



EUROPEAN COMMISSION

Brussels, 3.11.2020  
C(2020) 7668 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.58738 (2020/N) – The Netherlands  
COVID-19 – Support for regional and long-distance public  
passenger transport**

Excellency,

**1. PROCEDURE**

- (1) On 22 September 2020, the Netherlands pre-notified a scheme supporting regional and long-distance passenger transport operators that operate based on a contract concluded with the regional or national authorities (“the scheme” or “the measure”)<sup>1</sup>.
- (2) On 22 October 2020 the Netherlands notified the scheme based on Article 107(2)(b) of the Treaty on the Functioning of the European Union (“TFEU”).

---

<sup>1</sup> The Netherlands submitted additional information on 2, 5, 7, 9, 16, 20 and 21 October 2020. The Commission services and the Dutch authorities held telephone calls on 30 September, 8 and 15 October 2020.

H.E. Mr. Stef BLOK  
Minister of foreign affairs  
Bezuidenhoutseweg 67  
Postbus 20061  
NL – 2500 EB Den Haag

- (3) The Netherlands exceptionally agreed to waive their rights deriving from Article 342 TFEU, in conjunction with Article 3 of Regulation 1/1958,<sup>2</sup> and to have this Decision adopted and notified in English.

## 2. DESCRIPTION OF THE MEASURE

### 2.1. The COVID-19 outbreak in the Netherlands and the containment measures taken by the Dutch authorities

- (4) The first case of the infectious disease SARS-CoV-2 (COVID-19) in the Netherlands was confirmed on 27 February 2020. The number of confirmed cases at the time of the notification was 244 391.
- (5) As in other countries, in response to the COVID-19 outbreak, the Netherlands have taken sequential mitigation measures (“the containment measures”) to prevent the spread of COVID-19 in the country, as summarised below<sup>3</sup>. Non-compliance with the limitations imposed or violation of the rules was and is generally subject to sanctions.
- (6) On 12 March 2020, events with more than 100 visitors were cancelled throughout the Netherlands; this included museums, concert halls, theatres, sports clubs and sport competitions. On the same day, the Dutch authorities called on universities to offer distance learning and issued a strong recommendation to work from home, unless presence at the workplace was absolutely necessary. The mandatory sanitary requirements in workplaces (e.g. the obligation to keep a distance of 1.5 metres) and the recommendation to work from home were maintained throughout the pandemic and are still in force today in an even reinforced manner. They were strengthened on 28 September 2020, when it became apparent that a second wave of COVID-19 infections has hit the Netherlands, by stepping up enforcement and introducing the possibility for the government to close down workplaces affected by COVID-19 infections or where infection prevention rules are not observed. The Dutch authorities submitted that the recommendation to work from home has been largely complied with<sup>4</sup> and translated into more specific and often binding instructions by large employers such as the national government. Additionally, the obligation to keep a distance of 1.5 metres has effectively meant that only a limited number of personnel has been allowed in workplaces and that employers cannot use office space at full capacity (on average they had to reduce capacity by 75%).

---

<sup>2</sup> Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

<sup>3</sup> A general overview and up to date information on the COVID-19 outbreak in the Netherlands is available at <https://www.rivm.nl/en> and <https://coronadashboard.government.nl/>.

<sup>4</sup> For example. CBS, the national statistics bureau, reported that the workforce in Q2 2020 worked from home substantially more than in the same period in 2019. For example, in the ICT and economic/administrative sector the percentage of people working from home was more than 40%. See <https://www.cbs.nl/nl-nl/nieuws/2020/33/ict-ers-werken-vaakst-vanuit-huis-tijdens-coronacrisis>.

- (7) As of 15 March 2020, primary and secondary schools and childcare centres were closed, as were food and beverage outlets and a range of other establishments. Additional measures were adopted on 25 March, including very strict limitations on events and gatherings of less than 100 visitors and a ban on the activities of contact-based professions such as driving instructors and hairdressers. Further, everyone in the Netherlands was called upon to stay at home as much as possible and to only go outside with a maximum of two people. The so-called safety regions ('veiligheidsregio's'<sup>5</sup>) were empowered to close facilities such as holiday parks and beaches where the 1.5-metre distance was not complied with.
- (8) Between mid-May and early June 2020, some economic sectors (such as contact-based professions, food and beverage outlets, etc.) gradually reopened under certain conditions and secondary education activities restarted partially. Higher education institutions continued to offer online courses to the extent possible.
- (9) As of 1 July 2020, further activities were allowed again (e.g. gyms and fitness centres). The number of people allowed to gather in indoor and outdoor spaces was set at 100 and 250 people, respectively. Discos and nightclubs remained closed.
- (10) Between mid-September and mid-October, certain containment measures have been again tightened up, first in six safety regions and later also nationwide, including stricter rules on the maximum number of people allowed to gather indoors (max. 30) and outdoors (max. 40), a ban on visitors during sports competitions and trainings and limitations on the opening hours of food and beverage outlets. As of 14 October 2020, further restrictions were introduced, e.g. food and beverage outlets must stay closed and events are generally prohibited (with few exceptions).
- (11) The continued provision of public transport as a service of public interest was deemed essential, not only for people working in vital economic sectors (health care, police, food chain, etc.) but also for the wider economy and for people dependent on public transport for their mobility needs. The Dutch authorities adopted the following measures with specific regard to public transport:
- On 12 March 2020, a recommendation to avoid public transport and use it only for essential travel was put in place.
  - As passenger numbers fell dramatically (see recitals (13) and (14)), the government and the transport operators agreed on scaling down timetables slightly in April and May, whilst ensuring at all times minimum service levels.
  - From 1 June 2020, public transport has been scaled up to a full timetable, but the seating capacity was limited to 40% due to the need to ensure social distancing on board (1.5 metres). The governmental recommendation to only use public transport for essential journeys,

---

<sup>5</sup> A partnership of municipalities that is active in the field of disaster preparedness and the coordination and management of different type of crises.

avoid rush hours and crowds, work from home as much as possible remained in place. Wearing a facemask in public transport became mandatory.

## **2.2. The economic impact of the containment measures on regional and long-distance public transport**

- (12) The COVID-19 outbreak and the containment measures described in Section 2.1 severely affected the financial equilibrium of operators in the Dutch regional and long-distance public transport sector.
- (13) Following the adoption of the first containment measures as of 12 March 2020, passenger numbers in public transport rapidly declined. The first drop in passenger numbers was recorded on 11 March (-20% compared to 2019 levels). On 16 March, i.e. the start of the first working week after the containment measures had been announced, the passenger numbers dropped by 74% compared to an average and comparable day in 2019<sup>6</sup>. Throughout March, April and May passenger numbers continued to be very low (between 80 and 90% lower than 2019 levels). Between July and September passenger numbers marginally improved, but still remained at ca. 45-50% of 2019 levels on average before they again quickly fell following the recent containment measures taken in late September and early October (see recital (10)).
- (14) The Dutch authorities also provided specific figures on commuter traffic, which show an above-average decrease based on the number of check-ins<sup>7</sup> during peak hours and the number of subscriptions purchased. There was a pronounced impact on commuter traffic on long-distance services, which is consistent with the fact that it is common in the Netherlands to commute by train between different cities or provinces multiple times a week. Based on information provided by the Dutch authorities, the number of commuters using the Nederlandse Spoorwegen (NS) rail services dropped from 85% to 17% of 2019 levels between week 11 and week 12 in 2020 and continued to decrease in the weeks that followed (reaching its lowest level in week 14, when it fell to 9% of 2019 levels). The number of commuters on NS's network remained low in the subsequent months and was still between 32% and 43% of 2019 levels in July and August.
- (15) Furthermore, the Netherlands point out that the containment measures have also had a significant impact on the number of visitors attending events. Based on information provided by the Dutch authorities, in 2018 there were 26.5 million visitors attending festivals in the Netherlands<sup>8</sup>. In 2020, large events such as SAIL Amsterdam, the Eurovision song contest, the first Formula 1 race in 35 years, the 'Nijmeegse Vierdaagse' and many football matches were supposed to

---

<sup>6</sup> Based on the number of 'check-ins' with the public transport chip card (OV-Chip kaart).

<sup>7</sup> Each 'check-in' represents an individual starting a trip with public transport by using an electronic card.

<sup>8</sup> Source: <https://respons.nl/wp-content/uploads/2019/09/Factsheet-Festival-Monitor-2019.pdf>.

take place. Cancellation of all these events contributed to an 80% turnover reduction for the events sector compared to 2019 figures<sup>9</sup>.

- (16) While public passenger transport providers suffered a significant drop in income, they continued to bear various costs (e.g. for wages, lease and financial commitments, overhead costs). The Dutch authorities estimate that the expected deficit resulting from the decreased passenger income in regional public transport will be approximately EUR [550 to 750 million] in 2020, whereas they estimate the losses in the long-distance sector (i.e. the Dutch national rail network) to be approx. EUR [750 million to 1 billion] in 2020.

### 2.3. Objective of the Measure

- (17) The scheme aims at compensating transport providers for the damage suffered due to the COVID-19 outbreak and the containment measures introduced by the Netherlands as a consequence of it described in Section 2.1. By so doing, the Member State seeks to ensure continuity of regional and long-distance public passenger transport in the Netherlands.

### 2.4. The nature and form of the Measure

- (18) The aid takes the form of direct grants to be provided by the twelve Dutch provinces and two metropolitan areas<sup>10</sup>/the Dutch State to regional/long-distance transport providers, respectively.

### 2.5. National legal basis

- (19) The national legal basis of the scheme is: (a) as regards regional public transport, a regulation<sup>11</sup> to be issued by the State Secretary for Infrastructure and Water Management, which is based on the *Financiële verhoudingswet*<sup>12</sup>, the *Kaderwet subsidies I en M*<sup>13</sup> and the *Kaderbesluit subsidies I en M*<sup>14</sup>; and (b) as regards the rail network for long-distance services, a subsidy decision to be issued by the State Secretary for Infrastructure and Water Management based on Art. 4:23(3)(d) of the Dutch General Administrative Law Act (*Algemene Wet*

---

<sup>9</sup> Source: <https://www.eventbranche.nl/dossiers/eventbranche-stort-ineen-80p-omzetverlies-16-000-eventprofs-werkloos-en-17-000-zzp-ers-zonder-werk-21905.html>.

<sup>10</sup> Amsterdam and Rotterdam-Den Haag.

<sup>11</sup> The Dutch authorities provided a copy of the yet to be adopted Regulation: “Regeling van de Staatssecretaris van Infrastructuur en Waterstaat, van..., nr. IENW/BSK-2020/, houdende regels voor een specifieke uitkering met betrekking tot de beschikbaarheidsvergoeding voor regionale OV-bedrijven in verband met het virus dat COVID-19 veroorzaakt (Regeling specifieke uitkering beschikbaarheidsvergoeding regionale OV-bedrijven 2020)”.

<sup>12</sup> Financiële-verhoudingswet in the version of 22 March 2018, identification number: BWBR0008290, available at: <https://wetten.overheid.nl/jci1.3:c:BWBR0008290&z=2018-03-22&g=2018-03-22>.

<sup>13</sup> Kaderwet subsidies I en M in the version of 1 July 2015, identification number: BWBR0032789, available at: <https://wetten.overheid.nl/jci1.3:c:BWBR0032789&z=2015-07-01&g=2015-07-01>.

<sup>14</sup> Kaderbesluit subsidies I en M in the version of 1 July 2015, identification number: BWBR0036381, available at: <https://wetten.overheid.nl/jci1.3:c:BWBR0036381&z=2015-07-01&g=2015-07-01>.

*Bestuursrecht*)<sup>15</sup>. The draft regulation and subsidy decision will enter into force upon approval of the scheme by the Commission.

## **2.6. Administration of the Measure**

- (20) The scheme is administered by the Ministry of Infrastructure and Water Management.

## **2.7. Budget and duration of the Measure**

- (21) Compensation under the scheme is financed by the State budget. As regards the aid for regional transport operators, the State will channel the relevant funds to the Dutch provinces and metropolitan areas.
- (22) The estimated maximum budget is approx. EUR 1 550 million, of which approx. EUR [550 to 750 million] will be allocated to support regional transport and approx. EUR [750 million to 1 billion] to long-distance transport services.
- (23) The scheme provides compensation to the beneficiaries for damage suffered during the period between 15 March 2020 and 31 August 2020.
- (24) Beneficiaries may submit their application for aid until 31 December 2020. They are required to provide evidence of the damage actually incurred, in accordance with the methodology described in Section 2.10.
- (25) The Dutch authorities confirm that the aid scheme will not enter into force nor any aid will be paid out before the Commission's approval.

## **2.8. Beneficiaries**

- (26) The beneficiaries of the scheme are the regional and long-distance public passenger transport operators<sup>16</sup> that concluded contracts with the regional/national authorities before 1 January 2020. The beneficiaries must demonstrate that they suffered damages as a direct consequence of the COVID-19 outbreak and the resulting containment measures.

## **2.9. Sectoral and regional scope of the Measure**

- (27) The scheme is designed to support all providers of regional and long-distance public passenger transport services in the Netherlands based on a contract with the regional or national authorities.

## **2.10. Eligible costs and modalities for compensation**

- (28) The eligible costs correspond to the damage caused to the beneficiaries by the COVID-19 outbreak.

---

<sup>15</sup> Algemene wet bestuursrecht in the version of 1 July 2020, identification number: BWBR0005537, available at: <https://wetten.overheid.nl/BWBR0005537/2020-07-01>.

<sup>16</sup> These are ten regional operators and one national operator.

- (29) The scheme compensates the beneficiaries for up to 93%<sup>17</sup> of the damage incurred during the period 15 March 2020 to 31 August 2020 (“the compensation period”) as a direct consequence of the containment measures specified in Section 2.1.
- (30) The damage eligible for compensation under the scheme is calculated as the net costs (i.e. costs minus revenues) actually incurred during the compensation period. Only the costs directly related to the contract between the transport operator and the national or regional authorities are eligible for compensation, in particular personnel costs, various operating costs<sup>18</sup>, asset depreciation and financing costs, as well as specific COVID-19 related expenditures<sup>19</sup>. The actual revenues realised as well as avoided costs/cost savings are deducted from the eligible costs.
- (31) The beneficiaries’ accounts include separate statements as regards the public service compensation and will be subject to an independent audit, which will be submitted for verification to the Dutch authorities by 30 September 2022. The beneficiaries will in particular have to demonstrate, through verification by their external auditor, that the costs submitted do not deviate from the costs incurred in 2019<sup>20</sup>. Any discrepancy (e.g. due to additional infection prevention costs or differences related to an amended contract or concession relative to 2019) will have to be duly justified. In any event, the Dutch authorities expect that due to lower service levels the costs incurred in 2020 will be lower than in 2019.
- (32) Furthermore, during 2020 the beneficiaries may neither distribute dividends nor pay severance payments or bonuses to directors nor repurchase their own shares.
- (33) The Dutch authorities confirmed that the following safeguards will be put in place to avoid overcompensation:
- Any payment exceeding the damage suffered as a direct consequence of the COVID-19 outbreak will be recovered, including interest.
  - Payments to beneficiaries under the scheme shall be net of any amount recovered by insurance, litigation, arbitration or other source for the same damage.

---

<sup>17</sup> Beneficiaries may request that the aid intensity be increased to 95% of the damage incurred provided they can demonstrate that in the absence of the increase implementing a full timetable will not be economically viable and that they are not able to sustain services. To this end operators need to demonstrate that the profit they retained from their public service contracts in 2019 was less or equal to 2%.

<sup>18</sup> E.g. costs for maintenance, energy, lease, rental of buildings and grounds, IT, telecoms and postage costs, insurance, marketing and bank costs.

<sup>19</sup> They are notably costs related to infection prevention measures (e.g. protective equipment and materials, enhanced cleaning, additional personnel for testing and other measures related to COVID-19) to the extent that they have been agreed upon between the grantor and holder of the relevant concession or they are otherwise duly reasoned and explained.

<sup>20</sup> In the event of a new concession starting in 2020, so that no figures are available for 2019, the budget for 2020 can serve as a reference point.

- Payments under the scheme are excluded for any applicant who is responsible for the damage suffered and/or did not conduct its activities with due diligence or in compliance with applicable legislation or did not take any measure to mitigate its damages.
  - No aid will be paid to undertakings subject to an outstanding recovery order following a negative decision by the Commission.
  - Aid under the scheme cannot be cumulated with other aid for the same eligible costs.
- (34) Finally, the Dutch authorities committed to submit a report to the Commission no later than one year after the present decision, specifying the amount of compensation.

### **3. ASSESSMENT**

#### **3.1. Lawfulness of the Measure**

- (35) 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**

- (36) For a measure to be categorised as State 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.
- (37) The measure is imputable to the State, since, as set out in recitals (19) and (20):
- Insofar as regional public transport is concerned, the Dutch provinces and metropolitan areas as well as the Ministry of Infrastructure and Water Management are responsible for public transport concessions and funding public transport. The measure is based on a regulation to be issued by the State Secretary for Infrastructure and Water Management as well as the legal acts specified in recital (19).
  - Insofar as long-distance services are concerned, the Ministry of Infrastructure and Water Management is responsible. The subsidy is based on Article 4:23 (3)(d) of the Dutch General Administrative Law Act.
- (38) The measure is financed through State resources, since it is supported through public funds (see recital (21)).
- (39) The measure confers an advantage on its beneficiaries in the form of direct grants (see recital (18)). The advantage corresponds to the amount of compensation paid under the measure to each of the beneficiaries. The measure thus relieves those beneficiaries of costs that they would have to bear under normal market conditions.



- (40) The advantage granted by the measure is selective, since, as set out in recital (26), it is awarded only to regional and long-distance public transport providers, that can demonstrate they have incurred damages caused directly by the COVID-19 outbreak and the resulting containment measures.
- (41) 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.
- (42) In view of the above, the Commission concludes that the measure constitutes State aid within the meaning of Article 107(1) TFEU. The Dutch authorities do not contest that conclusion.

### **3.3. Compatibility**

- (43) Since the measure involves State 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.
- (44) This assessment has led to the following observations.

#### ***3.3.1. The notion of exceptional occurrences with the meaning of Article 107(2)(b) TFEU***

- (45) Article 107(2)(b) TFEU provides that aid to make good the 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’. The Commission, in line with the consolidated case-law of the Union courts<sup>21</sup>, has consistently held that the notions of ‘natural disaster’ and ‘exceptional occurrence’ referred to in Article 107(2)(b) TFEU must be interpreted restrictively as they constitute exceptions to the general prohibition of State aid within the internal market laid down in Article 107(1) TFEU.
- (46) 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 field<sup>22</sup>. In that regard, the following indicators relating to the event

---

<sup>21</sup> Judgement of the Court of Justice of 11 November 2004, *Spain v Commission*, C-73/03, EU:C:2004:711, paragraph 37 and judgment of the Court of Justice of 23 February 2006, *Atzeni and others*, Joined Cases C-346/03 and C-529/03, EU:C:2006:130, paragraph 79.

<sup>22</sup> Exceptional occurrences that 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).

concerned must be cumulatively met: (i) unforeseeable or difficult to foresee<sup>23</sup>; (ii) significant scale/economic impact<sup>24</sup>; and (iii) extraordinary<sup>25</sup>.

### 3.3.2. *COVID-19 as an exceptional occurrence*

- (47) 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 identified a novel coronavirus (SARS-CoV-2) as the main causative agent, which had not been previously identified in humans. The outbreak 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.
- (48) The WHO declaration of a pandemic<sup>26</sup>, 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 rapidity of the spread of the virus can cause enormous consequences both in terms of fatal outcomes in risk groups and in terms of economic and societal disruption<sup>27</sup>. The necessity to adopt and encourage the respect of measures aimed at interrupting transmission chains stems from this acknowledgement. According to WHO reports and observations of the current situation, such measures can result in far-reaching disruption of various economic sectors. That disruption is thus clearly outside the normal functioning of the market. In order to avoid an exponential

---

<sup>23</sup> 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, OJ C 135, 9.5.2012, p. 1.

<sup>24</sup> Elements taken into account by the Commission to consider that the occurrence reached a significant scale include: (i) the fact that 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, OJ C 380, 30.12.2000, p. 9); (ii) the significant 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, available at [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_33487](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_33487); 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, OJ C 170, 16.7.2002, p. 16); (iii) the occurrence of immense ecological and economic damage (Commission Decision of 11 April 2012 in case SA.33487, recital 36); (iv) 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).

<sup>25</sup> In its Decision of 19 May 2004 in case C-59/2001, concerning the aid scheme that Italy plans to implement for poultry farms — AIMA programme for the poultry industry, 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. In fact, it was an unforeseeable event but formed part of the normal commercial risks to which an undertaking is exposed.

<sup>26</sup> 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>.

<sup>27</sup> ECDC's Rapid Risk Assessment, Outbreak of novel Coronavirus disease 2019 (COVID-19): increase transmission globally – fifth update, 2 March 2020.

increase in the number of cases, accompanied by social alarm and severe economic consequences, containment measures needed to be adopted.

- (49) From March 2020, Member States adopted various measures that aim to limit the spread of the coronavirus, e.g. travel restrictions for non-essential travels, closure of borders, obligation for companies to organise working from home for every position where this is possible and various social distancing measures.
- (50) In view of the above, the Commission considers that this event qualifies as an exceptional occurrence as it was not foreseeable, as it is clearly distinguishable 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<sup>28</sup>.
- (51) In this context, the COVID-19 outbreak can be considered as an exceptional occurrence within the meaning of Article 107(2)(b) TFEU.

### ***3.3.3. Causal link between the COVID-19 outbreak and the damage compensated by the scheme***

- (52) As described in Section 2.1, starting as of 12 March 2020, the Dutch authorities adopted several sequential containment measures in response to the COVID-19 outbreak. Following the first registered infection on 27 February 2020, various limitations and rules were gradually introduced for the entire Netherlands, in particular a strong recommendation to work from home, the mandatory closure of schools and childcare facilities as well as of food and beverage outlets and several other economic activities. In addition, universities were called upon to offer distance education and events were progressively banned.
- (53) Non-compliance with the limitations imposed or violation of the rules was and is subject to sanctions.
- (54) Furthermore, certain measures concerned the public transport sector specifically, such as the (limited) scaling down of service levels, a reduction of the available seating capacity, requirements to wear a facemask and keep physical distancing, as well as various recommendations to limit the use of public transport to essential travels and avoid rush hours (see recital (11)).
- (55) The Commission takes note that, as set out in Section 2.2, the various containment measures have led, compared to the corresponding period in 2019, to a significant passenger decrease. Passenger numbers were as low as 9% of 2019 levels from mid-March to April and 20-90% lower than 2019 levels between mid-March and June. Passenger numbers did not exceed 50-55% of 2019 levels during the summer, before dropping significantly as of late September. The passenger decline negatively affected the financial situation of the regional and long-distance public transport providers.
- (56) Furthermore, the Commission notes that the closure of all the facilities referred to in Section 2.1 and in particular the call to work from home had a significant

---

<sup>28</sup> See for instance 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.

impact on passenger numbers. As described in recital (14), the volume of commuter traffic, which represent a significant proportion of public passenger traffic both on regional and long-distance public transport lines, declined significantly because of the closure of various work establishments and the extensive use of telework arrangements (which remain in place today). As explained in recital (6), according to the Dutch authorities the recommendation to work from home was strongly followed. In addition, binding social distancing measures have reduced the number of staff allowed to work at the same time in those workplaces where presence was still possible. The recommendation of telework coupled with the consequences of social distancing measures has led to a strong reduction of the proportion of workers which have been working at the workplace. This is reflected in a significant reduction of commuters using public transport, as described in recital (14). Finally, the Commission notes that the severe restrictions of social life have reduced usage of public transport to a minimum.

- (57) At the same time, the Commission takes note that, despite the significant decrease in passenger numbers, in order to fulfil their public service obligations set out in their contracts, providers of regional and long-distance public passenger transport had to largely maintain their offer throughout the duration of the containment measures. Those public service obligations aim at ensuring connectivity of individuals and prevented transport operators from limiting their damage by reducing their offer and thus their variable costs.
- (58) The Commission notes that the sharp decrease in revenues together with additional costs to prevent infection have created serious and persisting liquidity shortages, which put at risk the very survival of the affected transport operators.
- (59) As regards the duration of the compensation period 15 March - 31 August 2020, the Commission considers that due account should be taken of the specific circumstances in which the regional and local public transport providers have been operating and are currently operating.
- (60) As regards the end date of the scheme, the Commission notes that certain of the initial containment measures like the cancellation of events have been lifted as of June 2020. However, certain containment measures remained in place throughout the summer or were amended albeit not lifted, e.g. the number of people allowed in indoor spaces (maximum of 100 people) and outdoor spaces (maximum of 250 people). Further, the maximum occupancy rate of 40% significantly reduced passenger numbers (see recital (11)). Most importantly, the strong recommendation to work from home remained in force, was largely complied with throughout the summer and is still in place. The Commission acknowledges that the restrictions that remained in place continued to lead to a significant decrease in passengers and had a significant impact on regional and long-distance public transport operators.
- (61) Moreover, the Commission notes that the undertakings eligible for aid under the scheme discharge public service obligations and therefore fulfil a critical socio-economic function by ensuring mobility of individuals as well as contributing to

the green transition by ensuring sustainable environmental friendly mobility<sup>29</sup>. Indeed, throughout the duration of the COVID-19 containment measures the continued provision of regional or long-distance public transport services has been crucial to ensure connectivity for people without alternative means of transport and in particular for workers, including critical staff in the healthcare sector, thereby contributing to the proper functioning of the economy. At the same time, maintaining minimum service levels, despite significantly reduced passenger numbers throughout the period of application of the various containment measures, has helped ensure observance of the social distancing measures on public transport. Moreover, the envisaged compensation for the revenue shortfall caused by the containment measures is coherent with the very nature of common public financing mechanisms for those essential public services.

- (62) The Commission notes, for the reasons set out in recital (57), that due to the special nature of public services the beneficiaries under the scheme have not had the possibility to react to a changed market environment and to decreased demand as they were obliged by the contractual provisions to continue to provide a certain level of transport services independently of occupancy in order to ensure connectivity, in particular of critical staff. They have not had the choice to reduce frequency beyond a certain level to react to the reduced demand and thereby to reduce their fixed costs, as companies in other sectors. As such, the beneficiaries have had to continue to offer almost full capacity despite the very low number of passengers.
- (63) In view of all of the above, the Commission considers that the duration of the compensation period (15 March – 31 August 2020) is justified, as its start coincides with the implementation of the first containment measures in reaction to the COVID-19 outbreak and its end takes into account the various factors summarised above.
- (64) Therefore, the Commission considers that the direct causal link between the damage caused by the exceptional occurrence and the aid under the scheme is ensured.

#### ***3.3.4. Proportionality of the aid***

- (65) 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.
- (66) Aid granted under the scheme is strictly limited to compensation for the damage directly caused by the COVID-19 outbreak during the period 15 March - 31 August 2020. As described more in detail in Section 2.10, the compensation is calculated as 93% of the damage. The damage eligible for compensation under the scheme is calculated as the net costs (i.e. costs minus revenues including the public service compensation) actually incurred during the compensation period.

---

<sup>29</sup> An overview of the European Green Deal strategy, including through sustainable mobility, is available at [https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal\\_en](https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal_en).

The extra costs for infection prevention measures are added to the costs, whereas avoided costs/cost savings are deducted. The Dutch authorities will verify the independent auditors' report to be submitted by the beneficiaries and ensure that overcompensation is avoided.

- (67) As described in recital (33), the Dutch authorities have put in place the following additional safeguards to ensure that compensation under the scheme does not exceed what is necessary to make good the actual damage suffered and thus meets the above-mentioned criteria.
- i) First, compensation in excess of the damage actually incurred (calculated in line with the above methodology) will be recovered in all individual instances including interest.
  - ii) Second, aid granted to beneficiaries will be net of any amount obtained from insurance, litigation, arbitration or any other source for the same damage.
  - iii) Third, payments under the scheme are excluded for any applicant who is responsible for the damage suffered and/or did not conduct its activities with due diligence or in compliance with applicable legislation or did not take any measure to mitigate its damages.
  - iv) Fourth, no aid will be paid to undertakings subject to an outstanding recovery order following a negative decision by the Commission.
  - v) Fifth, aid provided under the scheme cannot be cumulated with other aid for the same eligible costs.
- (68) Finally, as explained in recital (34), the Netherlands committed to provide a report to the Commission specifying the amount of compensation granted no later than one year after the date of this decision.
- (69) The Commission positively notes the above-mentioned safeguards and concludes that the mechanism put in place will ensure that the compensation under the scheme will not exceed the damage directly suffered by each beneficiary due to the deficit caused by the COVID-19 outbreak.
- (70) In view of the above, the Commission considers that the scheme is proportional and consequently 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.

Yours faithfully,

For the Commission

Margrethe VESTAGER  
Executive Vice-President