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**Subject: State aid / Netherlands
SA.106559 (2023/N)
National cessation scheme for peak-load livestock sites (LBV Plus)**

Excellency,

The European Commission ("the Commission") wishes to inform the Netherlands that, having examined the information supplied by your authorities on the aid referred to above, notified as a scheme, it has decided not to raise any objections to the relevant scheme (hereafter, "the scheme", see recitals (12) and (35)) as it is compatible with the internal market pursuant to Article 107(3)(c) of the Treaty on the Functioning of the European Union ("TFEU").

The Commission has based its decision on the following considerations:

1. PROCEDURE

- (1) On 27 February 2023, the Netherlands notified to the Commission pursuant to Article 108(3) TFEU the above mentioned scheme by electronic submission. It was registered by the Commission on the same day. The Commission sent a request for additional information to the Dutch authorities on 27 March 2023, which the latter answered by letter of 21 April 2023, registered by the Commission on the same day.
- (2) The Netherlands exceptionally agrees to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union ("TFEU"), in conjunction

H.E. Mr. Wopke Hoekstra
Minister of Foreign Affairs
Rijnstraat 8
Postbus 20061
NL - 2500 EB Den Haag
Nederland

with Article 3 of Regulation 1/1958¹ and to have this Decision adopted and notified in English.

2. DESCRIPTION

2.1. Title

- (3) National cessation scheme for peak-load livestock sites (LBV Plus).

2.2. Objective

- (4) The objective of the scheme is to facilitate the total or partial² closure of livestock farming sites that bring about peak load of nitrogen in overburdened Natura 2000 areas, to improve thereby the environment quality in those areas and to promote a more sustainable and environmentally friendly production in the livestock sector as a whole.

2.3. Legal basis

- (5) The legal basis of the scheme is the draft Regulation of the Minister for Nature and Nitrogen establishing an aid scheme for the closure of peak-load livestock sites in nature areas (“draft regulation”) [*Regeling van de Minister voor Natuur en Stikstof tot vaststelling van een regeling voor de verstrekking van subsidie voor het sluiten van veehouderijlocaties met piekbelasting op natuurgebieden (reference title: Landelijke beëindigingsregeling veehouderijlocaties met piekbelasting)*]. It is based on the Framework Law on EZK³ and LNV⁴ subsidies [Kaderwet EZK- en LNV-subsidies].

2.4. Duration

- (6) The Dutch authorities confirm that the adoption, publication and entry into force of the draft regulation will take place after they received the approval decision of the Commission. The scheme will enter into force on the day following the date of the publication of the national legal basis in the Government Gazette (Staatscourant) and it will be in force until 27 February 2028.

2.5. Budget

- (7) The overall budget for the scheme is EUR 975 million, which is financed by the State budget.

¹ Regulation No 1 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385).

² There may be cases where a farmer owns several production sites, one being eligible for aid under the scheme and the other not, hence the possibility of a partial closure.

³ Economic Affairs and Climate

⁴ Agriculture, Nature and Food Quality

2.6. Granting authority

- (8) The Minister for Nature and Nitrogen grants the aid, and the scheme is administered by the Ministry of Agriculture, Nature and Food quality⁵.

2.7. Beneficiaries

- (9) Small and medium-sized enterprises (SMEs) may benefit from the scheme, who are active in the animal husbandry sector for dairy cattle, pigs, poultry and veal calves. The number of beneficiaries is estimated between 501 and 1000.
- (10) Aid under the scheme will not be granted to undertakings, which:
- are in difficulty as laid down in the Commission Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty⁶ and as referred to in point 33(63) of the Guidelines for State aid in the agricultural and forestry sectors and in rural areas⁷ ("the Guidelines");
 - are subject to an outstanding recovery order following a previous Commission decision declaring an aid unlawful and incompatible with the internal market.

2.8. Form of aid

- (11) Aid under the scheme will be provided in the form of direct grants.

2.9. Description of the scheme

- (12) The Netherlands notified the measure as a scheme.
- (13) The ammonia emissions from stables and manure deposits for all livestock farming and for dairy, pig, poultry and veal calves are indicated in the table below with 2021 figures (Source: CBS Statline).

Sector	Ammonia emissions from stables and manure deposits (in million kg NH₃)	Share of total livestock farming
Dairy cattle	27,9	49 %
Pigs	12,0	21 %
Poultry	11,2	19 %
Veal calves	3,6	6 %
Overall	54,7	95 %
Total livestock farming	57,4	100 %

⁵ The Ministry of Agriculture, Nature and Food Quality provides support for the Minister of Agriculture, Nature and Food Quality and for the Minister for Nature and Nitrogen.

⁶ OJ C 249, 31.7.2014, p. 1

⁷ OJ C 485, 21.12.2022, p. 1.

- (14) The scheme is open - on a voluntary basis - for farmers keeping animals referred to in the above table, as these sectors are the most important to reduce nitrogen deposition. Livestock farmers with production rights⁸ for dairy cattle, pigs and poultry (chicken and turkey) or farmers keeping veal calves may be eligible for aid for the irreversible closure of the livestock production site, if the nitrogen load⁹ caused by that site is at least 2 500 moles of nitrogen per year (“peak-load”) in the concerned areas listed in the annex to the draft regulation. Livestock farming activities may no longer be carried out at a production site that has been closed with the aid neither by the beneficiary nor by a future acquirer or user of the site in question.
- (15) The scheme makes an important contribution to achieving environmental and climate objectives (soil, water and air) due to the permanent reduction of the national livestock population. In addition to reducing the environmental pressure, the scheme contributes to the economic resilience of the livestock sector at large. The Dutch authorities explain that livestock farmers are prepared to close their production site only if they receive a financial contribution (direct grant), since production capacity represents a market value lost with the closure. The scheme is necessary to achieve a significant reduction in nitrogen deposition in the short term for the specific target group. To this end, a maximum aid amount allowed under the Guidelines must be made available. There is no market mechanism promoting the closure of capacity. The Dutch authorities confirm that the effectiveness of the scheme will be subject to an ex-post evaluation.
- (16) Under the scheme holdings/sites where no dairy cattle, pigs, poultry (with rights of production) or veal calves are actually kept, are not eligible for the aid. The corresponding production capacity must have been used commercially during the five years preceding the date of application, in a business-as-usual manner¹⁰. No aid will be granted if the production capacity has already been closed or if that closure appears inevitable¹¹.

⁸ The animal categories dairy cattle, pigs and poultry are covered by the system of production rights under the Dutch Fertilisers Act (Chapter V: Rules on the production of livestock fertilisers), however the animal category of veal calves is not covered. The production right as referred to in Article 1 (1) (aa) of the Dutch Fertilisers Act, is expressed in the following ways: a) for dairy cattle the phosphate right is expressed in kilograms of phosphate; b) for pig, in pig units, in accordance with the standards laid down in Annex II to the Dutch Fertilisers Act and c) for poultry, in poultry units, in accordance with the standards laid down in Annex II to the Dutch Fertilisers Act.

⁹ ‘Nitrogen load’ means the total nitrogen deposition, expressed in moles of nitrogen per year, caused by a livestock site on congested Natura 2000 sites. The nitrogen load is determined using the AERIUS Calculator (a calculation tool for determining the extent of nitrogen deposition on a nitrogen-sensitive habitat in a Natura 2000 site, available at www.aerius.nl). This calculation tool has certain characteristics, including the fact that only the nitrogen deposition on overburdened Natura 2000 areas within a distance of 25 kilometers is included. This makes it possible for all eligible undertakings to benefit from the scheme under the same conditions. The nitrogen load calculation is based on the number of farm animals kept on the site on average in 2021, broken down according to the animal categories and the housing system used. If the farmer can demonstrate that the situation in 2021 is not representative concerning the average number of farm animals kept during a year, the average number of farm animals kept in 2019 or 2020 may be used.

¹⁰ The breeding site is considered in continuous use also when there is an interruption due to an animal disease or when animals are sent to the slaughterhouse and have to be replaced by new animals.

¹¹ According to the Dutch authorities, the only cases where closure would be inevitable concern 1) undertakings in difficulty, which cannot benefit from the scheme (see recital (10 a)) and 2) farmers who already have undertaken a commitment to close the livestock site or has already started the closure (Article 6(2)(a) of the draft Regulation).

- (17) For the closure to be considered as irrevocable, the following cumulative conditions must be fulfilled:
- a) farm animals are no longer kept on the site;
 - b) the manure has been removed from the site;
 - c) the farmer has notified the total or partial cancellation of his/her production rights, at least to the extent required for keeping the following percentage of the animals, expressed in pig units, poultry units or kilograms of phosphate, held on the site on average in the reference year used to calculate the nitrogen load: 80 % for pigs, chickens and turkeys, and 95 % for dairy cattle;
 - d) depending on the applicable obligations under the Environmental Law General Provisions Act (*Wet algemene bepalingen omgevingsrecht*) and the Environmental Management Act (*Wet milieubeheer*), or after the entry into force of the Environmental Act (*Omgevingswet*) and the Decree on Activities related to the Living Environment (*Besluit activiteiten leefomgeving*):
 - (i) the farmer has submitted to the competent authority an environmental report stating that he/she no longer keeps farmed animals on the site and, if applicable, the competent authority has withdrawn the environmental permit “limited environmental test” (*bepaalde milieutoets*)¹² that the farmer holds by virtue of the Environmental Law General Provisions Act; or
 - (ii) the competent authority has withdrawn or amended the environmental permit for the site in such a way that the keeping of farmed animals on the site is no longer allowed;
 - e) the nature permit that the farmer might have is withdrawn, except if after the closure, the farmer starts carrying out other activities on the site causing nitrogen deposition on nitrogen-sensitive habitats in a Natura 2000 site, which can be in the following cases:
 - (i) the Provincial Executive has taken a decision on the basis of the first paragraph of Article 2.4 of the Nature Conservation Act (*Wet natuurbescherming*)¹³ or, after the entry into force of the Environmental Act (*Omgevingswet*), Article 11.9 of the Decree on activities related to the Living environment, or
 - (ii) the competent authority has granted a nature permit on the basis of which the permitted nitrogen emission from the site does not exceed the nitrogen emission from those activities, with a maximum of 15 % of the nitrogen emission from the previously authorised activities;
 - f) the competent administrative authority of the municipality within the boundaries of which the livestock farm is located has dealt with a request from the farmer to adapt the zoning plan or, after the entry into force of the

¹² Permit defining the conditions applicable to the construction, use and destruction of buildings and facilities.

¹³ That Article provides among others that the provincial Executive may lay down conditions to carry out actions.

Environmental Act, the environmental plan in such a way that a livestock farm can no longer be established on the site;

- g) the farmer has undertaken, based on an agreement with the Dutch State, to:
 - (i) no longer keep farm animals on the site, either as a person or together with others in the form of a legal person or association;
 - (ii) ensure that no farm animals are kept on that site after a temporary or non-temporary transfer or commissioning of the site or part of it to a purchaser or user; and
 - (iii) not to keep in another location in the Netherlands or in other Member States of the EU the same species of animals which were held on the site closed with aid under the scheme, either as a person or jointly with others in the form of a legal person or in association;
- h) the production capacity used on site for livestock farming with production rights or veal calf farming has been scrapped and disposed of. The Minister of Nature and Nitrogen may grant an exemption from this requirement if the farmer will use production capacity for a long time for activities other than for livestock farming, provided that the competent authority has allowed such use on the basis of the Environmental Law General Provisions Act and the Environmental Management Act or, after the entry into force of the Environmental Act, within 12 months of the conclusion of the agreement referred to in point g)).

(18) The aid consists of three types of compensation:

- (a) a compensation for the loss of all or part of the production rights when livestock farming with production rights is concerned (“compensation for the loss of production rights”);
- (b) a compensation for the loss of the value of the production capacity used for livestock farming with production rights or for veal calves on the livestock site as a result of the irreversible closure of the latter, except if an exemption from the obligation to demolish and remove production capacity has been granted as referred to in recital (17)(h)) (“compensation for the loss of value of the production capacity”);
- (c) a compensation for the costs of dismantling and disposing of the production capacity used on the site for livestock farming with a right of production or for veal calves (“demolition costs”).

(19) The compensation for the loss of production rights amounts to 100 % of the value of the fully or partially cancelled production rights, in so far as those cancelled production rights do not exceed the production rights required for the number of animals, expressed in pig units, poultry units or kilograms of phosphate, held on average on the breeding site in the reference year used to calculate the nitrogen load. That value is calculated on the basis of the market value of the production right required for a pig unit, a poultry unit or a kilogram of phosphate, and the proportion of rights cancelled, as well as on the basis of the actual market price, distinguishing, as far as pig rights and poultry rights are concerned, between the

concentration areas South and East, referred to in Annex I to the Fertilisers Act, and the other areas.

- (20) The compensation for the loss of value of the production capacity used for livestock farming with production rights at the breeding site or for veal calves on the livestock site will amount to 120 % of the adjusted replacement value of the production capacity. However, it is not applicable if an exemption from the obligation to demolish and remove the production capacity has been granted (see recital (17)(h)). The adjusted replacement value¹⁴ (as current selling value) is determined by multiplying the number of m² of the animal housing by the amount defined in the annex to the draft Regulation. The amounts defined in the draft Regulation¹⁵ are based on the lifespans, expressed in years of the animal facility (0 to 39 years)¹⁶ and the age of the animals (0 to 12 months).
- (21) Aid for the demolition costs consists of a fixed compensation per square meter of animal housing surface (EUR 45), meaning an aid intensity not exceeding 100%. It covers costs of demolishing the production capacity (stables, manure cellars and silos, feed silos) and removing the resulting rubble from the production site. The aid amount is based on assessment by experts from the agricultural sector who took into account the demolition costs that were common under the subsidy scheme for the reorganisation of pig farming and the increase in demolition costs as a result of the increased energy prices, costs of labor and costs for the environmentally responsible removal and processing of demolition waste.
- (22) The Dutch authorities explained that the aid amounts are established by applying fair, equitable and verifiable calculation methods based on objective information or expert judgement.
- (23) The Dutch authorities have confirmed that the maximum aid intensity and aid amount will be calculated by the granting authority when granting the aid, that the eligible costs will be supported by documentary evidence, which is clear, specific and contemporary, and that all figures will be taken before any deduction of tax or other charge. VAT will not be eligible for aid.
- (24) Applications for aid will have to contain at least the following information:
- a) details concerning the applicant, including contact details and the number under which the company is registered with the Chamber of Commerce;
 - b) the breeding site location to which the application relates,
 - c) the average number of animals of the species with production rights, expressed in pig units, poultry units or kilograms of phosphate kept at the

¹⁴ Wageningen Economic Research, that is part of Wageningen University and Research (WUR), has issued an opinion on the corrected replacement cost. To determine the current selling value of the production capacity the same principles were used as in SA.54275 (2019/N) NL LNV AGRI Subsidy scheme reorganisation of pig farming (Commission decision C(2019) 7234 final of 10.10.2019). The Wageningen Economic Research assumes however that the current value at the end of the 40-year depreciation period still amounts to 20 % of the replacement cost.

¹⁵In EUR per square metre of housing area.

¹⁶ In relation to the requirement of Article 6 (1) of the draft Regulation, aid is not granted for an animal housing that has been put into use less than five years previously.

breeding site, or the average number of veal calves kept at the breeding site in the reference year used for the calculation of the nitrogen load;

- d) in the case of livestock farming with production rights: the quantity of production rights, expressed in pig units, poultry units or kilograms of phosphate, which will be cancelled;
 - e) an indication about the possession, by the applicant, of a nature permit for the breeding site;
 - f) an indication of the production capacity used for livestock farming with production rights on the breeding site or the veal calves on the farming site, indicating: the date at which animals have been kept for the first time in the animal facility and the area of the animal housing expressed in m² based on the outer dimensions of the animal housing.
- (25) Concerning the other data that must appear in the application for aid, the Dutch authorities explain that the start and end date follow from the structure of the scheme: the starting date of the activity (closure of the production capacity) is the date at which the person concerned has concluded the agreement with the State mentioned in recital (17)(g), no later than six months after the granting of the aid, and the end date of the closure is (at the latest) 28 months after the conclusion of that agreement. Against that background and the fact that applications must be lodged before the start of the closure, the dates on which the latter will take place and end cannot appear in the application. The same applies to the amount of aid needed and the eligible expenditure, as the aid will be paid on the basis of the age of the stables, which will in turn depend on the time schedule explained for the definition of the starting and end dates of the closure.
- (26) Applications must be underpinned by appropriate documentation, including:
- a) where applicable, a copy of the Environmental Law declaration, the environmental permits “limited environmental test” and “nature” and the nature permit for the breeding site covered by the application;
 - b) a declaration in which the applicant states that he/she actually breeds animals with production rights on the breeding site or veal calves and that the production capacity used for livestock farming with production rights in the breeding site has been used on a continuous basis during the five years preceding the application in a commercially normal manner (recital 16 and footnote 10);
 - c) a copy of the results of the calculation of nitrogen load;
 - d) an up-to-date map of the breeding site indicating the production capacity used for livestock farming with production rights or for veal calves;
 - e) a copy of the most recent decision establishing the value of the production capacity.
- (27) The draft Regulation lays down that an application must be rejected, among others, if the applicant does not comply with European Union standards and

he/she is obliged to cease his/her activities as a farmer. Furthermore, it lays down that the application must be rejected if the farmer:

- a) has already undertaken to close the livestock site or has already started the closure of the site; or
 - b) does not comply with Union standards within the meaning of point 33(64) of the Guidelines or the legal requirements for carrying out a livestock farming with a right of production or for breeding on a veal calf farm.
- (28) The Dutch authorities explained that the scheme is related to the Common Agricultural Policy (CAP) and helps achieving the objectives of Article 5(b) and 6(d) and (f) of Regulation (EU) 2021/2115¹⁷ (“SP regulation”). By reducing nitrogen deposition in congested Natura 2000 sites, the scheme contributes to the objectives to improving the environment (biodiversity, ecosystems and habitats and landscape) and mitigate the climate change, which is one of the high priorities defined in the Regulation, and promoting a more sustainable production. The limitation of the animal population will not have any negative impact on the fulfilment of the objectives defined in Article 5 and 6 of the SP Regulation.
- (29) When a production site is closed, the applicant must fulfil several conditions, including that he/she does not infringe or has not infringed upon Union standards. After the closure of the production site, the beneficiary must take the necessary soil protection measures for hazardous substances on this site. This arises in particular from the obligations included in the “Environmental Management Activities Decree”, Section 2.4, and in the “environmental permit”. On that basis, the farmer must conduct an investigation into the soil quality within six months of the closure and, if the results of that investigation make it necessary, take measures to restore the soil quality. This ensures that Articles 11 and 22 of Directive 2010/75/EU¹⁸ are complied with upon closure of the site.
- (30) The Dutch authorities explain as far as cumulation of aid is concerned that:
- a) aid under the scheme may be cumulated concurrently with aid under several schemes or with ad hoc aid, provided that the total amount of State aid for an activity or project does not exceed the aid ceilings laid down in the Guidelines;
 - b) aid with identifiable eligible costs under the scheme may be cumulated with any other State aid, as long as those aids concern different identifiable eligible costs, and with any other State aid, in relation to the same eligible costs, partly or fully overlapping, only if such cumulation does not result in exceeding the highest aid intensity applicable to this type of aid under the Guidelines;

¹⁷ Regulation (EU) 2021/2115 of 2 December 2021, establishing rules on support for strategic plans to be drawn up by Member States under the common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulations (EU) No 1305/2013 and (EU) No 1307/2013 (OJ L 435, 6.12.2021, p. 1).

¹⁸ Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (OJ L 334, 17.12.2010, p. 17).

- c) aid under the scheme may be cumulated with *de minimis* aid in respect of the same eligible costs if such cumulation does not result in an aid intensity exceeding that fixed in the Guidelines.
- (31) There is no similar support in the Dutch rural development programme nor in the Dutch Strategic Plan.
- (32) Concerning the transparency of the aid: The information mentioned in point 112 of the Guidelines will be published on the following web page: <https://webgate.ec.europa.eu/competition/transparency/public/search/home/>, as well as on a comprehensive national State aid website, after the decision to grant the aid has been taken. It will be kept for at least 10 years and be available for the general public without restrictions.

3. ASSESSMENT

3.1. Existence of aid - Application of Article 107(1) TFEU

- (33) According to Article 107(1) of the TFEU, "*[s]ave as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market*".
- (34) The qualification of a measure as aid within the meaning of this provision therefore requires the following cumulative conditions to be met: (i) the measure must be imputable to the State and financed through State resources; (ii) it must confer an advantage on its recipient; (iii) that advantage must be selective; and (iv) the measure must distort or threaten to distort competition and affect trade between Member States.
- (35) Since the notified aid is governed by an act on the basis of which, without further implementing measures being required, individual aid awards may be made to undertakings defined in a general and abstract manner (see recitals (5) and (9)), the Commission agrees with the Dutch authorities and considers that it is an aid scheme within the meaning of point 33(13) of the Guidelines.
- (36) The scheme is imputable to the State as it is based on the legal acts described in recital (5) and the granting authority is the Minister for Nature and Nitrogen with the Ministry of Agriculture, Nature and Food quality administering the scheme (recital (8) and footnote 5).
- (37) The scheme is financed through State resources because it is financed by the State budget (recital (7)).
- (38) The scheme confers an advantage on its beneficiaries in the form of direct grants (recital (11)). It thus confers an advantage on those beneficiaries, which they would not have had under normal market conditions.
- (39) That advantage is selective because other undertakings in a comparable legal and factual situation, in the light of the objective pursued by the scheme, within the livestock sector or other sectors, are not eligible for aid and thus will not receive the same advantage. The scheme therefore gives only certain undertakings (see

recitals (9) and (14)) a selective economic advantage, by strengthening their competitive position on the market. According to the case law of the Court of Justice, the mere fact that the competitive position of an undertaking is strengthened compared to other competing undertakings, by giving it an economic benefit, which it would not otherwise have received in the normal course of its business, points to a possible distortion of competition¹⁹.

- (40) Pursuant to the case law of the Court of Justice, aid to an undertaking appears to affect trade between Member States where that undertaking operates in a market open to intra-EU trade²⁰. The beneficiaries of aid operate in the livestock sector where intra-EU trade takes place²¹. The sector concerned is open to competition at EU level and therefore sensitive to any measure in favour of the production in one or more Member States. Therefore, the scheme is liable to distort competition and to affect trade between Member States.
- (41) Considering the above (recitals (33) to (40)), the conditions of Article 107(1) of the TFEU are fulfilled. It can therefore be concluded that the proposed scheme constitutes State aid within the meaning of that Article. The Netherlands does not contest that conclusion. The aid may only be considered compatible with the internal market if it can benefit from one of the derogations provided for in the TFEU.

3.2. Lawfulness of the aid – Application of Article 108(3) TFEU

- (42) The scheme was notified to the Commission on 27 February 2023. It has not been implemented yet (see recital (6)). Therefore, the Netherlands has complied with its obligation under Article 108(3) TFEU.

3.3. Compatibility of the aid

3.3.1. Application of Article 107(3)(c) TFEU

- (43) The Commission has assessed the scheme on the basis of Article 107(3)(c) TFEU.
- (44) Under Article 107(3)(c) TFEU an aid may be considered compatible with the internal market, if it is found to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest. Therefore, compatible aid under that provision of the Treaty must fulfil two conditions (i) the measure should contribute to the development of certain economic activities or of certain economic areas and (ii) it should not distort competition in a way contrary to the common interest.

¹⁹ Judgment of the Court of 17 September 1980 in Case 730/79 Philip Morris Holland BV v Commission of the European Communities, ECLI:EU:C:1980:209.

²⁰ See in particular the judgment of the Court of 13 July 1988 in Case 102/87 French Republic v Commission of the European Communities, ECLI:EU:C:1988:391.

²¹ In 2022, trade in the pig sector between the Netherlands and the rest of the Union amounted to about EUR 2.42 billion for exports and EUR 1.32 billion for imports (Source: European Commission and Eurostat).

3.3.2. Application of the Guidelines

- (45) As regards the scheme, Part II, Chapter 1, Section 1.3.1.1 of the Guidelines regarding aid for “*closing of capacity for animal, plant or human health, sanitary, ethical, environmental or climate reasons*” is applicable.
- (46) It follows from point 423 of the Guidelines that the Commission will consider aid for closing of capacity compatible with the internal market under Article 107(3)(c) TFEU if it complies with Part I, Chapter 3 and with the relevant provisions of the above-mentioned Part II, Chapter 1, Section 1.3.1.1 of the Guidelines.
- (47) In this context, the Commission will determine whether the scheme facilitates the development of a certain economic activity or certain economic areas (first condition) and whether it adversely affects trading conditions to an extent contrary to the common interest (second condition).

3.3.2.1 First condition: the aid must facilitate the development of an economic activity or certain economic areas

Aided economic activity

- (48) The aided economic activity is husbandry. The scheme aims to facilitate the orderly closure of livestock farming sites that bring about significant nitrogen deposition (“peak-load”) in overburdened Natura 2000 areas, to improve thereby the environment quality in those areas and to promote a more sustainable and environment friendly production in the livestock sector.
- (49) According to point 43 of the Guidelines, the Member State must demonstrate that the aid aims at facilitating the development of the identified economic activity. The Dutch authorities have explained that the closure of polluting production capacity will have a positive effect on the environmental quality of the targeted areas, which will allow to keep a high quality, sustainable and environmentally friendly production (see recitals (4) (15) and (28)). Therefore, the provisions of point 43 of the Guidelines are complied with.
- (50) According to point 44 of the Guidelines, Member States must also describe whether and, if so, how the aid will contribute to the achievement of the objectives of the CAP and within that policy to the objectives of Regulation (EU) 2021/2115 and describe more specifically the expected benefits of the aid. The Dutch authorities have provided a description of that contribution and those benefits (see recital (28)). The Commission notes the arguments put forward by the Dutch authorities. Therefore, the provisions of point 44 of the Guidelines are complied with.

Incentive effect

- (51) According to point 47 of the Guidelines, the scheme has an incentive effect if it changes the behaviour of undertakings in such a way that they engage in additional activity contributing to the development of the sector, in which they would have normally not engaged in without aid or would have engaged in a different or restricted manner. Given the fact that, in the absence of the aid, pig, poultry, dairy and veal calf farmers rather would have little or no interest in closing their production capacity (see recital (15)), the State intervention has an incentive effect.

- (52) According to points 50 and 51 of the Guidelines, the relevant project or activity should not start before an application for aid is lodged and this application must include at least the name of the applicant, its size, a description and location of the project, the duration, the aid needed and the eligible costs. The Commission considers that those requirements are fulfilled in the light of recital (27) a), and accepts the explanation provided by the Dutch authorities about the content of the application in recitals (24) and (25). As described in recital (27), aid applications must be lodged before the start of the closure. The Commission considers that that rule satisfies the requirement that the project or activity should not start before an application for aid is lodged.

No breach of relevant provisions and general principles of Union law

- (53) According to point 62 of the Guidelines, the Commission will not authorise State aid which is incompatible with the provisions governing the common organisation of the market or which would interfere with the proper functioning of the common organisation. As the scheme aims at keeping a sustainable agricultural production in an environmentally friendly way, it does not go against the provisions nor interfere with the proper functioning of the common organisation of the market.
- (54) According to point 63 of the Guidelines, State aid cannot be declared compatible with the internal market where the award of aid is subject to the obligation for the beneficiary undertaking to use national products or services. The scheme does not provide for such an obligation.
- (55) According to point 64 of the Guidelines, the Commission will not authorise aid for export-related activities to third countries or to Member States which would be directly linked to the quantities exported, aid contingent upon the use of domestic over imported goods, or aid to establish and operate a distribution network or to cover any other expenditure linked to export activities. Aid towards the cost of participating in trade fairs, or of studies or consultancy services needed for the launch of a new or existing product on a new market in principle does not constitute export aid. The scheme does not provide for such aids.

3.3.2.2 Second condition: the aid must not unduly affect trading conditions to an extent contrary to the common interest

A) Need for State intervention

- (56) According to point 70 of the Guidelines, State aid can achieve an objective of common interest if it is targeted towards the correction of market failures. As mentioned in recital (15), the Dutch authorities have identified the market failure regarding the closure of production capacity for environmental reasons. The market failure is corrected by means of granting the most appropriate form of aid in relation to the counterpart provided by the beneficiary. Therefore, point 70 of the Guidelines is complied with.
- (57) As provided for in point 71 of the Guidelines, the Commission considers that the market is not delivering the expected objectives without State intervention concerning the aid measures fulfilling the specific conditions laid down in Part II of the Guidelines. The scheme fulfils the specific requirements laid down in Section 1.3.1.1 of Part II of the Guidelines (recital (80)). Therefore, in line with point 71 of

the Guidelines, the Commission considers that there is a need for State intervention.

B) Appropriateness of aid

Appropriateness among alternative policy instruments

- (58) As provided for in point 73 of the Guidelines, the Commission considers that aid granted in the agricultural sector which fulfils the specific conditions laid down in the relevant Section of Part II of the Guidelines is an appropriate policy instrument. The scheme fulfils the specific requirements laid down in Section 1.3.1.1 of Part II of the Guidelines (recital (80)). Therefore, the scheme is an appropriate policy instrument.
- (59) Point 74 of the Guidelines is not relevant in the present case, as the Dutch authorities explained that the operations funded by the scheme are not covered in the Dutch Rural Development Plan 2014-2022 nor included in the CAP National Strategic Plan 2023-2027 (see recital (31)).

Appropriateness among different aid instruments

- (60) According to point 75 of the Guidelines, aid may be granted in various forms. However, Member States should ensure that the aid is granted in a form that is least likely to distort trade and competition. In the present case, the aid will be granted in the form of direct grants (see recital (11)).
- (61) The Dutch authorities have explained why direct grant is the most appropriate form of aid (see recital (15)). The Commission considers that direct grants provide a greater incentive to participate in the scheme than loans requiring repayment. Therefore, they can be considered as the most appropriate aid instrument.

C) Proportionality of aid

- (62) Point 83 of the Guidelines states that aid is considered proportionate if the amount of aid per beneficiary is limited to the minimum necessary. According to point 84 of the Guidelines, for aid to be proportionate, the amount of aid should not exceed the eligible costs, with some exceptions. The maximum aid intensity under the scheme will be 100 % (see recitals (19) and (21)), in conformity with point 84 of the Guidelines. The 120% aid intensity for the compensation for the loss of value of assets (recital (20)) where the closure is done for environmental reasons is expressly provided for under point 436(b) of the Guidelines as it provides incentive for the benefit of the public (recital 78) and thus is in conformity with point (84) of the Guidelines.
- (63) According to point 86 of the Guidelines, the proportionality criterion is respected if the eligible costs are calculated correctly and if the maximum aid intensities laid down in Part II are respected. Moreover, the Dutch authorities described the calculation methodology for the different components of the aid, which is based on objective information or expert judgement (recitals (19), (20), (21) and (22)). In the light of recital (24) the granting authority will have all relevant data at its disposal to calculate the aid correctly.

- (64) According to point 87, the maximum aid intensity and aid amount must be calculated by the granting authority when granting the aid. The eligible costs must be supported by documentary evidence which should be clear, specific and contemporary. For the purposes of calculating the aid intensity and the eligible costs, all figures used must be taken before any deduction of tax or other charge. Those requirements are fulfilled (see recitals (23) and (24)).
- (65) According to point 88 of the Guidelines, value added tax (VAT) is not eligible for aid, except where it is not recoverable under national VAT legislation. That provision is complied with, as VAT is not eligible under the scheme (see recital (23)).
- (66) Based on those elements, the Commission considers that the aid provided for in the scheme is proportionate.

D) Avoidance of adverse negative effects on competition and trade

- (67) According to point 116 of the Guidelines, for an aid to be compatible, its negative effects in terms of distortions of competition and impact on trade between Member States must be minimised. According to point 118 of the Guidelines, if the aid is well targeted, proportionate and limited to the net extra costs, its negative impact is softened and the risk that it will adversely distort competition is more limited. Moreover, the Commission establishes maximum aid intensities or aid amounts and the greater the positive effects the aided project is likely to give rise to, the higher the cap on aid intensity. In the present case, the aid provided for by the scheme is well targeted (see recitals (4), (9) (14) and (16)) and proportionate (see recital (66)). Moreover, it is limited to the incurred losses, equivalent to net extra costs for the livestock farmers (see recitals (19), (20) and (21)) and only a part of the targeted farmers active in livestock husbandry is expected to take part in the scheme. Therefore, the Commission considers that adverse negative effects on competition and trade are kept to the minimum. Moreover, according to point 137 of the Guidelines, in principle, due to its positive effects on the development of the sector, the Commission considers that where an aid fulfils the conditions and does not exceed the relevant maximum aid intensities or maximum aid amounts, laid down in the applicable Sections of Part II, the negative effect on competition and trade is limited to the minimum. The aid provided under the scheme does not exceed the aid intensities related to closure of capacity.

E) Cumulation

- (68) The cumulation scenarios mentioned in recital (30) correspond to those described in points 103, 104 and 109 of the Guidelines. Thus, the requirements laid down in those points are complied with.

F) Specific assessment according to the category of aid: Section 1.3.1.1 of the Guidelines - Closing of capacity for animal, plant or human health, sanitary, ethical, environmental or climatic reasons

- (69) According to Section 1.3.1.1 of Part II of the Guidelines, the Commission will consider aid for closing capacity for animal, plant or human health, sanitary, ethical, environmental or climatic reasons compatible with the internal market under Article 107(3)(c) TFEU if it complies with the common assessment

principles of the Guidelines and with the conditions set out in points 424 to 436 of the Guidelines.

- (70) According to point 424 of the Guidelines the closing of capacity is done for animal, plant or human health, sanitary, ethical or environmental reasons, such as the reduction of overall stocking densities. As described in recital (4), the closure is done for environmental reasons. Therefore, this provision is complied with.
- (71) According to point 425 of the Guidelines, there must be a minimum contribution from the beneficiary of the aid, in the form of a definitive and irrevocable decision to scrap or irrevocably close the production capacity concerned. This decision will involve either the complete closure of capacity by the undertaking concerned or, where duly justified, the partial closure of capacity. Legally binding commitments must be obtained from the beneficiary that the closure concerned is definitive and irreversible and that the beneficiary will not start the same activity elsewhere. These commitments must also bind any future purchaser of the land or facility concerned. As described in recital (17) and given the fact that the partial closure of capacity is justified by the possibility to carry out other activities than livestock breeding on the farm, those provisions are complied with.
- (72) According to point 426 of the Guidelines only undertakings that have actually been producing, and only production capacities that have actually been in constant use over the past five years before closing of the capacity are eligible for aid and no aid may be granted if the production capacity has already been closed or if that closure appears inevitable. As described in recitals (16) and recital (26)b these provisions are complied with.
- (73) According to point 428 of the Guidelines only undertakings fulfilling Union standards are eligible for aid. Undertakings which would be obliged to stop production anyway are excluded. That requirement is fulfilled, as described in recital (27).
- (74) Point 429 of the Guidelines refers to open farmland taken out of production. The scheme does not concern open farmland taken out of production. According to the same point, the closure of installations falling within the scope of Directive 2010/75/EU of the European Parliament and of the Council must be carried out in accordance with Articles 11 and 22 of that Directive, aiming at avoiding pollution. In the light of recital (29), the provisions of those articles will be complied with.
- (75) According to point 430 of the Guidelines aid under the scheme must be accessible to all eligible undertakings. That provision is complied with, as shown in footnote 9.
- (76) According to point 431 of the Guidelines the eligible costs for which aid may be granted concern the compensation for the loss of value of the assets, measured as the current selling value of the assets. As mentioned above in recitals (19) and (20) and footnote 14, the scheme provides for aid based on a combination of assets (market value of the production rights and current selling value of animal housing). The provisions of point 431 of the Guidelines therefore are complied with.
- (77) According to point 436 (a) of the Guidelines, the maximum aid intensity may go up to 100 % for the loss of value of assets. That intensity is respected, as shown in recitals (19) with regard to the loss of production rights.

- (78) According to points 432 and 436(b) of the Guidelines, in addition to the compensation of loss of value of assets, for the closing of capacity for environmental or climate reasons, an incentive payment, which may not exceed 20 % of the value of the assets, may be given. The Dutch authorities consider that this incentive payment is necessary for farmer's participation in the scheme and thus to achieve their environmental aims and therefore allocate 120 % aid intensity for the loss of production capacity (recitals (15) and (20)). The provisions of points 432 and 436(b) of the Guidelines therefore are complied with.
- (79) According to point 433 of the Guidelines, compensation may also be granted for the costs of destruction of the production capacity up to 100 % aid intensity. The Dutch authorities make aid available for farmers with this aid intensity (recital (21) which complies with point 433 and point 436(a) of the Guidelines).
- (80) Therefore, the Commission considers that the scheme complies with the specific provisions of Section 1.3.1.1 of Part II, Chapter 1 of the Guidelines.

G) Duration of the aid measure

- (81) Pursuant to point 638 of the Guidelines, the Commission only authorises aid measures of a limited duration. Aid measures other than those benefiting from co-financing under Regulation (EU) No 1305/2013 and its implementing regulation should not apply for more than seven years. It follows from recital (6) that this requirement is met.

H) Transparency

- (82) The transparency requirements are fulfilled, as shown in recital (32).

I) Weighing up the positive and the negative effects of the aid (balancing test)

- (83) According to point 135 of the Guidelines, in cases where the proposed aid measure does not address a well-identified market failure in an appropriate and proportionate way, the negative distortive effects on competition will tend to outweigh the positive effects of the measure and the Commission is likely to conclude that the proposed aid measure is incompatible. However, in the present case, the scheme addresses an identified market failure (see recital (15)) in an appropriate and proportionate way (see recitals (58) to (66)).
- (84) According to point 136 of the Guidelines, as part of the assessment of the positive and negative effects of the aid, the Commission will consider the impact of the aid on the achievement of the general and specific objectives of the CAP set out in Articles 5 and 6 of Regulation (EU) 2021/2115. Based on recitals (4) and (28), the Commission concludes that the relevant objectives of the CAP set out in Regulation (EU) 2021/2115 (promotion of a more sustainable and environment friendly production) are complied with.
- (85) The negative effect on competition and trade is limited to the minimum, in line with point 137 of the Guidelines (see recital (67)).
- (86) According to point 139 of the Guidelines, all State aid notifications should contain an assessment on whether or not the aided activity is expected to have any environmental and/or climate impact, taking into account environmental protection

legislation, and the standards of good agricultural and environmental condition (GAEC) under Regulation (EU) 2021/2115. Where it is demonstrated that aid has positive environmental and climate impact, the Commission will consider that the positive effects of such aid have been established. In the present case, the scheme will have a positive environmental effect (see recitals (4) (13)(14) and (15)) because it will reduce nitrogen emissions in breeding farms in Natura 2000 areas, and therefore improve the quality of the soil and water, which in turn will be favourable for the future of the agricultural sector.

- (87) Based on the above considerations, the positive effects of the scheme outweigh its negative effects on competition and trade.
- (88) The Commission also notes that in compliance with point 23 of the Guidelines aid will not be granted to undertakings in difficulty and, in compliance with point 25 of the Guidelines, with undertakings which are subject to an outstanding recovery order following a previous Commission decision declaring an aid unlawful and incompatible with the internal market (recital (10)).

3.3.3. Conclusion with regard to the compatibility of the scheme

- (89) Considering the above, the Commission concludes that the scheme facilitates the development of an economic activity and does not adversely affect trading conditions to an extent contrary to the common interest. Therefore, the Commission considers that the scheme is compatible with the internal market based on Article 107(3)(c) TFEU, as interpreted by the Guidelines.

4. CONCLUSION

The Commission has accordingly decided not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(c) TFEU.

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Your request should be sent electronically to the following address:

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

Yours faithfully,

For the Commission
Margrethe VESTAGER
Executive Vice-President