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Luxembourg,  
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**Subject:** Ex-post methodological advice on the statistical treatment of the transactions between the Kingdom of the Netherlands and TenneT

**References:** Your letter 1807-18-EOC, 18/06/2018  
Eurostat preliminary opinion, 08/08/2018  
Statistics Netherlands e-mail, 22/09/2018  
Ministry of Finance Memorandum, 03/12/2018  
Ministry of Finance e-mail, 04/12/2018  
Ministry of Finance e-mail, 01/02/2019  
Ministry of Finance second Memorandum, 20/09/2019  
Statistics Netherlands note, 04/12/2019

Dear Ms Verbruggen,

In your letter of 18 June 2018 you requested an opinion on behalf of the Ministry of Finance of the Netherlands regarding the recording of the government capital injections into TenneT Holding B.V. (TenneT) as well as the recording of the dividend payments to the Dutch government. Eurostat issued a preliminary opinion on 8 August 2018 based on the information provided at the time. On 3 December 2018, the Dutch Authorities provided a Memorandum drafted by the Ministry of Finance in reaction to the preliminary opinion of Eurostat. On 5 December 2019, Statistics Netherlands provided Eurostat with its conclusions on the accounting treatment of the transactions concerned opining that the capital injections should be recorded as capital transfers, together with a second Memorandum of the Ministry explaining the reasons why, in its view, the equity injections should be recorded as financial transactions with no impact on the surplus/deficit of general government. Meetings took place between Eurostat and

Statistics Netherlands/Ministry of Finance on 20 June 2018, 11 December 2018 and 27 February 2020<sup>1</sup>. The current opinion draws on the outcome of these meetings and the information submitted by Statistics Netherlands and the Ministry of Finance.

## 1. THE ACCOUNTING ISSUE FOR WHICH A CLARIFICATION IS REQUESTED

### Introduction

Statistics Netherlands requested an ex-post advice on the national accounts treatment of the transactions between the Kingdom of the Netherlands and TenneT namely i) the capital injections in TenneT since 2016 and ii) the treatment of dividends paid to the Dutch State. The request was made on behalf of the Dutch Ministry of Finance.

Government made the capital injections in the context of the investment programme in the Dutch high-voltage grid scheduled for the next 10 years as notified by TenneT to the Ministry of Finance in February 2016<sup>2</sup>.

The issues of the accounting treatment of the capital injections and the dividends paid to the State were also discussed in the context of the April 2018 EDP notification<sup>3</sup>.

Since June 2018, Statistics Netherlands has reported the three capital injections in the Dutch ESA tables and EDP notification tables as capital transfers (with time of recording 2016).

The request for an opinion did not concern the sectorisation of TenneT.

### Documentation provided by Statistics Netherlands and the Ministry of Finance

Statistics Netherlands and the Ministry of Finance have provided a number of documents in relation to the current request for an opinion. An overview of the documents is shown in the table below:

Document	Date of transmission/Reference
Statistics Netherlands note requesting an ex-post opinion by Eurostat with the following documents: - Short note prepared by the Ministry of Finance (Not dated). - TenneT integrated Annual Report 2017.	E-mail 18 June 2018, ARES(2018) 3224875
TenneT investment agenda notified to the Ministry of Finance in relation to the 2016 government capital injection (in Dutch), 1 April 2016	E-mail 19 June 2018, Ares(2018)3356406
Memorandum of the Ministry of Finance of the Netherlands (December 2018)	E-mail 3 December 2018, Ares(2018)6210086
Agreement for an Additional Capital Injection between the State of Netherlands, The Ministry of Finance and	E-mail 4 December 2018

<sup>1</sup> With one representative of TenneT

<sup>2</sup> Letter from TenneT to the Ministry of Finance, reference CNC2016-427, dated 19 February 2016.

<sup>3</sup> See our e-mail of 18 April 2018

TenneT Holding BV, 20 December 2016 (in Dutch)	Ares(2018) 6970550
<p>Second Memorandum (20 September 2019) of Ministry of Finance) with annexes:</p> <ul style="list-style-type: none"> <li>- Letter from TenneT to Ministry of Finance requesting a capital increase, 19 February 2016 (in Dutch)</li> <li>- Advisory Bank Final Report on Project Electra II, 13 April 2016</li> <li>- Letter from the Ministry of Finance to the President of the House of Representatives of the State General, 12 July 2016 (in Dutch)</li> <li>- 2011 Agreement for an Additional Capital Injection between the State of Netherlands (Ministry of Finance and TenneT Holding BV (in Dutch), 17 October 2011</li> </ul>	E-mail 5 December 2019 Ares (2020) 48172
<p>Note from Statistics Netherlands (4 December 2019) to Eurostat with annexes:</p> <ul style="list-style-type: none"> <li>- Decision of the Ministry of Economic Affairs concerning the granting of subsidies for the management of the offshore network of Borssele and Dutch coast (in Dutch), 13 December 2016,</li> <li>- Authority of Consumers and Market (ACM) paper on their '<i>Incentive regulation of the gas and electricity networks in the Netherlands</i>', May 2017</li> </ul>	E-mail 5 December 2019 Ares (2020) 48172

In addition to the above documents, Eurostat has used a number of other public documents available mainly on the web sites of the Dutch government, TenneT, and the Authority of the Consumers and Market (ACM). References are provided in the current note as needed.

### **Description of the case**

TenneT Holding B.V. (Hereinafter 'TenneT') is the fully state-owned holding company<sup>4</sup> of TenneT TSO B.V. (Hereinafter 'TenneT TSO') and TenneT GmbH & Co. KG, the intermediate holding company for the group's German subsidiaries TenneT TSO GmbH and TenneT Offshore GmbH.

TenneT is an electricity transmission system operator (TSO) with activities in the Netherlands and Germany. TenneT TSO is the sole owner and operator of Netherlands' high voltage transmission grids. TenneT TSO GmbH is the owner and operator of the high-voltage electricity transmission network that runs north to south through large sections of Germany. With a total grid length of 22,800 kms, TenneT's network area covers approximately 41 million end-consumers in the Netherlands and Germany.

TenneT's primary tasks are to provide power transmission and system services and to facilitate the energy market. These tasks stem from the appointment as TSO falling under the 'Dutch Elektriciteitswet (E-wet)' and the 'German Energiewirtschaftsgesetz (EnWG)'. Close to 100% of TenneT's revenue and around 95% of its operating income stems from regulated network activities in the Netherlands and Germany.

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<sup>4</sup> The Kingdom of the Netherlands holds 100% of the share capital of TenneT.

On 6 September 2013, forty-seven organisations – amongst others – public authorities, employers, unions, environmental and social organisations, as well as financial institutions, settled with the public authorities an ‘Energy Agreement for Sustainable Growth’ (in Dutch: ‘*Energieakkoord voor duurzame groei*’<sup>5</sup>) on the development of sustainable growth in the Netherlands. The Energy Agreement encompassed a comprehensive climate and energy policy plan aimed at long-term sustainability and sets out agreed short to medium-term measures in ten pillars. One of these pillars is the increase of renewable energy production to 16 % by 2023. The Energy Agreement identified inter alia the need for additional offshore wind farm projects to be developed and to reach 4450 MW in total by 2023 and the creation of an offshore electricity grid. It also reaffirmed the objective to implement 6,000 MW of land wind capacity by 2020.

As an important step towards the realisation of the renewable energy targets as set out in the National Energy Agreement, was the adoption of the Offshore Wind Energy Act - OWEA (in Dutch: ‘*Wet wind energie op zee*’) in 2015. The OWEA regulates the construction, exploitation and decommissioning of wind farms in the Dutch territorial sea and the Dutch exclusive economic zone. The OWEA was part of the extensive governmental road map<sup>6</sup> to scale up the generation of renewable energy by providing 3,450 MW of additional capacity from offshore wind energy (in addition to the existing parks and parks already in preparation), making a significant contribution to the target of 16%.

To this end, Government had decided that the most cost effective way to achieve this target was to foresee the construction of offshore connection platforms of 700 Megawatt each. As the operator of the offshore grid, TenneT TSO was appointed to build five standard platforms of 700 MW each connected to the onshore high-voltage grid via high capacity transmission cables.

The designation of TenneT TSO as the operator of the new offshore grid followed a decision by Government<sup>7</sup> and sparked a specific legislative procedure for the adoption of an ‘emergency’ bill<sup>8</sup> in 2016 in order to amend the Electricity Act 1998. The amendments to the Electricity Act were aiming at formalising the legal basis for the designation of TenneT TSO as the builder (no high voltage offshore grid as such existed at the time) and the system operator of the Dutch offshore network.

As such, TenneT TSO is responsible for the connection of the wind farms to the grid at sea. At the time, the government had also allocated a maximum of €18 billion to subsidies for renewable energy (SDE+ Subsidies<sup>9</sup>) for offshore wind, commensurate with these targets.

Although no licences are required for power generation in the Netherlands under the Electricity Act 1998, a specific licensing regime applies to offshore wind power generation, pursuant to the Offshore Wind Energy Act (OWEA). The OWEA licence procedure is a combined application procedure for SDE+ subsidies and the exclusive license to build a wind farm within a site designated by the Minister of Economic

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<sup>5</sup> <https://www.rijksoverheid.nl/documenten/convenanten/2013/09/06/energieakkoord-voor-duurzame-groei>

<sup>6</sup> Brief Van de Minister van Economische Zaken, Structuurvisie Windenergie op Zee (SV WoZ), Dossier A/ Nr. 11 HERDRUK, 3 October 2014, Kamerstuk , 33561

<sup>7</sup> Brief van de Minister van Economisch Zaken aan de Voorzitter van de Tweede Kamer der Staten-Generaal, Den Haag, 18 juni 2014

<sup>8</sup> Wet van 23 maart 2016 tot wijziging van de Elektriciteitswet 1998 (tijdig realiseren doelstellingen Energieakkoord)

<sup>9</sup> ‘Stimulering Duurzame Energieproductie’ or ‘Sustainable Energy Production’ production subsidies.

Affairs. The permit to develop a wind farm on a particular site is awarded to the winner of the subsidy tender. The application for the licence and SDE+ subsidy must be submitted to the ‘Dutch Enterprise Agency’<sup>10</sup> (dependent from the Ministry of Economic Affairs).

On 19 February 2016, TenneT made a request to the Ministry of Finance for a capital injection of minimum EUR 1 billion of which EUR 500 million before 1 March 2017 and another EUR 500 million before 31 December 2018. In its letter, TenneT explained that it made this request in order to make investments amounting to EUR 5.7 billion for the onshore and offshore grids for the next five years, while TenneT found it prudent to increase their capital by one billion euro in order to keep their creditworthiness and continue to access capital markets on wide basis.

According to the ‘Investment Agenda of TenneT Netherlands’<sup>11</sup> of 1 April 2016, the expected annual investments for the next ten years established investments amounting to EUR 6.3 billion, consisting of investment on land (EUR 4.1 billion, of which approximately EUR 1.8 billion on major projects), at sea (EUR 1.9 billion) and in interconnections (EUR 0.2 billion).

In December 2016, the Dutch State and TenneT formally agreed<sup>12</sup> to contribute up to 1.2 EUR billion of new equity over the period 2017-2020 to finance TenneT's Dutch onshore and offshore grids investments. The government released the first tranche in March 2017 (EUR 150 million). The next tranches were paid in 2018 (EUR 350 million) and in 2019 (EUR 280 million). The final tranche (EUR 410 million) is conditional and would only be granted after due consideration of the financial situation of the Company in 2020<sup>13</sup>.

In 2017, TenneT Holding B.V. issued hybrid securities for EUR 1 billion for the financing of high voltage connections to offshore wind farms in Germany. Hybrid securities are in fact subordinated securities, and are, after the common equity, the most junior instruments in the capital structure of the company. It is possible for the company to avoid payments to hybrid security owners and therefore such securities are part of the equity attributable to the company's equity holders.

In February 2019, TenneT announced that it expected to invest approximately EUR 35 billion over the next ten years, of which EUR 12 billion in the Netherlands. The increase in the portfolio compared to the previous year mainly relates to an expected investment of EUR 5 billion in offshore grid connections as part of phase 2 of the expansion of offshore wind energy in the Dutch part of the North Sea.

In September 2019, the Government announced that due to the increase in the investments needed for the energy transition, TenneT needs additional financing of EUR 4.75 billion. Government declared that the Netherlands must retain control over investments in its own country and that it will examine various options for financing TenneT in the coming months. Options include a new capital injection by the Dutch State, the sale or partial sale of TenneT to a private party, or a form of cooperation with the German state.

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<sup>10</sup> RVO, Rijksdienst voor Ondernemend Nederland

<sup>11</sup> Investeringsagenda of TenneT Nederland, Notitie ten behoeve van het Ministerie van Financiën in capitaal verzoek 2016, 1 April 2016,

<sup>12</sup> ‘Overeenkomst tot Additionele Kapitaalstorting tussen de Staat der Nederlanden en TeneT Holding B.V. en TeneT TSO B.V., gedateerd 20 December 2016’

<sup>13</sup> Financial Statements of TenneT for the year 2017, note 6.2.1

Given that TenneT TSO B.V. has a monopoly as a TSO both in the Netherlands and its service area in Germany, its key tasks are regulated by independent regulatory bodies. The Authority for Consumers and Markets ('ACM') is the designated regulatory authority for the electricity market in the Netherlands. Given that TenneT has also a service area in Germany, TenneT is also supervised by the German Federal Network Agency '*Bundesnetzagentur*' (BNetzA).

Certain regulatory powers are assigned to the Dutch Minister of Economic Affairs. In this regard, the Minister must publish an Energy Report every four years that provides guidance to the Government for decision-making and law making for electricity related matters. For example, the energy report of 2015 had its main focus on the energy transition and triggered the government road map mentioned above. In addition, the designation of a network operator is subject to the Minister of Economic Affairs' consent.

In their market supervisors' capacity, the regulators seek to balance the interests of consumers, businesses and system operators against the objectives of affordability, security of supply and sustainability, by providing system operators with incentives for efficient operations, by using benchmarks where possible, and by setting the allowed rate of return on invested capital.

Therefore, the regulator determines the revenue and the maximum tariffs applicable to TenneT TSO regulatory activities. It decides on the tariff methodology and takes decisions on (maximum) tariffs. The allowed regulatory revenue reflects the costs of an 'efficient TSO' and comprises the reimbursement of operating expenses, depreciation and a return on invested capital. This regulatory regime for tariffs ensures that TenneT gets a compensation for the depreciation of its investments and that it makes a return on the capital invested in the regulatory asset base. There are some differences in the methodologies applied by the Dutch and German regulators.

Consequently<sup>14</sup> the regulatory framework provides that TenneT TSO receives a return on the capital invested starting at the point when assets are taken into use. Thus a growing asset base results in higher regulated revenue. In Germany, the regulatory framework is similar but allows companies like TenneT to receive an immediate return on capital invested in large projects.

In its 2017 annual report, TenneT specified that it '*measures and assesses its performance on regulatory activities*' based on the '*underlying financial information*', thus not on IFRS reported financials:

$$\text{IFRS} + \text{Regulatory Deferral Accounts} = \text{Underlying financial information}$$

Underlying financial information is based on the principle of recognising regulatory assets and liabilities, which (based on the current regulatory framework) need to be collected from or are to be returned to customers through future grid tariffs. Under IFRS, reimbursements or settlements through future grid tariffs may not be taken into account. As a result, regulatory assets or liabilities cannot be recognised under IFRS.

The underlying financial information is reconciled with IFRS for revenue, EBIT, assets and liabilities to the consolidated financial statements in the financial statements of TenneT. The main reconciling items are amounts to be settled in future tariffs, auction receipts and related investment contributions, proceeds from the maintenance of the energy balance of the high voltage grid and some differences in tangible fixed assets.

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<sup>14</sup> Integrated Annual Report 2017, TenneT Holding B.V. , page 93

In the IFRS accounts, revenue is recognised when realised and measured at the fair value of the consideration received or receivable, by taking into account the contractually defined terms of payments and excluding taxes.

If revenue collected or collectable exceeds the maximum annual amount as determined by the regulators, then an adjustment will be made to the future tariffs to reflect this overstatement of revenue in IFRS. However, in IFRS, no liability is recorded in this respect since the tariffs adjustment will be related to future services. Likewise, no asset is recognised when a regulator allows tariff increases in case revenue recognised is below revenue allowed by regulators.

TenneT distributes dividends to the State on an annual basis. In 2017 a common dividend of EUR 146 million was paid. In 2018, the dividend was similar (EUR 147 million euro). A pay-out ratio of 35% of the underlying profit attributable to the State is enshrined in a dividend policy agreed with the State.

## **2. METHODOLOGICAL ANALYSIS AND CLARIFICATION BY EUROSTAT**

### ***Applicable accounting rules***

- ESA 2010, Chapter 20, Capital injections (§ 20.197 to § 20.204), in particular, § 20.198 and § 20.199 refer to capital injections into public corporations, while § 20.104 elaborates on fiscal policy operations
- ESA 2010, Chapter 4, Capital transfers – Investment grants (§ 4.152 to § 4.163).
- ESA 2010, Chapter 4, Distributed income of corporations (§ 4.53 to § 4.57) refer to dividends distributed by corporations to their shareholders as well as to super-dividends.
- ESA 2010, chapter 20, § 20.205-20.206 discuss further the borderline between dividends and super-dividends.
- The 2019 Manual on Government Deficit and Debt (MGDD) provides also a section (Section 3) on the classification of transactions between government and a public entity, in particular capital injections into public corporations (Section 3.2) dividends and super-dividends (Section 3.5).
- ESA 2010 § 1.101 specifies that the time of recording is based on an accrual basis.
- ESA 2010, chapter 1, § 1.78 specifies the rule for recognising the principal party to a transaction.

## ***Methodological analysis and clarification by Eurostat***

### *Capital injections in TenneT*

#### *Capital transfer vs. acquisition of equity*

In its Memorandum of 20 September 2019, the Ministry of Finance expressed its view on the accounting treatment of the capital injection in TenneT. It argued that the injection is a financial transaction in the government accounts because, in its view:

- i) the injection is carried out to maintain the long term financial stability of the company,
- ii) the State has a valid expectation of receiving a sufficient rate of return,
- iii) TenneT has a large degree of freedom to use the funds provided,
- iv) the injection was not made to cover losses since TenneT's operations are profitable, and,
- v) the injection was not initiated to 'directly simulate public policy purposes'.

Conversely, Statistics Netherlands is of the opinion that the transaction has the features of a non-financial transaction<sup>15</sup>. In its note of 4 December 2019, Statistics Netherlands concluded that, in its view, the capital injection follows public policy objectives and is, to some extent, earmarked for specific purposes. In addition, Statistics Netherlands questions the relevance of the expected return on investments criteria given the applicable regulatory framework and the fact that TenneT's offshore activities are fully subsidised by government.

In Eurostat's view, when determining the classification of a transaction, it is essential to consider the role of the government in the transaction and to determine its underlying economic substance. The latter concerns in particular the circumstances of the provision of funds by the Dutch government.

In particular, MGDD – section 3.2 – Capital injections into public corporations, Box 1 – *Recording transactions: straightforward cases and difficult areas*, states that '*in practice, compilers are confronted either with straightforward cases that lead to clear statistical treatments, or with borderline cases that require further inquiries and applying various tests*'.

It provides a first example of a simple case of recording of capital injections, the case of investment grants (D.92). In accordance with ESA 2010 § 4.152, the MGDD provides that '*A capital injection that would consist of a capital transfer in cash or in kind made by government (...) to another resident (...) institutional unit to finance all or part of the costs of its acquiring of fixed assets is to be recorded as an investment grant (D.92).*'

Furthermore, for a profitable investment to be recorded as an acquisition of equity MGDD, section 3.2, Box 1, indicates that '*a capital injection given to a public corporation with the objective of increasing the government's future dividends should be recorded in F.5. This would be the case when the corporation is free to use the funds to maximise profits and the government expects a market return on its investment, i.e. a return similar to that, which could be obtained, from the acquisition of shares quoted on the market*'.

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<sup>15</sup> In the context of the latest Dutch benchmark revision for national accounts, the treatment was revised with an impact on the surplus/deficit in the underlying government finance statistics.



This follows the reasoning in ESA § 20.198(b), which provides for two conditions to record a capital injection by the State as a purchase of equity. The first condition is particularly addressed in the capital injection test and requires that government has the ‘*valid expectation of earning a sufficient rate of return in the form of dividends or holding gains*’.

Section 3.2.2.1 of the MGDD provide details on the conditions for the application of the so-called ‘capital injection test’ and specifies that when government pursues social or collective policy objectives, the capital injection should be recorded as capital transfer if inter alia the funds are provided without expecting a sufficient rate of return on investment. In this context, a good measure of the rate of return is the return on equity normally requested by private investors or shareholders for similar equity investments. The calculation of the rate of return must exclude transfer payments from government, such as subsidies, from the corporation’s revenues.

The second condition in ESA § 20.198(b) is of equal importance when analysing a capital injection, i.e. the entity that is receiving the funds should have ‘*a large degree of freedom*’ in how to use them. From this, it can be concluded that, if the provision of government funds is *de facto* earmarked to the acquisition of fixed assets, ESA 2010 foresees the recording of a non-financial instead of a financial transaction. In the current case, Eurostat observes that the purpose of the capital injections was not to increase the government's share in TenneT's capital, since government already holds 100% of the company's capital. In this case, Eurostat also draws attention to the fact that according to ESA § 20.200, in case of 100% state owned public corporations, the automatic increase in the stock of equity is not used as a criterion to determine the nature of the capital injection.

Based on the above considerations, Eurostat examined the following:

- i) if the capital injection was made to pursue social or collective policy objectives,
- ii) if a sufficient rate of return could have been expected by Government, and,
- iii) TenneT TSO B.V. had a large degree of freedom in using the funds with a view to maximise profits for its shareholder.

### ***On the social and collective policy objectives***

In their letter to the Ministry of Finance of 19 February 2016, TenneT explained that based on a prudent assessment, it would need a capital increase of EUR 1 billion to finance the planned investments in the Netherlands both for the offshore and the onshore grids. The assessment was made with a view for TenneT to continue borrowing funds on capital markets at affordable conditions under its current credit ratings. The process was completed in December 2016. As stated in the integrated annual report of TenneT for the year 2017, government finally contributed for up to EUR 1.2 billion of new equity over the period 2017-2020 to finance the Dutch onshore and offshore investment portfolio.

In the introduction of their last Memorandum, the Ministry of Finance is stating that ‘*the capital is solely provided to ensure that TenneT retains its capital position*’ and that ‘*the Dutch State acts in the same capacity as a private shareholder*’.

Alternatively, the investment in the connections of wind-farms to the electricity grid could also be considered as a national investment to ensure a public policy need, i.e., scaling up the generation of renewable energy by providing significant additional capacity from offshore wind energy and new on-shore energy sources (including solar

and wind). In making a significant step to the target of 16 % of sustainable energy of the 2013 Energy Agreement.

Government was a key party of the 2013 Energy Agreement. The parties to the agreement<sup>16</sup> concluded that the creation of an offshore grid would be more efficient than direct connections and that TenneT would be responsible for the offshore grid while *‘a decision by government on the design and pre-conditions would be needed’*<sup>17</sup>, and if necessary incorporated into legislation. The agreement also indicates that government will take a number of actions including the (Accelerated) designation of wind areas in the ‘Structure Vision of the Wind at Sea’ (‘Structuurvisie Wind op Zee’), including the completion of the necessary procedures and grid reinforcement at sea and on land.

The Energy Agreement clarifies further<sup>18</sup> that the energy transition will have far-reaching consequences for the networks that must ensure balancing of supply and demand. In particular, network operators, producers, governments and users *‘will have to take measures to adapt the gas and electricity system and prepare for a growing share of renewable energy in the energy mix’* while *‘the necessary energy infrastructure must be put in place on time because it creates the conditions for a sustainable and reliable energy supply’*<sup>19</sup>. As far as the national high voltage on-shore grid is concerned, the parties to the agreement declared that the current grid could be a limiting factor depending on the ambition placed on wind farms at sea, suggesting that modifications to the national high voltage grid would be needed to distribute increasing sea wind electricity production onto the mainland.

Government elaborated a first road map specifying how it would achieve the capacity target of 3,500 MW for the sea power generation. The starting point for government for the offshore wind energy project was to build and manage the wind farms in the most cost-effective manner and to reduce the impact on the environment<sup>20</sup>. To this end, it was decided that the most effective way to achieve this objective was to build an offshore grid to which wind farms could be directly connected. The offshore grid would then be connected to the onshore grid operated by TenneT TSO to ensure the transmission of the electricity onto the mainland.

In a letter to the President of the House of Representatives dated 19 May 2015<sup>21</sup>, the Ministry of Economic Affairs stated that the total infrastructure costs for 3,500 MW at sea for the period 2019-2028 would reach EUR 4 billion, including the cost reductions agreed in the Energy Agreement. This would mean shifting EUR 4 billion of subsidies paid to wind farm operators to *‘costs to be incurred by TenneT’*. In the same letter, the Ministry stated that *‘appointing TenneT as grid manager at sea will result in a higher capital requirement for TenneT that will have to be financed, possibly through a capital contribution by the State. The offshore grid would increase TenneT’s investment agenda in the Netherlands by approximately 50%.’*

As far as the onshore grid is concerned, the TenneT TSO 2016 Investment Agenda established<sup>22</sup> that, due to the increasing share of solar and wind power in the Netherlands, but also in neighbouring countries, TenneT needed to carry out investments to strengthen

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<sup>16</sup> See page 33 of the Energy Agreement.

<sup>17</sup> In Dutch in the original text

<sup>18</sup> §6, Pillar 4 – Modifications to the infrastructure in the Netherlands

<sup>19</sup> In Dutch in the original text

<sup>20</sup> See paragraph 5 of the letter from the Ministry of Economic Affairs to the President of the House of Representatives, 3 October 2014, ‘Structuurvisie Windeergie op Zee’.

<sup>21</sup> Kamerbrief SDE+ Wind Op Zee 2015, 19 mei 2015

<sup>22</sup> Paragraph 2.2.1 of the ‘Investeringsagenda TenneT Nederland’, 1 April 2016.

the connection with Germany, and to strengthen the national transmission grid. These investments were necessary to spread surpluses of sustainably produced electricity over a larger geographical area in Northwest Europe. In this respect, the 2016 TenneT Investment Plan appeared to be clearly aligned with the objectives of the 2013 Energy Agreement.

In its letter to the President of the House of Representatives of 12 July 2016<sup>23</sup>, the Minister of Finance explained that TenneT's legal responsibilities in the Netherlands translated into a comprehensive investment agenda of EUR 5 to 7 billion up to and including 2025. Approximately one third of this amount pertained to the realisation of the grid at sea while the remaining two thirds concerned the maintenance, renovation and expansion of the onshore grid. The Minister of Finance underlined in the letter that TenneT's investments were necessary to implement the energy agreement and the sustainability objectives while confirming that the construction of the grid at sea is indispensable for this purpose. For a detailed description of the investments, the Minister invited the President of the House of Representatives to refer to the 'Quality and Capacity Document' (KCD 2016<sup>24</sup>) prepared and published by TenneT.

Part II of the 2016 KCD concerning the onshore grid provides details on the investments needed over a period of 10 years (from 2016 to 2025) with total investments estimates ranging from EUR 3.5 billion to EUR 4.7 billion. Section 3 of Part II of the KCD concerns the estimation of the capacity requirements for the grid. It mentions that, thanks to the broad consensus on the 2013 energy agreement, there was an '*unambiguous framework for the development of the electricity supply at least until 2020*'. TenneT had therefore decided to use a '*reference scenario*' based on the agreements in the energy agreement for deciding on the 2016 investment plan. TenneT published a specific 2016 KCD document for the sea grid on 19 May 2016 but this document did not provide an estimation of the specific investments needed for the construction of the grid at sea.

As mentioned above, the purpose of government's roadmap was to reduce the costs of sea wind electricity. To this end, government has provided production subsidies for the construction of offshore wind farms, while TenneT did not, and still does not, charge any fees for their connections to the offshore platforms. In addition, TenneT cannot charge any fee for the transmission of power over the offshore grid<sup>25</sup>. Instead, it receives subsidies from government to cover the construction, management and maintenance of the grid at sea<sup>26</sup>. Statistics Netherlands confirmed that in 2019, TenneT received EUR 60 million of subsidies and EUR 33 million in 2018. In case the subsidies do not cover the allowed revenue as decided by the Regulatory Authority, TenneT can charge the part of the allowed revenue not covered by the subsidy to the clients of the onshore network. This clearly shows that government was willing to satisfy the environmental and public policy needs for increasing the use of renewable energy as expressed in the Energy Agreement of 2013.

In Eurostat's view, the decision to develop an offshore high voltage grid with a dedicated electricity transmission system to which wind parks would connect without charges, to appoint TenneT to build and manage the offshore grid and to provide subsidies for its operation, appear to have followed a government initiative in order to achieve a general

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<sup>23</sup> Kamerbrief van 12 Juli 2016, Kapitaaluitbreiding TenneT

<sup>24</sup> The so-called 'Quality and Capacity Document' (Kwaliteits en Capaciteits document or KCD) analyses the transmission needs of the market and the expected bottlenecks in the national high-voltage, substantiating which investments had to be made over a 10 years' timeframe.

<sup>25</sup> Article 42a of the Electricity Bill.

<sup>26</sup> Article 77g of the Electricity Bill.

policy objective. Based on the documents analysed, it would also appear that the investments needed for the expansion of the on-shore grid are to a significant part – although not fully quantified - stemming from the policy to shift to renewable energy sources.

In their explanatory note of December 2019, Statistics Netherlands also confirmed that the capital injections are clearly linked to public policy purposes.

Eurostat is therefore of the opinion that if a strong and direct link between the capital injection in TenneT and government policy objectives pursued for increasing diversification towards more sustainable energy sources is established, then the capital injection should be recorded as capital transfer.

### ***On the expected rate of return***

The transaction occurred between three parties: the State, TenneT and TenneT TSO. According to the agreement signed between the three parties, the State committed to a capital increase of TenneT under the explicit condition that TenneT injects simultaneously the capital into its subsidiary TenneT TSO for its activities in the Netherlands. Thus in the present case, TenneT Holding was not the final recipient of the capital injection but rather its subsidiary TenneT TSO.

In their last Memorandum provided to Eurostat, the Ministry of Finance explained that the purpose of the equity injection was to maintain the financial creditworthiness (credit rating) of TenneT. To this end, a private investment bank was required to assess the level of the capital required to achieve this objective given the level of capital expenditure envisaged in TenneT's investments agenda. Eurostat noted that the main purpose of the report was not *per se* to determine the 'expected rate of return on the capital injection' for the State but to provide an opinion on the size of the capital contribution request for the funding needs of the Dutch operations with the objective to maintain the current credit rating of TenneT Holding. The analysis thus focused on the equity contribution required by the Dutch TSO in order to ensure that it would not contribute negatively to the financial ratios at the holding level. To this end, the focus was on the funds from operations over net debt ratio (FFO/net Debt) as a key indicator<sup>27</sup> to maintain the rating at the holding level.

Eurostat noted a number of elements included in the independent analysis that are worth mentioning. Firstly, the analysis focused on a period up to the year of 2021 (the current regulatory period during which the method for setting the tariffs had been decided by ACM) and not over the 10 years' timeline of the underlying investment agenda. Secondly, the Bank made some adjustments to the 'base-case' scenario of TenneT including an additional capital injection of EUR 330 million euros for offshore activities in comparison to the initial request made by TenneT suggesting that government and TenneT had already agreed on an injection of this amount at the time the analysis was carried out. Last but not least, the analysis showed that in comparison to its European network peers, TenneT had significantly higher capital expenditure measured in percent of the enterprise value<sup>28</sup>. At the time, the adjusted base case used a capital expenditure (capex) programme of up to EUR 6 billion for TenneT TSO and EUR 29 billion for

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<sup>27</sup> FFO/Net Debt ratio should be maintained at 9.0% or above.

<sup>28</sup> Capex/EV was estimated at 40%, while the second largest was between 15 and 20%. Most peer companies are around 10% or lower.

TenneT Holding. The investments for the period 2015-2025 for TenneT TSO represented more than three times its equity value measured at the end of 2015. As noted by the advisory bank, relative to the company's size measured in 2016, TenneT's investment programme was by far the largest among its peers. The study also showed that the leverage<sup>29</sup> of TenneT (Holding and TSO) was on average much higher than its peers.

The estimations of the capital requirements showed an overall greater capital shortfall for TenneT TSO level than for the Holding company throughout the period (until 2021). On this basis, the report suggests that it could be assumed that TenneT TSO was 'subsidised' by the rest of the Group, thus mainly by the German segment. In this regard, the Annual Report for 2018 showed that the EBIT contribution of the German regulatory activities accounted for 80% of the total EBIT of the Group. Another result of the analysis is that the estimation of the share of the offshore investments to the capital requirements up to 2021 appear to be much higher in comparison to onshore investments. Finally, it should be noted that, according to the study, the equity requirement of TenneT TSO after 2021 reduces below the holding thus suggesting that Germany would have greater requirements to maintain the financial ratios and the overall rating.

In its last memorandum, the Ministry of Finance supports the view that TenneT Holding is a profitable company while dividend payments and earnings per share also increased substantially in the years of the capital injection. It also states that that TenneT's equity has increased after equity contributions were made in 2017 (EUR 150 million) and 2018 (EUR 350 million). It observes that the injection has not been used to finance losses and that the State received something in return, in the form of dividends and a higher value of the financial instrument (e.g. its shares in TenneT Holding).

Eurostat notes that the final beneficiary of the Capital injection is TenneT TSO and that the purpose of the injection was made solely to finance the investments in the Dutch grid, both offshore and onshore. Therefore, the substantiation of the expected level of return should focus on the Dutch TSO.

Eurostat also observes that between 2014 and 2018, TenneT TSO did not pay dividends to its shareholder TenneT Holding except in 2015. In that year, TenneT TSO made a loss of EUR 75 million but still paid dividends amounting to EUR 83 million from the retained earnings of previous years<sup>30</sup>. In 2018, TenneT TSO made another net loss of EUR 13 million. As already mentioned, TenneT TSO also received subsidies for their offshore activities, EUR 33 million in 2018 and EUR 60 million in 2019. The subsidies could reach as much as EUR 105 million in 2020 based on a recent decision of the Regulatory Authority<sup>31</sup> and subsidies are expected to increase substantially after. Such subsidies should be neutralised for the calculation of the expected rate of return. Overall, TenneT TSO revenue, earnings and returns on equity showed an unstable pattern since 2013.

Auction receipts result from auctioning the available transmission capacity on cross-border interconnections. These receipts are no more at the free disposal of TenneT. Until 2015, some investments were financed from these receipts. Since then, TenneT uses auction receipts to reduce future tariffs in agreement with the Dutch regulator. In its 2018 Financial Statements, TenneT TSO discloses a total amount of unused auction receipts of EUR 555 million that must be used to reduce future tariffs. There is no information on

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<sup>29</sup> Measured by the Net Debt/EBITDA ratio of 2016.

<sup>30</sup> The Management Board actually proposed 41million euro, see page 47 of the TenneT TSO B.V. Annual Report 2014.

<sup>31</sup> Inkomstenbesluit TenneT 2020 net op zee, ACM/UIT/520542, 13-12/2019.

the time horizon for clearing the commitment via tariff reductions in the Financial Statements, but given the size of the commitments (roughly 50% of the capital injection), the impact on the future profitability of the company is likely to be sizeable. This risk was also highlighted by Statistics Netherlands in their December 2019 explanatory note.

Given that TenneT is a monopoly, the regulator decides on the maximum level of revenue that TenneT can collect. The allowed regulatory revenue reflects the costs of an efficient TSO and comprises the reimbursement of operating expenses, depreciation and a return on invested capital:

$$\text{Allowed Revenue} = \text{Allowed operating costs} + \text{Allowed Cost of Capital}$$

The allowed operating costs is measured against the costs of an efficient TSO as determined by the regulator. The regulator uses benchmarks or similar techniques and cost assessments to determine that level. Costs are for example grid expenses, staff costs and maintenance costs. The allowed cost of capital is broken down into depreciation and a return on capital. The basis for the reimbursement of the depreciation is the efficient part of the capital expenditure as determined by the regulator via benchmarks and costs assessments. The return on capital is determined by applying a weighted cost of capital to the so-called regulatory asset base.

The methods for setting up the levels of revenue that TenneT TSO can collect are decided for time periods not exceeding five years. The current period started in 2016 and will lapse in 2021. As mentioned by the advisory bank in its report, TenneT was facing significant uncertainties as far as the revenue that it would be allowed to collect after 2021, although investments for which the equity was requested are committed until at least 2025.

In its credit opinion of 20 May 2016, the credit rating agency Moody's explained that TenneT's Dutch regulated network subsidiary entered into a new regulatory period in January 2014, which saw the weighted average cost of capital falling significantly to 3.6% (pre-tax, real), albeit gradually over the three-year period 2014-16, from 6.0% in the previous period. In April 2016, the Authority for Consumers and Markets (ACM), the economic regulator for the Dutch energy networks, published its draft consultation for the next regulatory period commencing in 2017, proposing a further cut in the allowed return to 3.1% by 2021. According to the rating agency, TenneT's diversification into German network activities, which account for around 70-75% of operating profit, provide '*significant risk mitigation*' since, at the time, the decline in allowed returns had been less pronounced for the German grids<sup>32</sup> than for the Dutch grids.

In its credit opinion of 21 March 2017, thus after the capital injection was agreed, the same rating Agency concluded that TenneT had increased cash flow visibility for its Dutch operations for almost five years following the regulator's '*Final Determination*' for the 2017-21 period. However, it viewed the new '*Final Determination*' as challenging, in line with its assessment of the prior control (2014-16), reflecting primarily (1) further cuts to the allowed return; and (2) challenging cost assumptions. For existing and new assets alike, the allowed return fell to 3.0% (real, pre-tax) by 2021, which was below that for other TSOs who receive a real return.

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<sup>32</sup> For the second regulatory period 2014-18 equity returns were set at 9.05% in Germany (nominal, pre-corporate tax, after trade tax), only marginally lower than the 9.29% previously - given the need to encourage investment.

Another constraint on profitability concerns the annual decisions taken by the regulator on an annual basis regarding the tariffs that TenneT can charge to its customers. Each year, the regulator applies a discounting factor<sup>33</sup> to the base level revenue as determined at the beginning of the 5 years period, before deciding on the tariffs that TenneT can charge to its customers on an annual basis. The main purpose of the regulator is to ensure that the operator carries out its activities with efficiency gains over time. The room of manoeuvre of TenneT for increasing its profitability is therefore heavily constrained and mainly depends on efficiency gains.

In their December 2019 explanatory note, Statistics Netherlands confirmed that the regulator ACM sets the maximum tariffs for the regulated activities that TenneT can charge from its customers. It recalled that offshore activities and connections to the mainland are fully subsidised by government and therefore do not yield a market return on investments. In addition, Statistics Netherlands recalled that the overall profitability of TenneT as measured by its EBIT (earnings before interest and taxes) is not impacted by its revenue arising from grid investments, since the regulatory regime ensures that TenneT is compensated for the depreciation of its assets and grid expenses<sup>34</sup>. Statistics Netherlands also stated in their note that the Ministry of Finance had declared to them, that even without the capital injections, the investments would still take place in spite of higher capital costs and thus lower dividends for the State.

In these circumstances, Eurostat considers that in the present case, the assumption that government made a capital injection with the objective to earn a sufficient rate of return, as a private shareholder would have done, is not soundly based. Statistics Netherlands stated in their explanatory note that the purpose of the capital injection was to ‘implement a government policy and to reduce the costs of TenneT’. This would seem to contradict a claim that the purpose was to increase the government’s future dividends of the Dutch TSO by maximising the profits from the investments made in the national grid.

### ***On the degree of freedom to use the funds***

The Ministry of Finance publishes an annual report of the State’s participations in public corporations<sup>35</sup>. In section 5.2 of the 2018 report, the Minister explains that as a shareholder, the Government has a right to approve investments above certain levels. The law foresees that investments above one third of the total balance sheet are approved by the shareholders. Lower levels can be set in the articles of incorporations of public corporations. According to a report of the Dutch Court of Auditors<sup>36</sup>, all investments above 100 million euros are approved by the Ministry of Finance.

The contract between the State of the Netherlands, TenneT Holding B.V. and TenneT TSO B.V. of 20 December 2016 concerning an additional capital injection stipulates (Paragraph 4.2) that the additional capital injection should only be used for the tasks deriving from the 1998 Electricity law<sup>37</sup> in the Netherlands (thus excluding Germany). In the aforementioned contract, the three parties have agreed (Paragraph 1.1) that TenneT would use the capital injection exclusively to carry out the Investment Plan of TenneT TSO for the period 2016-2025.

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<sup>33</sup> The so-called x-factor.

<sup>34</sup> See also the TenneT TSO B.V. Annual Accounts 2018, page 8. ‘(...) higher grid expenses lead to higher revenues, but do not affect our underlying EBIT.’

<sup>35</sup> Jaarverslag Beheer Staasdeelnemingen 2018

<sup>36</sup> Report on TenneT’s investments in the Dutch high-voltage network, Rekenkamer, 2015

<sup>37</sup> Elektriciteitswet 1998

Part II of the 2016 KCD provides details on the Investment agenda for the period 2016-2025. The KCD makes a distinction between investments in Large Cluster projects and other investments. Large Cluster projects represented about half of the total investments for the period (roughly 2 billion euros).

As far as large investments are concerned, TenneT must comply with the State Coordination Regulation (RCR)<sup>38</sup>. Certain projects of national importance, including a number of projects within the Large Cluster portfolio, are subject to the State Coordination Regulation. Extensions of segments of the national high-voltage grid at a voltage level of 220 kV or higher are automatically subject to the RCR. The aim of this regulation is to enable decisions to be taken more quickly, without compromising the accuracy of the decision-making process while retaining the possibility of participation by the stakeholders concerned. In particular, the regulation aims at making coordinated decisions that are necessary for a project (e.g. spatial integration, permits and exemptions). The competent authorities for projects subject to the RCR are the Ministers of Economic Affairs and Infrastructure and the Environment.

The duties and powers of the Minister of Economic Affairs in RCR projects are regulated in article 20 of the Electricity Act and in articles 3.28 and 3.35 of the Spatial Planning Act (WRO)<sup>39</sup>. The Minister of Economic Affairs - as project minister, together with the Minister of Infrastructure and the Environment - decides on the construction, routing, implementation and integration of extensions to the high-voltage grid with high-voltage connections<sup>40</sup>. These decrees shall include considerations and decisions on all related matters for the purposes of good spatial planning, such as the construction and implementation of switches and transformer substations as well as the temporary and permanent modification of other high-voltage connections.

In their decision, the ministers weigh up all relevant interests, partly on the basis of an environmental impact assessment. In other words, both Ministers (in the role of Authorised Authority) ultimately decide on the scope of the RCR projects, partly on the basis of the information provided by TenneT (in the role of Initiator).

As mentioned above, the regulator Consumer and Market Authority (ACM) will only reimburse TenneT with those costs in the regulated tariffs that are deemed being efficient. The legal framework and its interpretation by the regulator in the method of regulation (the method decisions) determine how the efficient costs are determined. Choices made in the investment projects must therefore be tested against the efficiency measures applied by the regulator. The efficiency assessment by the ACM must be taken into account in every investment decision.

In their explanatory note, Statistics Netherlands stated that TenneT had provided a detailed investment agenda prior to the capital injection which clearly shows that the investments are largely the result of deliberate government policy in the context of the climate agenda and energy transition. Statistics Netherlands also underlined that the fact that the capital injection is broken down in three tranches indicates that the funds are not at the free disposal of TenneT.

Based on the above considerations, in Eurostat's opinion, the equity injection is subordinated to the implementation of the 2016 investments agenda of TenneT TSO in the Netherlands. Given the role of government in the decision making process, Eurostat

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<sup>38</sup> Rijkscoördinatiereregeling

<sup>39</sup> 'Wet ruimtelijke ordening'

<sup>40</sup> In the so-called 'Inpassing' plans.



is of the opinion that TenneT does not have a large degree of freedom to use the funds relating to the equity injections.

#### Time of recording of capital transfer

As far as the time of recording of investment grants is concerned, Eurostat notes that the final tranche (EUR 410 million) of the capital injection is ‘conditional’ and would ‘only be granted after due consideration of the financial situation of the Company in 2020’<sup>41</sup>. According to ESA 2010 § 1.10, flows are recorded on an accrual basis, that is when claims and obligations arise. Government committed to inject EUR 780 million in TenneT already at the end of 2016. Eurostat also took note that a capital contribution of EUR 780 million had been recorded in the consolidated statement of changes of TenneT's equity with a counter entry in receivables in 2016<sup>42</sup> which supports the view that the amount should be fully recorded as an investment grant already in that year. The last tranche of 410 million euros was recorded as a government expenditure in 2019.

#### Dividends and super-dividend test

MGDD Section 3.5 indicates that transactions, although recognised as dividends in business accounting, could require a different treatment in the ESA framework. The main issues to be analysed for dividends are the size of the transactions in comparison to the profits and the timing of the payment. In the case of TenneT Holding the issue is the determination of the correct profit figure to be used for the application of the super-dividend test in national accounts. Eurostat noted that the dividends paid by TenneT Holding to the government are based on the profits as reported in its underlying accounts, which means that the dividend payments are not directly linked to the IFRS earnings. Accordingly, Eurostat understands that the Ministry of Finance does not wish to carry out the super-dividend test on the basis of the IFRS profit figures as reported in the annual reports of TenneT. In the last 3 years, a pay-out ratio of 35% of the underlying profit has been agreed between the government and TenneT. Eurostat also observes that in the last years TenneT Holding underlying results and IFRS accounts were always positive:

<b>EUR million / Year</b>	<b>2018</b>	<b>2017</b>	<b>2016</b>	<b>2015</b>	<b>2014</b>
<i>IFRS operating result</i>	880	900	439	273	961
<i>IFRS profit for the year</i>	510	553	242	116	604
<i>IFRS profit attributable to holders of ordinary shares</i>	389	442	134	-5	508
<i>Underlying results</i>	443	531	523	681	418
<i>Underlying results attributable to the shareholder</i>	420	477	418	561	333

<sup>41</sup> Financial Statements of TenneT for the year 2017, note 6.2.1

<sup>42</sup> Financial Statements of TenneT for the year 2017, pages 86, 113 and 114

<i>Dividends</i>	147	146	146	196	117
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*Source: TenneT Integrated Annual Reports.*

The financial performance and the calculation of the dividends attributed to the State are based on the so-called underlying accounts. Underlying accounts are matched against IFRS accounts by recognising regulatory deferral accounts. This implies that regulated assets and liabilities are recognised in respect of permitted reimbursements of current expenses in future years and settlements (repayments) of current years revenue through future tariffs.

Regarding the size of the dividends, Eurostat is concerned by the fact that the dividends are not based on business accounts income but rather on the underlying accounts thus integrating deferred revenue and expenses arising from future tariffs adjustments. The consequence is that dividends paid to the State can be (as observed in some years) much larger than profits reported in the IFRS statement of profit or losses and could therefore be considered as super-dividends. This could be particularly the case for the year 2016 when the actual dividend payment largely exceeded the IFRS based profits and the year 2015 when TenneT incurred an IFRS net loss. Eurostat noted that Statistics Netherlands performed the super dividend test based on IFRS accounts, after correction for holding gains, resulting in a downwards adjustment of B.9 of 196 million for 2016.

Eurostat is of the opinion that the profit figure provided by the underlying accounts does not constitute a sound basis for assessing the nature (property income vs financial transactions) of the dividends paid by TenneT to the State because ESA 2010 § 1.101 requires recording transactions on an accrual basis. This implies that flows are recorded when economic value is created, transformed or extinguished, or when claims and obligations arise, are transformed or are cancelled. This principle is not in line with the underlying accounts that recognise revenue adjustments in the current year for tariffs adjustments that are related to future services.

In this context, Eurostat recalls that the concept of entrepreneurial income should be used (ESA § 4.56, ESA § 20.205 and ESA § 20.206) for the super-dividend test of public corporations. ESA § 20.206 stipulates that the operating profit in business accounts may be used as proxy for a measure of an entrepreneurial income.

MGDD Section 3.5.2.1 § 6 explains that the resources from which dividends have to be paid should ‘*neither include the proceeds of sales of assets nor holding gains (...) which are not part of the distributable income*’. It further states that in practice, the operating profit, or surplus (including the net interest charge in order to be consistent with the Entrepreneurial income (B.4) concept in ESA 2010 as defined in paragraphs 8.26 – 8.27) of the corporation should be used as a proxy for the entrepreneurial income. As mentioned in Paragraph 9 of the same section of the MGDD, the entrepreneurial income and distributable cover the same concept.

The Ministry of Finance did not provide the information for assessing the plausibility of the current level of dividends with an assessment of the past annual entrepreneurial income of TenneT in order to assess if a part or all of selected dividend payments should be recorded as withdrawals of equity (F.5).

Eurostat notes that Statistics Netherlands uses the ‘*IFRS operational profit attributable to the holders of normal shares, adjusted for holding gains, but including the write-offs of tangible fixed assets*’ in the context of the EDP notifications.

Eurostat agrees with the proposed method provided that IFRS operating result is used but including the net interest charges in order to be consistent with the Entrepreneurial income (B.4) concept in ESA 2010.

Furthermore, as explained before, the distributable resources should not include holding gains. As far as the write-offs of tangible fixed assets, these are added to the operating expenses in IFRS accounts in order to determine the operating surplus. Therefore, Eurostat agrees that they are included (thus considered as an expense) for the determination of the operating surplus and the distributable income.

### 3. CONCLUSION

TenneT is a 100% state-owned profitable public company and is an electricity transmission system operator (TSO) with activities in the Netherlands and Germany. Almost all of its revenue stems from its regulatory activities.

In its TSO capacity, TenneT has undertaken large investments under the control of the government. The government's capital injections are essential for TenneT's investments since it needs to maintain its credit rating to access capital markets in order to leverage funds on the capital markets at favourable conditions.

Eurostat notes that the Dutch government made capital injections in 2011, 2012, 2016 and released a last conditional tranche in 2019. TenneT also announced recently that additional capital injections might be needed in view of the expanding investment needs. There is therefore a repetitive pattern of capital injections in TenneT being an indicator and a presumption of unrequited transfers.

A key feature of an investment grant is that it is earmarked whereas for equity the entity should have a large degree of freedom in using the amounts received from its shareholders or owners. Eurostat is of the opinion that the proposed capital injection has the features of an investment grant since TenneT is not able to decide freely on the use of the funds. Hence, Eurostat concludes that this capital injection is, de facto, not different from an investment grant and is to be recorded as a non-financial transaction expenditure in capital transfers (D.92), with an impact on the government net lending/borrowing (B.9).

In addition, the provision of government funds in order to enable TenneT to carry-out investments in the offshore grid, and to some extent in the onshore grid, could be seen as a national investment to ensure a public policy need, i.e., the increase in production of electricity from renewable energy sources following the adoption of the Energy Agreement. The established framework for supporting the growth of renewable energy sources, in particular, the unequal distribution of the burden (consumers have to pay and TenneT is subsidised) supports the view that it is a clear case of implementing a specific public policy which should be reflected as such in the government accounts.

Considering the above, Eurostat is of the opinion that an amount of EUR 780 million has to be recorded as an investment grant in 2016. The same applies to the last tranche of 410 million euros in 2019.

Finally, as regards the treatment of dividends received by the Dutch State, Eurostat is of the opinion that the use of the underlying results for the super-dividend test is not suitable since it seems to be in conflict with the general ESA 2010 principle to record

transactions on an accrual basis. Hence, Eurostat considers that Statistics Netherlands should analyse if the dividends have the features of interim dividends. Finally, Eurostat agrees that the IFRS operational profit attributable to the holders of normal shares, including the net interest charges, adjusted for holding gains, and including the write-offs of tangible fixed assets is a suitable measure for the implementation of the super-dividend test.

#### **4. PROCEDURE**

This view of Eurostat is based on the information provided by the Dutch Statistical authorities and the Dutch Ministry of Finance. If this information turns out to be incomplete, or the implementation of the operation differs in some way from the information presented, Eurostat reserves the right to reconsider its view. We would like to remind you that Eurostat is committed to adopting a fully transparent framework for its decisions on debt and deficit matters in line with Council Regulation 479/2009 and the note on ex-ante advice, which has been presented to the CMFB and cleared by the Commission and the EFC. Eurostat therefore publishes all official methodological advice (ex-ante and ex-post) given to Member States, on the Eurostat web site.

Yours sincerely,

*(e-Signed)*

Luca Ascoli  
Director