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**Subject: State aid SA.60166 (2021/N) – The Netherlands
Amendment of the aid scheme SA.57712 as already amended by
SA.59535, and new sub-measures on “COVID-19: direct grant scheme
to support the fixed costs for enterprises affected by the COVID-19
outbreak”**

Excellency,

1. PROCEDURE

- (1) By electronic notification of 4 January 2021, according to Article 108(3) Treaty on the Functioning of the European Union (“TFEU”), registered by the Commission on the same date, the Dutch authorities notified an amendment to the State Aid scheme SA.57712 (2020/N), (direct grant scheme to support the fixed costs for enterprises affected by the COVID-19 outbreak, “the initial scheme”)¹ as already amended by SA.59535 (2020/N)² (“the first amending Decision” and “the existing scheme”), as well as two new sub-measures (all together “the notified measure”). The notification provides for limited amounts of aid under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, (“the Temporary Framework”).³ The Netherlands provided additional

¹ Approved by Commission Decision C(2020)4442 final of 26 June 2020 (“the initial decision”), published in JO C/294/2020, 29 June 2020, p. 16.

² Approved by Commission Decision C(2020)8286 final of 20 November 2020, not yet published.

³ 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 Communication from the Commission C(2020) 2215 final of 3 April 2020 on the Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 112I, 4.4.2020, p. 1, by Communication from the Commission C(2020) 3156 final of 8 May 2020 on the Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 164, 13.5.2020, p. 3, by Communication from the Commission C(2020) 4509 final of 29 June 2020 on the Third Amendment of the Temporary Framework for State

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information and updated notifications on 13, 14, 25 and 27 January 2021 and on 1 and 2 February 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 1/1958⁴ and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE NOTIFIED MEASURE

- (3) As set out in recitals (3) and (7) of the initial Decision, the Netherlands considers that the COVID-19 outbreak has affected the real economy and in particular small and medium size enterprises (“SMEs”). The notified 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 notified measure is composed of three different parts:
 - (a) A new sub-measure providing for aid to SMEs in the period January to March 2021 (“sub-measure (a)”);
 - (b) A new sub-measure addressed to SMEs active in the event industry for the periods October to December 2020 and January to March 2021 (“sub-measure (b)”);
 - (c) An amendment to the existing scheme introducing a series of changes with regard to the period October to December 2020.
- (5) The Netherlands confirmed that the aid under the notified 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.
- (6) The compatibility assessment of the notified measure is based on Article 107(3)(b) TFEU, in light of sections 2 and 3.1 of the Temporary Framework.

aid measures to support the economy in the current COVID-19 outbreak, OJ C 218, 2.7.2020, p. 3, by Communication from the Commission C(2020) 7127 final of 13 October 2020 on the Fourth Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak and amendment to the Annex to the Communication from the Commission to the Member States on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance, OJ C 340 I, 13.10.2020, p. 1 and by Communication from the Commission C(2021) 564 final of 28 January 2021 on the 5th Amendment to the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak and amendment to the Annex to the Communication from the Commission to the Member States on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance, OJ C 34, 1.2.2021, p. 6.

⁴ Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

2.1. Common provisions to sub-measures (a) and (b)

2.1.1. The nature and form of the aid

- (7) The sub-measures provide aid in the form of direct grants.

2.1.2. Legal basis

- (8) The legal basis for the sub-measures is (i) the “Kaderwet EZK- en LNV-subsidies” (“legal framework for the granting of subsidies by the Minister for the Economy Affairs”)⁵ and (ii) the draft Regulation “Regeling subsidie vaste lasten financiering COVID-19” (“temporary support to enterprises to overcome the economic impact of the COVID-19”)⁶.

2.1.3. Administration of the sub-measures

- (9) The Ministry of Economic Affairs and Climate Policy is the granting authority and responsible for administering the sub-measures. 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 sub-measures.
- (10) The implementation of the sub-measures is based on individual applications submitted to the responsible body (recital (9)) by the potential beneficiaries. The Tax Department’s data is used for determination and verification purposes of the applicants’ turnover in order to implement this scheme.

2.1.4. General information on the sub-measures

- (11) The Dutch authorities confirmed that the aid may be granted provided its nominal value, for all measures granted in accordance with Section 3.1 of the Temporary Framework, does not exceed EUR 800 000 per undertaking, EUR 120 000 per undertaking active in fishery and aquaculture sectors and EUR 100 000 active in the primary production of agricultural products (all figures used being expressed in gross, that is before any deduction of tax or other charges)⁷.
- (12) The Dutch authorities also confirmed that where the aid is granted to undertakings active in the processing and marketing of agricultural products, it is conditional on not being partly or entirely passed on to primary producers and is not fixed on the basis of the price or quantity of products purchased from primary producers or put on the market by the undertakings concerned.

⁵ 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>

⁶ Draft Regulation of the State Secretary for Economic Affairs and Climate Policy, No WJZ/21022026 (hereinafter “the draft Regulation”).

⁷ At this stage, the Netherlands did not amend those maximum aid amounts despite the changes provided by the fifth amendment of the Temporary Framework.

- (13) The Dutch authorities confirmed that 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.
- (14) The 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(1)(a) to (k) of Commission Regulation (EU) No 717/2014.
- (15) 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, the Dutch authorities 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 1 800 000 is not exceeded per undertaking. Where an undertaking is active in the sectors covered by point 23(a), the overall maximum amount of EUR 270 000 should not be exceeded per undertaking.

2.1.5. *Cumulation*

- (16) The Dutch authorities confirm that aid granted under the sub-measures may be cumulated with aid under de minimis Regulations⁸ or the Block Exemption Regulations⁹ provided the provisions and cumulation rules of those Regulations are respected.
- (17) The Dutch authorities confirm that aid under the notified sub-measures may be cumulated with other forms of Union financing, provided that the maximum aid intensities indicated in the relevant Guidelines or Regulations are respected.
- (18) The Dutch authorities confirm that aid granted under the sub-measures 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.
- (19) The Dutch authorities confirm that if the beneficiary receives aid on several occasions or in several forms under the sub-measures or aid under other measures

⁸ 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).

⁹ As defined in Article 2(18) of 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, Article 2(14) of 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, and Article 3(5) 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.

approved by the Commission under section 3.1 of the Temporary Framework, the overall maximum cap per undertaking, as set out in points 22(a) and 23(a) of that framework, will be respected.

2.1.6. Monitoring and reporting

- (20) 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 agricultural and fisheries sector on the comprehensive national State aid website or Commission's IT tool within 12 months from the moment of granting¹⁰).

2.2. The sub-measure (a)

- (21) Sub-measure (a) provides for aid to SMEs in the period January to March 2021.

2.2.1. Budget and duration of the sub-measure

- (22) The estimated budget of the sub-measure is EUR 970 million. The scheme is not co-financed by the Union funds.
- (23) Aid may be granted under this sub-measure as of the notification of the Commission's approval decision until no later than 31 December 2021.
- (24) Beneficiaries can introduce applications for the notified sub-measure from the date of entry into force of the scheme until no later than 15 June 2021.

2.2.2. Beneficiaries

- (25) The beneficiaries of the sub-measure are SMEs¹¹, active in the Dutch territory, and registered in the Dutch central commercial Registry¹² on 15 March 2020. However, financial institutions are excluded as eligible beneficiaries. The Dutch authorities expect 55 000 beneficiaries for this sub-measure.
- (26) Entities listed in paragraph 4 of Article 2.2.2 of the draft Regulation are excluded from the sub-measure.¹³

¹⁰ 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.

¹¹ As defined in Annex I to Commission Regulation (EU) No 651/2014 of 17 June 2014.

¹² <https://business.gov.nl/partners/netherlands-chamber-of-commerce/>

¹³ No grant will be awarded to:

- a. a legal person administered by public law as referred to in 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.

- (27) Aid may not be granted under the sub-measure to SMEs that were already in difficulty within the meaning of the Block Exemption Regulations¹⁴ on 31 December 2019.

2.2.3. Sectoral and regional scope of the sub-measure

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

2.2.4. Basic elements of the sub-measure

- (29) The sub-measure has as its main purpose to ensure that sufficient liquidity remains available for SMEs, which have been particularly affected by the negative impact of COVID-19 outbreak. The subsidy is directly related to the outbreak of COVID-19 and is available for a limited period.
- (30) Aid under the sub-measure will be granted in the form of a grant and will be exempted from tax. The grant covers only eligible costs needed to overcome the funding shortage or lack of liquidity resulting from the COVID-19 outbreak (such as the fixed costs¹⁵). All figures used must be gross, that is, before any deduction of tax or other charges. The aid granted is a one-off support. An SME is eligible if it lost at least 30% of its turnover in the period January to March 2021 compared to the reference period, namely the months January to March 2019, or a comparable period for an SME that started its economic activity at a later date¹⁶. The fixed costs of the undertaking in the period covered by the aid scheme (January to March 2021) are calculated by multiplying the turnover in the reference period with a sector specific constant¹⁷ and must at least amount to EUR 3 000 or more. The result of this calculation shall be expressed as a percentage.
- (31) The amount of the aid is the product of $A \times B \times C \times D$, where:

¹⁴ As defined in Article 2(18) of Commission Regulation (EU) No 651/2014 of 17 June 2014, Article 2(14) of Commission Regulation (EU) No 702/2014 of 25 June 2014, and Article 3(5) of Commission Regulation (EU) No 1388/2014 of 16 December 2014.

¹⁵ As reported in footnote (15) of the initial decision, the following type of costs are considered “fixed costs”: (i) depreciation of fixed assets and (ii) other operating costs. “Depreciation of fixed assets” means depreciation of sustainable inputs, such as machinery, buildings, means of transport and software as a result of normal wear and tear and foreseeable obsolescence. “Other operating costs” include operating costs which do not relate to the purchase value of the turnover, labour costs and depreciation of fixed assets.

¹⁶ Turnover in the reference period shall be for an SME registered for the first time in the Commercial Register:

- after 31 December 2018 and no later than 30 September 2019: turnover during the first full calendar quarter following the month of commencement of activities;
- after 30 September 2019 and no later than 30 November 2019: turnover in the three calendar months following the month of commencement of activities;
- after 30 November 2019 and no later than 29 February 2020: turnover in the period following the day of commencement of business until 15 March 2020 divided by the number of months whose turnover is taken into account multiplied by three.

¹⁷ The sector specific constant will be determined as the ratio between fixed costs and turnover for an average undertaking in a specific sector. This constant is calculated on the basis of statistical evidence from the Central Statistical Office. The sector specific constant is specified in an Annex to the legal basis for each activity covered by the measure.

- A = turnover during the reference period expressed in EUR;
- B = loss of turnover, expressed as a percentage;
- C = the ratio between fixed costs and turnover of an average firm, as indicated by sector in the third column of the table in the Annex to the national legal basis, expressed as a percentage;
- D = the subsidy rate, calculated on the basis of the formula $28.57\% \times B + 41.43\%$.¹⁸

- (32) The amount of aid per undertaking is capped at EUR 90 000.
- (33) The minimum amount of subsidy awarded for the period from January to March 2021 is EUR 750. The same amount will be awarded to beneficiaries registered for the first time in the Commercial Register after 29 February 2020.
- (34) The turnover during the period covered by the aid shall not include, for the purposes of this scheme, subsidies, allowances or aid in any other form obtained by the beneficiary from an administrative body in connection with, or also in connection with, measures taken in the for combating the spread of COVID-19.
- (35) In case the beneficiary has multiple main activities, the aid will be calculated considering the highest applicable percentage as reported in the Annex to the draft Regulation and the aid applies to all economic activities.

2.3. The sub-measure (b) (“event industry”)

- (36) Sub-measure (b) provides aid to SMEs active in the event industry.

2.3.1. Budget and duration of the sub-measure

- (37) The estimated budget of the sub-measure is EUR 3.5 million for each relevant quarter, namely the fourth quarter of 2020 and the first quarter of 2021. The estimated budget of the sub-measure is therefore EUR 7 million. The scheme is not co-financed by the Union funds.
- (38) Beneficiaries can submit applications for aid for the fourth quarter of 2020 from the date of entry into force of the scheme until no later than 15 June 2021 (the Dutch authorities may set an earlier deadline to submit applications).
- (39) Aid may be granted under the sub-measure as of the notification of the Commission’s approval decision until no later than 30 June 2021 with regard to the fourth quarter 2020 and no later than 31 December 2021 with regard to the first quarter of 2021.

2.3.2. Beneficiaries

- (40) The final beneficiaries of the sub-measure are SMEs active in the event industry¹⁹ and registered in the Dutch central commercial Registry²⁰ on 15 March 2020. For

¹⁸ This ensures a proportional increase of the aid compared to the increase of the turnover loss.

¹⁹ Public events have been restricted since March 2020. As a result of these restrictions, the turnover of undertakings active in the event industry has been severely affected.

²⁰ See footnote (12).

the purpose of this measure, an event is defined as an organised and occasional²¹, accessible to the public²² gathering, attended by a group of people, during a specific period of time. The purpose of the event is irrelevant.

- (41) Aid may not be granted under the sub-measure to SMEs that were already in difficulty within the meaning of the Block Exemption Regulations on 31 December 2019.

2.3.3. Sectoral and regional scope of the sub-measure

- (42) The sub-measure is open to all sectors of the event industry and excludes the financial sector. It applies to the whole territory of the Netherlands.

2.3.4. Basic elements of the sub-measure

- (43) Aid under the sub-measure will be granted in the form of a grant and will be exempted from tax.
- (44) The grant covers only eligible costs of the event industry needed to overcome the funding shortage or lack of liquidity resulting from the COVID-19 outbreak (such as the fixed costs²³). Due to the seasonality effect, the event industry undertakings do not record an important loss of turnover in the respective periods of the fourth quarter of 2020 and/or the first quarter of 2021, as they traditionally have no or very little turnover at that time of the year. However, these undertakings are affected, because their fixed costs continue to be generated. The compensation received so far during the period during which these undertakings faced a loss of turnover, according to the Dutch authorities, did not cover a fair share of their fixed costs, compared to other undertakings.
- (45) The aid granted is a one-off support for fixed charges of the fourth quarter of 2020 and/or the first quarter of 2021. An SME is eligible if:
- in the second and third quarters of 2019, it recorded at least 50% of its turnover in organizing events or in supplying goods or services to one or more events held during that period;
 - it benefited from a subsidy for the months of June, July, August and September 2020 on the basis of the initial scheme;
 - the fixed costs of the undertaking in the period covered by the aid scheme (fourth quarter of 2020 and/or the first quarter of 2021), as calculated by multiplying the turnover in the reference period with a sector specific constant, are lower than EUR 3 000; and
 - it entered in the Commercial Register for the first time before 14 September 2019.

²¹ The occasional nature of the event means that the event does not take place regularly.

²² This is the case where the event is of a non-closed nature, that is to say, is accessible free of charge, can be accessed through the purchase of an entry ticket, is advertised or a congress accessible on invitation to external outside the organisation. Closed events, including tolls, private fairs and closed business events, are therefore excluded from this definition, as they are not publicly available. The public must also be physically present. Therefore, events taking place online are not covered by the definition

²³ See footnote (14).

- (46) The aid amounts to 33.3% of the total aid granted under the initial scheme. It is however capped at EUR 16 666.67 for each of the two relevant quarters (undertakings applying for this subsidy for both quarters can therefore receive a maximum amount of EUR 33 333.33). The minimum amount of subsidy awarded is EUR 750 and all figures used must be gross.

2.4. The amendment (c) (“the fourth quarter of 2020”)

2.4.1. Description of the amendment

- (47) The notified amendment contains three changes to the existing scheme, covering the months of October, November and December 2020.
- (48) Only undertakings deemed eligible under the existing scheme are eligible to receive aid under the notified amendment. The conditions of this amendment are automatically applied to the existing scheme and its beneficiaries, including the increments. Undertakings active in the financial sector are excluded.
- (49) The notified amendment provides for:
- (a) a change in the formula applied to calculate the amount of the aid. While the initial formula was the product of $A \times B \times C$ (as defined in footnote (19) of the initial decision) times a fixed percentage (50%)²⁴, the new formula will be $A \times B \times C \times D$, as defined in recital (31). This change will ensure a proportionate increase of the aid compared to the loss of turnover;
 - (b) a change in the formula to calculate the amount of the increment for drinking and eating facilities²⁵ introduced by the first amending Decision²⁶. The new formula will be $A \times B \times 5.6\% \times D$, as defined in recital (31)²⁷. This change will ensure a proportionate increase of the increment compared to the loss of turnover. The product of this formula will come on top of the compensation granted by the existing scheme as amended by the previous point (49)(a);
 - (c) the introduction of an increment for undertakings in the non-food retail sector²⁸. This increment will be calculated on the basis of the same formula as the increment for drinking and eating facilities (recital (49)(b)).

²⁴ The Commission notes that footnote (19) of the initial decision mistakenly referred to a multiplying factor of 0.5%, rather than 50% or 0.5.

²⁵ Drinking and eating facilities include companies registered in the Commercial Register under codes 56.10.1, 56.10.2, 56.29 or 56.3 of the Standard Industrial Classification.

²⁶ The increment for drinking and eating facilities introduced by the first amending Decision used a flat rate of 2.8% of the loss of turnover in the compensation period.

²⁷ In effect, this means that a company with a 30% loss of turnover (minimum eligibility requirement) can get an increment of 2.8% of its loss of turnover compensated (product of 5.6% x D, where D would equal 50%), and that a company with 100% loss of turnover can get an increment of 3.92% of its loss of turnover compensated (product of 5.6% x D, where D would equal 70%).

²⁸ For the purpose of this measure, the non-food retail sector includes companies registered in the Commercial Register under codes 47.19, 47.26, 47.4, 47.5, 47.6, 47.71, 47.72, 47.75, 47.76, 47.78, 47.79, 47.82, 47.89.2 or 47.89.9 of the Standard Industrial Classification.

- (50) The maximum increment for the drinking and eating facilities as well as for the non-food retail sector has been set at EUR 20 160, so that the maximum amount of aid for companies in those sectors is EUR 110 160.

2.4.2. Budget of the amendment

- (51) The budget estimated for the increase of aid as provided for in recital (49)(a) and (b), will amount to EUR 180 million.
- (52) The budget estimated for the increment for non-food retail sector as provided for in recital (49)(c) will amount to EUR 20 million.
- (53) All other elements of the existing scheme remain unchanged.

3. ASSESSMENT

3.1. The sub-measure (a)

3.1.1. Lawfulness of the sub-measure

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

3.1.2. Existence of State aid

- (55) 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.
- (56) The measure is imputable to the State, since it is administered by the Ministry of Economic Affairs and Climate Policy as granting authority and responsible for administering the measure (recital (9)) and it is based on the national legal basis as reported in recital (8). It is financed through State resources, since it is financed by public funds (recital (22)).
- (57) The measure confers an advantage on its beneficiaries in the form of direct grants (recital (7)). The measure thus confers on those beneficiaries an advantage that they would have received under normal market conditions.
- (58) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, and excludes the financial sector (recital (28)).
- (59) 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.
- (60) 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.

3.1.3. *Compatibility*

- (61) 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.
- (62) 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”.
- (63) 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”.
- (64) The measure aims at preserving the continuity of economic activity of beneficiaries, as indicated in recital (3) 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.
- (65) 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 preserve economic continuity of the eligible beneficiaries is widely accepted by economic commentators and the measure is of a scale which can be reasonably anticipated to produce effects across the entire the 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.
- (66) 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 (7));
The overall nominal value of the direct grants will not exceed EUR 1 800 000 per undertaking (recital (11)); all figures used must be gross, that is, before any deduction of tax or other charges. The measure therefore complies with point 22(a) of the Temporary Framework;
The overall nominal value of the direct grants does not exceed EUR 270 000 per undertaking active in the fishery and aquaculture sector or EUR 225 000 per undertaking active in the primary production of agricultural products (recital (11)). The measure therefore complies with point 23(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 (22). 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 (see recital (27)). The measure therefore complies with point 22(c) of the Temporary Framework;
- Aid will be granted under the measure no later than 31 December 2021 (recital (23)). 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 are excluded when the aid is conditional on being partly or totally passed on to primary producers, fixed on the basis of the price or quantity of products purchased from primary producers, or put on the market by such producers (recital (12)). The measure therefore complies with point 22(e) 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 (13)). 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 (14)). 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 1 800 000 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 (15)). The measure therefore complies with point 23bis of the Temporary Framework.

3.2. The sub-measure (b)

3.2.1. Lawfulness of the sub-measure

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

3.2.2. Existence of State aid

- (68) 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.

- (69) The measure is imputable to the State, since it is administered by the Ministry of Economic Affairs and Climate Policy as granting authority and responsible for administering the measure (recital 9) and it is based on the national legal basis as reported in recital (8). It is financed through State resources, since it is financed by public funds (recital (37)).
- (70) The measure confers an advantage on its beneficiaries in the form of direct grants (recital (7)). The measure thus confers on those beneficiaries an advantage that they would have received under normal market conditions.
- (71) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, and excludes the financial sector (recital (42)).
- (72) 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.
- (73) 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.

3.2.3. *Compatibility*

- (74) 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.
- (75) 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”.
- (76) 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”.
- (77) The measure aims at preserving the continuity of economic activity of beneficiaries, as indicated in recital (3) 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.
- (78) 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 preserve economic continuity of the eligible beneficiaries is widely accepted by economic commentators and the measure is of a scale which can be reasonably anticipated to produce effects across the entire the 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.

(79) 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 (7));
The overall nominal value of the direct grants will not exceed EUR 1 800 000 per undertaking (recital (11)); all figures used must be gross, that is, before any deduction of tax or other charges. The measure therefore complies with point 22(a) of the Temporary Framework;
The overall nominal value of the direct grants does not exceed EUR 270 000 per undertaking active in the fishery and aquaculture sector or EUR 225 000 per undertaking active in the primary production of agricultural products (recital (11)). The measure therefore complies with point 23(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 (37). 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 (see recital (41)). The measure therefore complies with point 22(c) of the Temporary Framework;
- Aid will be granted under the measure no later than 30 June 2021 with regard to the fourth quarter 2020 and no later than 31 December 2021 with regard to the first quarter of 2021 (recital (39)). 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 are excluded when the aid is conditional on being partly or totally passed on to primary producers, fixed on the basis of the price or quantity of products purchased from primary producers, or put on the market by such producers (recital (12)). The measure therefore complies with point 22(e) 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 (13)). 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 (14)). 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 1 800 000 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 (15)). The measure therefore complies with point 23bis of the Temporary Framework.

3.3. The amendment (c)

3.3.1. Lawfulness of the amendment

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

3.3.2. Existence of State aid

- (81) 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.

- (82) The qualification of the existing aid scheme as State aid was established in recitals (32) to (37) of the initial decision and was confirmed with regard in the first amending Decision in its recital (17). The notified amendment described in recitals (49) to (52) does not affect that qualification. In particular, only undertakings deemed eligible under the existing scheme are eligible to receive aid under the notified amendment. The conditions of this amendment are automatically applied to the existing scheme and its beneficiaries (recital (48)) and undertakings active in the financial sector are excluded. Consequently, the Commission considers that the existing aid scheme as amended constitutes State aid within the meaning of Article 107(1) TFEU.

3.3.3. Compatibility

- (83) In recitals (38) to (43) of the initial decision, the Commission explained that the initial scheme fulfilled the conditions of point 22 of the Temporary Framework and was therefore compatible with the internal market on the basis of Article 107(3)(b) TFEU. This assessment was confirmed in the first amending Decision in its recitals (19) to (21).
- (84) The amendment described in recitals (49) and (50) does not affect that conclusion, as it concerns a change in the formula to calculate the amount of aid, which has no impact on the conditions for compatibility assessed in the initial decision. Also, the amendment includes an increase of the budget that was already allocated for the existing scheme as indicated in recitals (51) and (52) and this increase has no impact on the conditions for compatibility assessed in the initial decision. The measure therefore complies with point 22(b) of the Temporary Framework.

3.4. Common provisions

- (85) The Dutch authorities confirm that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected (recital (20)). 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 are respected and the cumulation rules of the relevant Regulations are respected (recitals (16) to (19)).

- (86) 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/eojade/isef/index.cfm>.

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President