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**Subject: State Aid SA.101892 (2022/N) – The Netherlands
COVID-19: Eighth amendment of the direct grant scheme to support
the fixed costs for enterprises affected by the COVID-19 outbreak
(amendments to SA.57712, SA.59535, SA.60166, SA.62241, SA.63257,
SA.63984, SA.100829 and SA.101235)**

Excellency,

1. PROCEDURE

- (1) By electronic notification of 9 February 2022, the Netherlands notified amendments (the “notified amendments”) to State aid measure SA.57712 “COVID-19: direct grant scheme to support the fixed costs for small and medium-sized enterprises affected by the COVID-19 outbreak” approved by Commission Decision C(2020) 4442 final of 26 June 2020 (the “initial decision”)¹, under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (the “Temporary Framework”)², as amended in cases:

¹ OJ C 294, 4.9.2020, p. 1.

² 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), C(2021) 564 (OJ C 34, 1.2.2021, p. 6) and C(2021) 8442 (OJ C 473, 24.11.2021, p.1).

Zijne excellentie meneer Wopke Hoekstra
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- (a) SA.59535 “Amendment of the scheme SA.57712 - COVID-19: direct grant scheme to support the fixed costs for small and medium-sized enterprises affected by the COVID-19 outbreak” (the “first amendment”)³;
- (b) SA.60166 “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”” (the “second amendment”)⁴;
- (c) SA.62241 “Third amendment of the direct grant scheme to support the fixed costs for enterprises affected by the COVID-19 outbreak” (the “third amendment”)⁵;
- (d) SA.63257 “COVID-19: Fourth amendment of the direct grant scheme to support the fixed costs for enterprises affected by the COVID-19 outbreak (amendments to SA.57712, SA.59535, SA.60166, SA.62241)” (the “fourth amendment”)⁶;
- (e) SA.63984 “COVID-19: Fifth amendment of the direct grant scheme to support the fixed costs for enterprises affected by the COVID-19 outbreak (amendments to SA.57712, SA.59535, SA.60166, SA.62241, SA.63257)” (the “fifth amendment”)⁷;
- (f) SA.100829 “COVID-19: Sixth amendment of the direct grant scheme to support the fixed costs for enterprises affected by the COVID-19 outbreak (amendments to SA.57712, SA.59535, SA.60166, SA.62241, SA.63257 and SA.63984)” (the “sixth amendment”)⁸; and
- (g) SA.101235 “COVID-19: Re-introduction of the schemes SA.56914, SA.61360, SA.62816, SA.57397, SA.57850, SA.62556, as already amended and amendment of scheme SA.57712, as already amended)” (the “seventh amendment”)⁹

(collectively, the “existing aid scheme”).

- (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 1/1958¹⁰ and to have this Decision adopted and notified in English.

³ Approved by the Commission on 20 November 2020, C(2020) 8286 final.

⁴ Approved by the Commission on 9 February 2021, C(2021) 942 final.

⁵ Approved by the Commission on 15 March 2021, C(2021) 1872 final.

⁶ Approved by the Commission on 22 June 2021, C(2021) 4735 final.

⁷ Approved by the Commission on 26 July 2021, C(2021) 5709 final.

⁸ Approved by the Commission on 10 December 2021, C(2021) 9427 final.

⁹ Approved by the Commission on 19 January 2022, C(2022) 405 final.

¹⁰ Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

2. DESCRIPTION OF THE NOTIFIED AMENDMENTS

- (3) The Netherlands wishes to amend sub-measure (a) of the existing aid scheme, introduced by the second amendment¹¹, as amended by the third, fourth, fifth, sixth and seventh amendment, providing aid for the period from 1 October to 31 December 2021, by introducing a derogation for the reference period for small and medium-sized enterprises (“SMEs”), the owner of which was entitled to pregnancy and/or parental leave for at least three weeks of the reference periods provided for in the sixth amendment. For those SMEs, the reference period shall be the third calendar quarter of 2020.
- (4) The Netherlands wishes to prolong sub-measure (a) of the existing aid scheme, introduced by the second amendment, as amended by the third, fourth, fifth, sixth and seventh amendment, and to provide aid in the form of direct grants for the period from 1 January to 31 March 2022, subject to the following amendments:
- (a) An enterprise is eligible if it lost at least 30% of its turnover in the period from 1 January to 31 March 2022 compared to either the same period in 2019 or the same period in 2020, at the choice of the applicant.
 - (b) By derogation, for beneficiaries registered for the first time in the Commercial Register after 31 December 2018 and before 1 October 2019, the reference period shall be, at the choice of the applicant, the first calendar quarter of 2020 or the first full calendar quarter following the month of entry in the Commercial Register. By derogation, for beneficiaries registered for the first time in the Commercial Register after 30 September 2019, the reference period shall be, at the choice of the applicant, the third calendar quarter of 2020 or the first full calendar quarter following the month of entry in the Commercial Register.
- (5) Applications can be submitted after the entry into force of these notified amendments.
- (6) The legal basis for the notified amendments is (i) the “Kaderwet EZK- en LNV-subsidies” (“legal framework for the granting of subsidies by the Minister of Economic Affairs and Climate Policy”)¹² and (ii) the draft Regulation “Regeling subsidie vaste lasten financiering COVID-19” (“Regulation on the financing of fixed costs COVID-19”)¹³.
- (7) The estimated budget of the measure for aid to undertakings for the period from 1 January to 31 March 2022 is EUR 1.9 billion. The measure is not co-financed by Union funds.
- (8) Aid may be granted under the existing aid scheme, as amended, as from the notification of the Commission’s decision approving the notified amendments.

¹¹ Sub-measure (a) of the existing aid scheme is the only measure of the existing aid scheme, as amended, that has not expired.

¹² See footnote 5 of Commission decision C(2021) 942 final approving the second amendment.

¹³ Draft Regulation of the Minister for Economic Affairs and Climate Policy, No WJZ/22003003, provided by the Dutch authorities with the notification.

- (9) Apart from the notified amendments, the Netherlands confirms that no further amendments are proposed to the existing aid scheme and that all other conditions of that scheme remain unaltered.

3. ASSESSMENT

3.1. Lawfulness of the measure

- (10) By notifying the amendments before putting them into effect, the Dutch authorities have respected their obligations under Article 108(3) TFEU.

3.2. Existence of State aid

- (11) 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 be liable to affect trade between Member States.
- (12) The existing aid scheme constitutes State aid within the meaning of Article 107(1) TFEU for the reasons set out in recitals (55) to (60) of the decision approving the second amendment, recital (15) of the decision approving the third amendment, recital (11) of the decision approving the fourth amendment, recital (11) of the decision approving the fifth amendment, recital (13) of the decision approving the sixth amendment and recital (14) of the decision approving the seventh amendment. The notified amendments do not affect that conclusion. The Commission therefore refers to the respective assessment of the aforementioned decisions and concludes that the existing aid scheme, as amended, constitutes State aid within the meaning of Article 107(1) TFEU.

3.3. Compatibility

- (13) The existing aid scheme is compatible with the internal market pursuant to Article 107(3)(b) TFEU, since it meets the conditions of Sections 2 and 3.1 of the Temporary Framework for the reasons set out in recitals (61) to (66) and (85) and (86) of the decision approving the second amendment, recitals (16) to (19) of the decision approving the third amendment, recitals (12) to (15) of the decision approving the fourth amendment, recitals (12) to (15) of the decision approving the fifth amendment, recitals (14) to (17) of the decision approving the sixth amendment and recitals (22) to (24) of the decision approving the seventh amendment. The Commission therefore refers to the respective assessment of the aforementioned decisions.
- (14) The notified amendments, as described in recitals (3) to (8), do not affect the conclusion of the compatibility assessment referred to in recital (13). In particular:
- (a) The amendment related to the eligibility of beneficiaries (recitals (3) and (4)) has no impact on the compatibility of the existing aid scheme, which continues to comply with point 22(c) and 22(c)bis of the Temporary Framework;

- (b) The increase of the budget as indicated in recital (7) has no impact on the compatibility assessment of the existing aid scheme, as it complies with point 22(b) of the Temporary Framework, which requires that the scheme has an estimated budget;
 - (c) The modification of the period in which beneficiaries can apply to the measure (recital (5)) does not modify the conclusions of the compatibility assessment of the existing aid scheme, as the period for the granting of the aid remains in the limit as provided by point 22(d) of the Temporary Framework.
- (15) Apart from the notified amendments, the Netherlands confirms that no further amendments are proposed to the existing aid scheme and that all other conditions of that scheme remain unaltered (recital (9)).
- (16) The Commission therefore considers that the notified amendments are necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State pursuant to Article 107(3)(b) TFEU, since they meet all the relevant conditions of the Temporary Framework. The notified amendments do not alter the Commission's conclusion on the compatibility of the existing aid scheme.

4. CONCLUSION

The Commission has accordingly decided not to raise objections to the existing aid scheme, as amended, 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