Docnr14

Non-paper on the reform of the childcare benefit system in the Netherlands - June 23rd, 2025

1. Introduction

On 20 November 2024, the NL authorities had an informal exchange with the European Commission (EC) on the Dutch government's plans for a new funding system for childcare. In short, this change amounts to the following:

- High income-independent childcare allowance for working parents.
- The childcare allowance is paid directly to the childcare organisations in the form of a subsidy.
- Shifting risks and responsibilities from parents to childcare organisations and the government.

Due to the direct funding of childcare organizations, the NL authorities discussed with the EC some questions regarding the Dutch view of whether state aid is involved in the new funding system. 5.1.2.a

5.1.2.a

5.1.2.a

In terms of planning, it is good to remark that the entry into force of the new financing system has been postponed to 1 January 2029 (instead of 1 January 2027). However, this does not change the planning for the legislation much. The internet consultation for the bill is scheduled for October 2025, advice from the Council of State in early 2026 and offer of the bill to the Dutch Parliament for the summer of 2026. However, postponing the date of entry into force will give the sector more time to adapt to the new system.

Discussion items

- First of all, we would like to hear from the EC how they view the criterion of selectivity. This is further explained under point 2.
- In addition, under point 3, we explain how we intend to apply the conditions for the lawful establishment of a SGEI to the childcare sector. We would like to hear from the EC whether this interpretation meets the conditions set out in the Decision and any related concerns the EC may have.

2. Selectivity as a criterion for State aid

One of the criteria for assessing the existence of State aid is selectivity: the proposed measure must confer a selective advantage on certain undertakings, categories of undertakings or a certain sector.

During a meeting we have had with the childcare sector, the sector has expressed doubts regarding whether there is a selective advantage in the new funding system. In their view the childcare allowance is made available to all childcare organizations on equal terms. Furthermore, there are no other undertakings that are in a comparable factual and legal situation to childcare organizations in light of the objective pursued by the Childcare Act.[1] In other words: there is equal treatment of all childcare organisations, and therefore (according to the childcare sector) there is no selective advantage.

How does the EC view the position taken by the sector?

3. Service of General Economic Interest (SGEI)

Assuming that all the criteria for State aid are met, it is necessary to make this compatible with the EU State Aid rules. This is possible by qualifying childcare as a SGEI. Childcare is a service described in Decision C(2011)9380 (hereinafter: the Decision). Below, we explain why childcare is eligible to be a SGEI. First, we explain why the market failure justifies public intervention. After, we will briefly describe the application of the conditions of the Decision to the childcare sector.

[1]See, for example, judgment of the CJEU of 14 December 2023, C-693/21 P and C-698/21 P, ECLI:EU:C:2023:989 (EDP Espana SA), paragraph 71.

3.1. Market failure

The childcare policy in the Netherlands has two equal goals: 1) making it possible for parents to combine work and care, thereby stimulating labour market participation, and 2) contributing to the development of children.

The government sets and supervises quality and safety requirements for childcare and also reimburses a large part of the costs of childcare. This is currently the case with the childcare allowance. This tool has led to major problems for parents. That is why the childcare allowance is being replaced by new funding that is much simpler and more secure for parents.

Without government intervention, much less childcare will be offered and purchased, because it is not financially profitable for entrepreneurs. The childcare that is offered is also expected to be of inferior (pedagogical) quality. This would result in an undesirable low level of labor market participation and too little commitment to child development. Because of these two policy goals, it is important for the government to ensure accessible, high-quality childcare.

Government intervention is therefore required to achieve a socially responsible situation of childcare. Both in terms of funding and quality.

3.2. Implementation of the childcare service

The definition of the childcare service for the SGEI aims to lawfully provide public funds to institutions that carry out the childcare service. For this, it is necessary that the childcare organisation is registered in the National Register of Childcare (LRK). The LRK contains information about childcare facilities such as address details, inspection reports and the registration number. The LRK also contains a summary of the inspection report and whether it has been maintained. Only a childcare organisation registered in the LRK can be eligible for compensation from the government for providing the childcare service.

In this context, we legally lay down two conditions:

1. The definition of the childcare service: this service includes the care of children, which is compensated by financial *compensation* from the government. This must include the *care and education of children* and the care must *contribute to the development of children* (in accordance with the already existing definition of childcare in the first paragraph of Article 1.1 of the Childcare Act).
2. Only childcare organisations that carry out the childcare service, are registered in the LRK (meet the quality requirements), and are affiliated to the system to apply for the public compensation can qualify as a SGEI.

3.3. Objective and transparent parameters for the calculation of compensation

The criteria on the basis of which the compensation is calculated must be established in advance in an objective and transparent manner in order to avoid an economic advantage from the compensation. The remuneration under the new financing system is determined by a fixed rate of 96% of the maximum hourly price. The maximum hourly rate depends on the type of care (day care, out-of-school care, childminder care). The amount of the maximum hourly price and its indexation are legally fixed. The government has room to adjust the maximum hourly price and to set indexation differently when there is reason to do so.

The level of the maximum hourly price was originally set when the Childcare Act was introduced in 2005, at a level in which 80% of the supply fell at that time. The average actual rates applied by childcare organisations have been slightly above the maximum hourly price for each type of care since 2012. The difference between the average rates and the maximum hourly rate is different per year and depends on the type of childcare provider. The difference between the actual rate and the maximum hourly rate is an indicator of the affordability of childcare. A cost study is currently being carried out to gain a better understanding of the costs incurred by daycare centres, childminders and childminders, how big the differences are and what explains these differences. The research will be completed around the summer of 2025. The outcome of the cost price survey may lead to a public debate about the amount of the maximum hourly price.

3.4. (Check for) overcompensation

Overcompensation occurs if the undertaking operating the service of general economic interest receives compensation that exceeds the amount necessary to provide the service, including a reasonable return.

3.4.1. Current returns in the childcare sector

The Childcare Guarantee Fund sees a return of 3 to 5 percent to strengthen the financial position of childcare organisations as appropriate for the sector. The Guarantee Fund's 2023 sector report shows that nearly 70 percent of the organisations surveyed had profitability below 3 percent in 2023. A significant number of childcare organisations achieve limited to no profitability. A limited part of the organizations surveyed achieved a return of 10% or more.

3.4.2. Determination of overcompensation

It is important that there is more supply to meet the increasing demand for childcare. In the past, it has been shown that the supply of childcare is growing as a result of an increase in demand. This indicates that childcare is a dynamic market in which supply and demand move towards each other.

It is essential that supply increases to solve the main problem of shortage. After all, tightness can lead to economies of scale and more market power for providers. This can change the composition of the childcare market. Due to the shortage, increasing market power and economies of scale, childcare organisations have more freedom to increase their profits or use their income in a different way than for expanding the supply or providing high-quality childcare. This can be detrimental to the efficient use of public funds.

The government applies a regulatory strategy to ensure the efficiency of spending taxpayers' money on childcare, while maintaining the character of the childcare sector as an entrepreneurial and customer-oriented sector. The aim is both to mitigate the current risks of inefficiencies and to prevent foreseeable risks of inefficiencies in the future. Measures that ensure efficiency generally lead to a reduction in supply through increased regulatory burdens or a reduction in entrepreneurial freedom. Because the increase in supply is essential, it is important to implement an efficiency measure only if the situation is so necessary that it justifies the slowdown in (growth of) supply. The annex explains how the government monitors and assesses the situation.

3.4.3. Periodic monitoring of overcompensation

The development of the rates applied by childcare organisations and the returns made in the sector will be monitored by the government. This is done by imposing an obligation on childcare organizations to publish the annual accounts every year. As a result, childcare organizations are held socially accountable every year for the use of their resources. Childcare organisations are obliged to publish in this account what their profitability is.

In addition, a legal obligation is included for the participation of childcare organisations in periodic cost price surveys. If it turns out that returns are rising, the maximum hourly rate (and the associated government compensation) can be reduced generically.

In addition, childcare organisations must keep separate accounts for the implementation of the SGEI. The separation of accounts may, following an investigation by the Commission, make it clear that the public authority did not grant aid to regular economic activities, but only compensated for the performance of the SGEI activities. The requirement for separate accounting of a childcare organisation relates to the SGEI activities and includes all costs and revenues of the SGEI. This prevents the compensation from benefiting non-SGEI activities and thus the risk of cross-subsidisation.

The financial supervision of childcare organisations is set up in such a way that the remuneration received by a childcare organisation is linked to the performance of the childcare service. The full compensation is regarded in accounting terms as an income due to the implementation of the childcare service. More specifically, this means that the governmental compensation for the service significantly reduces the costs of childcare for parents.

Annex: Elaboration of the regulatory strategy

Regulatory strategy: information driven
The basis of this strategy is the collection of data and information so measures can be implemented in an information-driven manner. Some efficiency risks actually materialize. Other risks relate to potential inefficiencies in the future. We are not sure if they wlll all occur and to which extent. Therefore, collecting information and gaining insight is important.

Regulatory strategy: reactive
It is desirable to use a measure only when a risk arises. It is therefore important that action is taken quickly at that time and measures can be implemented quickly. With proper preparation, the regulatory strategy must be reactive. The regulatory strategy makes it possible with an escalation ladder to weigh which measures are proportionate when. Further measures have major disadvantages and therefore not all measures are introduced at the same time. A measure is only chosen if the intended effect of the measure cannot be achieved in another way that is less intrusive for the persons concerned.

Regulatory strategy: full-time
The addition of new measure is done in phases. The step-by-step introduction of regulation has an signalling function and may therefore make further measures unnecessary (prevention). The aim is to prevent inefficiencies, while maintaining the character of the childcare sector as an entrepreneurial and customer-oriented sector, since this leads to a large, high-quality and diverse offer that matches the different needs of parents.

Within the regulatory strategy, we identify eight main categories of coherent measures:
1. Self-regulation: The sector itself sets standards to influence behaviour in the sector.
2. Transparency: Improve the information position of parents by understanding important features of the offer.
3. Governance: Organizing countervailing power in childcare organizations.
4. Reporting obligations: Obligations to report to the government/society.
5. Market organisation: Understanding and managing risks (local) market concentrations.
6. Financial requirements: Requirements for financial performance or financial accountability.
7. Performance regulation: Restrictions on the number of hours reimbursed.
8. Tariff regulation: Setting conditions at market prices.

Within these main categories, various measures are developed and can be used to ensure efficiency.