Ministerie van Economische Zaken
en Klimaat

The Hague, 5 october 2021

HT.5938 – Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak

Response of the Dutch authorities on the draft 6th Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak and amendment to the Annex to the Communication from the Commission to the Member States on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance

1. General remarks

The Dutch authorities would like to thank the European Commission for the opportunity to comment on the adjustment of the Temporary State Aid Framework Covid-19 (hereafter: the Temporary Framework). With this sixth amendment the Commission is proposing to prolong and further adjust the scope of the Temporary Framework by enabling Member States:

(i) prolong the measures set out in the Temporary Framework until 30 June 2022;

(ii) adapt the aid ceilings of the uncovered fixed cost measure in order to address the prolonged economic effects of the ongoing crisis;

(iii) introduce new provisions enabling sustainability investment and solvency support;

(iv) clarify/amend the conditions for certain temporary State aid measures that the Commission considers compatible under Article 107(3)(b) of the Treaty on the Functioning of the European Union ('TFEU'); and

(v) amend to the list of marketable risk countries set out in the Annex to the Communication from the Commission to the Member States on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance ("STEC").

The Temporary Framework has proved to enable Member States to ease the immediate economic effects of the Covid-19 pandemic from March 2020 onwards. The flexible rules on government support saved companies, created security in economically insecure times, and limited the economic downturn. However, with increasing vaccination rates Member States are alleviating health restrictions on their economies in the second half of 2021. Therefore, the economic necessity of the flexibility under the Temporary Framework to provide more state aid is diminishing, whereas potential adverse effects are becoming more imminent.

The European economy is based on competitiveness and innovation. Continuing the extension of the Temporary Framework would mean a fundamental shift in the way we view the role of state aid in the economy. Keeping competition and innovation as the basis of the single market requires a strict state aid policy.

For these reasons, the Temporary Framework should continue to be regarded as the temporary crisis instrument it is, and should be ended as health restrictions are phased out. With the current expectations, we therefore **argue that the Temporary Framework should not be extended after 31 December 2021.**[1]

However, we endorse the Commission's statement that cliff-edge effects should be prevented when ending the Temporary Framework. Only for eligible costs that are incurred before the 1st of January 2022, there should be a possibility to formally grant aid under the Temporary Framework during a **phase-out period in the first half of 2022**. Such a phase-out period could allow a smooth transition to ordinary State aid rules and ensures that support to the economy is not hindered by administrative reasons (e.g. related to setting up aid schemes).

Lack of economic necessity

The Temporary Framework was intended to counter serious economic disturbances. These disturbances are expected to diminish from the second half of 2021 onwards – eliminating the necessity for crisis state aid rules.

The forecasts for the European economy are very positive. For the EU as a whole, economic growth is expected to be 4,8% in 2021 and 4,5% in 2022. In Q4 2021 the volume of output in the euro area will reach the pre-covid level (Q4 2019).[2] For individual member states these figures differ significantly.

However, for all member states the economies are expected to recover to pre-covid levels by the end of 2022.[3]

Harmful effects of the Temporary Framework

There are two significant risks associated with a prolongation of the Temporary Framework. Most importantly, it causes an unlevel playing field in the EU, putting the integrity of the internal market at risk. There is a significant difference in the willingness and ability of Member States to support firms. This gives an unfair advantage to firms in these member states that can and do give much government support.

Besides, as market incentives are suppressed by government support, necessary adjustments and restructuring of the economy do not take place automatically, harming long-term European competitiveness. This can be seen in the relatively low amount of bankruptcies.[4] The longer these adjustments are postponed, the costlier they will become. This may also create a lock-in effect for government support.

Other purposes than crisis response should be assessed under regular state aid rules

Decisions on aid for economic development and for the recovery, including green and digital investments, should be approved based on the regular state aid rules – not under the temporary framework, nor under a separate recovery framework. The revision of the regular state aid rules, such as the Guidelines on Climate, Environmental Protection and Energy (CEEAG) should enable these necessary investments while contributing to the EU climate goals and the Paris Agreement.

Crisis emergency rules such as the Temporary Framework should be used to address exceptional economic circumstances, and not to stimulate economic development, recovery or to boost necessary investments. The Temporary Framework should not be extended to aid beyond the acute crisis when the ongoing revision of state aid guidelines and regulations already take into account the latest technical, economic and political developments and priorities of the Union.

General assessment of the draft 6th Amendment of the Temporary Framework

Taking into account the economic analysis above, the Netherlands does not support the fundamental approach the Commission has taken in the draft 6th Amendment of the Temporary

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[1] This point of view has also been communicated to the European Commission through a Joint statement on Temporary State Aid Framework Covid-19 on behalf of the ministers of Sweden, Finland and the Netherlands, sent on 28th of September 2021.

[2] European economic forecast Summer 2021, European Commission (July 2021).

[3] European economic forecast Summer 2021, European Commission (July 2021).

[4] Business registrations and bankruptcies in the EU, Eurostat (May 2021).

Framework. The Netherlands is disappointed that the Commission does not set out an approach for a balanced phasing out of government support but prolongs and even extends the scope of the Temporary Framework without adequately justifying the necessity. In the Temporary Framework there should be more attention for how to return to a level playing field and how the Framework contributes to that. This analysis is missing is in the Framework and it is unclear how the latest amendment of Framework contributes to this.

2. Specific remarks

2.1 Remarks concerning the prolongation of the measures set out in the Temporary Framework until 30 June 2022

The objective of the Temporary Framework to remedy the liquidity shortage faced by undertakings and ensure that the disruptions caused by the COVID-19 outbreak do not undermine their viability, especially of SMEs. However, as described under 'General remarks' the risk is that while the economy is recovering from the COVID-19 outbreak, the Temporary Framework could be used as a general framework to support economic development. This leads to further distortion competition and the integrity of the internal market because the causal link between aid measures and the COVID-19 outbreak is less strict.

The argumentation provided by the Commission in the proposal seems inadequate and incomplete to justify the prolongation of the Temporary Framework, because there is lack of attention for:

- the adverse effects of a lenient State aid policy on the level playing field on the single market, and on the economy as a whole (as it could lead to suppression of market incentives). The argumentation of the Commission does not take into account the long term effects for the EU and the economies of the Member States. If the Temporary Framework is prolonged, this will have an increasingly harmful effect on the normal dynamics of the economies of the Member States.
- the unfair advantage for undertakings in Member States that continue Covid-19 support into 2022 and which Member States can and do give much government support.

The Commission states that it is necessary to prolong the Temporary Framework because of the prolonged economic effects of the ongoing crisis. However, as the Summer 2021 Economic Forecast[5] shows, in Q4 2021 only four Member States are currently below a bbp-level of Q4 2019. It seems disproportionate to prolong and even extend the scope of the Temporary Framework based on this. Most of the EU Member States economies are currently in an economic boom. Continued application of the Temporary Framework will therefore lead to overheating in a situation where inflation due to material shortages and supply chains is already high. Prolongation of the Temporary Framework, and thus support measures, creates even stronger inflationary pressures.

The Commission indicates that uncertainty and risks surrounding the growth outlook remain high taking into account the threat posed by the emergence and spread of COVID-19 variants. However, these risks are not the highest risks which need to be taken into account when looking at economic recovery. A more persistent and higher risk comes from bottlenecks in global supply chains. These put a brake on production, PMIs and investments. Prolonging the Temporary Framework will not resolve this greatest risk of recovery. Moreover, economic uncertainties will always remain. If phasing out of the Temporary Framework is not announced at this time with the current very favorable economic outlook, this will open the door for a further prolongation.

We invite the Commission to closely look at the economic analysis of the proposal in relation to the level playing field and provide improvements and adjustments where possible.

The Dutch authorities argue the prolongation should in any case:

a) be limited in scope and aid ceilings (possibly with more flexibility to towards heavier affected undertakings or sectors (like tourism, hospitality (catering), retail, the travel- or cultural sector));
b) should only be possible under strict conditions for individual aid to large undertakings and;
c) take into account incentives to boost public investments while at the same time stirring up private investments;

[5] European Commission, Economic and Financial Affairs: Summer Forecast 2021 (Interim) (July 2021).

d) take into account the nature of the current economic impact, which no longer calls for liquidity support but rather solvency support;
e) introduces more safeguards to prevent distortion of competition or the integrity of the internal market (for instance with regard to relocation of jobs) and the level playing field;
f) more firmly ground the final phase-out of temporary framework as of 30 June 2022. The language used in the recitals in this draft does not seem to be decisive enough.

Our remarks in the paragraphs below also reflect the need for phasing out support in this way.

2.2 Remarks concerning the aid of the uncovered fixed cost measures

The Commission considers that it is necessary to enable the conversion of repayable aid instruments into other forms of aid under section 3.1 and section 3.12 of the Temporary Framework until 30 June 2023. However, there are no substantive conditions for this conversion to make sure the recovery of the Union's economy is in line with EU priorities such as the Green Deal and the EU Digital Strategy. The Netherlands would therefore support more stringent conditions for the conversion of repayable aid.

2.3 Remarks concerning the new provisions enabling sustainability investment and solvency support

The Netherlands questions whether the new provisions enabling sustainability investments in the proposed paragraph 3.13 are strictly necessary. This aid would be better suited to be assessed under the (draft) Climate, Energy and Environmental Aid Guidelines (CEEAG). The CEEAG is set to enter into force in the beginning of 2022. The wider scope of these guidelines is accompanied by safeguards to ensure that the aid is effectively directed where it is needed to improve environmental protection (including climate targets), is limited to what is needed to achieve the environmental goals and does not distort competition or the integrity of the internal market. The proposed paragraph 3.13 does not seem to strike such a balance because it lacks these safeguards and is not limited in scope. It is also unclear why the Commission does not consider these guidelines and the General Block Exemption Regulation (which will also be amended) sufficient to support sustainable investments. In view of the Netherlands a kick off start to boost (sustainable) investments in the economies in the Member States in 2022, seems also possible under - for example- the (amended) GBER but with the safequards of that Regulation. The Netherlands also asks the Commission to explain how she will ensure that the aid does not unduly distort competition.

In the balancing exercise of weighing the positive effects of State aid against the negative effects on competition and trade, the Commission will pay particular attention to Regulation (EU) 2020/852 (proposed paragraph 91). According to the Netherlands the development of the EU taxonomy as a means to provide guidance for private investors assessing which investments are future proof (i.e. in line with the EU climate goals) can be supported. The EU taxonomy could be one of the factors that helps the European Commission in defining positive effects. However, as the EU taxonomy is still being developed, applying it as a decisive factor with regard to State aid is difficult to support as this stage.

2.4 Remarks concerning the clarifications and amendments to the conditions for certain temporary State aid measures that the Commission considers compatible under Article 107(3)(b) TFEU

The Commission considers that the ban on non-mandatory coupon payments should no longer apply to hybrid capital instruments issued at the same time as COVID-19 hybrid capital instruments or issued after the COVID-19 recapitalisation. The Netherlands understands the ratio of the necessity to attract new private equity or investments in order to reimburse state aid but would like to ask two clarifying questions. Point 77bis (b) provides that the hybrid capital instruments must be issued after the COVID-19 recapitalisation. How does the EC interpret after, i.e. when is the recapitalisation deemed to have occurred (e.g. as soon as a rights issue is completed and updated notes issued)? Related to this, could the Commission please confirm that hybrid capital instruments under point 77bis (b) can be issued until the expiry of the TF?

2.5 Remarks concerning the amendments to the list of marketable risk countries set out in the Annex ("STEC")

In accordance with points 35 and 36 of the STEC, the Commission conducted a public consultation to assess the availability of short-term export-credit insurance in order to determine whether the current market situation might justify the prolongation of the removal of all countries from the list of marketable risk countries in the Annex to the STEC beyond 31 December 2021. This public consultation is not finalized and the Netherlands has not collected all relevant information yet. The Commission has the intention, taking into account the outcome of the public consultation, to continue to apply the provisions of the communication on the short-term export-credit insurance ("STEC") beyond 2021. It also intends to prolong the temporary removal of all countries on the list of marketable risk countries set out in the Annex of STEC until 30 June 2022. The Netherlands would like to ask the Commission to take into account the outcome of the public consultation before taking any decisions on list of marketable risk countries and to provide the Member States with the possibility to give their feedback on this once the consultation is finalized.

2.6 Other remarks

The Dutch authorities would like to ask whether the Commission considers to prolong the exemption for 'undertakings in difficulties' in the GBER and other state aid guidelines. If that is the case, is the Commission considering to make a breakdown on certain sectors or certain (heavier affected) undertakings, which will make the possible longer exemption more targeted than the overall exemption right now?

The Dutch authorities would like to point out that there appears to be an error in the current Temporary Framework, under section 3.11.6, point 78. Point 78 states that under no circumstances bonuses or other variable or comparable renumeration elements shall be paid. The Dutch authorities propose an adjustment which aligns this point with the purpose of this condition. The Dutch authorities suggest the following adjustment: "Under no circumstances, shall bonuses or other variable or comparable remuneration elements be committed or paid."