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**Subject: State Aid SA.62867 (2021/N) – The Netherlands
COVID-19: Regulation on the financing of fixed costs for starting
SMEs COVID-19**

Excellency,

1. PROCEDURE

- (1) By electronic notification of 28 April 2021, the Netherlands notified aid in the form of limited amounts of aid under the name “Regulation on the financing of fixed costs for starting SMEs COVID-19” (the “measure”) under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (the “Temporary Framework”).¹ The Dutch authorities provided supplementary information on 11 May 2021.
- (2) The Netherlands exceptionally agrees to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union (“TFEU”), in conjunction with Article 3 of Regulation 1/1958² and to have this Decision adopted and notified in English.

¹ Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak (OJ C 91I, 20.3.2020, p. 1), as amended by Commission Communications C(2020) 2215 (OJ C 112I, 4.4.2020, p. 1), C(2020) 3156 (OJ C 164, 13.5.2020, p. 3), C(2020) 4509 (OJ C 218, 2.7.2020, p. 3), C(2020) 7127 (OJ C 340I, 13.10.2020, p. 1) and C(2021) 564 (OJ C 34, 1.2.2021, p. 6).

² 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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2. DESCRIPTION OF THE MEASURE

- (3) The Netherlands considers that the COVID-19 outbreak affects the real economy. The measure forms part of an overall package of measures and aims to ensure that sufficient liquidity remains available in the market, to counter the liquidity shortage faced by undertakings because of the outbreak, to ensure that the disruptions caused by the outbreak do not undermine the viability of the undertakings and thereby to preserve the continuity of economic activity during and after the outbreak.
- (4) The Netherlands confirms that the aid under the measure is not conditioned on the relocation of a production activity or of another activity of the beneficiary from another country within the EEA to the territory of the Member State granting the aid. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA.
- (5) The compatibility assessment of the measure is based on Article 107(3)(b) TFEU, in light of sections 2 and 3.1 of the Temporary Framework.

2.1. The nature and form of aid

- (6) The measure provides aid in the form of direct grants.

2.2. Legal basis

- (7) The legal basis for the measure is (i) the “Kaderwet EZK- en LNV-subsidies” (“legal framework for the granting of subsidies by the Minister for the Economic Affairs”)³ and (ii) the draft Regulation “Regeling subsidie financiering vaste lasten startende MKB-ondernemingen COVID-19” (“Regulation on the financing of fixed costs for starting SMEs COVID-19” - hereinafter “the draft Regulation”)⁴. This Regulation will be published in the Dutch Official Gazette and will enter into force after the Commission’s approval of the notified measure.

2.3. Administration of the measure

- (8) The Ministry of Economic Affairs and Climate Policy is responsible for administering the measure. The “Rijksdienst voor Ondernemend (‘RVO’)” (the “Netherlands Enterprise Agency”), which is part of the Ministry of Economic Affairs and Climate Policy, is the body responsible for the implementation of the measure.

2.4. Budget and duration of the measure

- (9) The estimated budget of the measure is EUR 90 million. The measure is not co-financed by Union Funds.

³ Act of 29 February 1996 laying down rules for the granting of subsidies by the Minister for Economic Affairs, as into force since 1 January 2019, Dutch Official Gazette (“Staatsblad”) with reference number [Stb. 1996, 180]. The last change to the law was signed into law on 5 December 2018 [Stb. 2018, 487]. A consolidated version of the law can be found here, alongside links to all relevant publications in the NL Official Gazette: <https://wetten.overheid.nl/BWBR0007919/2019-01-01>.

⁴ Draft Regulation of the State Secretary for Economic Affairs and Climate Policy, No WJZ/21037856 provided by the Dutch authorities with the notification.

- (10) Aid may be granted under the measure as from the notification of the Commission's approval until no later than 31 December 2021.

2.5. Beneficiaries

- (11) The beneficiaries of the measure are micro, small and medium enterprises (*SMEs*)⁵ with registration date in the Dutch Commercial Register⁶ between 1 October 2019 and 30 June 2020 (“starting SMEs”)⁷. However, financial institutions are excluded as eligible final beneficiaries.
- (12) Paragraph 2 e of Article 2.2.1 of the draft Regulation sets out further requirements on the establishments SMEs should have to be eligible.⁸
- (13) Entities listed in paragraph 4 of Article 2.1.1 of the draft Regulation are excluded.⁹

⁵ As defined in Annex I to Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187, 26.6.2014, p. 1 (“GBER”) and Annex I to Commission Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 193, 1.7.2014, p. 1 (“ABER”) and Annex I of Commission Regulation (EU) No 1388/2014 of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 369, 24.12.2014, p. 37 (“FIBER”).

⁶ As referred to in Article 2 of the Commercial Register Act 2007.

⁷ An SME part of group (defined as a single undertaking, as referred to in Article 2 (2) of the Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid) is only eligible if all SMEs of the group are registered in the Commercial Registry at the earliest the 1st of October 2019. If one or more SMEs of the group are registered before the 1st of October 2019, the undertaking is not qualified as a starting SME and therefore is not eligible for aid.

⁸ SMEs not registered on the reference date under the Standard Industrial Classifications (Standaard Bedrijfsindeling, SBI) codes 56.10.1, 56.10.2, 56.30, 47.81.1, 47.81.9, 47.82, 47.89.1, 47.89.2, 47.89.9, 49.39.1, 49.32, 49.41, 49.42, 50, 51.10, 53, 85.53 or 93.21.2 must have at least one establishment with an address other than the private address of the owner or owners of the SME; or must have an establishment that is physically separated from the private home of the owner (s) of the SME and has its own entrance or access. In the case of a catering undertaking, the SME must rent, lease or own at least one catering establishment.

⁹ No grant will be awarded to:

- a. a legal person administered by public law within the meaning of Article 1 of Book 2 of the Civil Code;
- b. a public undertaking within the meaning of Article 25 (1) of the Competition Act;
- c. a funded school within the meaning of the Primary Education Act, the Law on Excellence Centres or the Secondary Education Act;
- d. a funded institution for education and vocational training as referred to in the Education and Vocational Training Act;
- e. a funded higher education institution as referred to in Article 1.8, first paragraph, of the Higher Education and Scientific Research Act.

- (14) Aid may not be granted under the measure to starting SMEs that were already in difficulty within the meaning of the relevant Block Exemption Regulations¹⁰.

2.6. Sectoral and regional scope of the measure

- (15) The measure is open to all sectors within a range of Standard Industrial Classifications (Standaard Bedrijfsindeling, SBI), listed in an annex to the draft Regulation.¹¹ The list does not include the financial sector. The measure applies to the whole territory of the Netherlands.

2.7. Basic elements of the measure

- (16) The measure aims to remedy the liquidity shortage faced by starting SMEs by contributing to the financing of fixed costs incurred in the months of January, February and March 2021 (the “subsidy period”). Aid under the measure will be granted in the form of a one-off grant and will be exempted from tax.
- (17) The grant is awarded only to SMEs with a loss of turnover of at least 30 % in the subsidy period, when compared to the third quarter of 2020 (the “reference period”). The turnover in the subsidy period shall not include, for the purposes of this measure, grants, allowances or aid in any other form obtained by the beneficiaries from an administrative body in connection with, or also in connection with, the effects of combating the spread of COVID-19.
- (18) The grant is awarded only to SMEs with fixed costs of at least EUR 1 500, in the reference period. These fixed costs are calculated by multiplying the turnover in the reference period by the sector specific fixed cost percentage¹² provided in the annex of the draft Regulation.
- (19) The amount of the aid is the result of the product $A \times B \times C \times 0,85$, where:
- A = Turnover in the reference period, i.e. the third quarter of 2020,
- B = Loss of turnover in percentage calculated as difference between the turnover in the reference period and the turnover in the subsidy period and dividing it by the turnover during the reference period,
- C = Sector specific fixed cost percentage (recital (18)).

¹⁰ As defined in Article 2(18) of the GBER, Article 2(14) of the ABER and Article 3(5) of the FIBER.

¹¹ The aid is granted only to SMEs whose main registered activity on the reference date in the Commercial Register is within the SBI codes in the annex of the draft Regulation or whose main activity, at the reference date, is established, to the satisfaction of the Minister of Economic Affairs, to be one listed in the annex of the draft Regulation or, in the case of SMEs with main registered activity on the reference date under SBI codes 64.2 (Financial Holdings), 64.30.3 (Investment institutions with limited entry) or 70.10 (Holdings), whose ancillary activity is within the SBI codes in the annex of the draft Regulation. The reference date is 15 March 2020 for SMEs with a registration date in the Commercial Register which is between 1 October 2019 and 15 March 2020. The reference date is 30 June 2020 for SMEs with a registration date in the Commercial Register which is between 16 March 2020 and 30 June 2020.

¹² The fixed cost percentage is the share of the turnover used to pay the fixed costs and is a fixed percentage, provided by the ‘Centraal Bureau voor de Statistiek’ (Statistics Netherlands). This percentage is based on the average share of the turnover being used to cover fixed costs and is calculated on a sector level.

- (20) The grant shall not exceed EUR 124 999. The grant shall be EUR 1 500 if the result of the calculation referred to in recital (19) is less than EUR 1 500.
- (21) In case of beneficiaries with multiple eligible main activities with different fixed cost percentages, the aid for these beneficiaries will be calculated using the highest sector specific fixed cost percentage (element C in the amount of aid calculation formula, recital (19)).
- (22) The Dutch authorities confirmed that the overall maximum aid amount under the measure shall not exceed EUR 225 000 per undertaking active in the primary production of agricultural products¹³, EUR 270 000 per undertaking active in the fishery and aquaculture sector¹⁴, and EUR 1 800 000 per undertaking active in all other sectors as provided by the Temporary Framework, all figures used being gross, before any deduction of tax or other charges.
- (23) For the agricultural, fisheries and aquaculture sectors, the Dutch authorities confirmed that:
- (a) for beneficiaries active in the processing and marketing of agricultural products, the aid is not being partly or entirely passed on to primary producers and is not fixed on the basis of the price or quantity of products put on the market by the undertakings concerned or purchased from primary producers, unless, in the latter case, the products were either not put on the market or were used for non-food purposes such as distillation, methanization or composting by the undertakings concerned;
 - (b) aid to undertakings active in the primary production of agricultural products¹⁵ is not fixed on the basis of the price or quantity of products put on the market;
 - (c) aid to undertakings active in the fishery and aquaculture sector¹⁶ does not concern any of the categories of aid referred to in Article 1, paragraph (1) (a) to (k) of Commission Regulation (EU) No 717/2014¹⁷;
 - (d) where an undertaking is active in several sectors to which different maximum amounts apply in accordance with points 22(a) and 23(a) of the Temporary Framework, it will be ensured, by appropriate means such as separation of accounts, that for each of these activities the relevant ceiling

¹³ As defined in Article 2(5) of ABER.

¹⁴ As defined in Article 2(1) of Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the fishery and aquaculture sector, OJ L 190, 28.6.2014, p. 45.

¹⁵ As defined in Article 2(5) of ABER.

¹⁶ Commission Regulation (EC) No (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the fishery and aquaculture sector, OJ L 90, 28.6.2014, p. 45.

¹⁷ Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the fishery and aquaculture sector, OJ L 90 of 28.6.2014, p. 45.

is respected and that the overall maximum amount of EUR 1.8 million is not exceeded per undertaking. Where an undertaking is active in the sectors covered by point 23(a) of the Temporary Framework, the overall maximum amount of EUR 270 000 is not exceeded per undertaking.

2.8. Cumulation

- (24) The Dutch authorities confirm that aid granted under the measure may be cumulated with aid under de minimis Regulations¹⁸ or the GBER or the ABER or the FIBER provided the provisions and cumulation rules of those Regulations are respected.
- (25) The Dutch authorities confirm that aid under the notified measure may be cumulated with other forms of Union financing, provided that the maximum aid intensities indicated in the relevant Guidelines or Regulations are respected.
- (26) The Dutch authorities confirm that aid granted under the measure may be cumulated with aid granted under other measures approved by the Commission under other sections of the Temporary Framework provided the provisions in those specific sections are respected.
- (27) The Dutch authorities confirm that if the beneficiary receives aid on several occasions or in several forms under the measure or aid under other measures approved by the Commission under section 3.1 of the Temporary Framework, the overall maximum cap per undertaking, as set out in point(s) 22(a) and 23(a) of that framework, will be respected. Aid granted under the measure and/or other measures approved by the Commission under section 3.1 of the Temporary Framework which has been reimbursed before 31 December 2021 shall not be taken into account in determining whether the relevant ceiling is exceeded.

2.9. Monitoring and reporting

- (28) The Dutch authorities confirm that they will respect the monitoring and reporting obligations laid down in section 4 of the Temporary Framework (including the obligation to publish relevant information on each individual aid above EUR 100 000 granted under the measure and EUR 10 000 in the primary agriculture and in the fisheries sectors on the comprehensive national State aid website or Commission's IT tool within 12 months from the moment of granting¹⁹).

¹⁸ Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid (OJ L 352, 24.12.2013, p. 1), Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the agriculture sector (OJ L 352, 24.12.2013 p. 9), Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the fishery and aquaculture sector (OJ L 190, 28.6.2014, p. 45) and Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest (OJ L 114, 26.4.2012, p. 8).

¹⁹ Referring to information required in Annex III to Commission Regulation (EU) No 651/2014 and Annex III to Commission Regulation (EU) No 702/2014 and Annex III to Commission Regulation (EU) No 1388/2014.

3. ASSESSMENT

3.1. Lawfulness of the measure

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

3.2. Existence of State aid

- (30) 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.
- (31) The measure is imputable to the State, since it is administered by the Ministry of Economic Affairs and Climate Policy (recital (8)) and it is based on the national legal basis mentioned in recital (7). It is financed through State resources, since it is financed by public funds (recital (9)).
- (32) The measure confers an advantage on its beneficiaries in the form of direct grants (recital (6)). The measure thus confers an advantage on those beneficiaries which they would not have had under normal market conditions.
- (33) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, in particular starting SMEs active in all sectors, excluding the financial sector (recitals (11) to (14)).
- (34) 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 (recital (15)).
- (35) In view of the above, the Commission concludes that the measure constitutes aid within the meaning of Article 107(1) TFEU. The Dutch authorities do not contest that conclusion.

3.3. Compatibility

- (36) 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.
- (37) Pursuant to Article 107(3)(b) TFEU the Commission may declare compatible with the internal market aid “*to remedy a serious disturbance in the economy of a Member State*”.
- (38) By adopting the Temporary Framework on 19 March 2020, the Commission acknowledged (in section 2) that “*the COVID-19 outbreak affects all Member States and that the containment measures taken by Member States impact undertakings*”. The Commission concluded that “*State aid is justified and can be declared compatible with the internal market on the basis of Article 107(3)(b) TFEU, for a limited period, to remedy the liquidity shortage faced by*

undertakings and ensure that the disruptions caused by the COVID-19 outbreak do not undermine their viability, especially of SMEs”.

- (39) The measure aims at supporting the liquidity of starting SMEs at a time when the normal functioning of markets is severely disturbed by the COVID-19 outbreak and that outbreak is affecting the wider economy and leading to severe disturbances of the real economy of Member States.
- (40) The measure is one of a series of measures conceived at national level by the Dutch authorities to remedy a serious disturbance in their economy. The importance of the measure to ensure liquidity of starting SMEs is widely accepted by economic commentators and the measure is of a scale which can be reasonably anticipated to produce effects across the entire Dutch economy. Furthermore, the measure has been designed to meet the requirements of a specific category of aid (“*Limited amounts of aid*”) described in section 3.1 of the Temporary Framework.
- (41) The Commission accordingly considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State and meets all the conditions of the Temporary Framework. In particular:
- The aid takes the form of direct grants (recital (6)).
The overall nominal value of direct grants shall not exceed EUR 1.8 million per undertaking; all figures used must be gross, that is, before any deduction of tax or other charges (recitals (16), (20) and (22)). The measure therefore complies with point 22(a) of the Temporary Framework.
 - Aid is granted under the measure on the basis of a scheme with an estimated budget as indicated in recital (9). The measure therefore complies with point 22(b) of the Temporary Framework.
 - Aid may not be granted under the measure to SMEs that were already in difficulty on 31 December 2019 (recital (14)). The measure therefore complies with points 22(c) and 22(c)bis of the Temporary Framework.
 - Aid will be granted under the measure no later than 31 December 2021 (recital (10)). The measure therefore complies with point 22(d) of the Temporary Framework.
 - Aid granted to undertakings active in the processing and marketing of agricultural products is excluded when the aid is conditional on being partly or entirely passed on to primary producers, fixed on the basis of the price or quantity of products put on the market by the undertakings concerned or purchased from primary producers, unless, in the latter case, the products were either not put on the market or were used for non-food purposes such as distillation, methanization or composting by the undertakings concerned (recital (23)(a)). The measure therefore complies with point 22(e) of the Temporary Framework.
 - The overall nominal value of direct grants does not exceed EUR 270 000 per undertaking active in the fishery and aquaculture sector (recitals (20) and (22)) or EUR 225 000 per undertaking active in the primary

production of agricultural products (recitals (20) and (22)). The measure therefore complies with point 23(a) of the Temporary Framework.

- Aid granted to undertakings active in the primary production of agricultural products must not be fixed on the basis of the price or quantity of products put on the market (recital (23)(b)). The measure therefore complies with point 23(b) of the Temporary Framework.
- Aid granted to undertakings active in the fishery and aquaculture sector does not concern any of the categories of aid referred to in Article 1, paragraph (1)(a) to (k) of Commission Regulation (EU) No 717/2014 (recital (23)(c)). The measure therefore complies with point 23(c) of the Temporary Framework.
- Where an undertaking is active in several sectors to which different maximum aid amounts apply in accordance with points 22(a) and 23(a) of the Temporary Framework, the Netherlands will ensure, by appropriate means such as separation of accounts, that the relevant ceiling is respected for each of those activities and that the overall maximum amount of EUR 1.8 million is not exceeded per undertaking. Where an undertaking is active in the sectors covered by point 23(a) of the Temporary Framework, the overall maximum amount of EUR 270 000 is not exceeded per undertaking (recital (23)(d)). The measure therefore complies with point 23bis of the Temporary Framework.

(42) The Dutch authorities confirm that the aid under the measure is not conditioned on the relocation of a production activity or of another activity of the beneficiary from another country within the EEA to the territory of the Member State granting the aid. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA (recital (4)).

(43) The Dutch authorities confirm that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected (recital (28)). The Dutch authorities further confirm that the aid under the measure may only be cumulated with other aid, provided the specific provisions in the sections of the Temporary Framework and the cumulation rules of the relevant Regulations are respected (recitals (24) to (27)).

(44) The Commission therefore considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State pursuant to Article 107(3)(b) TFEU since it meets all the relevant conditions of the Temporary Framework.

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(3)(b) of the Treaty on the Functioning of the European Union.

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