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**Subject: State Aid SA.57554 (2020/N) – The Netherlands
COVID-19: Compensation scheme special transport for special groups due to the COVID-19 outbreak**

Excellency,

1. PROCEDURE

- (1) By electronic notification of 18 June 2020, following pre-notification contacts, the Netherlands notified the above-mentioned scheme (“the measure” or “the scheme”). The Netherlands notified the measure on the basis of Article 107(2)(b) of the Treaty on the Functioning of the European Union (“TFEU”).
- (2) The Netherlands exceptionally agrees to waive its rights deriving from Article 342 TFEU, in conjunction with Article 3 of Regulation 1/1958,¹ and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURE

- (3) As a consequence of the COVID-19 outbreak and measures adopted by the Dutch authorities in response (described in detail in Section 3.3), almost all publicly funded transport for specific groups in the social domain (“special transport”), organised at municipal level in the Netherlands, was suspended. Special transport refers only to road-bound transport, mainly carried out on mini-buses (which hold eight passengers), wheelchair mini-buses and, to a lesser extent, taxis.

¹ Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

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- (4) The specific groups in the social domain are children, elderly persons and other persons who are not able to use regular public transport to go to school or attend social activities. Special transport for these specific groups includes on-demand transport in remote areas and other services under the Social Support Act (“Wet Maatschappelijke Ondersteuning”), the Youth act (“Jeugdwet”), the Primary Education Act (“Wet op het Primair Onderwijs”), the Secondary Education Act (“Wet op het Voortgezet Onderwijs”), the Special needs education Act (“Wet op de expertisecentra”) and the Participation Act (“Participatiewet”).
- (5) Due to COVID-19-related measures, schools have been closed and activities or treatments of specific groups using special transport have been cancelled. According to the Dutch authorities, undertakings providing special transport based on scheduled and unscheduled rides for these specific groups are faced with a massive drop in income due to rides that were not carried out. Indeed, generally, the remuneration from the contracts with municipalities are based on the amount and distance of rides carried out.
- (6) At the same time, these undertakings still incur significant costs. For example, wages, lease commitments for vehicles, commitments to banks and overhead costs have to be paid. According to the Dutch authorities, these fixed costs on average amount to 78.5% of total costs for affected undertakings².
- (7) The scheme aims to compensate undertakings offering special transport services for special groups for the damage suffered due to COVID-19 related measures adopted by the Dutch State. The damage consists in the difference between the profit/loss incurred under the new circumstances (after the COVID-19 outbreak and the adoption of containment measures by public authorities) – “factual scenario” – and the profit/loss incurred before those events – “counterfactual scenario”.

2.1. The nature and form of the measure

- (8) Under the scheme, municipalities can compensate undertakings that provide special transport services (and with which they already have contracts) in the form of direct grants amounting to a maximum of 80% of the revenues lost due to “non-performed rides”: rides that are not carried out because of the COVID-19 outbreak and measures adopted by the Dutch State in response. Compensation can be granted for non-performed rides in the period of 15 March up until 30 June 2020, with a possibility of starting the period as of 1 March if the mayor or safety-region³ already decided to take measures to prevent the spread of COVID-19 that impacted special transport.

² <https://www.panteia.nl/nieuws/compensatie-effecten-coronacrisis-zorgvervoer/>.

³ A safety regions (“veiligheidsregio”) comprises several municipalities that cooperate on certain issues. There are 25 safety regions in the Netherlands.

- (9) Identifying non-performed rides is done by comparing the activities of the undertaking concerned in a particular month in 2020 (March, April, May or June) with the same month in 2019⁴.

2.2. National legal basis

- (10) The national legal basis of the measure is a framework issued by the Minister of the Interior and Kingdom Relations⁵, which can be used by municipalities and will enter into force upon its approval by the Commission.

2.3. Administration of the measure

- (11) The scheme is administered by municipalities in the Netherlands, which are the parties that contracted with undertakings offering special transport services. Under the Constitution of the Kingdom of the Netherlands and the Municipality Act (“Gemeentewet”), Dutch municipalities have their own autonomy in concluding contracts, including in social domain policy areas such as special transport services.

2.4. Budget and duration of the measure

- (12) The budget of the scheme is EUR 160 million. Article 6 of the Act on the financial relationship between national, regional and local public authorities in the Netherlands (“Financiële-verhoudingswet”) defines the right to a general payment for municipalities from the State budget through the Fund for municipalities (“Gemeentefonds”) each year. This general payment is at the free disposal of the municipality and will be the source of financing of the scheme.
- (13) Compensation can be granted until 31 December 2020 for damage suffered between 15 March and 30 June 2020. Damage as of 1 March 2020 can be covered if the mayor or safety-region concerned already before that date decided to take measures to prevent the spread of COVID-19 that impacted special transport. The end date of the period will also be differentiated depending on government decisions on lifting certain restrictions, though it can be no later than 30 June 2020.

2.5. Beneficiaries

- (14) The Netherlands estimate that around 650 undertakings will be able to benefit from the scheme. Any type of undertaking by size (i.e. large enterprises, SMEs or micro enterprises) can receive support.

⁴ While scheduled non-performed rides will have been explicitly cancelled and are therefore easy to identify, there are also non-scheduled non-performed rides (i.e. rides that were never planned, but would have been planned as the normal execution of a contract concluded before the COVID-19 outbreak between the special transport companies and public authorities and gone ahead in the absence of the COVID-19 outbreak).

⁵ “Circulaire voor doorbetaling doelgroepenvervoer vanwege COVID-19 uit financiering vanuit het Gemeentefonds conform artikel 6 van de Financiële-verhoudingswet en conform artikel 108 juncto 160 van de Gemeentewet”.

2.6. Sectoral and regional scope of the measure

- (15) The scheme applies to undertakings that offer special transport services and have contracts with one or more municipalities in the Netherlands.

2.7. Basic elements of the measure

- (16) Under the scheme, municipalities can compensate undertakings providing special transport services with which they have contracts in the form of direct grants amounting to a maximum of 80% of the revenues lost due to non-performed rides. Beneficiaries are eligible for support only regarding contracts that were already in force prior to 15 March 2020, and only if the payment structure in the contract does not provide for payment for the damage suffered (e.g. because transport operators are paid on a per-ride basis of actually performed rides).
- (17) Non-performed rides are identified by comparing the activities of the undertaking concerned in a particular month in 2020 (March, April, May or June) with the same month in 2019. If the transport operator had no contract with the municipality concerned during these months in 2019, an average of performed activities in January and February 2020, before any measures regarding the COVID-19 outbreak were adopted by the Netherlands, or an average of the activities to be expected in 2020 based on the contract, can be taken into account.
- (18) The Dutch authorities provided the following example: if the revenue of an undertaking corresponding to the provision of special transport services hypothetically is EUR 100 and only 10% of the rides have been carried out, the operator will be paid for 10% based on the contract, whereas 90% of the rides will be compensated for 80% of the revenues lost, thus resulting in a maximum of $EUR\ 10 + 72 = 82$ paid, of which 72 compensation⁶.
- (19) Only beneficiaries establishing a direct link between the damage suffered from the COVID-19 outbreak and measures adopted by the Dutch authorities in response are entitled to support under the scheme.
- (20) The Dutch authorities have confirmed that:
- Compensation will in all instances be limited to the actual damage incurred, which is calculated on the basis of the lost revenues minus the variable costs, for non-performed rides only. This limit applies upon control of the compensation, and any overcompensation will be recovered;
 - No profit is allowed to any operators as a result of compensation granted under the scheme;
 - Payments to beneficiaries under the scheme shall be net of any amount recovered by insurance, litigation, arbitration or other source for the same damage;

⁶ The example assumes that all rides are remunerated equally; in reality it generally depends e.g. on the distance travelled.

- No payment under the scheme is possible for any applicant who is responsible for the damage suffered, who did not conduct his activities with due diligence or in compliance with applicable legislation, or who did not take any measure to mitigate its damage;
- Undertakings in financial difficulty prior to 31 December 2019 cannot benefit from the aid scheme; and
- Undertakings that have benefited from earlier unlawful aid declared incompatible by a Commission decision who remain subject to an outstanding recovery order cannot benefit from the scheme.

2.8. Cumulation

- (21) The Dutch authorities have confirmed that aid provided under the scheme cannot be cumulated with other aid for the same eligible costs.

2.9. Monitoring and reporting

- (22) The Dutch authorities have committed to provide a report no later than 1 year after the Commission decision, specifying the amount of compensation and recoverable advances granted.

3. ASSESSMENT

3.1. Lawfulness of the measure

- (23) By notifying the scheme before putting it into effect, the Dutch authorities have respected their obligations under Article 108(3) TFEU.

3.2. Existence of State aid

- (24) For a measure to be categorised as aid within the meaning of Article 107(1) TFEU, all the conditions set out in that provision must be fulfilled. First, the measure must be imputable to the State and financed through State resources. Second, it must confer an advantage on its recipients. Third, that advantage must be selective in nature. Fourth, the measure must distort or threaten to distort competition and affect trade between Member States.
- (25) The measure is imputable to the State, since it is administered by municipalities in the Netherlands based on a framework issued by the Minister of the Interior and Kingdom Relations (recital (10)). It is financed through State resources, since it is financed by public funds (see recital (12)).
- (26) The measure confers an advantage on its beneficiaries in the form of direct grants (see recital (16)) that they would not have been able to receive under normal market conditions.
- (27) The advantage granted by the measure is selective, since it is awarded only to undertakings that provide special transport services and meet the eligibility requirements of the scheme (see recitals (16)-(19)).

- (28) The measure is liable to distort competition, since it strengthens the competitive position of its beneficiaries. It also affects trade between Member States, since those beneficiaries are active in sectors in which intra-Union trade exists.
- (29) In view of the above, the Commission concludes that the measure constitutes State aid within the meaning of Article 107(1) TFEU.

3.3. Compatibility

- (30) Since the measure involves aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether that measure is compatible with the internal market. Following the notification of the Dutch authorities, the Commission has examined the notified measure pursuant to Article 107(2)(b) TFEU.
- (31) This assessment has led to the following observations.

The notion of exceptional occurrences with the meaning of Article 107(2)(b) TFEU

- (32) Article 107(2)(b) TFEU stipulates that aid to make good damage caused by natural disasters or exceptional occurrences shall be compatible with the internal market. Neither the TFEU nor other Union legislation contains a precise definition of the notion of ‘exceptional occurrence’. As they constitute exceptions to the general prohibition of State aid within the internal market laid down in Article 107(1) TFEU, the Commission, in line with the consolidated Union case-law⁷ has consistently held that the notions of ‘natural disaster’ and ‘exceptional occurrence’ referred to in Article 107(2)(b) TFEU must be interpreted restrictively.
- (33) The characterisation of an event as being an exceptional occurrence is made by the Commission on a case-by-case basis, having regard to its previous practice in the field⁸. In this regard, the following indicators relating to the event concerned must be cumulatively met: (i) unforeseeable or difficult to foresee⁹; (ii) significant scale/economic impact¹⁰; and (iii) extraordinary¹¹.

⁷ Judgement of the Court of Justice of 11 November 2004, Spain v. Commission, C-73/03, ECLI:EU:C:2004:711, paragraph 37 and judgment of the Court of Justice of 23 February 2006, Giuseppe Atzeni and others, in joined cases C-346/03 and C-529/03, ECLI:EU:C:2006:130 paragraph 79.

⁸ Exceptional occurrences which have been accepted in the past by the Commission include war, internal disturbances and strikes, and, with certain reservations and depending on their extent, major industrial accidents which result in widespread economic loss, see Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020, paragraph 330 (OJ C 204, 1.07.2014, p. 53).

⁹ Commission Decision of 1 August 2008 in case SA.32163, Remediation of damage to airlines and airports caused by seismic activity in Iceland and the volcanic ash in April 2010, Slovenia, recital 31.

¹⁰ Elements taken into account by the Commission to consider that the occurrence reached a significant scale: negative consequences cannot be contained (Commission Decision of 4 October 2000 in case NN 62/2000, Régime temporaire d'aides aux entreprises victimes des intempéries et de la marée noire – France), or because of the number of dead or injured people (Commission Decision of 11 April 2012 in case SA.33487, Agricultural and fisheries aid to compensate for damage due to exceptional occurrence (red mud "Aluminium accident"), Hungary, recital 35; Commission Decision of 2 May 2002 in case N241/2002, Régime en faveur des entreprises victimes de la catastrophe industrielle de Toulouse, France, recital 19), the immense ecological and economic damage (Commission Decision of 11 April 2012 in case

COVID-19 as an exceptional occurrence

- (34) Following the first reports of cases of acute respiratory syndrome (COVID-19) in the Chinese Wuhan municipality at the end of December 2019, the Chinese authorities have identified a novel coronavirus (SARS-CoV-2) as the main causative agent, which had not been previously identified in humans. The outbreak has rapidly evolved, affecting not only other parts of China but spreading to the majority of countries worldwide. Specific sectors and areas are particularly affected by the outbreak, be it because of national outbreak control measures, travel restrictions or supply chain disruptions.
- (35) The WHO declaration of a pandemic¹², associated with the public health risk deriving from the absence of therapeutics or vaccines for the novel COVID-19 determine the exceptional nature of the circumstances. The rapidness of the spread can cause enormous consequences both in terms of fatal outcomes in high-risk groups and in terms of economic and societal disruption¹³. The necessity to adopt and encourage the respect of measures aimed at interrupting transmission chains stems from this acknowledgement. Such measures can result in far-reaching disruption of various economic sectors. This disruption is thus clearly outside the normal functioning of the market.
- (36) In view of the above, this event qualifies as an exceptional occurrence as it was not foreseeable, as it clearly distinguishes itself from ordinary events by its character and by its effects on the affected undertakings and the economy in general and therefore lies outside of the normal functioning of the market.¹⁴
- (37) In this context, the COVID-19 outbreak can be considered as an exceptional occurrence within the meaning of Article 107(2)(b) TFEU.

Causal link between the COVID-19 outbreak and the damage compensated by the measure

- (38) In a press conference on 15 March 2020, the Dutch Minister for Medical Care and the Minister for Primary and Secondary Education and Media announced that all restaurants and other venues would be closed. Schools and childcare centres were also closed, except for the children of parents in vital professions (for example

SA.33487, recital 36), the amount of material damage despite the local character of the industrial accident (Commission Decision of 2 May 2002 in case N 241/2002, recital 19).

¹¹ In its Decision of 19 May 2004 in case C-59/2001 (OJ L 32, 6.2.2007, p. 14), the Commission considered that the (alleged) fall in sales of poultry meat in a Member State not directly affected by the dioxin contamination, did not constitute in itself an exceptional occurrence. It was yet an unforeseeable event, but formed part of the normal commercial risks to which an undertaking is exposed.

¹² WHO Director-General's opening remarks at the media briefing on COVID-19 on 11 March 2020, <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>.

¹³ ECDC's Rapid Risk Assessment, Outbreak of novel Coronavirus disease 2019 (COVID-19): increase transmission globally – fifth update, 2 March 2020.

¹⁴ See also Commission Decision of 12 March 2020, SA.56685 - Denmark - Compensation scheme for cancellation of events related to COVID-19, OJ C 125, 17.4.2020, p. 8.

children with parents working in the health care sector). The State also made an appeal to citizens to respect social distancing rules, the guideline being to keep one and a half meters distance. In some municipalities, decisions were taken before 15 March 2020, depending on the spread of COVID-19 in that region and decisions taken by the Mayor of that municipality or within the safety-region in cooperation with other Mayors.

- (39) Stricter measures were announced on 23 March 2020, with people being requested to stay at home as much as possible and to keep a meter and a half away. Fines were imposed for those who do not follow the rules. Since 11 May 2020, one fixed visitor per nursing home resident was allowed. On 15 June 2020 more visitors were allowed, but only if the nursing home was free of COVID-19 infections. Under certain circumstances, nursing homes themselves can decide not to make use of the possibility to allow more visitors.
- (40) On 31 March and 21 April 2020, the COVID-19-related measures were extended until 28 April and 20 May 2020 respectively. The first de-confinement measures were announced on 11 May 2020, date as of which primary schools and child care facilities have partially re-opened. As of 11 May 2020, citizens are no longer recommended to stay home as much as possible, but to stay at home if they have complaints and to avoid crowds and crowded spaces. Schools have fully re-opened since 8 June, but still there are situations in which a school is temporarily closed again.
- (41) Special transport based on the Participation Act is used by people with disabilities who work in specific workplaces and special transport services are performed again only if the workplaces have re-opened, which depends e.g. on the vulnerability of the persons and the resources of the institution responsible for the workplace.
- (42) Special transport services for activities and treatment based on the Social Support Act and the Youth Act are used by elderly people and children and are performed again only if the institution or activity centre concerned has re-opened again, which also depend e.g. on the resources of the institutions concerned.
- (43) The Commission notes that while certain confinement measures have gradually been lifted since 11 May 2020, the government's general advice, notably for vulnerable groups who are the biggest group of customers for the beneficiaries, remains to avoid large gatherings, to keep 1.5 metres distance, and to stay home as much as possible. Concretely this results in the advice for e.g. vulnerable elderly people to ask other people to do groceries.¹⁵ This has direct consequence on the usage rates of the special transport services as clients refrain, for example, from going to activity centres and workplaces, depending on their individual (health) situation and the trust of a client.
- (44) The start date of the scheme of 15 March 2020 (see recital (13)) coincides with the start date of measures adopted by the Netherlands. The Commission considers that it is justified to allow for compensation already prior to 15 March (as of 1 March at the earliest) in specific instances where safety regions adopted measures

¹⁵ Advice for risk groups: <https://www.rivm.nl/coronavirus-covid-19/risicogroepen>.

already as of a corresponding earlier date, to the extent that those measures would have led to non-performed rides for special transport services. Restrictions in particular for vulnerable groups as described in the previous recital remain in force, and do not have an envisaged end date. The Commission therefore considers that the end date of the scheme of 30 June 2020 is also justified.

(45) The Commission reaches the conclusion that there is a direct link between the measures adopted by the authorities in the Netherlands in response to the COVID-19 outbreak and the damage suffered by undertakings offering special transport services in the form of non-performed rides. As explained in recital (19), beneficiary undertakings have to additionally demonstrate this link when applying for aid.

(46) Therefore, the direct causal link between the damage caused by the exceptional occurrence and the aid is therefore ensured.

Proportionality of the aid

(47) In order to be compatible with Article 107(2)(b) TFEU, the aid must be proportional to the damage caused by the exceptional occurrence. Aid must not result in overcompensation of damage and should only make good the damage caused by the exceptional occurrence.

(48) Aid granted under the scheme compensates beneficiary undertakings for a maximum of 80% of the lost revenues of non-performed rides, which is based on the estimate that this will be sufficient to cover their fixed costs (see e.g. recitals (6) and (8)). Compensation in excess of the damage incurred (calculated on the basis of the lost revenues – variable costs of non-performed rides) in all individual instances will be recovered, and beneficiary undertakings are not entitled to have a profit due to compensation received under the scheme (see recital (20)).

(49) The Dutch authorities have put in place the following additional safeguards, so that the compensation under the scheme does not exceed what is necessary to make good the actual damage suffered and thus meets the above-mentioned criteria.

(50) First, as described in recital (20) of this Decision, the Dutch authorities will ensure that aid granted to beneficiaries will be net of any amount obtained from insurance, litigation, arbitration or any other source for the same damage.

(51) Second, as described in recital (20), no payment under the scheme is possible for any applicant who is responsible for the damage suffered, who did not conduct his activities with due diligence or in compliance with applicable legislation, or who did not take appropriate measures to mitigate its damage.

(52) Third, as described in recital (20), undertakings in financial difficulty prior to 31 December 2019 cannot benefit from the aid scheme.

(53) Fourth, as described in recital (20), undertakings that have benefited from earlier unlawful aid declared incompatible by a Commission decision who remain subject to an outstanding recovery order cannot benefit from the scheme.

- (54) The Netherlands has therefore ensured that the compensation under the scheme will not exceed the damage directly suffered by each beneficiary from the loss of revenue caused by the COVID-19 outbreak.
- (55) In view of the above, the Commission considers that the measure is proportional and consequently also compatible with the internal market in accordance with Article 107(2)(b) TFEU.

4. CONCLUSION

The Commission has accordingly decided not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(2)(b) TFEU.

The decision is based on non-confidential information and is therefore published in full on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

