this market.
- (60) Both the financial services market and the advisory and consultancy markets have a strong cross-border dimension and there are players from other Member States active in the Dutch market. State measures in favour of such activities can therefore affect trade between Member States.

#### *Conclusion*

- (61) Based on the above, the Commission considers that the initial capital of up to EUR 2.5 billion in Invest-NL's impact investment subsidiary and the annual subsidy grant of EUR 10 million (insofar as used for economic activities) to Invest-NL's development banking subsidiary are State aid within the meaning of Article 107(1) TFEU.

## **5. ASSESSMENT OF THE COMPATIBILITY OF THE MEASURES**

### **5.1. Scope and criteria for assessing the compatibility**

- (62) The notification relates to the creation of Invest-NL and the State aid measures in favour of Invest-NL and its subsidiaries. Therefore, the Commission will

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<sup>41</sup> Since these subsidies and interventions of Invest-NL also do not meet the conditions as made clear in the Altmark judgment: see Judgment of the Court of Justice of 24 July 2003, Altmark Trans, C-280/00, ECLI:EU:C:2003:415, paragraph 87 to 95. This does not prejudice whether the services provided by Invest-NL at the level of the final beneficiary contain any selective advantage.

assess below the compatibility of those measures. This decision does not pronounce itself on the existence of aid (and the potential compatibility of such aid) related to the Invest-NL financing activities at the level of financial institutions, co-investors and final beneficiaries (Level II aid).

- (63) Article 107(3)(c) TFEU provides that "*aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest*" may be considered compatible with the internal market.
- (64) The Commission has examined whether any secondary State aid act could be applicable to the measures, but concludes that the measures do not fall within any existing Commission Communications, Guidelines or Frameworks setting out the rules for implementing Article 107(3)(c) TFEU.<sup>42</sup>
- (65) In light of the above, the Commission will assess the measures directly under Article 107(3)(c) TFEU, following the common State aid assessment principles and the Commission's extensive case practice in the field of development banks<sup>43</sup>. In particular, the Commission will analyse whether the measures contribute to a well-defined objective of common interest; are necessary; appropriate; have an incentive effect; are proportionate; and avoid undue negative effects on competition and trade between Member States. In order to avoid undue distortions of competition, aid to Invest-NL (Level I aid) can only be compatible if its remit is limited to activities that address market failures. Therefore, the Commission will assess below that the different activities of Invest-NL correspond to this criterion.

## **5.2. Contribution to a well-defined objective of common interest**

- (66) The measures in favour of Invest-NL must aim at a well-defined objective of common interest.
- (67) Invest-NL's first objective is to overcome market failures which impede important economic transitions such as those described in recital (7). Invest-NL's second objective is to facilitate co-financing with European funds (see recital (8)). As a third objective, Invest-NL deals with the demand/supply mismatch in parts of the risk finance market (see recital (9)).
- (68) As for the impact investing subsidiary, those more general objectives have also been concretised further in a detailed remit.

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<sup>42</sup> For a more detailed analysis on this matter, see recitals (96) to (101) of the UK Business Bank Decision, OJ C 460, 19.12.2014, p. 1-9.

<sup>43</sup> See Commission Decision of October 17, 2012, SA.33984 Green Investment Bank, United Kingdom, OJ C 370, 30.11.2012, p.2; Commission Decision of October 15, 2014, SA.36061 UK Business Bank, United Kingdom, OJ C 460, 19.12.2014, p.1-9; Commission Decision of August 24, 2016, SA.39793 Malta Development Bank, Malta, OJ C 471, 16.12.2016, p.1-8; Commission Decision of October 28, 2014, SA.37824 Portuguese Development Institution, Portugal, OJ C 005, 09.01.2015, p.1-5; Commission Decision of June 9, 2015, SA.36904 MLB development segment and creation of the Latvian Single Development Institution, Latvia, OJ C 25, 22.01.2016, p.1-5.

- (69) For the aided measures and the *de minimis* measures of the impact investing subsidiary – described in recital (19) – the Commission notes that Invest-NL will address market failures identified in the GBER or other exemption regulations (or alternatively, its interventions will be assessed separately in Commission decisions). Full compliance with those regulations ensures that the interventions of Invest-NL’s impact investment subsidiary pursue the common interest objectives set out in those regulations in a precise manner.
- (70) Moreover, the MEO interventions of the impact investing subsidiary – described in recital (22) – will help to address the market failures identified in the GBER or other exemption regulations. The fact that those interventions comply with the eligibility criteria of the GBER or the other exemption regulations (except for certain conditions such as cumulation and transparency) helps to target those measures towards the well-defined common interest objectives, also because the MEO interventions always take place on the basis of the parameters defined in recital (22).
- (71) In addition, with regard to MEO interventions, the Commission notes that equity interventions in the field of SMEs, small mid-caps and innovative mid-caps are in line with the definitions of the Risk Finance Guidelines<sup>44</sup>. The general policy objective of the Risk Finance Guidelines is to improve the provision of finance to viable SMEs and (in certain circumstances) to small mid-caps and innovative mid-caps<sup>45</sup>, so as to develop a competitive business finance market in the Union, which should contribute to overall economic growth<sup>46</sup>.
- (72) Moreover, equity interventions to SMEs (which do not fulfill all the eligibility conditions laid down in a block exemption regulation) and small mid-caps will be limited to companies that are RD&I intensive or to projects in renewable energy and environmental protection. The provision of financing to companies engaged intensively in RD&I projects - RD&I aid - should contribute to the achievement of the Europe 2020 strategy of delivering smart, sustainable and inclusive growth. The support for projects in renewable energy and environmental protection should also contribute to the Europe 2020 strategy in particular for sustainable growth to support the shift towards a resource-efficient, competitive low-carbon economy. Therefore, the Commission concludes that the MEO interventions in general also serve a well-defined objective of common interest.

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<sup>44</sup> See recital (22)

<sup>45</sup> See also the Communication from the Commission, Guidelines on State aid to promote risk finance investments, OJ C 19, 22.1.2014, p. 4.

<sup>46</sup> In particular, the Communication from the Commission, Europe 2020, A strategy for smart, sustainable and inclusive growth, (COM(2010) 2020 final, 3.3.2010) sets out a strategy framework for a fresh approach to industrial policy that should put the Union economy on a dynamic growth path strengthening Union competitiveness. It underlines the importance of improving access to finance for businesses, especially for SMEs.

- (73) For the development services<sup>47</sup> described in recital (27), insofar as they are economic in nature, they will be in line with the GBER (or potentially the *de minimis* regulation) and target the objectives described therein.
- (74) In this manner, the interventions to be carried out by the subsidiaries of Invest-NL (level II aid) serve a well-defined objective of common interest and therefore the measures of aid in favour of Invest-NL (level I aid) also serve these objectives.
- (75) In light of the elements described in recitals (66) to (74), the Commission finds that the measures in favour of Invest-NL's impact investment subsidiary and its development services subsidiary serve well-defined objectives of common interest.

### 5.3. Necessity

- (76) State aid must be needed to remedy a market failure. If the market already delivers an optimal equilibrium, State aid is not needed. However, if market failures – such as for instance information asymmetries or externalities – lead to a suboptimal equilibrium, State aid can help to maximise welfare.
- (77) As described in section 2.3.2, the remit of the impact investing subsidiary addresses market failures.
- (78) First, the impact investing subsidiary may provide financing in compliance with State aid schemes approved by the Commission. When approving individually those schemes, the Commission verifies whether they address the market failures identified in the relevant State aid legal basis. Therefore, there is no need to re-notify the remit of Invest-NL when new aid schemes are added to Invest-NL, since those schemes have been approved by the Commission and the relevant market failures have been established in the related Commission decisions.
- (79) Invest-NL may also provide financing on the basis of State aid schemes that are compatible under the GBER or other exemption regulations. These regulations are based on the assumption that market failures are addressed by providing access to finance measures which are set out in these texts and which fulfil all their respective conditions, without the need for further market failure evidence in that regard.
- (80) Invest-NL may also provide financing under the *de minimis* Regulation as well as the Agricultural and Fisheries *de minimis* Regulations. Because of the limited amount received per undertaking, the limited activity of the impact investing subsidiary conducted under these regulations, and the absence of effects on competition of such interventions, the Commission considers that the activities conducted under these regulations do not alter its assessment of the necessity of the measure to the impact investing subsidiary as they are also closely associated to market failures in the access to finance market for SMEs.

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<sup>47</sup> As far as it contains aid (e.g. concerns economic activities).

- (81) The development services, when economic in nature, will be provided within the scope of the GBER, therefore addressing market failures defined therein or in the *de minimis* Regulation with the consequent absence of effects on competition.
- (82) Second, Invest-NL may provide financing on MEO terms but only to address the market failures identified by the GBER, ABER, FIBER and the Commission Guidelines. Consequently, these MEO schemes will target exclusively undertakings which are eligible under the respective articles in the block exemption regulations or Commission Guidelines to receive aid instruments specific therein. These regulations are based on the assumption that market failures are addressed by providing measures which are set out in these texts and which fulfil all their respective conditions, without the need for further market failure evidence in that regard. More specifically, Invest-NL will limit its equity interventions (that do not comply with the eligibility conditions of the relevant GBER articles<sup>48</sup>) to smaller companies which are RD&I intensive or engaged in projects related to renewable energy and environmental protection<sup>49</sup>. As a result of asymmetric information, business finance markets may fail to provide the necessary equity finance to smaller and innovative companies resulting in a capital market failure preventing supply from meeting demand at a price acceptable to both sides. The Commission also notes the significant need (high demand) for investments in the transition to renewable energy, which further supports the need to overcome any possible market failures for smaller companies in this area. The Commission also takes positive note of the fact that the Dutch authorities will regularly assess the activities of Invest-NL whether the activities are effective (and efficient) as described in recital (34).
- (83) In light of the above, the Commission concludes that the remit of Invest-NL is limited to activities that address market failure and therefore measures of aid to Invest-NL are necessary to fulfil the identified common objectives.

#### **5.4. Appropriateness**

- (84) The State aid measure must be an appropriate policy instrument to address the objective of common interest. In that regard, the Commission has assessed whether the aid measures required for the creation of Invest-NL (and its subsidiaries) are an appropriate response to addressing market failures in the Netherlands.
- (85) First, as mentioned in section 2.1, Invest-NL has as explicit objectives to facilitate the financing of economic transitions and also to improve access to finance for SMEs (and in some cases small mid-caps and innovative mid-caps). Consolidating a number of initiatives addressing those market failures in one institution (i.e. Invest-NL) is – from the viewpoint of efficiency and coherence – an appropriate tool. In this regard, as described in recital (34), the Commission also takes positive note of the fact that the Dutch authorities plan to evaluate the effectiveness and efficiency of the tool on a regular basis.

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<sup>48</sup> Notably articles 21 and 22 of the GBER

<sup>49</sup> See recital (22)(b)



- (86) Second, by limiting Invest-NL's activities to interventions that address market failures, the set-up of this institution is an appropriate way of ensuring that it is a true development bank with a remit limited to addressing the identified market failures without unduly distorting competition.
- (87) Third, the Commission notes that investments by Invest-NL's impact investing subsidiary include equity interventions and financing for long-term capital-intensive projects without seeking a commercial return. The Commission considers it is appropriate to finance that type of financing (which do not result in predictable short-term cash flows) through a capital intervention. Moreover, the annual subsidy is an appropriate measure to fund the activities of the development service subsidiary, which will not receive a separate additional remuneration for the services it provides.
- (88) Therefore, the Commission concludes that setting up a development bank with Invest-NL's remit with the help of a capital injection and an annual subsidy is an appropriate tool to address the identified market failures.

### **5.5. Incentive effect**

- (89) A State aid measure must have an incentive effect, i.e. it must change the behaviour of an undertaking in such a way that it engages in additional activity which it would not carry out without the aid or would carry out to a lesser extent or at different condition.
- (90) The Commission has examined whether the creation of Invest-NL and the financing it obtains will itself provide an incentive effect.
- (91) Firstly, the Commission notes that no commercial return is expected on the EUR 2.5 billion capital injection in Invest-NL. This means that in the absence of the capital injection of the Dutch State, Invest-NL's impact investing subsidiary would not be able to attract financing externally and engage in the same financing activities in absence of the aid. Moreover, without the annual subsidy for the development services, Invest-NL would not be able to fund the costs related to offering these services.
- (92) Secondly, with respect to Invest-NL's financing or development services activities which are carried out on the basis of block-exemption regulations, all conditions laid down therein will have to be fulfilled, including as regards the necessary presence of an incentive effect<sup>50</sup>.
- (93) With respect to funding provided below the threshold set under the *de minimis* Regulation, the Commission considers that the limited amount of such funding per undertaking and the absence of effect on competition ensure that the implementation of *de minimis* activities by Invest-NL does not alter its assessment of the incentive effect of the measure.
- (94) With respect to Invest-NL's financing activities on MEO terms, firstly, Invest-NL will provide funding only in areas where a market failure is presumed to

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<sup>50</sup> For example, as set out in article 6 of the GBER

exist, since they will comply with the relevant eligibility conditions as included in existing general exemption regulations or Commission Guidelines. Therefore, Invest-NL will contribute to close the funding gap that exists in the markets where it will be active. It will make loan or investment volumes available, which the final beneficiary – without Invest-NL – would only have available in lower volumes and/or at a higher price. Secondly, Invest-NL will apply no-crowding-out measures as described in recital (25), thereby ensuring that only those entities and projects with insufficient market access can receive funding from Invest-NL. Therefore, the Commission can conclude that the funding provided by Invest-NL will be additional to market finance and that Invest-NL's interventions on MEO terms will increase the funding available to projects in areas where a market failure exists and where insufficient market funds are available.

- (95) With respect to Invest-NL's financing activities funded from the EU Financial Instruments (such as COSME and Horizon 2020), the Commission finds that there is an incentive effect for the following reasons. First, such instruments also aim to address market failures or suboptimal investment situations. Second, according to Article 209 of the Financial Regulation<sup>51</sup>, the principle of additionality, non-distortion of competition in the internal market and consistency with the State aid principles apply to them. Therefore, the Commission concludes that Invest-NL's interventions funded from the EU Financial Instruments ensure the incentive effect of the measure.
- (96) In light of these elements, the Commission concludes that the measures in favour of Invest-NL have an incentive effect.

## **5.6. Proportionality**

- (97) The State aid measure must be limited to the minimum necessary to induce the additional investments or activity by the undertakings concerned, i.e. whether it would not be possible to reach the same outcome with a lesser amount of aid.
- (98) The Commission notes that the EUR 2.5 billion capital injection aims to provide a sufficient (but non-commercial) return to Invest-NL which will be used to benefit SMEs (and larger companies) that are affected by market failures in accessing the necessary finance. As indicated in footnote 4, the total assets of Invest-NL amount to 0.3% of GDP, which seems to be a proportionate size (smaller on a relative basis than most other development banks). Also, the Commission considers the annual subsidies provided to Invest-NL development services to be proportionate, as they are set to cover the operating costs of this subsidiary (which does not receive any additional remuneration).
- (99) With respect to Invest-NL's financing and development services activities carried out on the basis of block-exemption regulations, if all conditions laid down therein are fulfilled, aid is presumed to be proportionate. With respect to

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<sup>51</sup> See Financial regulation applicable to the general budget of the Union, as available on <https://publications.europa.eu/en/publication-detail/-/publication/e9488da5-d66f-11e8-9424-01aa75ed71a1/language-en/format-PDF/source-86606884>

funding provided below the threshold set under the *de minimis* Regulation, the Commission considers that the limited amount of such funding per undertaking and the absence of effect on competition ensure that the implementation of *de minimis* schemes by Invest-NL does not alter its assessment of the proportionality of the measure.<sup>52</sup>

- (100) With respect to Invest-NL's financing activities, the Commission notes that the aided measures will be constrained within the eligibility criteria and certain other limits (such as with regard to aid amounts and aid intensities) of the block-exemption regulations or the Commission State aid Guidelines. With regard to the MEO measures, since those interventions are market-conform and do not provide a selective advantage, the aid amount (actually no aid) is also limited to the minimum necessary.
- (101) With respect to the financing activities funded from the EU Financial Instruments, the Commission notes that the principle of proportionality also applies to them. According to Article 209 of the Financial Regulation, "*Financial instruments and budgetary guarantees shall be used in accordance with the principles of sound financial management, transparency, proportionality, non-discrimination, equal treatment and subsidiarity, and in accordance with their objectives*). Moreover, the principle of "leverage effect" applies to EU Financial Instruments by virtue of Article 209 of the Financial Regulation, which ensures that they also aim to attract co-financing, including from private investors.
- (102) In light of those elements, and in particular the fact that each of the activities conducted by Invest-NL will be proportionate, the Commission concludes that the measures of aid to Invest-NL are proportionate.

### **5.7. Avoidance of undue negative effects**

- (103) The aid measures in favour of Invest-NL have limited crowding out risk for a number of reasons. In particular, all interventions carried out by Invest-NL at level II will limit potential negative effects on competition to the minimum.
- (104) First, Invest-NL will conduct its activities in line with State aid rules, which by itself ensures that potential negative effects are limited to the minimum.
- (105) With regard to Invest-NL's future financing activities on MEO terms, they will be subject to no-crowding-out measures, whereby Invest-NL intervenes only when market funding is not sufficient or not available. This will be ensured by

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<sup>52</sup> The Commission notes that various elements point to the proportionate use of the *de minimis* Regulation by Member States in general. In the context of the revision of the *de minimis* Regulation the data available on the use of the current *de minimis* Regulation showed that the great majority of beneficiaries receive a quite limited amount. A rather large sample showed that the average amount per beneficiary per year is below EUR 30 000 aid and that the vast majority of beneficiaries receive below EUR 50 000 aid per year, with approximately 69-89% of them receiving less than EUR 10 000 aid per year. As regards the Member States for which the Commission received detailed data on that point, as shown, around 90% of the beneficiaries were micro and small undertakings and more than 95% were SMEs.

a set of mandatory steps that Invest-NL will follow before investing in an entity. The investee will have to demonstrate that it tried to obtain the required financing from the market, but was unable to secure part or whole of the required financing. Therefore, the Commission finds that the no-crowding-out measures, which will apply for all MEO activities of Invest-NL, will ensure that the financing provided will not distort the market.

- (106) Finally, the Commission notes that Invest-NL might provide financing to undertakings in difficulty. In this case, Invest-NL will ensure that the financing is provided on MEO basis (that such intervention does not constitute aid within the meaning of Art 107(1) TFEU). The Dutch authorities could choose to notify such investments to the Commission for a ‘no-aid’ decision for reasons of guidance or legal certainty).
- (107) In light of those elements, the Commission concludes that the creation of Invest-NL will not lead to undue distortions of competition.

## **5.8. Conclusion**

- (108) On the basis of the foregoing assessment, the Commission concludes that the proposed measures (i.e. the capital injection of EUR 2.5 billion into Invest-NL’s impact investment subsidiary and the annual subsidy grant of EUR 10 million into Invest-NL’s development services subsidiary) are compatible with the internal market pursuant to Article 107(3)(c) TFEU.

## 6. DECISION

- (109) The Commission concludes that the capital injection of EUR 2.5 billion in the impact assessment subsidiary of Invest-NL and the annual subsidy grant of EUR 10 million to the development services subsidiary of Invest-NL (insofar they are used for economic activities) represent State aid within the meaning of Article 107(1) TFEU.
- (110) The Commission concludes that those aid measures are compatible with the internal market pursuant to Article 107(3)(c) TFEU.
- (111) The Commission reminds the Dutch authorities that the authorisation of the measures is limited until 31 December 2026. All plans to modify the measures, in particular with respect to further funding, the remit and duration, must be notified to the Commission.
- (112) This approval does not extend to any potential aid by Invest-NL to other undertakings, financial institutions and co-investors.

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Yours faithfully,

For the Commission

Margrethe VESTAGER  
Member of the Commission