ANNEX

Response of the Netherlands to the letter of Vice-President of the European Commission Vestager

General remarks

The Netherlands welcomes the European ambition to remain at the forefront of the climate transition and clean technologies, and welcomes the steps other countries have taken in this regard. Our wish is to strengthen cooperation with other countries in reaching our climate-targets and to complement each other's climate policies. At the same time it is in our interest to maintain a leading position in clean tech. Therefore we need to assist our industries in the green transition and help address challenges such as high energy prices and global competition. This also applies to sectors that contribute to the digital transition and open strategic autonomy of the EU. However, this also comes with the realization that not all current economic activities have a future in a climate-neutral European economy.

Strengthening our long-term competitiveness starts with a strong economic foundation. Therefore we need to step up our commitment to a strong and fair internal market, a level playing field, an open economy and international cooperation, a dynamic and agile workforce and strong EU Member States with sound public finances. But more is needed from the EU and its member states to ensure a sustainable, resilient and competitive European Union

This means we need to deepen the single market, accelerate the energy transition and strengthen the EU investment climate. To do this we have a large toolbox with policy instruments available. The State aid rules are an important tool in this regard, but not the only one. Therefore the Commission should carefully assess which policy mix, for example relating to coordination, regulation or financial stimulation among others, is suitable to address our challenges. On EU financing, the current MFF and Next Generation EU provides for important programs like, for example, the RRF, REPowerEU and the Innovation Fund. Before considering the introduction of new funds, we should first evaluate how these existing funds could better facilitate the green transition.

Specifically with regard to the State aid instrument as part of the EU toolbox, the Dutch authorities are of the opinion that the regular State aid frameworks should be fit for their purpose and prevent disruption of the level playing field as much as possible. The Temporary Crisis Framework (TCF) should be used only if there is a clear link to its stated purpose. We value all the efforts of the Commission under the TCF and the possibility to quickly address the challenges posed by the consequences of Russia's actions in Ukraine. The Dutch authorities have, however, serious concerns about the distortionary effect of the TCF on the internal market, especially since more than two thirds of all national funding mobilized under the TCF has been notified by only two Member States.

The Dutch authorities are, therefore, not in favor of further broadening the purpose of the TCF to a transition framework. The green transition requires a long-term strategy which the regular State aid frameworks are the appropriate instrument for. As acknowledged by your letter, the regular State aid frameworks already provide possibilities to support the twin transition. Crisis frameworks are not the right instrument to regulate State aid for longer-term and structural purposes as this would diminish adequate procedural and substantive safeguards. Nor is this in the interest of European industry, which needs long-term certainty. Crisis frameworks should be temporary in nature, focus on the temporary problem and provide for a clear exit strategy. Moreover, the legal basis of the TCF is Article 107(3)(b) TFEU, which states that the Commission may declare compatible with the internal market aid 'to remedy a serious disturbance in the economy of a Member State'. Even though the high energy prices, the need to re-skill and up-skill workers and the Inflation Reduction Act have an impact on the competitiveness of European industry, they are insufficient at this time to lead to the conclusion that a serious disturbance in the economy of a Member State in the sense of Article 107(3)(b) TFEU has been created.

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Moreover, the starting point of new State aid rules should be a problem analysis. This includes a thorough analysis of the current implications of the Inflation Reduction Act. A proper analysis further includes a public consultation in order to include insights from industry and other stakeholders. In our view, this problem analysis has not yet been sufficiently made. Should the Commission be of the view that a further relaxation of State aid rules is nevertheless justified in the context of the competitive challenge facing EU industry, the Dutch authorities are of the view that such review should not focus on the TCF but on better targeted aid within the regular State aid frameworks, such as the ongoing targeted review of the General Block Exemption Regulation (GBER).

With the above in mind, the Dutch authorities have the following response to the questions posed in your letter.

Process simplification

In your letter you present the proposal to simplify the calculation of the aid amount and accelerate the approval process based on the TCF. Further (process) simplification of the TCF indeed comes with risks for the integrity of the internal market. Therefore, the Dutch authorities are of the opinion that simplifications to accelerate the energy transition and industry sustainability should be implemented in particular within the regular State aid frameworks since these instruments already have the necessary safeguards in place to ensure a level playing field. Fit for purpose State aid rules are very important. In this regard, the Dutch authorities have the following suggestions.

Most importantly, and also in relation to strategic autonomy, the GBER plays a key role in supporting the green transition as it allows for measures to be taken without prior notification to the Commission. GBER as an instrument has already delivered greatly on process simplification in the past years. The targeted revision of the GBER is therefore of great importance. Therefore, the Dutch authorities call on the Commission to adapt and swiftly adopt the targeted revision of the GBER.

Providing ample possibilities for aid to accelerate the green transition under the GBER should be a priority, for example by:

- increasing the aid thresholds per undertaking for environmental aid to at least EUR 25 million. Projects which utilize radically new industrial processes and do so fossil free, both in feedstock and energy, in line with the 2050 climate targets, should be exempt from notification for aid up to EUR 50 million under the following conditions:
    1) the project must demonstrate, through a Life Cycle Analysis, that emissions in the European value chain are reduced; and
    2) calculations must demonstrate that the subsidy, as part of the business case, does not lead to an internal rate of return exceeding 10%;
- providing sufficient flexibility for the specific characteristics of fiscal aid schemes, among other things by simplifying the calculation of the maximum aid and eligible costs. The calculation of the maximum aid and eligible costs under the current GBER may become more complex after the targeted revision due to the prescriptive calculation method called for. Such a method is not feasible for fiscal aid schemes where aid is automatically granted through a reduction in tax payments;
- leaving sufficient flexibility for Member States to design aid measures without a competitive bidding procedure (e.g. in case of innovative projects, for "first come, first served" schemes and for fiscal aid schemes);
- ensuring aid possibilities for effective and ambitious circular economy investments and projects and projects with environmental benefits in the value chain (indirect effects). In view of the Dutch authorities, it is important to include aid for circular investments, including those made higher up the chain in in the waste hierarchy, to the scope of investment aid for resources efficiency/the circular economy. This concerns, for example, the replacement of primary (including fossil based) alternatives with sustainable bio-based raw materials or feedstock, or the production of reusable or recyclable products including circular buildings; And
- simplifying rules on risk financing and adaption of the definition of private investor. This is especially important for investments that are relevant to strategic autonomy. Moreover, this provides more possibilities for the energy transition in the built environment.

In the case of aid schemes excluded from the scope of GBER solely by reason of exceeding the aid thresholds per undertaking, the Commission might assess compatibility of the aid scheme on the basis of the criteria defined in GBER (including aid intensity etc.) instead of applying a more complicated State aid framework such as the new Guidelines on State aid for climate, environmental protection and energy (CEEAG). However, the maximum amount of aid would then be assessed by simple options in the CEEAG to quantify how much aid can be granted to a project. In this way, the conditions for granting aid are clear and it is easier to assess whether the State aid is compatible. This would be a type of 'GBER-plus' fast track procedure under the CEEAG.

There is as of yet very little case practice under the new CEEAG on new aid measures which leads to longer discussions on the interpretation of the conditions within. Reinstating the practices of 'case portfolio approach' and 'mutually agreed planning' could be helpful for more predictable timelines. This would also help in clarifying early on what information Member States should submit for the Commission's assessment.

Under the Recovery and Resilience Facility and Important Projects of Common European Interest Framework (IPCEI) the Commission has provided the Member States with specific templates to clarify which aid possibilities are available or what information is required. Especially under IPCEI, specific templates with regard to the funding gap method have been very useful in clarifying at an early stage what information is necessary for the Commission's assessment. Such templates for specific conditions in other frameworks, such as the CEEAG, could prove to be very helpful.

Even though the Dutch authorities do not agree that the TCF is the right instrument for accelerating the green transition, the option of a simplified calculation of aid amounts is welcome. A simplified assessment of necessity, incentive effect and proportionality and simpler options to Member States to quantify how much aid they can grant to a project, while maintaining sufficient safeguards, could be helpful as a fast track procedure under CEEAG for strategic sectors as well. Proportionality can, instead of via a funding gap method, also be ensured by a (lower) maximum aid intensity. Overcompensation can also be remedied by the use of claw back mechanisms. Setting out clearly in which way Member States can quantify how much aid they can grant to a project would be helpful in accelerating the approval of aid by the Commission.

Sufficient possibilities for aid to accelerate the green transition

As stated above, the TCF serves only a temporary purpose. The Dutch authorities are not in favor of further expanding the TCF to a transition framework. Therefore it is important that the regular aid frameworks are fit for purpose. Please see the suggestions above and the response of the Dutch authorities regarding the targeted review of GBER and the TCF survey with regard to the green transition.

Additional flexibility for investments in sectors strategic for the green transition

The Dutch authorities consider it very important to prevent subsidy races, both in relation to third country jurisdictions and in particular in the internal market. State aid control and instruments have always played an important role in this regard. Instead of reactively participating in a subsidy race by providing possibilities to match aid by third countries, an EU long-term strategy should rather determine which investments in strategic sectors are needed for the green transition. The State aid frameworks play an important role and the prevention of a harmful subsidy race in the internal market should by default also be part of the Commission's assessment of the more market-distorting forms of State aid. Such consideration does not take place sufficiently in the context of the TCF which, moreover, is temporary in nature. Therefore, the Dutch authorities urge the Commission to make use of other instruments if necessary.

In the view of the Dutch authorities, due to the possible effects on the level playing field in the internal market, it is of great importance to first thoroughly examine whether there is an actual need for aid and for granting additional flexibility for investments in sectors strategic for the green transition. The Dutch authorities consider it important to emphasize that the whole toolbox of available EU instruments should be involved, instead of solely focusing on State aid instruments.

Additional possibilities for State aid can be necessary as part of a long-term EU strategy for strategic value chains. This means that it must be determined at the EU-level which value chains

are to be considered strategic. It is important to analyze whether State aid policy in strategic sectors is an appropriate instrument to promote EU's competitiveness and prevent strategic dependencies, and whether other less distortive instruments, including existing instruments at the EU level, are more appropriate to achieve the intended results. If State aid is determined to be the appropriate instrument, it should then be clear whether and in what way regular State aid frameworks are insufficient. A European framework with strict conditions is desirable in this case to ensure that the activity is of strategic relevance, and that the activity cannot be carried out profitably within the EEA at the moment, and can be imported from a reliable partner or a diverse portfolio of suppliers. EU State aid rules should be designed taking into account the value added at the level of the EU as a whole.

Looking at the existing aid frameworks, the IPCEI Framework is especially suited to provide important contributions to economic growth, jobs and competitiveness for the EU industry and economy. The Framework provides for specific safeguards and considerations which are specifically important for EU competitiveness, such as taking into account the fact that, directly or indirectly, competitors located outside the Union have received aid. Of course, it is important that the IPCEI Framework is fit for purpose and its challenges still need to be addressed, such as regarding the operational implementation of IPCEI initiatives and how to accelerate critical strategic investments in a structured and consolidated way. Identification of potential IPCEI should be done based on strategic importance, market failure and European added value. Individual projects of strategic European importance with benefits for an entire European value chain should be taken into consideration as well.

The Dutch authorities see risk financing as potentially important in stimulating innovative disruptions and addressing strategic autonomy and have specific suggestions for how this could be accommodated by simplification of the GBER. Increasingly, companies are faced with large amounts of Foreign Direct Investment (FDI) that EU Member States might find undesirable when applied to strategically important sectors and critical value chains. It is important that the EU Member States have the right possibilities to defend their financial participation but also to make it more difficult for an FDI investor to quickly take over the target company. The current State aid rules do not provide adequate possibilities to provide risk funding for innovative SME's and innovative mid-caps. First, due to the high burn rate these companies require high aid amounts in the early stages of a company's life cycle. Maximum State aid amounts under the GBER are capped at an amount that is too low for companies working on innovations and critical technologies. Second, the transparency provisions of the GBER are too restrictive for funding of these companies. Especially when it comes to R&D intensive SME's and innovative mid-caps, risk financing is a normal market practice for promoting investments . Risk finance (both under MEOP-conditions and as State aid) at the level of eligible undertakings, may take the form of equity, quasi-equity investments, loans, guarantees, or a mix thereof.

Furthermore, the Dutch authorities consider it important to emphasize that the whole toolbox of EU instruments should be involved. In that context, it is worth exploring ways in which more risk financing can become available, also at the EU level. Declaring the European Investment Bank and the European Investment Fund as non-private investors in the GBER definitions, although they also offer investments on market terms, is not helpful. Growth of the most promising European innovative companies is held back by the difficulty of raising sufficient venture capital from funds based in Europe.

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