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**Subject: State aid N 266/06
“Environmental investment aid for iron foundry Nijmeegsche
IJzergieterij”**

Excellency,

The Commission wishes to inform the Netherlands that, having examined the information supplied by your authorities on the matter referred to above, it has decided to raise no objections to the aid measure.

I. PROCEDURE

1. By letter of 26 April 2006, the Dutch authorities notified, according to Article 4(2) of Regulation (EC) n° 794/2004 of 21 April 2004¹ implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty², the above-mentioned measure. The Commission requested additional information by letter of 19 May 2006. By letter of 2 June 2006, the Dutch authorities provided the requested information.
2. In the notification, the Dutch authorities held that the measure respects the conditions laid down in the Community guidelines on State aid for environmental protection³ hereafter referred to as ‘the environmental aid guidelines’.

¹ OJ L 140, 30.04.2004, p. 1

² OJ L 83, 27.03.1999, p. 1

³ OJ C 37, 3.2.2001, p.5.

Zijne Excellentie de Heer Bernard Rudolf BOT
Minister van Buitenlandse Zaken
Bezuidenhoutseweg 67

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II. DETAILED DESCRIPTION OF THE AID

3. The present notification concerns an environmental subsidy for the Nijmeegsche IJzergieterij (hereinafter NIJG), an iron foundry in Nijmegen (the Netherlands). Objective of the subsidy is the reduction of the emission of unpleasant smell and the reduction of emission of fine dust which result from the activities of the NIJG. This will be achieved by the outsourcing of the follow up treatment, the lacquer of the casting, compartment of the hall (way), the installation of a 50 meter high chimney and the installation of an extra dust filter.
4. The NIJG is a small enterprise as defined in the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises⁴. The NIJG employs 75 job holders and has an annual turnover of €15 million located in the city of Nijmegen. The enterprise is specialised in heavy moulded work, mainly contra weights for forklifts.
5. Over the past years NIJG's activities caused increasing nuisance of smell for the surrounding homes and industrial areas. Two recent studies showed that this nuisance was attributed to the activities of the NIJG. The smell emissions from the NIJG led to 100 to 200 complaints related to stench annually. As a result of the above described situation the Province requested the NIJG to take some measures with the objective to reduce the level of smell nuisance.
6. For the implementation of the measures relating to the reduction of the emission of smell and the emission of fine dust the NIJG will receive a direct grant of €870,563. The Province of Gelderland will contribute € 728,649 and the municipalities Beuningen en Nijmegen will contribute € 141,914 to the investments made by the NIJG.

Provincial policy on the emission of smell

7. The provincial policy on the emission of smell laid down in the "Gelderse beleidsregels voor geur in milieuvergunningen⁵", which is an instrument to implement the national policy on the emission of smell. The system defines four types of 'smell' (not annoying, less annoying, annoying and very annoying) and distinguishes between residential area and working area. For each of these types of smell in each area it lays down quantitative values for 1) the targeted level, 2) the guiding level and 3) the upper level. In this way smell policy can be put in practice in an objective and verifiable way. For new investments, the province requires the company to comply with the guiding level. For existing installations the company has to comply with the upper level. For modifications to existing installations, the company has to comply with the upper level, but it should reduce smell in accordance with the principle "as low as reasonably achievable".
8. NIJG is an existing installation in a residential area, so the acceptable level under the normal provincial policy is the upper level in a residential area. The authorities, however, want to impose the stricter standard of the 'guiding level' amongst other because the smell from NIJG's activities accumulates with the smell of other

⁴ PB L 124, 20.05.2003, p.36.

⁵ Provinciaal Blad 2002/77.

industries in NIJG's vicinity. Research has shown that the planned measures will enable NIJG to comply with the guiding level.

Emission of dust

9. The 50 meter high chimney is in the first place installed to reduce the emission of smell. When the measure is implemented it results in a source of dust emission which exceeds the general emission rule from the National Emission Regulation (NeR), but on the other hand it complies with the requirements of the Best Reference Documents (BREF)⁶ The Best Available Techniques Associated Emissions Levels of the BREF on foundries are 5-20 mg/m³, with the installation of a dust filter the emission is reduced to 5 mg/m³. In this sense the application of the NeR is more strictly than the BREF. The NeR also stipulates that a general emission requirement is only imposed when the necessary measure does not entail excessive cost.
10. According to the information provided by the Dutch authorities the proposed measure for the removal of dust entails excessive cost and is therefore not obligatory on the basis of the NeR.

Dust dispersion

11. The installation of the dust filter is also assessed in the light of national legislation "decision air quality"⁷. Without the placement of the dust filter the dispensation of fine dust would remain the same as in the existing permitted situation and the air quality would not be affected. In this scenario the NIJG complies with the requirements of the applicable environmental regulation. If the NIJG would not bring the dust filter in place, there is no legal ground to refuse or withdraw the – environmental - permit.

Eligible costs

12. The investment costs amount to €1,742,157. They include the installation of the chimney, works on the domed oven and the placement of the exhaust hood. There are no cost savings foreseen, on the contrary, there are extra operational cost envisaged. These are the extra energy used for the operation of the ventilation and cooling system and maintenance costs, which over a period of 5 years amount to the total operating costs of €434,250. The total amount of eligible costs is therefore calculated at €2,176,407.

⁶ IPPC Reference Document on Best Available Techniques in the Smitheries and Foundries Industry, May 2005", <http://eippcb.jrc.es/pages/FActivities.htm>.

⁷ This decision air quality implements the following directives: Council Directive 96/62/EC of 27 September 1996 on ambient air quality assessment and management, PB L 296, 21.11.1996, p.55. Directive 2000/69/EC of the European Parliament and of the Council of 16 November 2000 relating to limit values for benzene and carbon monoxide in ambient air, PB L 313, 13.12.2000, p. 12. Directive 2002/3/EC of the European Parliament and of the Council of 12 February 2002 relating to ozone in ambient air, PB L 67, 9.03.2002, p.14.

13. The subsidies mentioned in point 7 above amount to 40% of the eligible costs, i.e. €870,563.

III. ASSESSMENT

Existence of State aid and legality

14. Under article 87(1) EC Treaty, “*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, insofar as it affects trade between Member States, be incompatible with the common market.*”
15. The notified measure is granted directly by various State authorities and it is directly financed from the budgets of these authorities concerned. It favours a certain undertaking, namely NIJG, as the subsidies reduce the cost of the investments NIJG is planning to undertake. As there is trade between Member States in the products produced by NIJG, iron foundry products, there is a risk that the aid could affect that trade and distort competition. Consequently, the proposed aid measure constitutes State aid with in the meaning of Article 87(1) of the EC Treaty and Article 61(1) of the EEA Agreement.
16. By notifying the current scheme to the Commission, the Netherlands has complied with its obligation of article 88(3) of the EC Treaty.

Compatibility of aid

17. Given the objectives, the Commission has examined the proposed aid measure in the light of the environmental aid guidelines. The reduction of smell and fine dust emission falls within the concept of environmental protection as defined in point 6 of the guidelines.
18. The environmental aid guidelines stipulate in point 29 that “Investment aid enabling firms to improve on the Community standards applicable may be authorised up to not more than 30% gross of the eligible investment costs as defined in point 37. These conditions also apply to aid where firms undertake investment in the absence of mandatory Community standards or where they have to undertake investment in order to comply with national standards that are more stringent than the applicable Community standards”.
19. The IPPC Directive⁸ in general covers odour⁹ but the BREF on Smitheries and Foundries¹⁰ does not have special conclusions on odour and therefore no particular Community standards apply to the current measure. The Province has implemented a regional policy to reduce the nuisance of smell. As demonstrated in point 8 -9 above, the allowed level of smell nuisance is applied stricter in the case of the NIJG then the provincial policy and also community law prescribes.

⁸ Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control, OJ L 257, 10-10-1996, p.26.

⁹ See Article 1 on purpose and scope and Article 2.1 with the broad definition of substances.

¹⁰ See footnote 6.

20. There are mandatory Community standards for the emission of fine dust¹¹, these standards are implemented in the national regulation. From the description in point 10-12 follows that the installation of the dust filter goes beyond the relevant national and Community standards.
21. So the investments described in point 3 above are eligible for aid pursuant to point 29 of the environmental aid guidelines.
22. As far as eligible costs are concerned the environmental aid guidelines stipulate in point 37 that “Eligible costs must be confined strictly to the extra investments costs necessary to meet the environmental objectives.” In this case, the cost of investment in environmental protection can easily be identified in the total cost: as the beneficiaries would not be obliged to make any investment at all, the full investment cost can be qualified as extra investment costs in the sense of the environmental guidelines and there is no need to subtract the cost of a theoretical reference investment¹².
23. Point 37 of the environmental aid guidelines prescribes in addition that “In all cases, eligible costs must be calculated net of the benefits accruing from any increase in capacity, cost savings engendered during the first five years of the live of the investment and additional ancillary production during that five-year period.” The planned investments by NIJG, however, do not create any capacity increase, they do not lead to any ancillary production, and there are no cost savings envisaged. On the contrary there are extra energy costs foreseen. Therefore, the eligible costs, as described in point 13, comply with point 37 of the guidelines.
24. As regards to the variable “benefits of ancillary production” the Commission notes that there no product produced because the project is aimed at emission reduction and there is thus no ancillary production in this case.
25. There is no cumulation with other aid measures because the grant of €870.563 is the only subsidy that the NIJG will receive for the project.
26. Point 29 of the environmental aid guidelines allows a grant up to 30% of the eligible cost. The NIJG is a SME and in the case of a SME point 35 of the environmental aid guidelines stipulates that an increase of 10% may be authorised. The grant is determined at 40% of the eligible costs, which complies with the aforementioned provisions of the environmental aid guidelines.

¹¹ See footnote 6 and 7.

¹² This applies also to the investments in photo-voltaic energy. There is no need to take into account the investment cost of corresponding investment in conventional energy production, as the Commission decided in case N 11/2005, Pb C 107, 6.5,2006, p 4.

IV. CONCLUSION

27. The Commission has accordingly decided not to raise objections to the notified measure at hand as the State aid can be found compatible with the common market pursuant to Article 87(3)(c) of the EC Treaty, since it respects the conditions laid down in the environmental aid guidelines.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within 15 working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, it will assume that you agree to the publication of the full text of the letter. Your request should be sent by registered letter or fax to:

European Commission
Directorate-General of Competition
State Aid Registry
B-1049 BRUSSELS
Telefax n°: + 32-2-296-12 42

Please, mention the name and number of the case in all the correspondence.

Yours faithfully,

For the Commission

Neelie KROES
Member of the Commission