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**Subject: State Aid SA.100463 (2022/N) – Netherlands –
Aid scheme to promote modal shift from road to rail and inland
waterways**

Excellency,

1. PROCEDURE

- (1) Following pre-notification contacts, on 25 May 2022, by electronic notification, the Dutch authorities notified, in accordance with Article 108(3) of the Treaty on the Functioning of the European Union (“TFEU”), an aid scheme promoting the modal shift from road to rail and inland waterways in the Netherlands (the “scheme” or the “notified measure”).
- (2) On 14 July 2022, the Commission requested additional information from the Dutch authorities on the notified measure. On 20 July 2022 the Dutch authorities submitted additional information.

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- (3) The Netherlands exceptionally agreed to waive its rights deriving from Article 342 TFEU, in conjunction with Article 3 of Regulation 1/1958¹ and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE NOTIFIED MEASURE

2.1. Objective of the notified measure

- (4) The objective of the notified measure is to support the modal shift of freight from road transport to inland waterways and rail transport by compensating the beneficiaries for the difference in external costs between, on the one hand rail transport and inland waterways transport, and on the other hand road transport. In particular, the notified measure aims at encouraging a modal shift of at least 200 TEU² per day from road to inland waterways on the so-called “Freight Transport Corridors East and Southeast”³ and of at least 2,000 TEU per day from road to rail.
- (5) According to the Dutch authorities, without the aid, there would be no incentive for the undertakings to engage in the modal shift. The notified measure consists of two sub-measures: the first sub-measure relates to the transport of goods by inland waterways (“sub-measure 1”) and the second sub-measure relates to the transport of goods by rail (“sub-measure 2”).

2.2. Legal basis

- (6) The national legal basis of the notified measure will be a regulation of the Ministry of Infrastructure and Water Management laying down rules for the Subsidy incentive scheme for modal shift from road transport towards inland water or rail transport 2022, a draft of which has been submitted to the Commission (“the draft Regulation”).
- (7) The draft Regulation will be adopted only after the notification of the Commission’s decision approving the notified measure.

¹ Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 16.10.1958, p. 385.

² Twenty-foot Equivalent Unit (TEU), i.e. the standard unit for counting containers of various capacities and for describing the capacities of container ships or terminals.

³ According to the definition in the legal basis of the notified measure, the “Freight Transport Corridor East” refers to the system of main roads, railways and waterways that links the port of Rotterdam via the Arnhem-Nijmegen region to Germany. The main roads include in particular road A15 and the relevant road sections located on this route or that serve as feeder roads. The Waal, Lek and Nederrijn are the most important waterways and the Betuwe Route is the most important rail line along this corridor. “Freight Transport Corridor Southeast” refers to the system of main roads, railways and waterways between the port of Rotterdam via the Venlo region towards Germany. The main roads include roads A15, A16, A58, A67 and the relevant road sections located on this route or that serve as feeder roads. The Meuse and the Brabant canals are the main waterways and the Brabant route is the main rail line along this corridor.

2.3. Beneficiaries

- (8) For sub-measure 1, the eligible beneficiaries are shippers⁴ and logistics operators⁵ organising the transportation of goods by inland waterways. Moreover, eligible operations are only operations that would take place on the so-called “Freight Transport Corridors East and Southeast” in order to relieve their congestion due to renovation and replacement works.
- (9) For sub-measure 2, the eligible beneficiaries are shippers and logistics operators organising the transportation of goods by rail. Railway undertakings are not included in the scope of beneficiaries.
- (10) To be eligible, companies must shift a minimum of 3 TEU per day from road transport to inland waterways transport or from road transport to rail transport over a minimum distance of 35 kilometres (“km”).
- (11) The following undertakings are excluded from the scope of beneficiaries:
 - (a) undertakings which are subject to a recovery order resulting from a decision of the Commission declaring State aid incompatible with the internal market;
 - (b) undertakings which are considered to be in difficulty within the meaning of the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty⁶.

2.4. Budget and duration

- (12) The overall budget of the notified measure is EUR 22.5 million, of which EUR 15 million will be allocated to sub-measure 1 and EUR 7.5 million to sub-measure 2.
- (13) The notified measure will be put into effect only after the notification of the Commission’s approval until 1 January 2026.

2.5. Administration of the measure

- (14) The granting authority will be Stichting Connekt⁷, which will be in charge of publishing the call for applications and will administrate the aid. All applications should be submitted to Stichting Connekt using an online application form⁸.
- (15) Stichting Connekt will select projects on a “first come, first served” basis.

⁴ According to the definition in the legal basis of the notified measure, a shipper is a company that transports its own cargo or that engages a carrier for such purpose.

⁵ According to the definition in the draft Regulation, a logistics operator is a transport intermediary that acts as an organizer between a shipper and a carrier in the process of shipping and transporting goods and is not a carrier for the eligible transport operation.

⁶ OJ C 249 of 31.07.2014.

⁷ Stichting Connekt is a foundation, which was established in 2000 as an independent organisation entrusted to implement government policy. By way of a framework agreement, it was entrusted by the Ministry of Infrastructure and Water Management with the task to implement and support policy initiatives in the field of mobility and logistics.

⁸ See: www.topsectorlogistiek.nl.

2.6. Form of support, maximum aid amount, eligible costs and aid intensity

- (16) The support takes the form of non-refundable grants for reducing external costs for a maximum duration of 24 months.
- (17) The Dutch authorities will grant the following maximum aid amounts to the beneficiaries:
- Under sub-measure 1, EUR 20 for each container transported by inland waterway transport in Freight Transport Corridors East or Southeast.
 - Under sub-measure 2, EUR 20 for each container transported by rail on the Dutch territory.
- (18) The Dutch authorities explain that the maximum aid amount was identified in relation to a standard container that is normally transported on the freight traffic corridors identified in recital (4), over a standard single trip in the Dutch territory. The standard container and standard trip were identified as follows based on the freight traffic data collected by the Dutch Ministry of Infrastructure and Water Management in relation to the Dutch territory:
- The weight of a standard container corresponds to approximately 20 tonnes.⁹
 - The reference freight single trip corresponds to the distance between the port of Rotterdam and Venlo for transport services by rail (177 km) and between the port of Rotterdam and Nijmegen for transport services by inland waterway (165 km). The two segments are part of the intercontinental freight transport routes that run on the TEN-T network in the Dutch territory; those segments represent the major cause of negative externalities;
- (19) The Dutch authorities also indicated that the aid granted under both sub-measure 1 and sub-measure 2 will remain under the thresholds laid down in point 107(b) of the Community guidelines on State aid for railway undertakings¹⁰ (“Railway Guidelines”), i.e. 50% of the external costs savings of transport by rail or by inland waterways compared to transport by road and 30% of the total cost of rail or inland waterway transport.
- (20) For the sake of administrative efficiency, the respect of both thresholds will be checked in relation to the overall volume of cargo transported by rail or by inland waterways over the relevant year for which the beneficiary will apply for the aid.
- (21) To that purpose the aid will be granted to beneficiaries based on an annual report submitted by the beneficiary which must include the number and weight of all containers transported, the distance covered by the cargo transported by rail or inland waterways and the total cost of that transport.¹¹

⁹ 1.7 TEU, where 1 TEU weighs 12 tonnes on average (1.7 * 12 tonnes = 20.4 tonnes).

¹⁰ Communication from the Commission – Community guidelines on State aid for railway undertakings, OJ C 184 of 22.7.2008, p. 13.

¹¹ See Article 12 of the draft Regulation and the corresponding specifications by Stichting Connekt.

- (22) On the basis of the annual report, the granting authority will quantify the overall aid amount to which the beneficiary is entitled for the transport services carried out over the relevant year and will ensure that the aid will not exceed 50% of the external costs savings of transport by inland waterways or by rail compared to transport by road, and 30% of the total cost of transport by inland waterways or by rail. The aid will not exceed EUR 20 per container, independently from the weight of the containers transported and the distance covered.
- (23) First, as regards the 50% threshold applicable in relation to the external costs savings, the Dutch authorities explained that the eligible costs correspond to the external costs which inland waterway freight transport (for sub-measure 1) or rail freight transport (for sub-measure 2) make it possible to avoid compared to road freight transport. The external costs as well as the eligible costs are defined based on the Commission’s Study “Sustainable Transport Infrastructure Charging and Internalisation of Transport Externalities”¹² and the Commission’s Handbook on the external costs¹³ (“Commission’s Handbook”). According to the Commission’s Handbook, the external costs are estimated at EUR 0.033 per tonne kilometre (“tkm”) for road freight transport; EUR 0.017 per tkm for inland waterway transport; and EUR 0.011 per tkm for rail freight transport. This means that the difference between the external costs of road and inland waterway transport is EUR 0.016 per tkm and the difference between the external costs of road and rail transport is EUR 0.022 per tkm. According to the Dutch authorities, as the maximum aid that may be granted will not exceed the amount of EUR 0.008 per tkm for inland waterway transport¹⁴ and EUR 0.011 per tkm for rail transport¹⁵, the aid will not exceed 50% of the eligible costs.
- (24) Second, as regards the 30% threshold applicable to the total cost of transport by inland waterways or by rail, the Dutch authorities explained that the total cost of those means of transport will be quantified based on a report specifically conducted for the Ministry of Infrastructure and Water Management by Panteia, a research and consulting firm.¹⁶ Based on that report, the total costs of transport of a standard container over a reference freight single trip (see recital (18)) is estimated at EUR 150 for transport by inland waterways and EUR 170 for transport by rail. Therefore, the maximum aid granted under the scheme (namely EUR 20 for each container) will not exceed 30% of the total cost of transport by inland waterways or by rail (i.e. EUR 51 and EUR 45 respectively).

2.7. Reporting and monitoring

- (25) As explained in recital (21), beneficiaries are required to submit annual reports to Stichting Connekt. Such reports must include the information on the freight

¹² European Commission, “Sustainable Transport Infrastructure Charging and Internalisation of Transport Externalities”, Luxembourg: Publications Office of the European Union, May 2019.

¹³ Handbook on the external costs of transport, Version 2019 – 1.1, available at <https://op.europa.eu/en/publication-detail/-/publication/9781f65f-8448-11ea-bf12-01aa75ed71a1>.

¹⁴ 50% of EUR 0.016 = EUR 0.008

¹⁵ 50% of EUR 0.022 = EUR 0.011

¹⁶ The report will be published on the website of the National Government, available at: www.rijksoverheid.nl, within 30 days from the adoption of the legal basis.

volumes shifted from road to inland waterways or to rail and the total cost of that transport. Further, beneficiaries have to demonstrate how the modal shift has been structurally incorporated in their business operations.

- (26) Beneficiaries are required to participate in an evaluation of the scheme after five years from the date of the aid award.
- (27) Stichting Connekt will be responsible for monitoring the scheme as well as for recovering any amounts unduly paid to the beneficiaries (including interest).

2.8. Cumulation

- (28) As per Article 11 of the draft Regulation, the aid under the notified measure may not be cumulated with other State aid or with other Union funding if, as a result, the combined support exceeds the relevant thresholds set out in point 107(b) of the Railway Guidelines.
- (29) Beneficiaries are requested to inform the relevant authorities of any other support they receive during the period of application of the notified measure.

3. ASSESSMENT OF THE NOTIFIED MEASURE

3.1. Lawfulness of the notified measure

- (30) As noted in recitals (6) and (7), the draft Regulation has not yet been adopted.
- (31) By notifying the measure before putting it into effect, the Dutch authorities have respected the standstill obligation under Article 108(3) TFEU.

3.2. Existence of aid

- (32) By virtue of Article 107(1) TFEU “*any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.*”
- (33) The criteria laid down in Article 107(1) TFEU are cumulative. Therefore, for a measure to constitute State aid within the meaning of Article 107(1) TFEU all of the following conditions need to be fulfilled. The measure must:
 - (a) be granted by the State or through State resources;
 - (b) confer a selective advantage to its beneficiaries;
 - (c) distort or threaten to distort competition; and
 - (d) affect trade between Member States.

3.2.1. *Economic activity and notion of undertaking*

- (34) The concept of an undertaking covers any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed¹⁷. Any activity consisting in offering goods and services on a given market is an economic activity¹⁸.
- (35) The beneficiaries under the notified measure are shippers and logistics operators transporting goods by inland waterways under sub-measure 1, and shippers and logistics operators transporting goods by rail under sub-measure 2. Beneficiaries of both sub-measure 1 and sub-measure 2 offer services on markets which are open to competition, namely on the inland waterway freight transport market and the rail freight transport market respectively, hence they engage in an economic activity. Therefore, the beneficiaries are to be considered undertakings.

3.2.2. *State resources and imputability*

- (36) In order for a measure to be found as being granted by a Member State or through State resources in any form whatsoever, it must (i) be granted directly or indirectly through State resources and (ii) be imputable to the State.
- (37) In this case, the aid takes the form of a grant to the beneficiaries and is financed through the resources made available through the State budget. The Commission notes that the notified measure will be introduced by a regulation described in recitals (6) and (7) to be adopted by the Dutch authorities. The Commission also notes that the measure will be granted by an organisation entrusted by the Ministry of Infrastructure and Water Management to implement and support policy initiatives in the field of mobility and logistics. Therefore, the aid is financed from the State budget and is imputable to the State.

3.2.3. *Selective advantage*

- (38) An advantage, within the meaning of Article 107(1) TFEU, is any economic benefit, which an undertaking would not have obtained under normal market conditions, that is to say in the absence of State intervention. Article 107(1) TFEU also requires that a measure, in order to constitute State aid, is selective in the sense that it favours “*certain undertakings or the production of certain goods*”.
- (39) By supporting undertakings, namely shippers and logistics operators, active in inland waterway freight transport and rail freight transport through non-repayable grants, which is a form of financing not available on the market, an economic advantage is conferred on the beneficiaries.

¹⁷ Judgment of the Court of Justice of 18 June 1998, *Commission v Italy*, C-35/96, ECLI:EU:C:1998:303, paragraph 36; Judgment of the Court of Justice of 23 April 1991, *Klaus Höfner and Fritz Elser v Macrotron GmbH*, C-41/90, ECLI:EU:C:1991:161, paragraph 21; Judgment of the Court of Justice of 16 November 1995, *FFSA and Others*, C-244/94, ECLI:EU:C:1995:392, paragraph 14; Judgment of the Court of Justice of 11 December 1997, *Job Centre Coop. arl*, C-55/96, ECLI:EU:C:1997:603, paragraph 21.

¹⁸ Judgment of the Court of Justice of 16 June 1987, *Commission v Italy*, 118/85 ECLI:EU:C:1987:283, paragraph 7.

- (40) The notified measure is selective insofar as only shippers and logistics operators shifting freight transport from road to either inland waterway or rail are eligible (see recitals (8) and (9)).

3.2.4. *Distortion of competition and effect on trade between the Member States*

- (41) In accordance with settled case-law¹⁹, for a measure to distort competition, it is sufficient that the recipient of the aid competes with other undertakings on liberalised markets.
- (42) The Commission notes that when aid granted by a Member State strengthens the position of an undertaking compared with other undertakings competing in intra-Union trade, the latter must be regarded as affected by that aid.
- (43) Since the notified measure concerns markets that are liberalised²⁰ and compete with road freight transport, the Commission considers that the measure is liable to distort competition and to have an effect on intra-Union trade.

3.2.5. *Conclusion on the existence of aid*

- (44) In light of the above, the Commission concludes that the notified measure involves State aid within the meaning of Article 107(1) TFEU.

3.3. Compatibility of the aid

- (45) Article 93 TFEU states that “*aids shall be compatible with the Treaties if they meet the needs of coordination of transport or if they represent reimbursement of the discharge of certain obligations inherent in the concept of a public service*”. In this regard, the Commission notes that measures for the coordination of transport may be needed when certain modes of transport do not bear the costs of the negative externalities that they impose on society.
- (46) The concept “coordination of transport” has a significance that goes beyond the simple fact of facilitating the development of an economic activity. It implies an intervention by the public authorities, which is aimed at guiding the development of the transport sector in the common interest.
- (47) In its Communication on “The European Green Deal”²¹, the Commission noted that “*as a matter of priority, a substantial part of the 75% of inland freight*

¹⁹ Judgment of the General Court of 30 April 1998, *Het Vlaamse Gewest v Commission*, T-214/95, ECLI:EU:T:1998:77, paragraph 50.

²⁰ As regards rail transport, in accordance with Directive No 2004/51/EC, international rail freight transport is liberalized from 1 January 2006 and all other rail freight services from 1 January 2007 (Directive No 2004/51/EC of the European Parliament and of the Council of 29 April 2004 amending Council Directive 91/440/EEC on the development of Community railways, OJ L 164, 30.4.2004, p. 164). As regards inland waterway transport, following the adoption of Council Directive 96/75/EEC of 19 November 1996 (OJ L 304, 27.11.1996, p. 12), from 1 January 2000 contracts in the field of national and international inland waterway transport in the EU are to be freely concluded and prices freely negotiated.

²¹ COM (2019) 640 final of 11.12.2019. Available at: https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal_en.

carried today by road should shift onto rail and inland waterways". Similarly, in its Communication on a "Sustainable and Smart Mobility Strategy – putting European transport on track for the future"²², the Commission noted the need for "*decisive action to shift more activity towards more sustainable transport modes (notably shifting a substantial amount of freight onto rail, inland waterways, and short sea shipping)*", indicating that transport by inland waterways and short sea shipping should increase by 25% by 2030 and by 50% by 2050, and transport by rail should double by 2050.

- (48) The Commission observes that, as explained in recital (4), the notified measure aims at improving the modal shift from road to both inland waterways and to rail. Thus, the notified measure falls within the scope of Article 93 TFEU.
- (49) Sub-measure 1, which concerns inland waterway transport, will be assessed directly under Article 93 TFEU based on the Commission's previous decision practice²³. For sub-measure 2 concerning rail freight transport, rules for the interpretation of Article 93 TFEU have been set out in section 6 of the Railway Guidelines. In accordance with the Commission's decision-making practice²⁴, the principles set out in the Railway Guidelines concerning aid for reducing external costs apply also when the direct beneficiaries of the scheme are not railway undertakings. The compatibility assessment of sub-measure 2 will therefore be carried out on the basis of Article 93 TFEU (aid for the coordination of transport), as interpreted by Section 6 of the Railway Guidelines, in particular its sub-section 6.3 ("Criteria for aid for rail infrastructure use, reducing external costs and interoperability").

²² COM (2020) 789 final of 9.12.2020. Available at: https://ec.europa.eu/transport/themes/mobilitystrategy_en.

²³ Commission decision of 3 June 2015, in case SA.38229, Luxembourg, Aide à la promotion du transport combiné pour la période 2015-2018, OJ C 309, 18.09.2015, p.1; Commission decision of 14 September 2015 in case SA.42388, Belgium, Support measure for intermodal waterborne transport in the Brussels-Capital Region for the period 2016-2020, OJ C 343, 16.10.2015, p. 1; Commission decision of 9 November 2018 in case SA.50217, Sweden, Swedish Eco-bonus scheme for short sea shipping and inland waterway transport, OJ C 14, 11.01.2019, p. 3; Commission decision of 6 August 2021, in case SA.60177, Belgium, Aid scheme improving the quality of intermodal connections to and from Flemish seaports, OJ C 355, 03.09.2021, p. 1; Commission decision of 20 September 2021 in case SA.58817, Italy State aid scheme to support freight transport by inland waterways, OJ C 500, 10.12.2021, p. 1.

²⁴ Commission decision of 15 May 2020, in case SA.53615, Italy Interventions in favour of the city of Genoa, OJ C 206, 19.6.2020, p.1; Commission decision of 20 December 2018, in case SA.50115, Italy, Intermodal rail transport of iron slabs in the FVG region, OJ C 90 of 08.03.2019, p. 2; Commission decision of 6 December 2017 in case SA.48858, Italy, Aid scheme supporting combined transport in the Province of Bolzano, OJ C 158 of 04.05.2018, p. 6; Commission decision of 25 July 2017 in case SA.46806, Italy, Aid to combined transport in the Province of Trento, OJ C 442 of 22.12.2017, p. 2; Commission decision of 29 April 2016 in case SA.41033, Italy, Integrated transport scheme in the Province of Trento, OJ C 220, 17.06.2016, p. 2, Commission decision of 26 May 2015 in case SA.40404, France & SA.39606, Ital, Régime d'aide au service transitoire d'autoroute ferroviaire alpine, OJ 66 of 19.2.2016, p. 2-3; Commission decision of 13 June 2014 in case SA.38152, Italy, Aid in favour of rail freight transport in Emilia Romagna region, OJ C 282 of 22.8.2014, p. 23; Commission decision of 16 December 2011, in case SA.32603, Italy, Subsidy scheme "Ferrobonus" for combined transport, OJ C 88 of 24.3.2012, p. 1.

3.3.1. *Compatibility of sub-measure 1 under Article 93 TFEU*

- (50) For a given aid measure to be considered to “meet the needs” of transport coordination, it has to contribute to the coordination of transport and be necessary and proportionate. Furthermore, the aid must be open to all undertakings based on objective and transparent criteria and undue negative effects on competition and trade in the Union should be avoided.

3.3.1.1. Development of the transport sector and contribution to transport coordination

- (51) As described in recital (47), transport by inland waterways together with short sea shipping transport should increase by 25% by 2030 and by 50% by 2050.
- (52) Sub-measure 1 aims at reducing the difference in costs between road and inland waterway transport and at promoting the use of inland waterway transport (see recital (4)). Thereby, it also contributes to reducing freight transport by road and thus road congestion and pollution on the Freight Transport Corridors East and Southeast (see recital (8)).
- (53) By pursuing these objectives, the notified measure stimulates the development of the transport sector in the Netherlands and contributes to its coordination.
- (54) The Commission therefore concludes that the aid pursues the objective of coordinating transport.

3.3.1.2. Necessity and the incentive effect of aid

- (55) In its previous decisions²⁵, the Commission has acknowledged that inland waterway transport bears higher costs than road transport, while it offers considerable environmental advantages. These additional costs are essentially imputable to the specific characteristics of the infrastructure involved (in particular trans-shipment equipment) that can prevent the desired modal shift from occurring so that market forces alone are not sufficient to bring about such a shift.
- (56) In that context, the Commission has emphasized that State intervention is necessary to encourage the private operators to pursue alternative modes of transport²⁶.

²⁵ Commission decision of 3 June 2015, in case SA.38229, Luxembourg, Aide à la promotion du transport combiné pour la période 2015-2018, OJ C 309, 18.09.2015, p. 1; Commission decision of 14 September 2015 in case SA.42388, Belgium, Support measure for intermodal waterborne transport in the Brussels-Capital Region for the period 2016-2020, OJ C 343, 16.10.2015, p. 1; Commission decision of 9 November 2018 in case SA.50217, Sweden, Swedish Eco-bonus scheme for short sea shipping and inland waterway transport, OJ C 14, 11.01.2019, p. 3; Commission decision of 6 August 2021, in case SA.60177, Belgium, Aid scheme improving the quality of intermodal connections to and from Flemish seaports, OJ C 355, 03.09.2021, p. 1; Commission decision of 20 September 2021 in case SA.58817, Italy State aid scheme to support freight transport by inland waterways, OJ C 500, 10.12.2021, p. 1.

²⁶ Commission decision of 4 February 2014, in case SA.37293, Belgium, Prolongation du régime d'aides en faveur des modes de transport alternative à la route pour la période 2014-2020, OJ C 163, 28.05.2014, p. 1; Commission decision of 9 November 2018, in case SA.50217, Sweden, Swedish

- (57) By providing support to shippers and logistics operators transporting goods via inland waterway, sub-measure 1 aims at reducing the competitiveness gap between inland waterways transport and road transport. The Commission concludes that sub-measure 1 in support of the modal shift is necessary to achieve the objectives pursued.
- (58) As explained by the Dutch authorities (see recital (4)), without the aid, there would be no incentive for the beneficiaries to shift freight from road to inland waterways. The Commission thus concludes that the aid is necessary and has an incentive effect.

3.3.1.3. Proportionality of aid and non-discrimination

- (59) The Commission notes that in order to simplify the administration of the measure, the Dutch authorities will allocate an amount of aid equal to EUR 20 per container based on companies' forecasts on the number of containers to be transported over a given year. At the end of the given year, the granting authority will verify, based on a report that will be submitted by the aid beneficiaries, the precise volume of cargo transported by inland waterways (i.e. number and weight of containers transported) and the distance covered over the relevant year in order to ensure that the aid does not exceed (i) 50% of the external costs savings of transport compared to transport by road; and (ii) 30% of the total cost of transport by inland waterways (see recital (19)).
- (60) The Commission notes that, the Dutch authorities defined the maximum aid amount per container in relation to a standard container that is normally transported on the freight traffic corridors identified in recital (4), over a standard single trip in the Dutch territory. In particular, the Dutch authorities took into account the fact that a standard container weights approximately 20 tonnes, and that the reference freight single trip corresponds to a distance of 177 km for transport services by rail and 165 km for transport services by inland waterway (see recital 18).
- (61) Based on the report conducted for the Ministry of Infrastructure and Water Management by Panteia (see recital 24), the total costs of transport of a standard container over a reference freight single trip is EUR 150 for transport by inland waterways and EUR 170 for transport by rail. On that basis, the Dutch authorities set the aid amount at EUR 20 per container, which ensures that the aid is below the applicable threshold of 30% of the total costs of transport by rail and inland waterways (namely EUR 45 and EUR 51 respectively).
- (62) The Commission observes that all aid beneficiaries will be required to submit to the aid granting authorities an annual report indicating the number and weight of all containers transported, the distance covered by the cargo and the total cost incurred for the transport by inland waterways (see recitals (20) to (22)).²⁷ On that basis, the Dutch authorities committed to ensure that the aid will not exceed (i)

Eco-bonus scheme for short sea shipping and inland waterway transport, OJ C 14, 11.01.2019, p. 1; Commission decision of 6 August 2021 in case SA.60177, Belgium, Aid scheme improving the quality of intermodal connections to and from Flemish seaports, OJ C 355, 03.09.2021, p. 1.

²⁷ See Article 12 of the draft Regulation and the corresponding specifications by Stichting Connekt.

50% of the external costs savings of transport by inland waterways compared to transport by road; and (ii) 30% of the total cost of transport by inland waterways (see recital (19)). To that purpose, the Dutch authorities explained that the granting authority will take into account (i) the external costs savings of transport by inland waterways compared to transport by road, as these result from the Commission's Handbook and the values therein (see recital (23)); and (ii) the total cost of inland waterway transport, as it results from the report conducted by the research and consulting firm Panteia on behalf of the Ministry of Infrastructure and Water Management, which will be made public once the scheme is adopted (see recital (24)). The Dutch authorities committed that appropriate claw-back mechanisms will be put in place to ensure respect of the applicable thresholds.

- (63) The Commission notes that in similar cases it has considered aids of up to 50% of the external costs savings and up to 30% of the total transport costs to be compatible with the internal market²⁸.
- (64) Furthermore, the Commission considers that the mechanism put in place by the Dutch authorities ensures that the aid granted to beneficiaries will not exceed the said limits and will thus be limited to the minimum necessary.
- (65) The Commission therefore considers that the maximum aid amount under sub-measure 1 is proportionate.
- (66) As described in Section 2.3, sub-measure 1 is open to all eligible beneficiaries meeting objective and transparent conditions specified in recitals (8) and (10). Hence, the Commission concludes that sub-measure 1 is non-discriminatory.

3.3.1.4. Avoidance of undue negative effects on competition and trade between Member States

- (67) The Commission notes that sub-measure 1, compared to the situation that would prevail in the absence of support for intermodal transport, is liable to distort the normal course of competition on the market. This is so because the scheme will support only certain activities, in this case inland waterway transport, to the detriment of other modes of transport, in particular road transport.
- (68) However, the scheme will facilitate the coordination of transport, while supporting the modal shift towards more environmentally friendly means of transport, namely inland waterway transport.
- (69) The Commission notes that the scheme contributes to a modal shift towards inland waterway transport, which reduces the imbalances between transport by road and inland waterway transport. Without the aid, the beneficiaries would not engage in the modal shift from road to inland waterways. Consequently, the Commission considers that the aid does not adversely affect trading conditions to an extent contrary to the common interest.

²⁸ See Commission decision of 20 September 2021 in case SA.58817 (2020/N) – Italy State aid scheme to support freight transport by inland waterways, OJ C 500, 10.12.2021, p.1, recital 107 and footnote 47.

- (70) Additionally, sub-measure 1 minimizes the distortions on competition and trade, as it is necessary, appropriate and proportionate (see sections 3.3.1.2 and 3.3.1.3).
- (71) Therefore, the Commission concludes that the distortion of competition is limited.

3.3.1.5. Conclusion on the compatibility of sub-measure 1

- (72) In view of the above, the Commission considers that sub-measure 1 fulfils the conditions set out in Article 93 TFEU. The Commission therefore concludes that sub-measure 1 is compatible with the internal market pursuant to Article 93 TFEU.

3.3.2. Compatibility of sub-measure 2 under the Railway Guidelines

- (73) According to point 95 of the Railway Guidelines, aid that meets the needs of transport coordination is in principle considered compatible with the TFEU. Point 96 of the Railway Guidelines provides that for a given aid measure to be considered to “meet the needs” of transport coordination it has to be necessary and proportionate to the intended objective. Furthermore, the distortion of competition, which is inherent in the aid must not jeopardise the general interests of the European Union. According to point 97 of the Railway Guidelines the aid scheme needs to be limited to a maximum of five years, in order to allow the Commission to re-examine it in the light of the results obtained and, where necessary, to authorise its renewal.
- (74) According to point 98 of the Railway Guidelines, aid for the needs of transport coordination can take several forms including aid for reducing external costs, designed to encourage a modal shift to rail because it generates lower external costs than other modes of transport such as road transport.

3.3.2.1. External costs savings

- (75) The transport sector entails major negative externalities, both as regards individual users (congestion, accidents) and society as a whole (pollution). As a result, there may be disparities between the different modes of transport, which it may be appropriate to correct by way of public support for those modes of transport that give rise to the lowest external costs.
- (76) The Railway Guidelines state in point 103 that “*as regards aid for reducing external costs, the eligible costs are the part of the external costs which rail transport makes it possible to avoid compared with competing transport modes.*”
- (77) Point 105 of the Railway Guidelines provides that for aid for reducing external costs, Member States have to provide a transparent, reasoned and quantified comparative cost analysis between rail transport and the alternative options based on other modes of transport. The methodology used and calculations performed must be made publicly available.
- (78) The Commission notes that the Dutch authorities calculated the eligible costs based on the Commission’s Handbook (see recital (23)). The Dutch authorities have compared the external costs generated by rail transport to those generated by road transport. Since the highest cost differential is that between road transport and rail transport, the Commission finds this approach reasonable.

- (79) Furthermore, the Commission notes that the Dutch authorities have based the methodology for their external costs calculations on the Commission's Handbook, and that the external costs analysis is therefore based on a sound methodology. The Commission further notes that the Handbook is publicly available. In addition, the Commission notes that the calculations concerning the total costs of transport are based on a report conducted for the Ministry of Infrastructure and Water Management by the research and consulting firm Panteia (see recital (24)) which will be published once the legal basis has been adopted. Thus, the Commission considers that the conditions laid down in point 105 of the Railway Guidelines, which requires a transparent, reasoned and quantified comparative cost analysis between rail transport and the alternative modes of transport, are satisfied.
- (80) In the light of the above, the Commission concludes that sub-measure 2 complies with point 103 and with point 105 of the Railway Guidelines.

3.3.2.2. Necessity and proportionality of the aid

- (81) The Railway Guidelines state in point 109 that aid for reducing external costs has to be strictly limited to compensating the opportunity costs connected with the use of rail transport rather than with the use of a more polluting mode of transport.
- (82) Points 107(b) and 109 of the Railway Guidelines set out a presumption of necessity, proportionality and absence of overcompensation when the intensity of the aid for reducing external costs does not exceed 50% of the external costs savings and stays below 30% of the total cost of rail transport.
- (83) In line with point 109 of the Railway Guidelines, where there are several competing options, which cause higher levels of pollution than rail transport, the aid has to be limited to the highest cost differential among the various options.
- (84) The Commission notes that EUR 20 is the maximum aid amount per container that the Dutch authorities defined in relation to a standard container that is normally transported on the freight traffic corridors that the notified measure is targeting for the purpose of the modal shift, over a standard single trip in the Dutch territory. The Commission also notes that the same mechanism is in place as described in relation to sub-measure 1 in order to simplify the administration of the measure (see recital (59)). The Dutch authorities will allocate an amount of aid equal to EUR 20 per container based on companies' forecasts on the number of containers to be transported over a given year. At the end of the given year, the granting authority will verify, based on a report that will be submitted by the aid beneficiaries, the precise volume of cargo transported by rail (i.e. number and weight of containers transported) over the relevant year for which the beneficiary has applied for the aid (see recitals (20) to (22)).
- (85) The Commission notes that the Dutch authorities committed to ensure that the aid will not exceed (i) 50% of the external costs savings of transport by rail compared to transport by road; and (ii) 30% of the total cost of transport by rail (see recital (19)). To that purpose, the Dutch authorities explained that the granting authority will carry out the proportionality check taking into account (i) the external costs savings of transport by rail compared to transport by road, as these result from the Commission's Handbook and the values therein (see recital (23)); and (ii) the

total cost of rail transport, as it results from the report conducted by the research and consulting firm Panteia (see recital (24)). The Dutch authorities also committed that appropriate claw-back mechanisms will be put in place to ensure respect of the applicable thresholds.

- (86) The Commission considers that the mechanism put in place by the Dutch authorities complies with the methodology set out in the Railway Guidelines and that it ensures that the beneficiaries will not receive aid exceeding the thresholds set out in point 107(b) of the Railway Guidelines, i.e. 50% of the eligible costs and 30% of the total cost of rail transport. Furthermore, the Commission positively notes that the proportionality check at the level of the annual volume transported by each beneficiary also allows reducing the administrative burden in the granting authority.
- (87) In view of the above, the Commission concludes that the aid is proportionate and necessary, in line with points 107(b) and 109 of the Railway Guidelines.
- (88) According to point 111 of the Railway Guidelines, there must be realistic prospects of keeping the traffic transferred to rail so that the aid leads to a sustainable transfer of traffic.
- (89) In this regard, the Commission observes that the conditions to receive aid under the scheme have been designed with the view to trigger a modal shift from road to rail in the medium-long term. All beneficiaries need to demonstrate how the modal shift has been structurally incorporated in their business operations (see recital (25)). This is an eligibility condition to receive support under the scheme. The Commission considers that as the aid is granted to logistics operators and shippers transporting goods by rail (see recital (9)), this will in turn positively affect demand for freight transport services and thus contribute to keep a sustainable transfer of traffic from road freight transport to rail freight transport in line with point 111 of the Railway Guidelines, as modal shift will be structurally incorporated into the business operations of the beneficiaries.
- (90) In view of all the above, the Commission concludes that, in accordance with point 111 of the Railway Guidelines, sub-measure 2 encourages the modal shift to rail and there are realistic prospects that the aid leads to a sustainable transfer of traffic.

3.3.2.3. Avoidance of undue negative effects on competition

- (91) According to point 96 of the Railway Guidelines, the distortion of competition, which is inherent in any aid must not jeopardise the general interest of the Union. This means that the negative effects on competition and trade of the measure under assessment must remain limited.
- (92) The Commission notes that sub-measure 2, compared to the situation without support to the rail freight transport, is liable of distorting the normal course of competition in the market. This is so, because it will support only rail freight transport services, to the detriment of other freight transport modes (such as road freight transport).

- (93) At the same time, the Commission notes that sub-measure 2 will support the use of rail freight transport and thus incentivise the modal shift and, therefore, more environmentally friendly means of transportation (see recital (4)).
- (94) Moreover, as regards competition between different transport modes, the measure is limited to reducing imbalances between rail freight transport and road freight transport. Additionally, sub-measure 2 minimizes the distortions on competition and trade, as it is necessary and proportionate (see section 3.3.2.2).
- (95) Therefore, the Commission finds that sub-measure 2 limits undue negative effects on competition and trade and does not give rise to a distortion of competition to an extent contrary to the general interest according to point 96 of the Railway Guidelines.

3.3.2.4. Non-discrimination and duration

- (96) Aid under sub-measure 2 will be granted according to a non-discriminatory procedure, as described in Section 2.3, to beneficiaries meeting objective and transparent conditions specified in recitals (9) and (10). Therefore, the Commission concludes that sub-measure 2 is granted on non-discriminatory terms.
- (97) Finally, according to point 97 of the Railway Guidelines the aid scheme has to be limited to a maximum of five years, in order to allow the Commission to re-examine it in the light of the results obtained and, where necessary, to authorise its renewal. The Commission observes that the duration of the scheme, including sub-measure 2, will cover the period from its approval until 1 January 2026 (see recital (13)) and therefore have a duration of less than five years, in line with the maximum duration laid down in point 97 of the Railway Guidelines.

3.3.2.5. Cumulation

- (98) As described in section 2.8, the Dutch authorities commit to respect the rules on cumulation laid down in point 124 of the Railway Guidelines. Support under the notified measure will not be combined with other State aid or with other Union funding if, as a result, the combined aid exceeds the limits laid down in the Railway Guidelines. Moreover, the beneficiaries will be required to inform the relevant authorities of any other support they are receiving.
- (99) The Commission therefore considers that the cumulation rules laid down in point 124 of the Railway Guidelines are respected.

3.3.2.6. Conclusion on compatibility of sub-measure 2

- (100) The Commission concludes that sub-measure 2 fulfils the criteria of section 6 of the Railway Guidelines, and in particular of section 6.3 thereof. Sub-measure 2 can therefore be considered to meet the needs of coordination of transport pursuant to Article 93 TFEU.

4. CONCLUSION

- (101) The Commission has accordingly decided not to raise objections to the notified measure on the grounds that it is compatible with the internal market pursuant to Article 93 TFEU.
- (102) If this letter contains confidential information, which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site:

<http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Your request should be sent electronically to the following address:

European Commission,
Directorate-General Competition
State Aid Greffe
B-1049 Brussels
Stateaidgreffe@ec.europa.eu

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

