



EUROPEAN COMMISSION

Brussels, 9.2.2021
C(2021) 945 final

PUBLIC VERSION

This document is made available for
information purposes only.

**Subject: State Aid SA.61360 (2021/N) – *The Netherlands*
COVID-19: New compensation scheme for special transport
providers**

Excellency,

1. PROCEDURE

- (1) By electronic notification of 29 January 2021, the Netherlands notified the above mentioned scheme (*Doelgroepenvervoer II*) concerning publicly funded transport for specific groups in the social domain ('the scheme'). The scheme consists of two separate measures for different eligible costs. One measure concerns aid in the form of limited amounts of aid and the other measure concerns aid in the form of support for uncovered fixed costs (together 'the measures') under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, as amended ("the Temporary Framework").¹

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 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 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

Zijne Excellentie de Heer Stef Blok
Minister van Buitenlandse Zaken
Rijnstraat 8
NL - 2515 XP Den Haag

- (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.

2. DESCRIPTION OF THE MEASURES

- (3) The Netherlands considers that the COVID-19 outbreak affects the real economy. The measures form part of an overall package of measures and aim 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) According to the Netherlands, because of the COVID-19 outbreak and the subsequent measures taken by the Dutch authorities in response to that outbreak, almost all publicly funded transport for specific groups in the social domain (the so-called “*doelgroepenvervoer*”), paid by municipalities in the Netherlands has been suspended. Special transport refers to transport by road, mainly carried out with mini-buses (which can accommodate up to eight passengers), wheelchair mini-buses and, to a lesser extent, taxis.
- (5) The specific groups in the social domain are children, elderly persons and other persons who are not able to use regular public transport to go to school or attend social activities. Special transport for those specific groups includes on-demand transport in remote and urban areas and other services under the Social Support Act (“*Wet Maatschappelijke Ondersteuning*”), the Youth act (“*Jeugdwet*”), the Primary Education Act (“*Wet op het Primair Onderwijs*”), the Secondary Education Act (“*Wet op het Voortgezet Onderwijs*”), the Special needs education Act (“*Wet op de expertisecentra*”) and the Participation Act (“*Participatiewet*”).
- (6) The Netherlands explained that demand for special transport services has declined due to COVID-19-related measures such as the closure of activity centres and cancellation of treatments. In addition, the Dutch government measures aimed at ensuring sufficient distance between passengers to limit the risk of contamination and calls to stay at home as much as possible and to avoid crowds and crowded places have further reduced demand for special transport services. According to the Dutch authorities, undertakings providing special transport based on scheduled and unscheduled rides for these specific groups are faced with a massive drop in income due to rides that were not carried out. Indeed, generally, the remuneration from the contracts with municipalities is based on the amount and distance of rides carried out.

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.

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

- (7) The Netherlands further explained that other measures that specifically hit special transport providers or their customers (thereby resulting in less rides) in the period covered by this decision (1 July 2020 until 13 October 2020, see recital (15) below) are a mandatory reservation for taxis and buses, a mandatory health check, mandatory reservation for venues like cinemas, restrictions for choirs and a general call to work from home. From 18 August 2020 onwards, one could only host a maximum of six people at home. On 29 September 2020, this number was reduced to three people. At the same time, reservations had to be made in advance for zoos, museums and libraries. Moreover, no visitors were allowed anymore for sports games.
- (8) According to the Netherlands, while providers of special transport generated less revenues for the reasons explained above, they continued to incur regular costs such as wages, lease commitments for the vehicles, commitments to the banks and overhead costs. According to a study commissioned by the Dutch authorities, such costs have been calculated to amount up to 80% of the total costs of the providers of special transport.³
- (9) The Netherlands confirmed that the aid under the measures 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.
- (10) The compatibility assessment of the measures is based on Article 107(3)(b) TFEU, in light of sections 2, 3.1 and 3.12 of the Temporary Framework.

2.1. The nature and form of aid

- (11) Both the measure granted under Section 3.1 and the measure granted under Section 3.12 of the Temporary Framework are part of one scheme. The aid under this scheme is provided in the form of direct grants.

2.2. Legal basis

- (12) Municipalities will use as legal basis a framework to be issued by the Minister of the Interior and Kingdom Relations.⁴ That framework will not enter into force before the Commission has notified its decision authorising the aid.

2.3. Administration of the measures

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

³ <https://www.panteia.nl/nieuws/compensatie-effecten-coronacrisis-zorgvervoer/>

⁴ “Circulaire voor doorbetaling doelgroepenvervoer II vanwege COVID-19 uit financiering van uit het Gemeentefonds conform artikel 6 van de Financiële-verhoudingswet en conform artikel 108 juncto 160 van de Gemeentewet”

2.4. Budget and duration of the measures

- (14) The budget of the scheme is EUR 122.5 million. Article 6 of the Act on the financial relationship between national, regional and local public authorities in the Netherlands (“*Financiële-verhoudingswet*”) defines the right to a general payment for municipalities from the State budget through the Fund for municipalities (“*Gemeentefonds*”) each year. This general payment is at the free disposal of the municipality and will be the source of financing of the scheme.
- (15) The scheme covers the period between 1 July and 13 October 2020 inclusively. Aid may be granted under the measures as from its approval until no later than 31 December 2021.

2.5. Beneficiaries

- (16) The eligible beneficiaries of the aid scheme are special transport providers that had already a contract with a municipality before 15 March 2020 for providing such transport services. The estimated number of beneficiaries is 150 contracted and over 500 subcontracted transport operators.
- (17) Every type of undertaking (SME⁵ or non-SME) active in the Netherlands may benefit from this scheme.
- (18) Aid may not be granted under the measures to micro, small, medium⁶ and large enterprises that were already in difficulty within the meaning of the General Block Exemption Regulation (“GBER”)⁷ on 31 December 2019. This also applies to any undertaking that may have benefited from earlier unlawful aid declared incompatible by a Commission decision, until that undertaking has reimbursed or paid into a blocked account the total amount of unlawful and incompatible and the corresponding recovery interest.

2.6. Sectoral and regional scope of the measures

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

2.7. Basic elements of the scheme applicable to both measures

- (20) Due to the exceptional and unforeseen circumstances described in recitals (6) to (8) above, which have significant financial consequences for the sector, the Dutch authorities have made the present scheme available for the undertakings active in field of special passenger transport in the Netherlands that have a contract with

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, OJL 187, 26.6.2014, p. 1.

⁶ 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, OJL 187, 26.6.2014, p. 1.

⁷ 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, OJL 187, 26.6.2014, p. 1.

one or more municipalities. A first aid scheme was approved by the Commission under Article 107(2)(b) TFEU and covered the period from 15 March 2020 until 30 June 2020.⁸

- (21) Because the exceptional and unforeseen circumstances continued, the Dutch authorities considered that more aid was necessary.
- (22) In the draft framework (see recital (12)), the Dutch authorities have laid down that the total aid amount under both measures together will not exceed 70% of the part of the revenues not generated for the non-performed rides.⁹ This 70% is a different limitation from the 70% of uncovered fixed cost limitation under Section 3.12 of the Temporary Framework (see recital (29)(c) below).
- (23) Moreover, the aid amount under both measures is calculated in line with the requirements set by the Temporary Framework and therefore the limits to the aid amount set by the Temporary Framework will also apply (see recital (27)(a), (29)(c) and (29)(e) below).
- (24) Non-performed rides are identified by comparing the activities of the undertaking concerned in the period 1 July until 13 October 2020 with the same period in 2019.
- (25) The aid scheme is split into two measures. Both measures can be applied simultaneously provided the caps in recitals (22) and (23) are respected. In addition, both measures cover the same period, but aim at covering different eligible costs of the same group of beneficiaries.

2.7.1. Basic elements of the scheme applicable to the measure concerning aid in the form of limited amounts of aid (Section 3.1 Temporary Framework)

- (26) The measure under Section 3.1 Temporary Framework is earmarked for general costs and capacity costs (i.e. fixed costs) such as depreciation, interests, insurance and storage.
- (27) As regards the measure under Section 3.1 Temporary Framework, the Dutch authorities have confirmed that:
 - (a) The overall maximum aid amount(s) per undertaking¹⁰ (gross, i.e. before any deduction of tax or other charge) is respected and limited to EUR 1 800 000.
 - (b) The aid will be granted by 31 December 2021 at the latest.
 - (c) The aid scheme is not open to undertakings active in the processing and marketing of agricultural products, nor to the agricultural, aquaculture and fisheries sector.

⁸ Commission Decision of 29 June 2020, SA.57554(2020/N) – The Netherlands COVID-19: Compensation scheme special transport for special groups due to the COVID-19 outbreak.

⁹ Compared to 80% under the first scheme, see footnote 8.

¹⁰ See paragraphs 22(a) and 23(a) of the Temporary Framework.

2.7.2. *Basic elements of the scheme applicable to the measure concerning aid in the form of support for uncovered fixed costs (Section 3.12 Temporary Framework)*

- (28) The measure under Section 3.12 Temporary Framework is earmarked for labour costs (wages and personnel costs).
- (29) As regards the measure under Section 3.12 Temporary Framework, the Dutch authorities have confirmed that:
- (a) The aid will be granted no later than 31 December 2021 and covers uncovered fixed costs (limited to wages and personnel costs) incurred during the period between 1 July 2020 and 13 October 2021, including such costs incurred in part of that period ('eligible period');
 - (b) The aid is granted on the basis of a scheme to undertakings that suffer a decline in turnover during the eligible period of at least 30% compared to the same period in 2019. In case under the current contract no turnover is available for the same period in 2019, a comparable contract that was available in 2019 will be used as a benchmark.
 - (c) The uncovered fixed costs are defined under the measure in accordance with point 87(c) of the Temporary Framework and the aid intensity shall not exceed 70% of the uncovered fixed costs incurred during the period 1 July 2020 until 13 October 2020.
 - (d) As regards the calculation of the aid under this measure:
 - the losses¹¹ of undertakings from their profit and loss statements during the eligible period¹² are considered to constitute uncovered fixed costs;
 - the aid may be granted based on forecasted losses if the actual losses are not yet known;
 - the final amount of aid shall be determined after realisation of the losses on the basis of audited accounts; and
 - any payment exceeding the final amount of the aid shall be recovered.
 - (e) The overall maximum aid amount(s) under Section 3.12 Temporary Framework per undertaking¹³ (gross, i.e. before any deduction of tax or other charge) is respected and limited to EUR 10 million.
 - (f) 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 3.12 of the Temporary Framework, the overall

¹¹ Taking into account the aid granted under Section 3.1 of the Temporary Framework (see Section 2.7.1)

¹² One-off impairment losses are not included in the calculation of the losses.

¹³ See paragraphs 87(d) of the Temporary Framework.

maximum aid amount per undertaking, as set out in point 87(d) of that framework is respected.

2.8. Cumulation

- (30) The Dutch authorities confirm that aid granted under the measures may be cumulated with aid under de minimis Regulations¹⁴ or the GBER provided the provisions and cumulation rules of those Regulations are respected.
- (31) The Dutch authorities confirm that aid granted under the 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. In this specific case, the Dutch authorities have confirmed that the funding granted under Section 3.1 Temporary Framework will be reflected in the profit and loss statements for the calculation of the funding under Section 3.12 Temporary Framework.
- (32) The Dutch authorities confirm that if the beneficiary receives aid on several occasions or in several forms under the measure under section 3.1 of the Temporary Framework 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 points 22(a) of that framework, will be respected. Aid granted under the measures or aid under 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.
- (33) The Dutch authorities confirm that if the beneficiary receives aid on several occasions or in several forms under the measure under section 3.12 of the Temporary Framework or aid under other measures approved by the Commission under section 3.12 of the Temporary Framework, the overall maximum cap per undertaking, as set out in point 87(d) of that framework, will be respected.
- (34) The aid granted under Section 3.12 of the Temporary Framework shall not be cumulated with other aid for the same eligible costs;

2.9. Monitoring and reporting

- (35) 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 measures on the comprehensive national State aid website or Commission's IT tool within 12 months from the moment of granting¹⁵).

¹⁴ 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) 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).

¹⁵ 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 scheme

- (36) 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

- (37) For a scheme 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 scheme 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 scheme must distort or threaten to distort competition and affect trade between Member States.
- (38) The scheme is imputable to the State, since it is administered by municipalities in the Netherlands based on a framework issued by the Minister of the Interior and Kingdom Relations (recital (13)). It is financed through State resources, since it is financed by public funds (see recital (14)).
- (39) The scheme confers an advantage on its beneficiaries in the form of direct grants (see recital (11)). The scheme thus confers an advantage on those beneficiaries that they would not have had under normal market conditions.
- (40) The advantage granted by the scheme is selective, since it is awarded only to undertakings that provide special transport services (see recital (19)).
- (41) The scheme 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 scheme constitutes aid within the meaning of Article 107(1) TFEU. The Dutch authorities do not contest that conclusion.

3.3. Compatibility

- (43) Since both measures that form a part of the scheme involve aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether the measures are compatible with the internal market.
- (44) 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*”.
- (45) 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*”.

- (46) The measures aim at providing liquidity to undertakings providing special transport services 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.
- (47) The measures are part 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 measures to support companies that provide essential services to the more vulnerable parts of the Dutch population is of a scale which can be reasonably anticipated to produce effects across the entire sector and thereby safeguard the provision of these essential transport services in the future. Furthermore, both measures have been designed to meet the requirements of specific categories of aid (“*Limited amounts of aid*” and “*Aid in the form of support for uncovered fixed costs*”) described in section 3.1 and 3.12 of the Temporary Framework.
- (48) The Commission accordingly considers that the measures are necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State and meets all the conditions of the respective sections in the Temporary Framework.

3.3.1. Measure under Section 3.1 Temporary Framework

- (49) As regards the relevant conditions in Section 3.1 of the Temporary Framework:

- The aid takes the form of direct grants (recital (11)).

The overall nominal value of the grants shall not exceed EUR 1 800 000 per undertaking; all figures used must be gross, that is, before any deduction of tax or other charges (recital (27)(a)). 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 (14). The measure therefore complies with point 22(b) of the Temporary Framework;
- Aid may not be granted under the measure to any undertaking that was already in difficulty on 31 December 2019 (see recital (18)). 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 (15)). The measure therefore complies with point 22(d) of the Temporary Framework;

3.3.2. Measure under Section 3.12 Temporary Framework

- (50) As regards the relevant conditions in Section 3.12 of the Temporary Framework:

- Aid is granted under the measure no later than 31 December 2021 and covers uncovered fixed costs incurred during the period between 1 July 2020 and 13 October 2020 inclusively (recital (15)). The measure therefore complies with point 87(a) of the Temporary Framework;

- Aid is granted under the measure on the basis of a scheme to undertakings that suffer a decline in turnover during the eligible period of at least 30% compared to the same period in 2019. Also if no turnover decline can be established compared to 2019, the reference period will still be 2019, however based on a different comparable contract that was in force at the time (recital (29)(b)). The measure therefore complies with point 87(b) of the Temporary Framework;
- Uncovered fixed costs are defined under the measure in accordance with point 87(c) of the Temporary Framework and the aid intensity will not exceed 70% of the uncovered fixed costs (recital (29)(c)). The losses of undertakings from their profit and loss statements during the eligible period¹⁶ are considered to constitute uncovered fixed costs. The aid under this measure may be granted based on forecasted losses. The final amount of aid will be determined after realisation of the losses on the basis of audited accounts. Any payment exceeding the final amount of the aid must be recovered (recital (29)(d)). The measure therefore complies with point 87(c) of the Temporary Framework;
- The aid takes the form of direct grants (recital (11)). The overall nominal value of the grants will not exceed EUR 10 million per undertaking all figures used must be gross, that is, before any deduction of tax or other charges (recital (29)(e)). The measure therefore complies with point 87(d) of the Temporary Framework;
- Aid may not be granted under the measure to any undertaking that was already in difficulty on 31 December 2019 (recital (18)). The measure therefore complies with point 87(f) of the Temporary Framework.

(51) For both measures, the Dutch authorities confirm that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected (recital (35)). The Dutch authorities further confirm that the aid under both measures 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 (30) to (34)).

3.3.3. *Conclusion*

(52) The Commission therefore considers that the scheme 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.

¹⁶ One-off impairment losses are not included in the calculation of the losses.

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

