



Brussels, 27.2.2020  
C(2020) 1109 final

<p>In the published version of this decision, some information has been omitted, pursuant to articles 30 and 31 of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus [...]</p>	<p>PUBLIC VERSION</p> <p>This document is made available for information purposes only.</p>
---	---

**Subject: State aid SA. 55704 (2019/FC) – The Netherlands  
Alleged aid related to the Dutch Venture Initiative (“DVI”)**

Excellency,

**1. PROCEDURE**

- (1) On 24 September 2018, the Commission received a complaint alleging that the Netherlands had granted unlawful State aid to the Dutch Venture Initiative (“DVI”), the private equity funds that DVI invested in, and to the SMEs in which those private equity funds invested. The complainant also argued that the Netherlands had provided State aid to PPM Oost to invest in DVI and also that DVI paid a non-market conform fee to the European Investment Fund (the “EIF”) to manage DVI.
- (2) On 8 October 2018, the Commission forwarded a non-confidential version of the complaint to the Dutch authorities, which provided a reply on 17 December 2018.

Zijne Excellentie de Heer Blok  
Minister van Buitenlandse Zaken  
Bezuidenhoutseweg 67  
NL – 2500 EB Den Haag

- (3) On 21 December 2018, the services of the Commission sent a first preliminary assessment letter to the complainant pursuant to Article 24(2) of Council Regulation (EU) 2015/1589 (“Procedural Regulation”)<sup>1</sup>. The first preliminary assessment letter included a non-confidential version of the reply of the Dutch authorities and stated that the measures objected to did not *a priori* appear to constitute State aid within the meaning of Article 107(1) of the Treaty of the Functioning of the European Union (“TFEU”).
- (4) On 20 February 2019, the complainant provided additional information to the Commission.
- (5) On 14 March 2019, the Commission sent the complainant’s submission to the Netherlands asking for additional clarifications. On 10 May 2019, the Commission received a new written submission from the Netherlands.
- (6) Having examined and reviewed the documents and the available information, the Commission services sent on 28 May 2019 a second preliminary assessment letter to the complainant pursuant to Article 24(2) of the Procedural Regulation. The second preliminary assessment letter included a non-confidential version of the reply of the Dutch authorities of 10 May 2019 and stated that the measure objected to did not *a priori* appear to constitute State aid within the meaning of Article 107(1) TFEU.
- (7) The complainant disagreed with that conclusion by letter dated 27 June 2019 and on 31 July 2019, the Commission services further clarified their letter of 28 May 2019.
- (8) The complainant substantiated further his reply on 30 August 2019 and sent additional information on 15 October 2019. On 23 October 2019, the complainant informed the Commission that more information would be coming and asked the latter not to adopt a decision before such information arrived. On 2 December 2019, the Commission received a new set of information from the complainant.
- (9) On 3 December 2019, 10 January 2020 and 14 February 2020, the Commission sent some final clarification questions to the Dutch authorities, which provided replies on 10 December 2019, on 20 January 2020 and on 14 February 2020.

## **2. BACKGROUND: THE ALLEGED BENEFICIARIES**

### **2.1. DVI**

- (10) DVI is a “private equity” “fund of fund”<sup>2</sup> structure, jointly initiated by the Dutch Ministry of Economic Affairs and Climate Policy (“MoE”), the

---

<sup>1</sup> Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, OJ L248 of 24.09.2015, p. 9.

<sup>2</sup> A “fund of funds” is an investment fund, which invests in other funds rather than directly in equity, bonds or other securities.

European Investment Fund (“EIF”) and PPM Oost and financed by the EIF and the MoE through PPM Oost.

- (11) There are two DVI funds set up as SICARs<sup>3</sup> under Luxemburgish law<sup>4</sup>: i.e. DVI I and DVI II<sup>5</sup>, incorporated in respectively August 2013<sup>6</sup> and April 2016.
- (12) The size of DVI I amounts to EUR 202.5 million, with the MoE through PPM Oost and the EIF contributing respectively EUR 130 million and EUR 67.5 million<sup>7</sup>. The remaining investment of EUR 5 million came from the publicly owned Brabant Development Company<sup>8</sup>. DVI II was funded with EUR 100 million from the MoE through PPM Oost and EUR 100 million from the EIF.

## 2.2. EIF

- (13) The EIF is a specialist provider of risk finance to SMEs across Europe. The shareholders of the EIF are the European Investment Bank (59.2%), the European Union (represented by the European Commission) (29.7%), and a wide range of public and private banks and financial institutions.
- (14) The EIF has committed funds to the DVI funds (see recital (12)), acts as an advisor to the DVI funds and performs their fund management. In the DVI mandate, the DVI funds and the EIF agreed that the former would pay the EIF a management fee of 0.75% per annum, together with a carried interest of 10% for returns above a 'hurdle' rate<sup>9</sup> of 5% internal rate of return (“IRR”)<sup>10</sup>.

---

<sup>3</sup> Société d'investissement en capital à risque.

<sup>4</sup> Law of 15 June 2004 related to the Société d'investissement en capital à risque (SICAR) (<http://legilux.public.lu/eli/etat/leg/loi/2004/06/15/n1/jo>).

<sup>5</sup> Dutch Venture Initiative S.A. SICAR (hereinafter: “DVI I”) and Dutch Venture Initiative II S.A. SICAR (hereinafter: “DVI II”).

<sup>6</sup> DVI I was fully committed at the end of 2015 (and had its final closing on October 10, 2016).

<sup>7</sup> The fund's first closing took place at an amount of EUR 150 million with PPM Oost and the EIF committing EUR 100 million each, but EIF's commitment being capped at one third of the total fund size (i.e. EUR 50 million at the first closing size). On 10 December 2014 the Brabant Development Company announced its entry into the capital of DVI with EUR 5 million bringing the total commitments into DVI to EUR 157.5 million as this commitment released an additional EUR 2.5 million in commitments from EIF. On 16 July 2015 the total commitments to DVI increased once again. PPM Oost committed an additional EUR 30 million, which automatically released additional commitments of EUR 15 million from the side of the EIF.

<sup>8</sup> The Brabant Development Company is the development company for the province of Noord-Brabant and was established by the Province of Noord-Brabant and the Ministry of Economic Affairs and Climate.

<sup>9</sup> A hurdle rate means that this carried interest is only applied to any returns above this hurdle rate. For example, if a fund realises a return of 8% (i.e. 3% above the hurdle rate of 5%), the fund manager would receive an extra fee of 30 basis points (i.e. 10% of 3%).

<sup>10</sup> The IRR is a discount rate that makes the net present value (NPV) of all cash flows from a particular project equal to zero.

### 2.3. PPM Oost

- (15) PPM Oost, meanwhile renamed to Oost NL, is a publicly owned development company which is mainly active in the Eastern part of the Netherlands investing in companies in that region (with a focus on SMEs) and providing them other support. The shareholders of PPM Oost are the provinces of Gelderland and Overijssel (with stakes of respectively 29.8% and 13.2%, the University of Twente (2.4%), the Twente region (with one single share) and the MoE (with the remaining 54.6%<sup>11</sup>).
- (16) PPM Oost is the channel which the Dutch State used to make its investments in DVI. An agreement between DVI and PPM Oost sets out the terms of the relationship between PPM Oost and the Dutch State. That agreement provides that the full risk of the DVI investments is borne by the Dutch State, i.e. the Dutch State will receive all potential profits of the investments and will bear also any potential losses<sup>12</sup>. The agreement also provides that PPM Oost has to keep all proceeds from DVI on a separate account, which PPM Oost cannot use for any other purposes except the execution of DVI.
- (17) PPM Oost has a facilitating role and provides support and services e.g. related to capital calls of DVI funds (after funds are committed, the capital calls relate to the actual transfer of funds). In this context, PPM Oost also has the right to nominate two members in the Steering Board of DVI and two members in its Investment Committee.
- (18) The Dutch State remunerates PPM Oost for the DVI-related administrative tasks it performs. Concretely, the remuneration relates to e.g. personnel expenses and legal fees that PPM Oost incurs for its DVI-related work. An independent auditor validates a financial report which includes this compensation. The report for the year 2018 states that one to two full-time equivalents (“FTE”) are allocated to the management of the DVI shareholding inside PPM Oost. As a result, the compensation fee amounted to EUR 51 000 in 2018, EUR 97 000 in 2017 and EUR 90 000 in 2016.

### 2.4. Private Equity Funds and SMEs

- (19) DVI invests in private equity funds that make equity investments in SMEs. DVI I has made commitments to 14 different private equity funds<sup>13</sup>, which by end-2017, had made 130 investments in SMEs. At the end of 2017, DVI II had committed funds to 3 different private equity funds for an amount of EUR 60.5

---

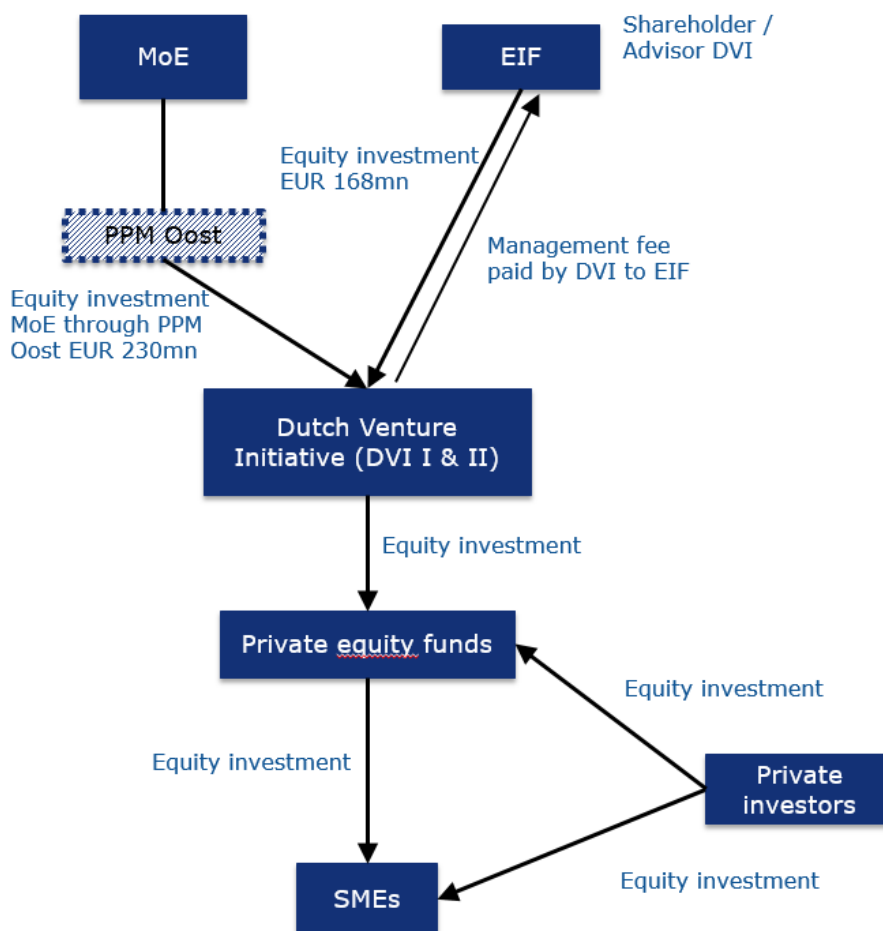
<sup>11</sup> See the 2018 annual report:  
[https://oostnl.nl/sites/default/files/attachments/Jaarverslag%20Oost%20NL%202018\\_0.pdf](https://oostnl.nl/sites/default/files/attachments/Jaarverslag%20Oost%20NL%202018_0.pdf)

<sup>12</sup> The Dutch State submitted that in legal terms the funding constituted a subsidy in the form of a cash loan, but the terms of the agreement ensured the risk and return was for the account of the State.

<sup>13</sup> Prime Ventures IV, Gilde Healthcare III, Newion Investments II, Karmijn Kapitaal I, Aglaia Oncology Fund II, Life Science Partners V, Forbion Capital Fund III, Gilde Healthcare Services II, henQ III, Endeit Fund II, European Angels Fund – EAF Netherlands, HPE Fund II, SET Fund II and the Keen Venture Partners Fund.

million. By end-2017, these funds had made 23 SME investments. The commitments by DVI to the private equity funds are generally in the range between EUR 5 million and EUR 20 million.

- (20) When investing in private equity funds, DVI always co-invests with other private investors (on a “pari passu” basis). In general, the participation of DVI in the underlying funds amounts to 5% to 30%, with the average participation rate at the end of 2017 being 11.4%.
- (21) DVI’s objective is in general to invest in fast-growing and innovative SMEs. The average investment in an SME from the private equity funds amounts to EUR 4.6 million<sup>14</sup>. The average age of the SMEs it invests in is 6 years and 1 month.
- (22) Chart 1 below provides an overview of the DVI structure and the different actors/investors.



*Chart 1 - Overview of the DVI structure (excluding the Brabant Development Company which was shareholder for DVI I)*

<sup>14</sup> See <https://www.dialogic.nl/wp-content/uploads/2019/02/financieringsmonitor-en-evaluaties-diverse-financieringsinstrumenten-3-1.pdf>

### **3. POSITION OF THE COMPLAINANT: THE ALLEGED STATE AID MEASURES**

- (23) On 24 September 2018, the Commission received a complaint alleging that the Netherlands had granted unlawful State aid to different actors involved in DVI: DVI, the EIF, PPM Oost, the private equity funds that DVI invests in and the SMEs, in which the private equity funds invest. Concretely, the complainant argues that there is aid in:
- the financial arrangement between the Dutch State and PPM Oost;
  - the investment made by PPM Oost into DVI;
  - the management fee paid by DVI to the EIF;
  - the investments made by DVI in private equity funds; and
  - the investments made by private equity funds funded by DVI into SMEs.
- (24) The complainant is [...]. Its objective was to set up a fund-of-funds structure via which private investors (such as pension funds) could indirectly invest in Dutch SMEs. The complainant argues that - through the unlawful aid - it experienced difficulties in attracting private financing and also had less investment opportunities available (as private equity funds that the complainant potentially wanted to invest in were oversubscribed).

#### **3.1. Alleged unlawful aid to DVI**

- (25) First, as to State resources and State imputability, the complainant submits that DVI was set up at the initiative of the MoE and was not run independently from the State. Second, other shareholders of PPM Oost renounced their voting rights with regard to decisions by PPM Oost with regard to DVI<sup>15</sup>. Third, the complainant notes that the financing of DVI was formally a cash loan, which was reflected in the Dutch State budget. Fourth, some members in the Board of Directors of DVI and the Investment Committee are appointed with the approval of the MoE. Therefore, the complainant submits that the investments in DVI are financed via State resources and are imputable to the Dutch State.
- (26) The complainant also alleges that the Dutch State provided a selective advantage to DVI. The complainant considers that DVI received an investment from the Dutch State in a non-market conform manner. In particular, the complainant notes the Dutch State was unsuccessful in attracting other private investors to DVI. Dutch pension funds which were approached to make an investment in DVI, decided not to invest. The complainant considers that, if the market did not invest, this means that the investment in DVI was not in line with market conditions. In addition, the MoE provided support to DVI to

---

<sup>15</sup> The complainant submits that therefore, the MoE can unilaterally decide with regard to decisions related to DVI.

attract private investors into DVI, which thus constitutes support from the State.

- (27) The complainant argues that, even if the State has instructed PPM Oost to behave as a market investor, this is not possible because PPM Oost’s objective is to make loans more accessible to SMEs in the Netherlands.
- (28) As to the observation that PPM Oost invests in DVI under the same conditions as the EIF, the complainant argues that this does not exclude a selective advantage to DVI. First, PPM Oost invested two thirds of the capital and it can appoint more members to the Board of Directors and to the investment committee than the EIF.
- (29) In addition, the complainant argues that the EIF does not act as a market economy operator given the fact that it is a public undertaking and its corporate objectives are not those of a market economy operator. Therefore, the *pari passu* principle does not apply because of a lack of private investors with pure economic objectives. The complainant also submits that the “leverage” effect which the MoE aims to achieve (i.e. the Dutch State believes that one euro injected in DVI leads to a 4 euros return to the Dutch economy) is not reconcilable with the objectives of a market economy operator to achieve the best possible return on its investment.
- (30) The complainant also mentions that in 2014, according to industry figures, the historical returns of venture capital funds (“VC Funds”) investing in early-stage investments were negative with a pooled internal rate of return of -0.13% (measured over more than 400 funds). VC Funds making later-stage investments yielded a return of 2.37% (measured over more than 100 funds). In the complainant's view, these figures of over 500 VC Funds clearly demonstrate that a market-conform return could not be expected.

### 3.2. Alleged unlawful aid to EIF

- (31) According to the complainant, DVI pays a non-market conform fee to the EIF to manage the DVI funds. As an example, the complainant highlights that two other private funds-of-funds had a lower fee structure.

	DVI I and II	Aurora	WMP FoF
Fixed annual management fee	0.75%	0.75% (for investments above EUR 35 million)	0.61%
Hurdle rate	5%	8%	8%
Carried interest above hurdle rate	10%	8%	10%

*Table 1 - Fee structure of EIF and of two other fund-of-funds (all figures are expressed as a percentage of the assets under management). Source: complainant’s submission dated 20 February 2019*

- (32) In addition, the complainant submits that the absence of a tender to manage the DVI funds implies that the fees paid to EIF (and therefore also the investment return of DVI) would not be market-conform.

### 3.3. Alleged unlawful aid to PPM Oost

- (33) According to the complainant, PPM Oost has received an advantage through the loan from the MoE. PPM Oost is also shielded from all the risks associated with this investment.
- (34) The complainant also argues that PPM Oost is co-investing with DVI. In some cases, PPM Oost is investing in the same underlying investments as DVI through another fund. Therefore, the complainant claims that PPM Oost cannot qualify as a ‘pass-through vehicle’ in the sense of the Guidelines on State aid to promote risk finance investments (the “Risk Finance Guidelines”)<sup>16</sup>. According to the complainant, PPM Oost receives an extra advantage thanks to the knowledge acquired through DVI, which it uses for its own investments.

### 3.4. Alleged unlawful aid to Private Equity Funds and SMEs

- (35) The complainant submits that, since the Dutch State investment in DVI is not market-conform, the underlying investments in private equity funds as well as the SMEs at the receiving end cannot be market-conform either.
- (36) Firstly, the complainant argues that, to comply with the market economy operator principle, the investments should be made with a purely commercial objective. The fact that the MoE has as objective to make risk finance more accessible to Dutch SMEs proves that this is not the case.
- (37) Secondly, the EIF seeks to minimise the share that DVI takes on private equity funds and it does not invest in funds that manage to attract sufficient private investors by themselves. The EIF can invest in the funds in two rounds, reserving an investment amount to the second round in case there is not enough private investors. The complainant submits that normal market participants would not seek to minimise its share for funds that are most promising (and therefore potentially oversubscribed). Also, the *pari passu* principle can only be applied for investments that are done at the same time. The complainant submits that this criterion is not met since the DVI investment makes it interesting for private investors to also participate *ex-post* in the private equity funds (in other words, the EIF helps those funds to achieve their first closing)<sup>17</sup>.

## 4. POSITION OF THE NETHERLANDS

- (38) The Dutch authorities consider that no unlawful State aid is provided to DVI nor to the different actors involved.

---

<sup>16</sup> Paragraph 39 of the Communication from the Commission — Guidelines on State aid to promote risk finance investments, OJ C 19, 22.1.2014, p. 4–34.

<sup>17</sup> The complainant refers to the evaluation study of DVI which includes that the reputation of EIF has a positive influence (and supports the crowding in) primarily in the first closing. EIF participates less in follow-on investments, which would support the objective to catalyse private investments according to the study.



- (39) More specifically, the Dutch authorities consider that there is no selective advantage to DVI nor to any of the actors involved: applying the assessment criteria set out in recitals (86) and (87) of the Commission Notice on the Notion of aid<sup>18</sup>, the Dutch authorities note that the public funding is provided on *pari passu* terms with investments made by private investors and therefore does not constitute State aid.

#### **4.1. Alleged unlawful aid to DVI**

- (40) The Netherlands stress that the behavior of DVI, in terms of investment, is based on market principles. This is also laid down in the DVI I and DVI II private placement memorandum and the fund documentation. The Dutch authorities also point out that the Luxemburgish regulatory guidelines on SICAR<sup>19</sup> provides that “the SICAR's declared intention shall be in general to acquire financial assets in order to sell them with a profit”. The circular from the Luxemburgish supervisor also states that “In order to maximise profits from investments for the SICAR's shareholders, the SICAR will often intervene in the management of the portfolio companies via an advisory activity or a representation in the managing bodies of the portfolio company, thereby aiming to create value in the latter through restructuring, modernisation, and by promoting any measures likely to improve the allocation of resources”.
- (41) In addition, the Dutch authorities underline that PPM Oost invested in the DVI funds on the same conditions as the EIF, which also behaves like a market participant. Since the Dutch State financed the DVIs through PPM Oost as a market economy operator, this financing represents no advantage to DVI. Therefore, no State aid was provided to DVI.
- (42) The Dutch authorities submit that the lack of other private investors such as pension funds, does not in itself establish that a selective advantage is provided to DVI<sup>20</sup>. The Dutch authorities’ assessment is that pension funds often find investments such as DVI too small, or not appropriate given the constraints of their mandates. Concretely, smaller investments (such as DVI) do not always fit in the mandate and therefore pension funds often prefer investments in larger funds. Finally, the double management fees (both at fund level and at fund-of fund level) are perceived negatively by pension funds. The Dutch authorities submit that pension funds have often the possibility to invest

---

<sup>18</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, C/2016/2946, OJ C 262, 19.7.2016, p. 1–50.

<sup>19</sup> Circular CSSF 06/241 of 5 April 2006, “The concept of risk capital under the Law of 15 June 2004 relating to the investment company in risk capital (SICAR)”, [https://www.cssf.lu/fileadmin/files/Lois\\_reglements/Circulaires/Hors\\_blanchiment\\_terrorisme/cssf\\_06\\_241eng.pdf](https://www.cssf.lu/fileadmin/files/Lois_reglements/Circulaires/Hors_blanchiment_terrorisme/cssf_06_241eng.pdf)

<sup>20</sup> Pension funds were invited to invest directly in the DVI funds — i.e. the funds of funds. The DVI initiative was communicated to institutional investors in a general way. However, no pension fund has actually invested in the DVI funds.

directly in the underlying private equity funds and can thus avoid the fees at the level of the fund of funds.

#### 4.2. Alleged unlawful aid to EIF

- (43) According to the Dutch authorities, the management fee received by the EIF for its activities as advisor is market-conform. This management fee is composed of three components, namely: the fixed annual management fee, the ‘hurdle rate’ and a ‘success fee’, also called the carried interest.
- (44) The Dutch authorities point out that management fees for funds are customised and the overall fees were assessed and taken into consideration by the Netherlands when the agreements with EIF were entered into. Fund or fund-of-funds investors determine the fixed management fee, the hurdle rate and the carried interest rate in relation to the investment mandate of the fund or fund-of-funds. According to the Dutch authorities, the average management fee for private equity funds-of-funds is around 1%: DVI pays a fixed management fee to the EIF of 0.75%, which is below the market average. More granular information is shown in Chart 2 below.

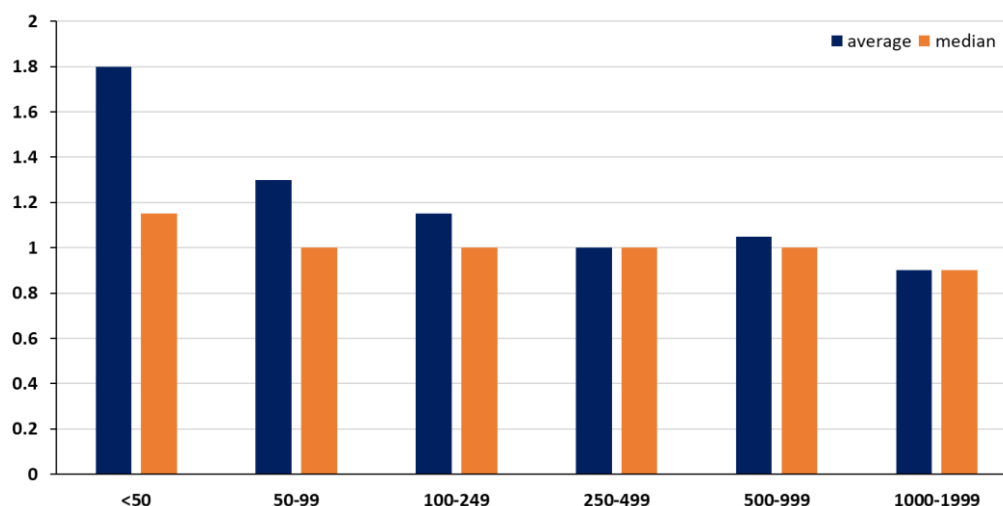


Chart 2 – Fixed annual management fee (% - vertical axis) vs fund size (USD million – horizontal axis) for private equity funds of funds. Source: Preqin Private Equity Fund of Funds Review and Preqin online database

- (45) Moreover, the DVI funds have been evaluated by an external research agency<sup>21</sup>. That evaluation report confirmed the market conformity of both the fixed management charge and the carried interest: *“In the DVI mandate, it was agreed that EIF should receive a management fee of 0.75 %. Interlocutors from a number of countries have seen this as market conform, especially in view of the quality of activities such as due diligence”*. *“The management fee*

<sup>21</sup> Evaluation of the SEED capital scheme, Growth facility & Dutch venture Initiative, dated 21 December 2018 (<https://zoek.officielebekendmakingen.nl/blg-872049>).

*includes also a carried interest (a part of the profit), i.e. 10 % from the 'hurdle' of 5 % effective rate of return (IRR). 42 % of the funds of funds started in 2016 and 2017 have a carried interest of 10 % or more. Therefore, EIF's carried interest from DVI is market conform."*

- (46) As regards the hurdle rate of 5 %, the Dutch authorities consider that it takes into account the specific terms of reference indicated by the Dutch State (investments in VC Funds). Higher hurdle rates might apply to other funds, in particular to hedge funds (which are characterised by a significant amount of leverage and therefore higher risk). The Dutch authorities consider however that a hurdle rate of 5% is appropriate for the DVI funds. The Dutch authorities consider that a higher hurdle rate does not sufficiently incentivise the fund manager to receive the carried interest rate of 10% and they attach value to this commercial incentive for the fund management.
- (47) Therefore, the Dutch authorities conclude that the remuneration paid to the EIF is in line with market conditions.
- (48) Finally, the Dutch authorities consider that the EIF, a body of the European Union, does not qualify as an undertaking and that therefore the remuneration received by the EIF for its fund manager activities cannot be considered as State aid.

#### **4.3. Alleged unlawful aid to PPM Oost**

- (49) The Dutch authorities highlight that the Dutch State is *de facto* exposed to both the profits (upside) and losses (downside) of the investment made in DVI. The Dutch State underlines that the relationship between the Dutch State and PPM Oost is governed by the agreements between the Dutch Government and PPM Oost<sup>22</sup>. No risk is borne by PPM Oost. The Dutch authorities consider that the Dutch State remains the full economic owner of the investment in DVI and that PPM Oost only acts as a pass-through intermediary, which returns the receipts of the investments in the DVI funds to the budget of the State. Concretely, the investments in and revenues from the DVI funds are included in the budgets of the MoE.<sup>23</sup>
- (50) The Dutch State also underlines that there is no overcompensation of PPM Oost for the services it performs. The Dutch authorities consider that the costs charged by PPM Oost given the size of the DVI funds and the work performed by PPM Oost are appropriate and proportionate. A financial report, which is validated by an independent auditor, is made each year in consultation with the Netherlands to ensure that PPM Oost is not overcompensated. Also, the fee

---

<sup>22</sup> At the time of the establishment of DVI I and DVI II, the contractual partner was in part PPM Oost Nederland N.V. Following a merger with Ontwikkelingsmaatschappij Oost N.V., Oost NL was created and is the current contracting party.

<sup>23</sup> Establishment of the Budget States of the Ministry of Economic Affairs and Climate Policy (XIII) for the year 2019, Parliamentary paper 35000-XIII, No 2.

structure was duly considered before entering into the agreement with PPM Oost.

#### 4.4. Alleged unlawful aid to Private equity funds and SMEs

- (51) The Dutch authorities highlight that DVI operates in line with market conditions. In all cases, DVI only holds a minority interest in a private equity fund (i.e. in practice DVI has provided between 5% and 30% of the total investment amount of a private equity fund). In particular, article 4 of the Confidential Private Placement Memorandum of DVI states that “*The Company [DVI] will seek to take participations of up to [...] % of a Portfolio Fund’s aggregate commitments, subject to a maximum of [...] %; to assess such [...] % limit, participations in the relevant Portfolio Fund held by the Adviser (whether in its own name or as manager/agent/trustee/adviser for others) will be added to the Company’s participation.*” The EIF, as adviser of DVI, checks and validates the minimum of [...] % of private co-investors in the VC funds targeted by DVI. The Dutch authorities submit also that the EIF ensures this already for the first closing. According to data submitted by the Dutch authorities, the stake of DVI in the underlying VC funds is on average 11.7% while the stake of private investors reaches 67%.

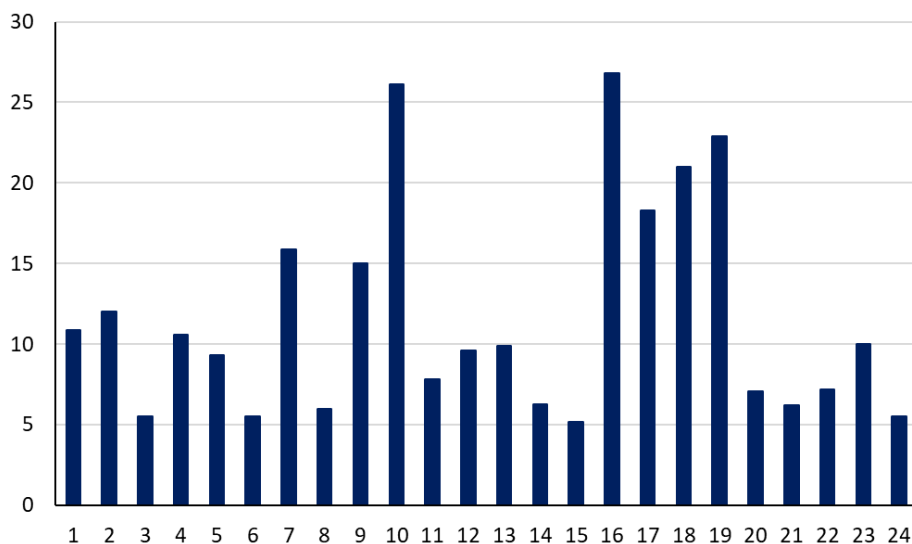


Chart 3 - Size in % of DVI's contribution (vertical axis) in the underlying private equity funds (horizontal axis). Source: Reply from the Netherlands dated 10 May 2019

- (52) DVI is often one of the contributors to a first closing but the Dutch authorities also stress that in a first closing, DVI always invests in underlying funds under the same conditions as private investors, those private investors including e.g. family offices. This *pari passu* approach also applies to any second closing. In addition, the Dutch authorities submit that DVI systematically assesses itself the risk and return characteristics of the investments they perform, before entering into them. The Dutch authorities therefore consider that there is no State aid to the private equity funds that DVI Funds invest in.

- (53) The Dutch authorities submit that DVI selects funds based on multiple criteria including investment track records, professional fund management, realism in investment assumption, etc. The funds financed by DVI also act in line with market conditions taking into account their track record and their prospects for future funding. SMEs therefore receive the investments under market conditions. Therefore, the Dutch authorities consider that there is no aid at the level of SMEs.
- (54) Finally, the Dutch authorities note that the investments made by DVI have resulted so far in a total return of EUR 23 million<sup>24</sup>. This performance (where there are still limited exits from the initial investments) corresponds to an IRR of 5.1%. As this IRR corresponds to the development stage of the DVI funds, assuming a standard J-curve<sup>25</sup> for the IRR obtained by VC funds, the Netherlands expects that, after the realisation of the fund from successful exits from its investments, the overall IRR could reach 10% to 15%.

## 5. ASSESSMENT OF EXISTENCE OF STATE AID

- (55) 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.*"
- (56) The qualification of a scheme as aid within the meaning of this provision therefore requires the following cumulative conditions to be met: (i) the scheme must be imputable to the State and financed through State resources; (ii) it must confer an advantage on its recipient; (iii) that advantage must be selective; and (iv) the scheme must distort or threaten to distort competition and affect trade between Member States. If any of those criteria are not fulfilled, there is no need to examine the other criteria and the presence of State aid can thus be excluded.
- (57) The Commission will first assess whether an advantage was provided to the different actors involved in DVI. An advantage, within the meaning of Article 107(1) TFEU, is any economic benefit that an undertaking could not have obtained under normal market conditions, that is to say in the absence of State intervention.

---

<sup>24</sup> Which corresponds to the difference of the current value of the investments (EUR 156 million) and the initial investments by DVI (EUR 133 million) as at March 2019. See also article from 'Het Financieel Dagblad' of 22 October 2019: 'Investeren met geld van de overheid: dit zijn de gelukkigen'.

<sup>25</sup> The J-curve represents a general tendency for private equity funds to have negative or lower returns in the initial years and then have increasing returns in later years when the investments mature.

## **5.1. Alleged unlawful aid to private equity funds and SMEs**

- (58) DVI systematically assesses the risk/return characteristics of the investments and the track record of the investment managers before an investment decision is taken. DVI invests in private equity funds on a “pari passu” basis, i.e. at the same time and at the same conditions as independent private investors. This follows from the following considerations: First, the participation of DVI in the underlying private equity funds is generally modest (see recital (51) and the information in Chart 3 above) with private co-investors owning the largest part of the underlying VC funds targeted by DVI. Second, the Commission notes that the EIF also validates the percentage of private co-investors in the VC funds targeted by DVI, and that the average private participation amounted to 67% (the private participation is thus economically significant<sup>26</sup>). Third, DVI invests in underlying funds under the same conditions as private investors at the same time (i.e. in both the first and second closing of a single fund raising process)<sup>27</sup> and from the same starting positions as external investors with no prior exposure to any private equity funds investees. When a transaction is carried out at the same time, under the same terms and conditions (and therefore with the same level of risk and rewards) as well as from the same starting positions by public bodies and private operators, it can be inferred that such a transaction is in line with market conditions.<sup>28</sup>
- (59) Given these considerations, the Commission considers that DVI invests in private equity funds in line with normal market conditions. Therefore, the latter do not receive any advantage in the meaning of Article 107(1) TFEU. The Commission also notes that the current IRR of the DVI funds is 5.1%. This figure corresponds to the development stage of the fund-of-funds.
- (60) By extension, this logically implies that private equity funds cannot pass on any selective advantage to SMEs either. Indeed if the private equity funds are normal market vehicles, which generate risk-adjusted returns that are also acceptable to normal private investors, such private equity funds have to make investments which generate such market returns.

## **5.2. Alleged unlawful aid to the EIF**

- (61) The Commission notes that the Netherlands submitted that they duly assessed the fee structure of the EIF (together with the services they perform) before the contract with the EIF was executed and constituted an appropriate

---

<sup>26</sup> The private participation is also economically significant at the first closing, as checked by the EIF (see recital (51))

<sup>27</sup> See recital (52)

<sup>28</sup> While actual ex-post performance cannot be used as indicator in itself to demonstrate that there was no advantage at the time financing was granted, the Commission observes that the expected IRR of the DVI funds (the actual IRR of 5.1% is expected to result in an expected IRR of 10-15% IRR once it realises its investments based on the standard J-curve) is in line or above the IRRs indicated in a Preqin report (Preqin Special Report: Private Equity Funds of Funds, November 2017).

compensation for the services would provide. As to the fees paid by the DVI funds to the EIF, the Commission considers it is not sufficient to only consider the fee structure of the two fund-of-funds that the complainant presented (see Table 1), to establish whether the EIF's fee structure is in line with market conditions.

- (62) The Commission considers that in order to establish whether the fee structure of the EIF is in line with market conditions, it is appropriate to consider also central tendency measures (such as averages or medians) of fees of a set of comparable fund-of-funds. This information is contained in the Preqin Report<sup>29</sup> submitted by the Dutch authorities.
- (63) As for the annual management fee, the report contains a comprehensive overview of the management fees of fund-of-funds. DVI pays a fixed management fee (0.75%) to the EIF that is equal or lower than the median management fee of private equity fund-of-funds launched in 2013 (1%) (i.e. at the same time as DVI I was incorporated) and 2016 (0.75%) (i.e. at the same time as DVI II was incorporated). The Commission also notes that the fund size of DVI is relatively limited, which typically goes hand in hand with a higher annual management fee (expressed as a percentage of assets under management). Chart 2 illustrates that, for fund sizes around EUR 200 million, the average annual management fee is around 1%.
- (64) Regarding the carried interest (10%), the Commission notes that a substantial percentage of recently started fund of funds (42% during 2016-2017) have carried interests of 10% or more.
- (65) Regarding the hurdle rate of 5%, the Commission observes that higher hurdle rates in the market typically relate to investment funds investing in leveraged companies such as private equity and buyout funds (where the investments are thus riskier and the expected return is higher). For those funds, the hurdle rate generally amounts to 8%, which is more difficult to achieve for VC funds that focus on low-leverage SMEs (which are also reflected in the fee structure sent by the complainant). Sectoral data for 2016 show that VC funds generate an IRR with ca. 0% in the short term, between 10% and 12% in the mid-term and 5% over 10 years. These performances are lower than what other types of funds (such as private equity and buyout) achieve on average. Given these figures, the Commission considers that the EIF's hurdle rate of 5% is adequate to incentivise the fund manager to adopt a mid-long term perspective so that it can reap the benefit of the carried interest rate consistently with the average performance of VC funds. Therefore, the Commission considers that the 5% hurdle rate is appropriate.
- (66) The Commission further considers that this hurdle rate (5% compared to 8%) cannot be seen in isolation i.e. the entire fee structure has to be assessed to determine whether the remuneration can be considered market-conform. The Commission notes that the EIF fixed management fee (0.75%) is slightly

---

<sup>29</sup> See Preqin Special Report: Private Equity Funds of Funds, November 2017.

below the median fixed management fee for fund-of-funds of a similar size (1%). With a carried interest of 10% and with a return of 8%, the total fee of EIF would have amounted to 1.05%<sup>30</sup>, which is close to the median fixed management fee for funds of funds of similar size of 1%<sup>31</sup> (and within the range of observations of fees). The Commission considers that the uncertainty<sup>32</sup> that this IRR could have been reached when the management fees were set, underlines that the management fees were market conform.

- (67) Based on the above, the Commission concludes that the overall fee structure of EIF (management fee, carried interest, hurdle rate) is in line with the fee structure of a comparable market operator of fund-of-funds. On this basis, the Commission considers that the remuneration of the EIF does not entail an economic advantage within the meaning of Article 107(1) TFEU.

### 5.3. Alleged unlawful aid to DVI

- (68) The Commission considers that the Dutch State invested in DVI at conditions that would also have been acceptable to private investors who would generally be interested in investing in a fund-of-funds. Indeed, DVI invests “pari passu” with other market operators in private equity funds (see recital (58) and (59)) and pays a market-conform remuneration for the management of the fund-of-funds structure to the EIF (see recitals (61) to (67)). This ensures that the return of DVI is in line with the normal return of a fund-of-funds in the same underlying investments. The Commission also notes that the Netherlands duly took the fee structure of the EIF into account when DVI was set up and that DVI itself also systematically assesses the risk and return characteristics before making investment decisions. On this basis, the Commission concludes that the return that the Dutch State can expect on its DVI investment is that of a normal market economy operator.
- (69) The Commission considers that the lack of appetite from certain investors (such as pension funds) to invest in DVI as a fund-of-funds does not prove the lack of market conformity of the investment. Such investors are restricted by the mandate they have in which underlying investments. Typically, such large investors typically can also invest directly in underlying funds and diversify the risk themselves (without needing to pay a management fee at fund of fund level). As to the argument that the Dutch State has other objectives than those of market economy operator (i.e. facilitate access to finance for SMEs), the Commission points out to the fact that the State aid rules only assess the effect

---

<sup>30</sup> Which includes the fixed management fee and the carried interest (10%) above the hurdle rate (8% minus 5%). The Commission also notes that if the IRR would be above 8%, the difference in management fee is still the same (0.05%). To illustrate this, if an IRR would be 10%, then the management fee with a fixed fee of 1%, carried interest of 10% and a hurdle rate of 8% would amount to  $1\% + (10\% - 8\%) * 10\% = 1.2\%$ . The management fee per the DVI fee structure would amount to  $0.75\% + (10\% - 5\%) * 10\% = 1.25\%$ .

<sup>31</sup> See chart 2.

<sup>32</sup> The Commission notes that the actual returns depend on many factors, including the overall economic and financial factors which have evolved positively over the past years.



of the investment and not its intention or objective<sup>33</sup>. The Commission again notes that the Netherlands duly took the fee structure of the EIF into account when DVI was set up and that DVI itself also systematically assesses the risk and return characteristics before making investment decisions. As noted in recitals (58) to (60), facilitating SME funding through DVI does not imply that the terms of the underlying investments are not market-conform or would not be done by a market economy operator. By investing *pari-passu* with private investors in private equity funds, DVI will be able to extract market-conform returns, which will then be passed on to its shareholders, including the MoE, while indirectly supporting SME financing.

- (70) Given the above, the Commission concludes that the investment in DVI fund-of-funds structure by the Dutch State is market-conform. Therefore, this investment does not provide an economic advantage to DVI. The Commission also notes that the overall IRR that will be generated by the fund-of-funds could reach 10% to 15% (see recital (54)).

#### **5.4. Alleged unlawful aid to PPM Oost**

- (71) The Commission notes that the Netherlands submitted that the fee structure and the terms and conditions of the agreement with PPM Oost were assessed before entering into the agreement with PPM Oost and that the fees only reflect the direct costs PPM Oost itself incurs (therefore generally below what other service providers would charge). The Dutch authorities clarified that the agreement between PPM Oost and the Dutch State (i.e. MoE) is *de facto* neither a loan nor a subsidy. PPM Oost mainly provides administrative services and allows the Dutch State to invest in DVI's equity through PPM Oost. PPM Oost keeps all the money of the DVI investments in a separate account and transfers all proceeds related to that investment to the Dutch State. Thus, PPM Oost does not retain any risk and does not receive any investment upside either. The Dutch State is therefore the economic owner of the investment in DVI.
- (72) PPM Oost only receives compensation for the costs of the administrative services that it provides. The Commission notes that a financial report is drafted and validated each year by an auditor, which further ensures that PPM Oost is not overcompensated for these services. According to the 2018 financial report submitted by the Netherlands, the Commission notes that one to two FTEs are assigned inside PPM Oost to the management of DVI (see recital (18)). Given the sums paid between 2016 and 2018, the Commission considers that the compensations paid by the MoE to PPM Oost are consistent with the number of FTEs. As the management of the shareholding requires from PPM Oost to take care of cash calls, to represent the MoE at DVI's board meetings and other related administrative paperwork, the Commission is of the view that allocating one to two FTEs inside PPM Oost is proportionate to manage the Dutch State's shareholding in DVI. In particular, now that both

---

<sup>33</sup> Judgment of the Court of Justice of 2 July 1974, Italy v Commission, 173/73, ECLI:EU:C:1974:71, paragraph 13.

funds are actively running, the Commission views the allocation of one FTE in 2018 as appropriate. Thus, the Commission considers that there are no indications that PPM Oost is overcompensated by the MoE.

- (73) Finally, the Commission does not consider the definition of a “pass-through vehicle” in the Risk Finance Guidelines to be relevant for PPM Oost. Both the Netherlands and the complainant refer to paragraph (39) of these guidelines. Given how the financial relationship between MoE, PPM Oost and DVI is structured and the market-conform nature of the MoE’s investment through PPM Oost into DVI, the circumstances referred to in the Risk Finance Guidelines definition of a ‘pass-through vehicle’ do not apply: no aid is transferred to either the underlying private equity funds or SMEs at the end of the investment chain.
- (74) In view of these elements, the Commission concludes that PPM Oost (with regard to its role and the agreements concerning DVI<sup>34</sup>) does not benefit from an economic advantage.

---

<sup>34</sup> The classification of an entity as an undertaking is always relative to a specific activity. An entity that carries out both economic and non-economic activities is to be regarded as an undertaking only with regard to the former: see also Judgment of the General Court of 12 December 2000, *Aéroports de Paris v Commission*, T-128/98, ECLI:EU:T:2000:290, paragraph 108.

## 6. CONCLUSION

(75) On the basis of the above, the Commission has decided that the measures complained of, namely:

- a) The financial arrangement between the Dutch State and PPM Oost;
- b) The investment made by the Dutch State via PPM Oost into DVI;
- c) The management fee paid by DVI to the EIF;
- d) The investments made by DVI in private equity funds; and
- e) The investments made by private equity funds funded by DVI into SMEs,

do not constitute State aid within the meaning of Article 107(1) TFEU, as they do not confer an economic advantage on any undertaking.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site <http://ec.europa.eu/competition/elojade/isef/index.cfm>

Your request should be sent by registered letter or fax to:

European Commission  
Directorate-General for Competition  
State Aid Greffe  
B-1049 Brussels  
Fax No: +32-2-296.12.42

Yours faithfully,

For the Commission

Margrethe VESTAGER  
Executive Vice-President