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**Subject: State Aid SA.112540 (2024/NN) - The Netherlands
Amendments to the 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 State aid measure referred to above (the 'scheme', recitals (4) and (14)), it has decided not to raise objections to it as it is compatible with the internal market pursuant to Article 107(3), point (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) By letter dated 8 February 2024, registered by the Commission on the same day, the Netherlands notified, in accordance with Article 108(3) TFEU, the above-mentioned aid scheme.
- (2) The Commission sent a request for additional information to the Dutch authorities on 13 February 2024 and on 11 March 2024, which the latter answered by letter of 29 February 2024 and 20 March 2024 respectively, together with the ex-post evaluation plan forming integral part of the notification, registered by the Commission on the same day.
- (3) The Netherlands exceptionally agreed to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union

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(“TFEU”), in conjunction with Article 3 of Regulation 1/1958 and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURE

2.1. Background and the notified amendments

- (4) The scheme amends the State aid scheme SA.106559 (2023/N) (‘the existing scheme’) approved by Commission decision C(2023) 2992 final of 2 May 2023 (‘the initial decision’).
- (5) The existing scheme was going to expire on 27 February 2028 as mentioned under recital (6) of the initial decision. The Dutch authorities would like to prolong the duration of the scheme, until 12 June 2028 in order to align the duration of the existing scheme approved by the Commission with the provision of the national legal basis.
- (6) In addition, the Dutch authorities would like to ensure sufficient time to the farmers to consider their participation in the scheme under the peak load approach. For doing so, the Dutch authorities notified an extension of the opening period for the submission of grant application which was initially until 5 April 2024 to 20 December 2024. There is no impact of the extension of the period of opening on the duration of the scheme.
- (7) Finally, the Dutch authorities explained that following the success of the applications already submitted and the ones to come, they need to increase the budget. Given the applicable deadlines, the payment of advances and the grant amount related to the instalments and the disbursement of the budget over several years, the Dutch authorities forecast an amount of EUR 1.820 billion for the scheme to ensure a sufficient budget to allow the granting of aid to all applicant who meet the conditions.
- (8) Therefore, the Dutch authorities wish to increase the budget of the existing scheme from EUR 975 million to EUR 1.820 billion.

2.2. Objective

- (9) In line with the existing scheme, the objective remains the same, i.e. to facilitate the total or partial 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 whole¹.

2.3. Legal basis

- (10) The legal basis for the amendment of the exiting scheme is the draft Regulation of the Minister for Nature and Nitrogen N° WJZ/, amending the National cessation scheme for nitrogen reduction livestock sites and of the National Ending Scheme for Peak Destination Livestock Sites [*Regeling van de Minister voor Natuur en Stikstof , nr. WJZ/, tot wijziging van de Landelijke beëindigingsregeling veehouderijlocaties voor stikstofreductie en*

¹ Recital (4) of the initial decision.

*van de Landelijke beëindigingsregeling veehouderijlocaties met piekbelasting*².

- (11) Article III of the legal basis provides that the amendments of the LBV plus scheme (under Article II) shall enter into force by the latest on 5 April 2024. Therefore, amendments of LBV Plus scheme would enter into force on the last day of the current opening period for the uninterrupted implementation of the measure. In this respect, it is stipulated that the amended LBV plus scheme will retroactively have effect from 5 April 2024 in order to keep the period for the submission of grant application open until 20 December 2024 (recital (6)).

2.4. Duration

- (12) The scheme will expire on 12 June 2028 (recital (5)).

2.5. Budget

- (13) The overall budget for the scheme is EUR 1.82 billion, which is financed by the State budget (recital (8)).

2.6. Description of the measure

- (14) Except for the changes described above (see subsection 2.1) all the conditions of the existing scheme³ remain unchanged.

3. ASSESSMENT OF THE SCHEME

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

- (15) According to Article 107(1) 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’*.

- (16) The existence of State aid within the meaning of Article 107(1) TFEU was established in the analysis carried out in the initial decision, to which the Commission refers (recitals (33) to (41) of the initial decision). The budget increase and the extension of the application period which are the subject of this notification do not call into question the Commission’s conclusion on the existence of the aid established in the initial decision.

3.2. Lawfulness of the aid

- (17) The Commission regrets that the aid under the amended scheme was partly granted before the Commission has concluded the notification procedure laid down in Article 108(2) of the Treaty by a final decision and before it has

² Recital (5) of the initial decision

³ From recitals (8) to (32) of the initial decision

notified its decision declaring the aid compatible with the internal market pursuant to Article 107(3), point (c), TFEU (recital (11)).

- (18) The Dutch authorities have not fulfilled their obligations under Article 108 (3) TFEU.

3.3. Compatibility of the aid

- (19) 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.

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

- (20) The Commission found in its initial decision that the derogation provided in Article 107(3), point (c), TFEU can apply to the existing scheme.
- (21) Under Article 107(3), point (c), TFEU, State aid may be considered compatible with the internal market, if (i) it is found to facilitate the development of certain economic activities or of certain economic areas, where (ii) such aid does not adversely affect trading conditions to an extent contrary to the common interest.

3.3.2. Application of the Guidelines

- (22) The Commission assessed the existing scheme on the basis of Section 1.3.1.1, Chapter 1, Part II of the Guidelines⁴ regarding aid for “*closing of capacity for animal, plant or human health, sanitary, ethical, environmental or climate reasons*”.
- (23) The prolongation of the duration of the initial scheme, the budget increase and the extension of the opening period for application referred to in subsection 2.1 have no bearing on the analysis carried out in the context of the initial decision (recitals (43) to (89) of the initial decision). The Commission can therefore maintain its initial conclusions on the compatibility of the scheme with the internal market.
- (24) Due to the large budget (recital (13)), the scheme is subject to the *ex-post* evaluation requirement pursuant to points (640) and (647) of the Guidelines. The Dutch authorities submitted an evaluation plan in the context of the notification as its integral part (recital (2)).
- (25) The aim of the evaluation should be to verify whether the assumptions and conditions underlying the compatibility of the scheme have been achieved, in particular the necessity and the effectiveness of the aid measure in the light of its general and specific objectives. It should also assess the impact of the scheme on competition and trade (point 642 of the Guidelines).
- (26) The Commission takes note that the final report will be submitted on 12 September 2027.

⁴ Communication from the Commission Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2022/C 485/01, C/2022/9120, OJ C 485, 21.12.2022, p. 1–90

- (27) In particular, the Dutch authorities:
- committed that the evaluation will be conducted in accordance with the agreed evaluation plan in order to identify the causal impact of the scheme, undistorted by other variables that may have had an effect on the observed outcome. Any problem hindering the completion of the evaluation as agreed will be swiftly communicated to the Commission to find possible solutions.
 - confirmed that an interim evaluation report will be submitted to the Commission at the latest by 15 April 2027. The Dutch authorities committed that the interim evaluation report will be as complete as possible in order to represent 70 to 80% of the final report. In addition, the interim report will provide an update on the status of the data collection to adjust if needed for the final report. The final evaluation report will be submitted to the Commission by 12 September 2027, at the latest.
 - confirmed that all the data used for the evaluations will be made available to the Commission in anonymized form for the purpose of verification and replicability.
 - confirmed that the evaluation plan, the interim and the final evaluation report will be published on the government's website.
 - committed to consider the evaluation results for the development of any future interventions of similar scope, with the aim of increasing the future measures' effectiveness and reducing any negative effects on competition.
- (28) The Commission recalls that the scheme must be suspended if the final evaluation report is not submitted in good time and sufficient quality.
- (29) On that basis, the Commission considers that the notified evaluation plan contains all the necessary elements (the objectives of the scheme to be evaluated, the evaluation questions, the result indicators, the proposed timing of the evaluation, confirmation that it will be carried out by an expert independent from the aid granting authority). The Commission therefore considers that points (642) and (644) to (646) of the Guidelines are complied with.
- (30) In light of all the above considerations, the existing scheme as amended by the notified measure remains in line with the relevant provisions of the Guidelines and can benefit from the derogation provided for in Article 107(3), point (c), TFEU.

3.4. Conclusion on the compatibility of the scheme

- (31) In light of 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), point (c), TFEU as interpreted by the relevant provisions of the Guidelines.

4. CONCLUSION

The Commission regrets that the Netherlands put the amendment in question into effect, in breach of Article 108(3) of the TFEU.

However, the Commission has decided on the basis of the foregoing assessment, not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(3), point (c) of the TFEU.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

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