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Subject: State aid N 249/2008 - Netherlands – Green Funds

Dear Sir,

The Commission wishes to inform the Netherlands that, having examined the information provided by your authorities concerning the above aid, the Commission has decided not to raise any objections to the above measure.

I. PROCEDURE

1. By letter of 19 May 2008, registered on the same date, the Dutch authorities gave notice of the measure under the simplified procedure. Following an initial examination, the Commission found that the normal procedure should be followed. The Commission requested further information on 19 June 2008; the Dutch authorities responded by letter of 3 September 2008, registered on the same date. By letter of 29 October 2008 the Commission asked some additional questions. On 10 December 2008 there was a meeting between the Commission and representatives of the Netherlands. The additional questions of 29 October 2008 were answered by the Dutch authorities by letters of 2 February 2009 and 13 March 2009, registered on the same day. On 19 May 2009, supplemented on 25 June 2009, the Commission asked further questions, which the Dutch authorities answered in a letter dated 16 September 2009, registered the same day.

II. DESCRIPTION

2. The notified measure is a revision and replacement of the Green Funds Scheme 2005 (*Regeling groenprojecten 2005*). It includes the addition of some project (sub)categories

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and some restrictions in the project criteria. The former scheme was approved by the Commission on 25 August 2006 in State aid case NN 41/2005.¹.

3. The Dutch authorities have stated and provided information that the Green Funds Scheme has been a success and that the amendments proposed do not affect the underlying methodology and cooperation between investors, banks and green projects. Their current notification is confined to changes to and within the categories which determine which projects are eligible for the scheme. Through this amendment the Dutch authorities are seeking to adapt the Green Funds Scheme's categories to the experiences of the past ten years, to the advancements in environment technologies and to current policy priorities.
4. In the decision of 25 August 2006 approving the aid, the Commission established that the state aid was compatible with the common market on two levels: aid for green projects, on the one hand, and aid for investment funds, on the other. The present amendments to the Green Funds Scheme 2005 all concern changes in project categories. Below, the Commission-approved scheme for 2005 is referred to as "the current scheme", while the draft green projects scheme 2009 (*concept-regeling groenprojecten 2009*) is called "the draft scheme".
5. The granting of aid at project level is carried out by means of a "green certificate" (*groenverklaring*)², which enables the project manager to apply for a long-term loan from the green investment funds. Individual taxpayers investing in the funds enjoy a tax reduction. As a result of this tax reduction, green projects can be financed at a lower rate of interest than would otherwise be the case³. Assuming that 70% of the project costs are financed from green funds⁴ and that the loan period is ten years, it is estimated that the aid element of the financing does not exceed 1.85% of the projects' investment costs⁵. In case of a loan with a duration of 15 or 20 years, the aid element would at most be 2.29% or 2.73% of the project's investment costs⁶ (whereby it is noted that projects with a duration of 15 years solely concern projects on or at a dwelling for the risk and account of the

¹ State aid case NN41/2005: C(2006) 3886

² This certificate is delivered at the request of the Minister for Housing, Spatial Planning and Environment, in conjunction with the Minister for Finance, and after consulting the Minister of Agriculture, Nature and Food Quality and the Minister for Transport and Water Management. Depending on the nature of the project a claim is lodged with SenterNovem or the Regulation Agency at the Ministry of Agriculture, Nature and Food Quality.

³ The Dutch authorities have specified that an individual investor would normally pay 1.2% capital gains tax on the amount invested, but green capital is exempt up to a maximum of EUR 55 145 per person (2009). Green investors also pay less income tax on their green capital. Their reduction is 1.3%, so the total tax advantage is 2.5%. This means they can accept a lower interest rate or dividend on their investment. The advantage is partitioned between the private investor, the banks (implementation costs) and the green projects. The precise scope of the advantage for an individual project depends on factors which play a role in the conclusion of a loan agreement, such as the quality of the debtor, the general interest level, securities, etc. Possible differences in the advantage arising from the interest rate may differ between projects but do not depend on the project category, according to the Dutch authorities.

⁴ The Dutch authorities have submitted in their notification that usually between 65% and 80% of the project's investment costs is borrowed, i.e. financed by way of a 'green loan'. Only exceptionally would banks finance 100% on the basis of a green loan. However, in such a case extra securities would generally be required.

⁵ The Dutch authorities have explained in their letter of 16 September 2009 that, on average, the advantage of the lower interest rate under the draft scheme amounts to 0.75% (based on information from participating banks and investors). The average financial advantage at the project level is expressed as the net present value and comes down to 1.85% of the project's total investment costs, based on the assumption of a project duration of 10 years, 70% being financed by borrowed capital, a reduced interest rate (by 0.75%), corporate tax rate of 25.5% and a discount rate of 4%.

⁶ Following the same calculation methodology, as set out in the previous footnote.

private owner, which therefore do not give rise to State aid⁷). Further, for a number of categories the draft scheme sets a cap on the amount of project funds per category qualifying for green funding⁸.

6. Funds are considered as green investment funds where at least 70% of the capital is invested in green projects. Most Dutch banks have a green fund or green bank. These specific funds or banks are under the supervision of De Nederlandsche Bank. The Dutch authorities select green projects on the basis of an open selection procedure.
7. The Dutch authorities' general policy objective for the current and the draft scheme is that the latter is confined to the most innovative sustainable solutions available in the market. The authorities say that projects must satisfy a number of specific conditions. In the first place, there should be a substantial direct impact on the countryside, environment or energy. Further, the application of the technology or the approach should be new or have low market penetration, i.e. an achievable market share of less than 5 to 10%. The selection criteria are set out in the draft scheme.
8. Under the draft scheme, projects in the following categories are, in principle, eligible for a green certificate, and as a result can profit from the scheme, provided that in all cases an individual assessment is made by the competent authorities:

Category A: Projects in the "countryside" category.⁹

Category B: Projects in the "organic agriculture" category.¹⁰

Category C: Projects in the "agriculture" category.¹¹

Category D: Projects in the "sustainable raw materials" category.¹²

Category E: Projects in the "recovery and recycling" category.¹³

⁷ Article 6 sub 1c of the draft scheme.

⁸ Article 6 of the draft scheme.

⁹ This concerns projects targeting: A.1, development and maintenance of woodland (areas with a surface of at least five hectares); A.2, development of additional urban green areas; A.3, development and maintenance of countryside and landscape value; A.4, development and maintenance of countryside, landscape and heritage value; A.5, development and maintenance of new countryside and landscape value in open country estates; A.6, development and maintenance of new countryside and landscape value eligible for subsidy on the basis of the Provincial Subsidy Regulation for countryside conservation; A.7, development and maintenance of new countryside and landscape value eligible for subsidy on the basis of the Provincial Subsidy Regulation agricultural countryside conservation; A.8, promotion and maintenance of bio-diversity (fisheries and animal control systems and bird alert systems); A.9, countryside and environment education targeting the domestic countryside.

¹⁰ This concerns projects targeting: B.1, producing or processing organic agricultural plant products; B.2, producing or processing of organic agricultural animal products.

¹¹ This concerns projects targeting: C.1, commercial cultivation in green label glasshouses; C.2a: animal-friendly farming of seawater or freshwater fish for human consumption; C.2b, animal-friendly farming and/or animal-friendly cultivation of local crustaceans or shellfish from cultivated parent animals and/or cultivated juveniles, intended for human consumption; C.3, sustainable dairy cattle breeding in accordance with the Yardstick for Sustainable Stockbreeding – Dairy Cattle (bovine).

¹² This concerns projects, targeting the industrial processing of agriculture raw materials, or residues of countryside conservation to products not suitable for human or animal consumption, with the exception of the processing of those substances to energy or energy carriers.

¹³ This concerns projects targeting: E.1, reduction of pressure on the environment and reduction in the use of primary raw materials for products (a) by innovative processes for recovery of material or products or raw materials (other than energy or energy carriers) from waste streams for which a lower graded processing method is commonly used, as a result of which the commitment of primary raw materials can be limited; and (b) processes targeting the processing of dredging spoil, which could be dumped, to raw materials as a result of which the use of primary raw materials can be limited; and plant for the detoxification of ships to be dismantled and dismantling of ships, with perceptible and guaranteed social and environment-justified

Category F: projects in the "sustainable energy" category.¹⁴

Category G: Projects in the "energy savings" category.¹⁵

Category H: Projects in the "sustainable construction" category.¹⁶

Category I: Projects in the "sustainable mobility" category.¹⁷

Category J: Projects in the "sustainable water chains" category.¹⁸

process in a closed system E.2, and E.3 (a), storing underground of carbon dioxide originating from incineration plants to generate energy or originating from industrial processes, and (b) construction of infrastructure for underground transport, for application in glasshouses or in other plants, of carbon dioxide originating from an incineration plant with a minimum capacity of 20 MW for generating energy or originating from industrial processes and consisting of investments for the collection, pre-processing and transport of these gases.

¹⁴ This concerns projects targeting: F.1, (a) construction of biogas storage plant (b) construction of a biofuel plant; F.2, generating electric energy by means of wind turbines; F.3, generating electrical energy using photovoltaic cells; F.4, the use of thermal solar energy by means of solar panels; F.5, tapping geothermal heat; F.6, generating electrical energy from water or water power.

¹⁵ This concerns projects targeting: G.1, the upgrading, by means of heat pumps and a closed soil heat exchanger or aquifer, from low-grade to high-grade heat, G.2 the installation of low-energy lighting for public roads, public squares, public buildings., etc.; G.3, the installation of heat distribution networks and co-firing boilers and heat buffers to use residual heat from (a) urban waste incineration plants and industrial installations where no electricity is generated and (b) power generating plant with an output of least 30% and minimum capacity of 20 MW; G.4 the installation of a micro-cogeneration device for generation by the owner-occupier of heat and electricity; and G.5 the installation by the owner-occupier of a heat pump for the heating of a dwelling.

¹⁶ This concerns projects targeting: H.1, the building of new dwellings; H.2, renovation of office premises to build new dwellings; H.3, renovation of existing dwellings by owner-occupiers; H.4, renovating existing dwellings with sustainably produced timber; H.5, construction of highly sustainable utility buildings; H.6, renovating existing utility buildings; and H.7 restructuring of industrial sites. With regard to the latter subcategory, H.7, the Dutch authorities consider aid for such projects compatible on the basis of Articles 12 and 15 of Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty ('general block exemption regulation'). This category is therefore not subject to the current decision.

¹⁷ This concerns projects targeting: I.1, (a) the building of cycle paths linking residential areas with work areas or residential centres with more than 50,000 inhabitants or which enhance accessibility by bicycle of Transferia (park-and-ride facilities), P&R areas, OV-stations or OV-stops (public transport stops), offices or industrial estates, schools, medical and care institutions or tourist attractions, or forming part of the rural bicycle route network; (b) construction of cycle shelters or the purchase of bicycles for non-commercial public use; I.2, (a) purchase of non-rail sustainable vehicles for goods transport on public roads; (b) purchase of sustainable vessels for public passenger transport for more than 8 persons on inland waterways; I.3, investment in low-noise and low-emission mobile tools, particularly (a) low-noise and emission mobile machines, (b) refuse vehicles with hybrid traction or mobile machines sufficiently adapted to certain low-emission standards, (c) suction vehicles where the pump is operated by power takeoff, with hybrid traction or sufficiently adapted to certain low-emission standards for mobile machines, (d) self-propelled street sweepers, with hybrid traction; I.4, construction of filling stations for alternative environmentally friendly fuels, namely natural gas, biogas, hydrogen and hydrogen/natural gas mixture, with more than 10% hydrogen, to supply vehicles and vessels; I.5, new inland shipping vessels for the transport of goods or persons and which meet certain requirements laid down in Annex 3 to the draft scheme.

¹⁸ This concerns projects targeting: J.1 (a) separate disposal and infiltration of rainwater, (b) separate disposal and storage of rainwater for use as process water, except for use in agriculture and horticulture, (c) separate disposal of rainwater for discharging on surface water; J.2, water treatment and intended for (a) the preparation of drinking water from wastewater flows, (b) the preparation of drinking water using as yet unavailable, innovative, sustainable methods, (c) the treatment of wastewater using as yet unavailable techniques for construction of a closed water system to replace open systems, (d) the treatment of wastewater using for the Netherlands as yet unavailable, innovative and sustainable systems for recovery and recycling of substances present in that wastewater to replace existing systems operating without such recovery and recycling, (e) the treatment of wastewater, or preparation of drinking water with a reduction of at least 50% in energy use in the existing installations or plant to be replaced, with improved or equal

Category K: other innovative and high-quality projects.¹⁹

9. The green certificate will only be valid for the duration of the project. This period is limited to a maximum of 10 years, except for projects in categories A.1 to A.7 inclusive, which may last up to 30 years, and projects in categories F.3, F.4, G.1, G.4 or G.5, which may last up to 15 years.
10. The measure is based on Article 5.14 (3) (a) and 5.14 (6) of the Income Tax Act 2001 (*Wet op de inkomstenbelasting*) and the Green Funds Scheme 2005.
11. The current scheme runs from 13 July 1994 to 31 December 2011. Approval for the draft scheme is sought for 10 years from the time of Commission approval. Where the measure applies to projects in the field of primary production, its duration is limited to seven years, in accordance with point 189 of the agriculture guidelines. For projects that could also be funded by the Dutch Rural Development Plan 2007 to 2013 (based on Regulation 1698/2005), the duration is limited to end 2013.
12. The Dutch authorities have indicated that the annual budget for the scheme, which is based on the tabled and approved project funds and through tax losses amounts to 2.5% of the allocated project funds. Therefore the annual budget fluctuates slightly. The average budget for the years 2004, 2005 and 2006 amounted to EUR 27.7 million. For 2009, the estimated budget is EUR 27.5 million, stemming from an estimated EUR 1.1 billion in project funds submitted.
13. Since the scheme's inception, around 244 000 individuals have invested EUR 6.8 billion in green projects, enabling the funding over the years of 5 000 green projects.²⁰ The Dutch authorities have explained that under the draft scheme the budget for each category will change slightly. For further details reference is made to the attached table (Annex).

III. ASSESSMENT

3.1 Aid within the meaning of Article 87(1) of the EC Treaty

14. Under Article 87(1) of the EC Treaty, except as otherwise provided in the Treaty, state aid in whatever form financed through State funds which distorts competition by favouring certain undertakings or production or distorts or threatens to distort competition is incompatible with the common market insofar as it may affect trade between Member States.
15. The notified draft scheme concerns a fund that is financed out of State resources. As a consequence of the tax reduction for taxpayers who invest in green funds, the Dutch authorities forfeit tax revenues. The benefit must be assessed at three levels: those who invest in green funds, the funds themselves and projects that are financed out of the funds.

purification results, (f) the treatment of wastewater polluted with priority substances using a system reducing by at least 50% the wastewater value of these substances with respect to their wastewater value in existing plants or installations to be replaced.

¹⁹ This concerns other innovative and high-quality projects key to protecting the environment, including the countryside and woodland.

²⁰ Groen Beleggen (Green Investments), annual report 2008 (figures for 2007).

16. At the first level the measure benefits those investing in green funds, i.e. taxpayers. The measure is open to all without any restriction or condition and the total amount of the tax reduction is unlimited. Therefore, at this level, the measure is general in nature and does not favour certain undertakings within the meaning of Article 87(1) of the EC Treaty.
17. The measure offers an advantage at the second level, that of the funds. The funds benefit from a tax reduction as they can attract money at interest rates that would not be acceptable to investors without the advantage in the shape of a tax reduction. While any financial institution can set up such funds, the measure still benefits a specific sector, namely investment funds. Consequently, the measure is selective in that it favours certain undertakings within the meaning of Article 87(1) of the EC Treaty.
18. The measure also provides an advantage at the third level, that of the companies implementing eligible green projects. The tax reduction is intended to be an incentive for investment in projects whose returns would be unacceptable without the benefit of a tax reduction. As a result, the tax reduction benefits green investment projects. This measure is selective since it favours only entities that manage green projects which can be subsidised as part of the scheme.
19. The Netherlands has provided information and confirmed that a number of project categories have no link to economic activities carried out by companies, but are related to activities by privately acting individuals or by municipalities, provinces or water boards in implementing their public mission without operating in the market. This concerns in particular categories A.8 (biodiversity), G.4 (projects for the generation by the owner-occupier of heat and electricity by means of a micro-cogeneration installation), G.5 (projects for the installation by the owner-occupier of a heat pump for the heating of a dwelling), H.3 (renovation of existing dwellings by owner-occupier); I.1 (creation of cycle paths and cycle shelters); J.1.a (separate arrival and disposal of rainwater); J.1.c (separate disposal of rainwater for discharging on surface water); J.2(a) the preparation of drinking water from wastewater flows; and J.2(b) the preparation of drinking water using as yet unavailable, innovative, sustainable methods.
20. As the beneficiary undertakings are active in a competitive intra-community market, the measure distorts or threatens to distort competition²¹. Although the aid often concerns only relatively small amounts, it cannot be ruled out that it affects trade between Member States.
21. In conclusion, the draft scheme involves aid at the level of investment funds and at the level of projects eligible for aid on the basis of the draft scheme.
22. This means that Article 87(1) of the EC Treaty applies and that the aid is compatible with the common market only if it can benefit from one of the Treaty derogations.

²¹ According to the case law of the Court of Justice, improvement in the competitive position of an undertaking resulting from a State aid generally points to a distortion of competition compared with other competing undertakings not receiving such assistance, Case C-730/79, ECR 1980, p. 2671, paragraphs 11 and 12.

23. The notified measure can be considered compatible with the common market only under the exemption provided for by Article 87(3)(c) of the Treaty, under which aid is available 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.
24. Article 87(3)(c) of the EC Treaty can be applied when the measure is in accordance with Regulation (EC) No 1857/2006 of 15 December 2006 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises active in the production of agricultural products²² (block exemption) or if the measure is in accordance with the agricultural guidelines. This equally applies if the measure is consistent with the fisheries guidelines or the environmental aid guidelines. In the event that these guidelines are not applicable, it must be assessed whether the aid in question meets the criteria to be directly compatible with Article 87(3)(c) of the EC Treaty.

3.2 Compatibility of the aid

3.2.1. Agriculture guidelines

25. The Dutch authorities have submitted documentation showing that the objectives of the projects which are supported by the Green Funds Scheme must comply with the Dutch Rural Development Plan 2007 to 2013. The projects will be targeted at the protection and improvement of the environment and animal welfare and at the stimulation of the sustainable improvement of the production and production processes.
26. The Dutch authorities have submitted documentation stating that the specific situation of Dutch agricultural holdings results in high costs that are incurred as a result of the applicable environmental standards. The aid in question is geared to specific investments in 'green' projects. The tax measure is clearly intended to increase the number of green investment projects in order to meet the territorial and structural requirement for more green areas and for less pressure on the environment.
27. Under point 189 of the agriculture guidelines, an aid measure may not be authorised for a period of more than seven years. If a project can also benefit from co financing under Regulation (EC) No 1698/2005, this maximum period is limited to the duration of the programming period, that is up to and including 2013. For the current aid measure, this means that the duration of the projects coming within the scope of the agriculture guidelines is limited to the period 2010 to 2016 and the projects which can obtain co financing under Regulation (EC) No 1698/2005 to 2013. The Dutch authorities have promised to resubmit the aid measure to the European Commission for approval in accordance with these different periods.
28. The Dutch authorities have provided information showing that the current regulatory system establishes an automatic right to receive the aid. After the entry into force of the aforementioned draft scheme, the banks can begin to place the listed projects under the Green Fund Scheme. The Regulation Agency certificate is obtained afterwards and serves

²² Commission Regulation (EC) No 1857/2006 of 15 December 2006 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises active in the production of agricultural products and amending Regulation (EC) No 70/2001 (OJ L 358 of 16.12.2006), OJ L 358 , 16.12.2006, p. 3.

only for verification purposes. There does not need to be a separate application for subsidy or administrative action before the start of the individual project. The aid can only be granted for activities which will take place after the aid measure has become applicable and the Commission has declared the measure to be in accordance with the Treaty. The information which the Dutch authorities have supplied shows that these conditions are fulfilled.

29. The Dutch authorities have indicated that there can be no overcompensation. The eligible costs are checked by the implementing body for the Green Funds Scheme, and the costs can be reimbursed only up to the percentage authorised for the specific aid in question.
30. The Dutch authorities have provided information showing that the projects in the A categories cannot relate to the forestry industry or commercially viable extraction of timber, transportation of timber or processing of wood and other forestry resources into products or for energy generation. The projects must be tailored to protection of the environment and only the projects with the best proposals for that purpose can be eligible to come within the scope of the Green Funds Scheme. The payment of compensation for commercial logging or plantation is precluded because of the statutory obligation in the Netherlands regarding replanting.²³
31. The eligible costs of the investments may consist of the construction, acquisition or improvement of immovable property, the purchase or lease-purchase of machinery and equipment, including computer software, up to the market value of the asset, general costs linked to the aforementioned expenditure, such as architects' fees, feasibility studies and the acquisition of patents and licences.

CATEGORY A: projects in the 'countryside' category

32. Project category A may include projects in which the green investment funds can make investments which come within the scope of the conditions of the agriculture guidelines (see points 8 and 10). This may cover projects developing activities which come within the scope of Annex I of the EC Treaty (agricultural production)²⁴.
33. The Dutch authorities have indicated that the green projects can concern investments in activities which may be covered by Annex I of the EC Treaty. These relate to productive, non-productive and agri-environmental measures and incentives for planting and maintenance of forests and woodland. The investments in category A may not be investments relating to the marketing and processing of agricultural products.
34. The aid scheme includes the following project categories:
 - A.3 development and maintenance of countryside and landscape value;
 - A.4 development and maintenance of countryside, landscape and heritage value;
 - A.5 development and maintenance of new countryside and landscape value;
 - A.6. Provincial subsidy regulations for countryside conservation (PSN²⁵);
 - A.7. Provincial subsidy regulations for agricultural countryside conservation (PSAN²⁶).

²³ Forestry Act: see point 148.

²⁴ Such as activities which may result in the production of hay, grass, straw and other crops or the keeping of animals (trade in animals, marketing of milk, meat, etc).

²⁵ Including any possible successors to them.

²⁶ Including any possible successors to them.

The various kinds of projects and the applicable conditions for granting aid are set out in more detail below.

Investments in primary agriculture, category A

35. Under Chapter IV.A.2 of the agriculture guidelines and Article 4 of Regulation (EC) No 1857/2006²⁷ it is possible to provide aid for investments in primary agriculture up to a percentage of generally 40% if the following conditions are met:

- holdings in difficulty are not to be eligible for aid;
- no aid may be granted in order to comply with existing Community or national standards (point 35 of the agriculture guidelines);
- support must be demonstrably targeted at clearly defined objectives reflecting identified structural and territorial needs and structural disadvantages (point 36 of the agriculture guidelines);
- where a common market organisation places restrictions on production or limitations on support at the level of individual farmers, holdings or processing plants, no investment is to be supported by state aids which would increase production beyond the authorised level (Article 4 (6) of Regulation (EC) No 1857/2006, point 37 of the agriculture guidelines);
- aid may not be granted for the purchase of second-hand equipment by large companies (point 39 of the agriculture guidelines). However, in the case of SME's, State aid for the purchase of second-hand equipment should be accepted where the lower cost of such equipment may be a useful first step towards modernisation notably for farms that start from a very low technical standard and which have little capital
- the investment must pursue notably (...) preservation and improvement of the natural environment (...) (Article 4(3)(d) of Regulation (EC) No 1857/2006);
- the eligible expenses may include the construction, acquisition or improvement of immovable property, the purchase or lease-purchase of machinery and equipment (...) and general costs linked to expenditure (...) (Article 4(4) of Regulation (EC) No 1857/2006);
- the aid must not be granted in respect of the manufacture of products which imitate or substitute for milk and milk products (Article 4(10) of Regulation (EC) No 1857/2006).
- Aid must not be granted in respect of the purchase of production rights, animals and annual plants, in respect of the planting of annual plants, and in respect of simple replacement investments.
- the aid may be granted for a purchase of land other than land for construction purposes costing up to 10 % of the eligible expenses of the investment
- the aid measure must be accompanied by documentation demonstrating how the State aid measure fits into and is coherent with the relevant Rural Development programmes

36. The Dutch authorities have submitted information and confirmed that the aid will not under any circumstances exceed 40% of the eligible costs. It has been stated that the aid will not exceed 1.85% (see point 5 above). The measure does not include any special provisions for young farmers or less favoured regions.

²⁷ OJ 2006 L 358, p. 3.

37. The Dutch authorities have indicated that, under this aid measure, only projects in which financially sound holdings are participating can be eligible for support from the Green Funds Scheme.
38. The projects under the Green Funds Scheme can not relate to a subsidy for the compliance with existing Community or national standards.
39. The purchase of production rights, animals and annual plants and the planting of annual plants do not come within the eligible costs of the projects. The Dutch authorities have provided information and confirmed that these projects concern support which is demonstrably targeted at clearly defined objectives reflecting identified structural and territorial needs and structural disadvantages (see point 36). The aid will not be granted in respect of simple replacement investments.
40. The Dutch authorities have indicated that the projects under the Green Funds Scheme do not relate to investments in areas on which a common market organisation places a restriction on production or a limitation on support.
41. The Dutch authorities have given an assurance that support for second-hand equipment can only be given to small and medium-sized enterprises that start from a very low technical standard and which have little capital.
42. The projects in the Green Funds Scheme are all obliged to pursue preservation and improvement of the natural environment (see point 8).
43. The eligible costs are restricted to the costs of the investment under the project in the construction, acquisition or improvement of immovable property, the purchase or lease-purchase of machinery and equipment and the general costs linked to such expenditure.
44. Aid for the projects in category A is not granted in respect of the manufacture of products which imitate or substitute for milk and milk products.
45. The Dutch authorities have indicated that the projects covered by project category A can relate to the purchase of land and that when this will be the case, the acquisition of land forms less than 10% of the total investment costs of the project, in accordance with the requirements of Article 4(8) of Regulation (EC) No 1857/2006.
46. In view of the above considerations, the conditions of Chapter IV.A of the agriculture guidelines are met with respect to investments in categories A.3 to A.7 inclusive.

Investments in non-productive heritage features, category A

47. Project categories A.3 to A.6 inclusive also cover the possibility of supporting projects under the Green Funds Scheme which include investing in non-productive heritage features. Under point 30 of the agriculture guidelines, investments for the conservation of traditional landscapes and buildings may be declared compatible with Article 87(3)(c) of the EC Treaty up to an aid rate of 100%, provided that they fulfil the conditions of Article 5 of Regulation (EC) No 1857/2006, with the exception of the maximum amount referred to in Article 5(2) of Regulation (EC) No 1857/2006.

48. The Dutch authorities have indicated that the green projects in categories A.3 to A.7 inclusive cover investments in traditional landscapes and buildings, such as archaeological or historical features. In so far as such investments include capital expenditure intended for the conservation of heritage features which also form part of the productive assets of an agricultural holding (such as railings, fences, property partitions, plantations of crops, bushes, trees), the ceiling of 60% of aid will not be surpassed, as the aid rate of 1.85% is also retained for these green projects.
49. The Dutch authorities have confirmed that the projects do not relate to regular maintenance activities. The Dutch authorities have indicated that implementation works that are undertaken by the farmer or his/her staff is not included in the eligible costs for these projects. Similarly, no costs are incurred for the conservation of heritage feature of productive assets on farms.
50. In view of the above considerations, the conditions of Chapter IV.A.2 of the agriculture guidelines are met with respect to investments in categories A.3 to A.6 inclusive.

Aid for non-productive investments linked to agri-environmental measures

51. The requirements relating to non-productive investments are laid down in Chapter IV.C.2.B Policy on aid for agri-environmental and animal welfare commitments.
52. In the Netherlands farmers can enter into various agri-environmental measures. These agri-environmental measures, listed in the (Provincial) Subsidy Regulation for Countryside Conservation (PSN), for example come under the Rural Development Plan 2007 to 2013 or the separately notified aid measures NN 47/2004 (Programme Management). Non-productive investments may be linked to the agri-environmental measure.
53. For category A.6, the Green Funds Scheme offers the possibility of funding non-productive investments which are linked to an agri-environmental commitment. This is only possible under the condition that no use has been made of the possibilities for reimbursement of the non-productive investments set out in the Rural Development Plan 2007 to 2013 and via NN 47/2004.
54. Only the actual costs for work, machinery and equipment can be eligible for financing under the Green Funds Scheme. These costs are checked at the time of the application and before the final level of the subsidy is fixed. At the same time, there is also a check to ensure that there is no cumulation or overcompensation. Only investments which do not result in an increase in productivity are eligible.
55. More specifically, such funding may relate to investments in the construction of landscape elements (earthworks for the construction of cultural-heritage embankments, creation of level differences, construction of landscape elements such as '*schurvelingen*' (sand/turf dikes), '*tuunwal*' (low wall made of turf and plants), hummock for a badger's sett) or the construction of recreational facilities on an open natural area which do not offer any possibility of producing income (construction of cycle paths and footpaths, benches in pastureland or along a ditch).

56. According to point 57 of the agriculture guidelines aid for non-productive investments linked to the implementation of an agri-environmental commitment may be granted up to a maximum of 100% of the eligible costs. As explained, the present aid measure could come to a maximum of 100% of the eligible costs of the non-productive investment.
57. In addition, point 57 of the agriculture guidelines stipulates that the non-productive investments should not lead to a net increase in farm value or profitability. The detailed description by the Dutch authorities and the information given regarding the check on the costs before the aid is granted guarantee that this condition is fulfilled.
58. In view of the above considerations, the conditions of Chapter IV.C.2.B of the agriculture guidelines are met with respect to non-productive investments in the category A.6.

Aid for forest and woodland measures, category A.

59. Finally, category A includes projects which may be supported by the Green Funds Scheme and which relate to maintaining, restoring or improving the ecological, protective and recreational function of forests, biodiversity and a healthy forest ecosystem; as far as it concerns (see point 8 above):
- A.1. Development and maintenance of woodland
 - A.2. Urban green areas
 - A.3. Development and maintenance of countryside and landscape value;
 - A.4. Development and maintenance of countryside, landscape and heritage value;
 - A.5. Development and maintenance of new countryside and landscape value;
 - A.6. Provincial subsidy regulations for countryside conservation (PSN);
60. Chapter VII.C. of the agriculture guidelines, Policy concerning forestry, is applicable to these project categories in so far as the projects relate to the forestry and woodland sector.
61. Pursuant to point 175(a) of the agricultural guidelines, aid amounting to a maximum of 100% may be granted for planting, pruning, thinning and felling of trees and other vegetation in existing forests, removing fallen trees, as well as restoring forests damaged by air pollution, animals, storms, fire, floods or similar events, and the planning costs of such measures, where the primary objective of such measures is to contribute to maintaining or to restoring forest ecosystem and biodiversity or the traditional landscape. However, no aid may be granted for felling the primary purpose of which is the commercially viable extraction of timber or for restocking where the felled trees are replaced by equivalent ones. Aid to increase forest cover may only be granted for environmental purposes such as a change to the low existing forest cover or the creation of contiguous wooded areas. The aid may not be granted for afforestation with short rotation species.
62. The Dutch authorities have demonstrated and confirmed that the projects coming within the scope of the Green Funds Scheme contribute directly to maintaining or restoring the ecological, protective and recreational functions of forests, biodiversity and a healthy forest ecosystem in accordance with point 175 of the agriculture guidelines.
63. The Dutch authorities have given an assurance that payments to the forestry industry, commercially profitable felling, replanting after felling, transportation of the processed timber and other forestry activities to obtain products for energy generation are not eligible for subsidy;

64. The eligible costs of a project may consist of planting, felling and pruning of the forest and removing fallen trees in so far as these are undertaken for the purpose of managing the forest. The objective of these projects is to expand forest cover in the Netherlands and to increase the number of forest ecosystems. The Dutch authorities have indicated that regular maintenance is excluded.
65. The Dutch authorities have demonstrated that, at 11% of the total land area, the Netherlands has one of the lowest levels of forest and woodland cover of the Member States of the EU. In the light of this, the Commission takes into account the need to maintain this forest and woodland cover for environmental reasons. In addition, it is confirmed that no aid is made available for short-rotation species.
66. According to the Dutch authorities, unforested areas will be incorporated into the natural areas as an integral part. These areas will be planted or restored because this is required for the purpose of biodiversity or because they are necessary for establishing a healthy ecosystem in the natural area in question. The Dutch authorities confirm that none of the projects in these categories will involve aid for agricultural production.
67. The Dutch have demonstrated in this way that all conditions of Article 175(a) of the agriculture guidelines are fulfilled.
68. The projects from categories A.1 to A.6 inclusive may also relate to restoration and maintenance of natural pathways, landscape elements and features and the natural habitat for animals. Pursuant to point 175(d) of the agriculture guidelines, aid may be granted for restoration and maintenance of natural pathways, landscape elements and features and the natural habitat for animals, including planning costs.
69. The Dutch authorities have demonstrated that the projects in these categories relate to the restoration and maintenance of landscape elements, natural footpaths, landscape elements and features and the natural habitat for animals in forest and woodland areas. This part of the eligible costs of the projects conforms to point 175(d) of the agriculture guidelines.
70. The projects from categories A.1 to A.6 inclusive can include measures relating to construction, improvement and maintenance of infrastructure in forests, including the planning costs. Under point 175(e) of the agricultural guidelines granting such aid is permitted up to 100% where the forests and infrastructure are open to the public at no cost for recreational purposes. Such access may be restricted in order to protect sensitive areas and to ensure the proper and safe use of the infrastructure.
71. The Dutch authorities have indicated that the forests and woodlands which are supported through the Green Funds Scheme are open to the public at no cost for recreational purposes. This is restricted when it is necessary in order to protect sensitive sites.
72. In addition, the Dutch authorities have demonstrated that the aid is given directly to the construction, improvement and management of the forest infrastructure. Therefore, the conditions of point 175(e) of the agriculture guidelines are fulfilled.
73. A green project under project categories A.1 to A.6 inclusive can also relate to the purchase of forestry land that is used or that will be used as a nature protection area. These

are implemented in a qualitative obligation which is laid down in a notary act. If the land is transferred, therefore, the obligation regarding its use as a natural area continues. In addition, the Forestry Act requires that forests are protected by means of a reporting and replanting obligation. These obligations ensure that forest cover in the Netherlands cannot decrease and that forest remains as forest and semi-natural forest also remains genuine semi-natural forest. In this way the forest is entirely and permanently protected and secured for nature protection purposes, thus complying with the requirements of point 175(g) of the agriculture guidelines.

74. Non-productive investments, afforestation of agricultural or non-agricultural land, establishment of agro-forestry systems on agricultural land and restoration of forestry potential may also come within the scope of the green projects listed in project categories A.1 to A.6. Point 176 of the agricultural guidelines deems these activities to be compatible with Article 87(3)(c) of the Treaty if the aid complies with Articles 43 to 49 of Regulation (EC) No 1698/2005²⁸ and does not exceed the maximum intensity stipulated therein.
75. The Dutch authorities have provided information showing that Articles 43 and 49 of Regulation (EC) No 1698/2005 are applicable to these green projects in the Green Funds Scheme. It has also been demonstrated that the conditions laid down in Articles 43 and 49 of Regulation (EC) No 1698/2005 are met. In particular, the Dutch authorities have indicated that the investments concerned related to the preparation of the land for afforestation, the ploughing of the land, planting and seeding. This corresponds to the establishment costs mentioned in art. 43(1) of Regulation (EC) No 1698/2005. In accordance with art. 43(2) of Regulation (EC) No 1698/2005, support for the afforestation of agricultural land owned by public authorities shall cover only the cost of establishment. If the agricultural land to be afforested is rented by a natural person or private law body, the annual premiums referred to in paragraph 1 of art. 43 may be granted. The Dutch authorities have indicated, in accordance with art. 43(3) of Regulation (EC) No 1698/2005 that support shall not be granted for farmers benefiting from early retirement support nor for the planting of Christmas trees. The Dutch authorities have indicated that the maxima laid down in the annex of this regulation would be respected. This commitment complies with the requirement of art. 43(4) of Regulation (EC) 1698/2005. As far as concerns the respect of art. 49 of Regulation (EC) 1698/2005, the Dutch authorities have indicated that the investments concerned the recreational accessibility of the new forests and nature areas, such as the creation of biking and footpaths. These investments enhance the public amenity value of forest and wooded land of the area concerned as required by art. 49 of Regulation (EC) No 1698/2005. As in the other green projects, the aid intensity is maintained at 1.85%.
76. In the light of the above, the conclusion is that the aid for maintenance of and investment in forests and woodland complies with all conditions laid down in Chapter VII.C and specifically in points 175 and 176 of the agriculture guidelines.
77. In view of the above considerations, the conditions of Chapter IV.A.2 and Chapter VII.C of the agriculture guidelines are met with respect to various investments referred to above.

CATEGORY B: projects in the ‘organic agriculture’ category

²⁸ Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD), OJ 2005 L 277, 21.10.2005 p. 1.

78. Project category B may include projects in which the green investment funds can make investments which come within the scope of the conditions of the agriculture guidelines (see points 8 and 10). Category B is explicitly targeted at investments in the development of organic agriculture and consists of the following categories:
- B.1 producing or processing of organic agricultural plant products, and
 - B.2 producing or processing of organic agricultural animal products.
79. The Dutch authorities have indicated that it may only relate to investments in respect of primary agricultural holdings; investments in the marketing and processing of organic agricultural products are not covered by the listed project categories. The applicable conditions for granting aid are explained in more detail below.

Investments in primary agriculture, category B

80. Under Chapter IV.A.2 of the agriculture guidelines referring to Article 4 of Regulation (EC) No 1857/2006²⁹ the following conditions are attached to investments in primary agriculture:

- holdings in difficulty are not to be eligible for aid;
- no aid may be granted in order to comply with existing Community or national standards (point 35 of the agriculture guidelines);
- support must be demonstrably targeted at clearly defined objectives reflecting identified structural and territorial needs and structural disadvantages (point 36 of the agriculture guidelines);
- where a common market organisation places restrictions on production or limitations on support at the level of individual farmers, holdings or processing plants, no investment is to be supported by state aids which would increase production beyond the authorised level (Article 4(6) of Regulation (EC) No 1857/2006, point 37 of the agriculture guidelines);
- aid may not be granted for the purchase of second-hand equipment by large companies (point 39 of the agriculture guidelines). However, in the case of SME's, State aid for the purchase of second-hand equipment should be accepted where the lower cost of such equipment may be a useful first step towards modernisation notably for farms that start from a very low technical standard and which have little capital
- the investment must pursue notably (...) preservation and improvement of the natural environment (...) (Article 4(3)(d) of Regulation (EC) No 1857/2006);
- the eligible expenses may include the construction, acquisition or improvement of immovable property, the purchase or lease-purchase of machinery and equipment (...) and general costs linked to expenditure (...) (Article 4(4) of Regulation (EC) No 1857/2006);
- the aid must not be granted in respect of the manufacture of products which imitate or substitute for milk and milk products (Article 4(10) of Regulation (EC) No 1857/2006).
- Aid must not be granted in respect of the purchase of production rights, animals and annual plants, in respect of the planting of annual plants, and in respect of simple replacement investments.

²⁹ Commission Regulation (EC) No 1857/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to State aid to small and medium-sized enterprises active in the production of agricultural products and amending Regulation (EC) No 70/2001, OJ 2006 L 358, p. 3.

- the aid may be granted for a purchase of land other than land for construction purposes costing up to 10 % of the eligible expenses of the investment
- the aid measure must be accompanied by documentation demonstrating how the State aid measure fits into and is coherent with the relevant Rural Development programmes

81. The Dutch authorities have submitted information and confirmed that the aid will not under any circumstances exceed the ceiling of 40% of the eligible costs. In general the aid will not exceed 1.85% (see point 5 above). The measure does not include any special provisions for young farmers or less favoured regions.
82. The Dutch authorities have indicated that only projects in which financially sound holdings are participating can be eligible for support from the Green Funds Scheme.
83. The Dutch authorities stated and confirmed as well that the projects under the Green Funds Scheme may not relate to a subsidy for the compliance with existing Community or national standards.
84. The Dutch authorities have provided information and confirmed that these projects concern support which is demonstrably targeted at clearly defined objectives reflecting identified structural and territorial needs and structural disadvantages (see point 35).
85. The purchase of production rights, animals and annual plants and the planting of annual plants do not come within the eligible costs of the projects. The Dutch authorities have indicated that the projects under the Green Funds Scheme do not relate to investments in areas on which a common market organisation places a restriction on production or a limitation on support. The aid will not be granted in respect of simple replacement investments.
86. The Dutch authorities have given an assurance that support for second-hand equipment can only be given to small and medium-sized enterprises that start from a very low technical standard and which have little capital.
87. The projects in the Green Funds Scheme must all pursue preservation and improvement of the natural environment (see point 8).
88. The eligible costs are restricted to the costs of the investment under the project in the construction, acquisition or improvement of immovable property, the purchase or lease-purchase of machinery and equipment and the general costs linked to such expenditure (see point 40).
89. The projects in category B are not granted aid in respect of the manufacture of products which imitate or substitute for milk and milk products.
90. In view of the above considerations, the conditions of Chapter IV.A of the agriculture guidelines are met with respect to investments in categories B.1 and B.2.

Investments in the processing of agricultural products, category B

91. Investments in the processing of agricultural products listed in category B are restricted to SMEs (small and medium-sized enterprises) and remains below the ceiling of 40%. In

accordance with the other sections of the Green Funds Scheme, the subsidy for investment acts as an incentive, and cumulation is precluded by the verification that is done before the subsidy is granted. In addition, the Dutch authorities have indicated that the subsidy for investments in the processing of agricultural products fulfilled all the conditions of Regulation (EC) No 800/2008³⁰ in general and Article 15(4) in particular. They nevertheless chose to notify the aid with the complete package, in order to give a global overview of all the measures. Hence, this category of investment does not have to be assessed by the Commission in the present decision.

CATEGORY C: projects in the ‘agriculture and fisheries’ category

92. Project category C may include projects in which the green investment funds can make investments which come within the scope of the conditions of the agriculture guidelines or the fisheries guidelines (see points 8 and 10). It has been shown that these projects may concern investments in agricultural holdings and support in fisheries. The various kinds of project and the applicable conditions for granting aid are set out in more detail below.

Investments in primary agriculture, category C

93. The project categories:

- C.1. Commercial cultivation in green label glasshouses, and
- C.3. Sustainable dairy cattle breeding in accordance with the Yardstick for Sustainable Stockbreeding – Dairy Cattle

94. Under Chapter IV.A.2 of the agriculture guidelines and Article 4 of Regulation (EC) No 1857/2006, the following conditions are attached to investments in primary agriculture:

- holdings in difficulty are not to be eligible for aid;
- no aid may be granted in order to comply with existing Community or national standards (point 35 of the agriculture guidelines);
- support must be demonstrably targeted at clearly defined objectives reflecting identified structural and territorial needs and structural disadvantages (point 36 of the agriculture guidelines);
- where a common market organisation places restrictions on production or limitations on support at the level of individual farmers, holdings or processing plants, no investment is to be supported by state aids which would increase production beyond the authorised level (Article 4(6) of Regulation (EC) No 1857/2006, point 37 of the agriculture guidelines);
- aid may not be granted for the purchase of second-hand equipment by large companies (point 39 of the agriculture guidelines). However, in the case of SME's, State aid for the purchase of second-hand equipment should be accepted where the lower cost of such equipment may be a useful first step towards modernisation notably for farms that start from a very low technical standard and which have little capital
- the investment must pursue notably (...) preservation and improvement of the natural environment (...) (Article 4(3)(d) of Regulation (EC) No 1857/2006);

³⁰ Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General block exemption Regulation), *OJ 2008 L 214*, p. 3.

- the eligible expenses may include the construction, acquisition or improvement of immovable property, the purchase or lease-purchase of machinery and equipment (...) and general costs linked to expenditure (...) (Article 4(4) of Regulation (EC) No 1857/2006);
- the aid must not be granted in respect of the manufacture of products which imitate or substitute for milk and milk products (Article 4(10) of Regulation (EC) No 1857/2006).
- Aid must not be granted in respect of the purchase of production rights, animals and annual plants, in respect of the planting of annual plants, and in respect of simple replacement investments. However, in respect of drainage works or irrigation equipment and irrigation works which do not lead to a reduction of previous water use of 25 %, aid may be granted to specific agricultural products
- the aid may be granted for a purchase of land other than land for construction purposes costing up to 10 % of the eligible expenses of the investment
- the aid measure must be accompanied by documentation demonstrating how the State aid measure fits into and is coherent with the relevant Rural Development programmes

95. The Dutch authorities have submitted information and confirmed that the aid will not under any circumstances exceed the ceiling of 40% of the eligible costs. In general the aid will not exceed 1.85% (see point 5). The measure does not include any special provisions for young farmers or less favoured regions.

96. The Dutch authorities have indicated that only projects in which financially sound holdings are participating can be eligible for support out of the Green Funds Scheme.

97. The Dutch authorities stated and confirmed as well that the projects under the Green Funds Scheme may not relate to subsidy for the compliance with existing Community or national standards.

98. The Dutch authorities have provided information and confirmed that these projects concern support which is demonstrably targeted at clearly defined objectives reflecting identified structural and territorial needs and structural disadvantages (see point 35)..

99. The purchase of production rights, animals and annual plants and the planting of annual plants do not come within the eligible costs of the projects. The Dutch authorities have indicated that the projects under the Green Funds Scheme do not relate to investments in areas on which a common market organisation places a restriction on production or a limitation on support. The aid will not be granted in respect of simple replacement investments.

100. The Dutch authorities have given an assurance that support for second-hand equipment can only be given to small and medium-sized enterprises that start from a very low technical standard and which have little capital.

101. The projects in the Green Funds Scheme must all pursue preservation and improvement of the natural environment (see point 8).

102. The eligible costs are restricted to the costs of the investment under the project in the construction, acquisition or improvement of immovable property, the purchase or lease-

purchase of machinery and equipment and the general costs linked to such expenditure (see point 40).

103. The projects in category C are not granted aid in respect of the manufacture of products which imitate or substitute for milk and milk products.

104. In view of the above considerations, the conditions of Chapter IV.A of the agriculture guidelines are met with respect to investments in categories C.1 and C.3.

3.2.2. Fisheries guidelines

Category C: projects in the agriculture category (C.2 – sustainable aquaculture)

105. Aid for projects in category C.2 qualifies as aid to aquaculture and has to be assessed in accordance with the fisheries guidelines.

106. According to point 4.1 in combination with point 2.2 of the fisheries guidelines³¹, aid measures of the same kind as covered by the block exemption regulation relating to State aid granted to SMEs active in the fisheries sector³² will be assessed on the basis of these Guidelines and of the criteria laid down for each category of measures in that regulation. In line with Article 11 of this block exemption regulation, in order to be compatible with the common market, aid for productive investments in aquaculture to aquaculture will first have to be in line with the conditions laid down in Articles 28 and 29 of Council Regulation (EC) No 1198/2006 of 27 July 2006 on the European Fisheries Fund ("EFF Regulation")³³ and Articles 9 and 10 of Council Regulation (EC) No 498/2007 of 26 March 2007 laying down detailed rules for the implementation of Council Regulation (EC) No 1198/2006 on the European Fisheries Fund ("Implementing rules")³⁴. In addition, the amount of aid cannot exceed, in grant equivalent, the total rate of public contribution fixed by Annex II to EFF Regulation.

107. Moreover, according to points 3.1-3.6 of the fisheries guidelines, the scheme must also have an incentive effect, be transparent, must not contain any operating aid and should be limited to 10 years. Finally the scheme must explicitly provide that, during the grant period, the beneficiary shall comply with the rules of the Common Fisheries Policy.

Compatibility with EFF Regulation

108. The relevant provisions of that Regulation in the present case are article 29 (1) (b), article 29 (2), (3) and (4) EFF Regulation, Annex IV (intensity of aid) to EFF Regulation and article 10 of the Implementing rules.

Enhancing positive effects on the environment

109. Article 29 (1) (b) EFF Regulation allows for aid in aquaculture infrastructure when the subsidized aquaculture methods substantially reduce negative impact or enhance positive

³¹ Guidelines for the examination of State aid to fisheries and aquaculture, OJ C84, 3.4.2008, p. 10.

³² Commission Regulation (EC) No 736/2008 on the application of Articles 87 and 88 of the Treaty to State aid to small and medium-sized enterprises active in the production, processing and marketing of fisheries products; OJ C201, 30.07.2008, p. 16.

³³ O.J. L 223, 15.8.2006, p.1.

³⁴ O.J. L 120, 10.5.2007, p.1.

effects on the environment when compared with normal practice in the aquaculture sector, i.e., according to article 10 (1) c of the Implementing rules, when compared with aquaculture activities carried out in compliance with binding legislation, whether it relates to health, veterinary or environmental matters.

110. The Dutch authorities have explained that the positive effects on the environment of aquaculture projects complying with the criteria laid down in the draft scheme result first from the limitation of the quantity of water that is necessary for the cultivation of fish. As a consequence, the volume of waste water is reduced and thus also the volume of pollutants. Second, contrary to what is still the case with traditional aquaculture of eels for instance, the draft scheme prohibits aquaculture with juveniles found in nature and makes it mandatory to use fish meal from sustainable fisheries if the project is to be labelled as green. The Dutch authorities recall that in traditional aquaculture, they regularly use fishmeal produced from wild fish, which has possibly been caught illegally.

111. As far as the rearing of molluscs and shellfish is concerned, the Dutch authorities explain that aquaculture generally takes place in open systems at sea. The impact of this sort of aquaculture on the environment will be reduced if the molluscs or shellfish are reared in closed systems on land.

112. On the basis of these elements, the Commission considers that the aquaculture methods subsidized through the draft scheme substantially reduce negative impact or enhance positive effects on the environment compared to normal practice in the aquaculture sector in the Netherlands.

Investment aid

113. According to article 29 (1) EFF Regulation, the aid may cover construction costs, extension costs, equipment and modernisation of production installations. Costs made for instance for the purchase of broodstock and juveniles of the species to be farmed can thus not be covered³⁵.

114. Under the draft scheme only investments in fixed assets that are necessary for the implementation of the project can benefit from the scheme. Broodstock and juveniles do not qualify as fixed assets. This is also confirmed in the "*toelichting*" of the draft scheme on p. 30 where it is mentioned that, as far as aquaculture projects are concerned, the costs of the project can relate to the breeding basins, the filtration and purification units, recirculation systems, feeding systems, brood installations, security systems and other devices intended for animal welfare. The Commission therefore concludes that the scheme relates only to investment costs within the meaning of article 29 (1) EFF Regulation.

Aid limited to SMEs

115. The draft scheme provides that only aquaculture projects undertaken by SMEs can be considered as green projects. The draft scheme thus complies with article 29 (2) EFF (in combination with article 3 (f) EFF Regulation).

Priority must be given to micro and small-sized enterprises

116. According to article 29 (4) EFF Regulation and article 10 (5) of the Implementing rules, priority must be given to projects developed by micro and small-sized enterprises. The

³⁵ See EFF Vademecum, Doc EFFC/10/2007 of 26.03.2007, point 5.1.1.4.

purpose of this priority rule is to ensure that, when there is only a limited budget available to support aquaculture projects, priority is given to micro and small-sized enterprises, either through setting aside 50% of the support available for productive investments in aquaculture for micro and small-sized undertakings or through using the size of the undertaking as a priority point when ranking beneficiaries for funding.

117. This priority rule, however, finds no application, where the available support is not limited. In the present case, as the aid scheme takes the form of a fiscal measure, there is no limit to the support available. All productive investments in aquaculture, including those envisaged by micro and small-sized undertakings, which comply with the criteria laid down in the draft scheme will be granted a green certificate, making them eligible for green loans. The aid scheme under examination can therefore be considered as complying with article 29 (4) EFF Regulation.

Aid intensity (Annex II EFF Regulation)

118. Public contributions may not go beyond 40% of the eligible costs and 20% of the eligible costs in the case of enterprises with less than 750 employees or with a turnover of less than EUR 200 million that are not covered by the definition of SMEs. So far as investments in productive aquaculture are concerned, the aid scheme applies to SMEs only; the applicable maximum aid intensity is thus 40% in the present case.

119. As mentioned under paragraph 5 above, it is estimated that the aid element of the financing does not exceed 1.85% of the projects' investment costs.

120. Given that for productive investments in aquaculture projects in the sense of article 29 EFF Regulation, most of the investments costs will be eligible costs and given the low percentage of the advantage, it can be assumed that most of the time the 40% maximum aid intensity will not be achieved.

121. The Commission notes, moreover, that, when examining whether a green certificate can be issued, the competent body examines whether the maximum aid intensity is reached or not, also taking into account aid received under other instruments.

122. The Commission therefore is satisfied that aid granted under the green funds aid scheme will remain below the allowed intensity ceiling of 40% of eligible costs.

Additional conditions laid down in the fisheries guidelines

No operating aid (point 3.4 fisheries guidelines)

123. A similar condition is already foreseen in article 29 (1) EFF Regulation and has been examined above.

Incentive effect (point 3.3 fisheries guidelines)

124. In order to be considered compatible with the common market, any aid measure must contain some incentive element or require some counterpart on the part of the beneficiary.

125. The Dutch authorities have explained that the purpose of the scheme was precisely to give the extra push needed for innovative projects to be financed. Without that small impulse, those projects would not find financing at an affordable rate. The Dutch authorities have also stressed that projects which could find financing on the market (at

market rates) without any support are not covered by the scheme. There is a specific provision in the draft scheme excluding them (see article 4 (h) draft scheme).

Transparency (point 3.5 fisheries guidelines)

126. For the total amount of the aid scheme, the Dutch authorities have indicated that they expect investments relating to aquaculture of around EUR 5 million for 2009. This corresponds to a loss of taxes of approx. EUR 100.000 for 2009. The advantage is estimated at 1.85 % of the investment costs by the Dutch authorities.

127. As far as cumulation is concerned, reference is made to section 3.3 of this decision.

128. Given the specific form of the aid instrument, the Commission considers that this information is in this case sufficient to ensure transparency and compatibility with point 3.5 of the fisheries guidelines.

Duration of State aid scheme (point 3.6 fisheries guidelines)

129. The Dutch authorities have indicated that they ask for a 10 year authorization. If the draft scheme were to remain in force for more than 10 years, the Dutch authorities confirmed that they would submit a new notification. The duration of the scheme is therefore compliant with point 3.6 of the fisheries guidelines.

Beneficiaries must comply with CFP (point 3.1 fisheries guidelines)

130. The Dutch authorities have added a specific provision in the draft scheme providing that projects have to comply with the rules of the Common Fisheries Policy. They have confirmed that when a project does not comply with these rules, the beneficiary will have to reimburse the aid (in proportion to the gravity of the infringement). The draft scheme explicitly provides that a green certificate will be retracted, if necessary with retroactive effect, when it is established that the conditions imposed in the green certificate are not respected. The Commission therefore considers that the draft scheme complies with point 3.1 of the fisheries guidelines.

Conclusion

131. The Commission concludes that a part of the scheme, as described under category C.2 – sustainable aquaculture, constitutes State aid for undertakings active in the fisheries and aquaculture sector.

132. The Commission concludes that this part of the aid scheme complies with the conditions laid down in the fisheries guidelines and is thus compatible with the common market.

3.2.3 Environmental aid guidelines / EC Treaty

Category D: Projects in the "sustainable raw materials" category

133. The Netherlands has explained that projects in the "sustainable raw materials" category increase the level of environmental protection because scarce and non-renewable resources are replaced by renewable resources. Examples given are the processing of nettles into clothing or the processing of common madder into dye. The Commission has examined this aid in the light of section 3.1.1 of the environmental aid guidelines regarding investment aid

for undertakings which increase the level of environmental protection in the absence of Community standards. The environmental benefit is realised in the production process of the beneficiary. The authorities have clarified that a project must concern an uncommon combination of raw materials which are processed into products and must, on balance, result in a reduction in an impact on the environment. The Dutch authorities have explained that the entire environmental balance, from raw material to product, will be assessed. By definition, this balance must be positive, according to the authorities. That such is indeed the case is ensured by project organisation SenterNovem who verifies whether all requirements of the draft Green Funds Scheme have been met in the context of the issuance of a green certificate. The Netherlands has provided a detailed example of a project in this (sub)category which demonstrates that the eligible costs are calculated in conformity with the relevant requirements of the environmental aid guidelines (points 80 to 84) and that the applicable maximum aid intensity of 50%, pursuant to point 76, is respected.

134. More in particular, the example provided concerns a clip for hanging tomato branches which is made from bioplastic. The Dutch authorities have explained that this investment is meant for the processing of biomass (in this case the residual product starch) into products which are not for human or animal consumption. The table provided takes a total investment cost of EUR 2 200 000 as the starting point. A reference investment of EUR 597 000 is deducted, which gives a total extra investment cost of EUR 1 603 000. The operating benefits have been deducted and the costs added, in accordance with the requirements of point 80 of the environmental aid guidelines. According to the example provided, there are benefits amounting to EUR 440 000 (realised because of a higher sales price per item). As a result, the total extra cost amounts to EUR 1 163 000. Aid on the basis of the Green Funds Scheme amounts to EUR 40 700, which represents 3.5% of the extra investment costs. All other calculation examples of projects eligible for support under the scheme which have been provided by the Dutch authorities (as referred to hereinafter) are based on the same methodology.

135. In light of the foregoing, the Commission concludes that aid for projects in this (sub)category can be declared compatible with the common market on the basis of section 3.1.1 of the environmental aid guidelines.

Category E: Projects in the "recovery and recycling" category

136. The Dutch authorities have explained that projects under Category E "recovery and recycling" must lead to a reduction of pressure on the environment and a reduction in the use of primary raw materials for products. As set out in the explanation to the draft scheme on p.30, a minimum processing standard applies in respect of various different waste streams, based on the so-called National Waste Management Plan (*Landelijk Afval Beheersplan*). In practice, this is the common standard for waste processing in the Netherlands (e.g. for paper this is recycling). A green certificate will only be issued for projects that exceed commonly accepted standards and, as the case may be, the applicable minimum standard under the National Waste Management Plan. The applicant must demonstrate that his processing method is not yet common in the market and that it results in a significant reduction of pressure on the environment and a reduced use of primary raw materials.

137. According to the Commission, aid for *projects of waste producers* can be declared compatible on the basis of section 3.1.1. of the environmental aid guidelines. The

Netherlands has demonstrated that the requirements of point 74 of the environmental aid guidelines are fulfilled, as the draft scheme only supports innovative projects, which rise above the existing standards or are developed in the absence of standards. The Dutch authorities have furthermore confirmed that the eligible costs are calculated in conformity with the requirements of the environmental aid guidelines (pursuant to points 80 to 84) and that the aid does not exceed the maximum aid intensity of 50% of the eligible costs, in conformity with point 76 of the guidelines.

138. In the Commission's view, aid for projects for the *management or recycling of waste created by other undertakings* can be declared compatible with the common market on the basis of section 3.1.9 of the environmental aid guidelines. The Dutch authorities have demonstrated that the conditions of section 3.1.9, set forth in the points 126 and 127 (including respect of the polluter pays principle), are complied with. Moreover, the Netherlands has shown, by way of a detailed calculation example for a project in this (sub)category, that the eligible costs are calculated in conformity with the applicable requirements of the environmental aid guidelines (points 130 and 131) and that the maximum aid intensity of 50% set out in point 128 is respected.
139. The Netherlands has confirmed that aid for projects in category E.2 regarding the detoxification and dismantling of ships shall be individually notified to the Commission pursuant to Article 88(3) of the EC Treaty and has included a specific provision to this end in the draft scheme³⁶. This category is therefore not subject to the current decision.
140. The Netherlands has confirmed that aid for projects in category E.3 regarding the capture, transport and storage of carbon dioxide shall be individually notified to the Commission pursuant to Article 88(3) of the EC Treaty and has included a specific provision to this end in the draft scheme³⁷. This category is therefore not subject to the current decision.

Category F: projects in the "sustainable energy" category

141. Category F "sustainable energy" concerns aid for: F.1, (a) the construction of a biogas storage plant (b) the construction of a biofuel plant; F.2, generating electric energy by means of wind turbines; F.3, generating electrical energy using photovoltaic cells; F.4, the use of thermal solar energy by means of solar panels; F.5, tapping geothermal heat; and F.6, generating electrical energy from water or water power. The Dutch authorities have explained that, compared to the current scheme, the kinds of renewable energy sources that are supported under the draft scheme in this (sub)category remain unchanged. With respect to category F.1.b the Dutch authorities have clarified that projects in this (sub)category are aimed at installations for the production of second generation biofuels. Investment aid for such projects shall be allowed only with regard to sustainable biofuels³⁸.
142. Based on the information provided, the Commission concludes that aid for the aforementioned projects can be declared compatible with the common market pursuant to the provision of section 3.1.6 of the environmental aid guidelines (aid for renewable energy

³⁶ See article 7 sub 2 of the draft scheme.

³⁷ See article 7 sub 2 of the draft scheme.

³⁸ Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC, OJ L 140/16, 05.06.2009.

sources). The Dutch authorities have submitted two detailed examples of projects in this category showing that the eligible costs are calculated in conformity with the relevant requirements of the environmental aid guidelines (points 105-106) and that the maximum aid intensity of 60%, set forth in point 102, is respected.

Category G: Projects in the "energy savings" category

143. Category G "energy savings" concerns aid for: G.1, the upgrading, by means of heat pumps and a closed soil heat exchanger or aquifer, from low-grade to high-grade heat; G.2 the installation of low-energy lighting for public roads, public squares and public buildings; and G.3, the installation of heat distribution networks to use residual heat from (a) urban waste incineration plants and industrial installations where no electricity is generated and from (b) power generating plants.
144. The Commission considers aid for such projects compatible with the common market for the following reasons. Regarding category G.1, the Netherlands has demonstrated that the criteria of section 3.1.5 of the environmental aid guidelines (aid for energy saving) are met. In particular, the Netherlands has demonstrated that the eligible costs are calculated in conformity with the requirements of point 98 of the guidelines and that the maximum aid intensity of 60% (point 95) is respected.
145. As for aid in category G.2 with respect to the installation of low-energy lighting for public roads, public squares, public buildings, bridges, public parks, car parks or industrial estates, the Dutch authorities have explained that only in the last two instances (aid for car parks and industrial estates) the beneficiary could be an undertaking, in which case the measure would give rise to state aid. According to the Commission, based on the information submitted, the Dutch authorities have demonstrated that for such projects the eligible costs are calculated in conformity with the applicable requirements of the environmental aid guidelines and that the maximum aid intensity of 60% is respected.
146. The Dutch authorities have explained that category G.3 sub b concerns aid for the installation of heat distribution networks using residual heat from power generating plants with an output of least 30% and minimum capacity of 20 MW, whereas for projects in category G.3 sub a investment aid can be granted for the installation of heat distribution networks using residual heat from urban waste incineration plants and industrial installations where no electricity is generated.
147. The Commission is of the opinion that aid in these two (sub)categories must be analysed on the basis of Article 87(3)(c) of the EC Treaty. Notably, point 67 of the environmental aid guidelines states that "*... to the extent that the provisions relating to energy saving (...) are not applicable, these Guidelines do not apply to State aid to investments in infrastructure related to district heating, which will be assessed under Article 87(3)(c) of the EC Treaty*". This is confirmed by footnote 44 of the environmental aid guidelines which reiterates that the financing of district heating infrastructure has to be assessed directly under Article 87(3)(c) of the EC Treaty. This conclusion is in line with a number of recent Commission decisions³⁹.

³⁹ See for instance cases N485/2008 and N584/2008.

148. Article 87(3)(c) of the EC Treaty states that "... *aid 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 ...*" may be considered to be compatible with the common market. In order to be compatible under Article 87 (3) (c), an aid must pursue an objective of common interest in a necessary and proportionate way.
149. The Dutch authorities have highlighted that the projects in question are expected to lead to energy savings, given that heat does not need to be produced separately. To illustrate the importance of the objective of energy saving, the Netherlands has also referred to the Commission's Directive on energy end-use efficiency and energy services⁴⁰. The Commission confirms that energy savings are indeed one of the priority objectives of the Commission and concludes therefore that the aid in question has an objective of common interest.
150. The Dutch authorities have furthermore demonstrated the necessity of the aid and its incentive effect, as without the aid projects would not be carried out. In addition, the Netherlands has shown that the eligible costs will be calculated in analogous application of points 124 and 125 (under section 3.1.8 'aid for energy-efficient district heating') of the environmental aid guidelines and respects the maximum aid intensity of 50%. As a result, the Commission considers that the aid is proportionate. Given the low aid intensities (the aid element amounts to a mere 1.85% of the total investment costs) and the local nature of the market for transport of heat, which is by definition bound to the location of the pipelines, the Commission concludes that the measure is unlikely to distort competition or have an adverse effect on Community trade to an extent contrary to the common interest. Aid for projects in categories G.3 sub a and G.3 sub b can therefore be declared compatible with the common market directly under Article 87 (3)(c) of the EC Treaty.

Category H: Projects in the "sustainable construction" category

151. With the projects in categories H regarding sustainable construction it is aimed by the Dutch authorities to stimulate projects for the construction of new and renovation of existing dwellings or utility buildings, as the case may be, which achieve an ambitious sustainability level. For instance, in respect of projects under category H.1, the building of new dwellings, the energy-efficiency of such dwellings must be 35 % stricter than the requirements laid down in the prevailing standard based on the so-called "*Bouwbesluit*". With regard to H.2, the renovation of office premises to build new dwellings, similar requirements apply regarding the energy performance of such property and the compulsory use of sustainable timber. Also for the realisation of projects in the categories H.4 (renovating existing dwellings with sustainably produced timber), H.5 (construction of highly sustainable utility buildings) and H.6 (renovating existing utility buildings) certain criteria must be complied with which ensure a higher level of sustainability.
152. The authorities have explained that where the projects relate to the construction of dwellings, the beneficiaries are either the private owner-occupiers or the owner-landlords of such dwellings that carry out the rental of the relevant property as a business activity. Where the private owner-occupiers are concerned, there is no state aid involved. However, in the case of projects for business premises, the beneficiary is the owner-occupier of the office or

⁴⁰ OJ L 114 , 27/04/2006, p. 64-85.

the landlord if such premises are rented out, in which case the measure does give rise to state aid that falls within the scope of Article 87 of the EC Treaty.

153. Based on the information provided by the Dutch authorities, the Commission is of the view that aid for projects in categories H.1, the building of new dwellings; H.2, renovation of office premises to build new dwellings; H.4, renovating existing dwellings with sustainably produced timber, H.5, construction of highly sustainable utility buildings and H.6, renovating existing utility buildings complies with the provisions of section 3.1.1 of the environmental aid guidelines (aid for undertakings which go beyond Community standards or which increase the level of environmental protection in the absence of standards). The Netherlands has furthermore demonstrated that the aid intensity for projects in these (sub)categories is at most 50% of the eligible costs, as described in point 76 of the environmental aid guidelines, and that the calculation of the eligible costs is carried out in conformity with points 80-84 of the environmental aid guidelines. Consequently, such aid can be declared compatible with the common market on the basis of section 3.1.1 of these guidelines.

Category I: Projects in the "sustainable mobility" category

154. The Netherlands has confirmed that aid for projects in categories I.2, (a) purchase of non-rail sustainable vehicles for goods transport on public roads; (b) purchase of sustainable vessels for public passenger transport for more than 8 persons on inland waterways; I.3, investment in low-noise and low-emission mobile tools and I.5, new inland shipping vessels for the transport of goods or persons, are granted in compliance with the requirements of section 3.1.2 (aid for the acquisition of new transport vehicles). The Dutch authorities have explained that, as in the current scheme, the draft scheme is limited to the best 5 to 10% of projects in the environmental field and which therefore go much beyond the existing community standards. The draft scheme will only be available for innovative projects in the transport area and will not be used for adjustments to existing norms or in support of already more widely available techniques which do not yet fall under community norms. The Netherlands has demonstrated that the eligible investment costs are determined in accordance with the requirements of the environmental aid guidelines, as laid down in points 73 to 84, and provided a detailed calculation example of a project in the category 'sustainable mobile tools', for illustration. Moreover, the Dutch authorities have confirmed that the maximum aid intensity of 50% is respected. The Commission concludes therefore that aid for projects in the (sub)categories I.2 (a) resp. (b), I.3 and I.5 can be declared compatible with the common market on the basis of section 3.1.2 of the environmental aid guidelines.

155. As regards aid in category I.4 with regard to the construction of filling stations for alternative environmentally friendly fuels, namely natural gas, biogas, hydrogen and hydrogen/natural gas mixture, with more than 10% hydrogen, to supply vehicles and vessels, the Commission is of the view that the environmental aid guidelines are not applicable to this type of aid, but that it would be appropriate to assess it on the basis of Article 87(3)(c) of the EC Treaty directly. Article 87(3)(c) of the EC Treaty states that "*... aid 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 ...*" may be considered to be compatible with the common market.

156. It must therefore be assessed whether the aid contributes to a Community objective, is necessary and has an incentive effect to achieve this objective, whether it is proportionate to the objective pursued and does not involve undue distortion of competition or impact on trade.
157. The Dutch authorities have demonstrated that the projects in question, i.e. the realisation of filling stations for alternative fuels, have environmental benefits. Such measures are consistent with both the obligations of the EU in the framework of the Kyoto Protocol and the Community strategy as reflected in Council Directive 96/62/EC of 27 September 1996 on ambient air quality assessment and management⁴¹. The Commission therefore confirms that aid for projects in this (sub)category contributes to a Community objective.
158. As regards the necessity of the aid and its incentive effect, the Commission accepts that the market would not engage in the realisation of filling points without the aid. Without an increase in the number of vehicles that can make use of environmentally friendly fuels, it is not profitable for the market to offer facilities in the field of environmentally friendly fuels. Without the aid no environmental benefit would be reached and therefore an increase in the number of filling points is considered necessary.
159. As regards the proportionality, the Dutch authorities have provided evidence that this aspect of the proposed measure complies with the conditions of the environmental aid guidelines by way of analogy. Given the low level of the aid intensity (1.85% of total investment costs) aid to many of these projects would stay below the de minimis threshold. The Dutch authorities have provided a detailed calculation example which shows that the aid intensity would be 50% of the eligible costs at most (the example provided shows an aid intensity of 9.6%), with reference to point 76 of the environmental aid guidelines. The calculation of the eligible costs is carried out in conformity with points 80-84 of the environmental aid guidelines.
160. As regards the measure's impact on competition, the Commission considers that an increase in the number of filling stations offering alternative environmentally friendly fuels would rather enhance competition in the market than have a distortive effect on competition and an adverse effect on trading conditions. In any event, given the very limited scope of the aid, it is considered to be unlikely that any impact would be such as to give rise to an undue distortion of competition and adversely affect trading conditions.
161. In light of the above, the Commission is of the view that aid for projects in this (sub)category contributes to a Community objective, is necessary and has an incentive effect, and is proportional to the objective pursued. The same approach was taken by the Commission in cases N687/2007 and N 642/2008. Consequently, aid for projects in category I.4 can be declared compatible with the common market directly under Article 87 (3)(c) of the EC Treaty.

Category J: Projects in the "sustainable water chains" category

162. In respect of projects as described under category J.1.b (separate disposal and storage of rainwater for use as process water, except for use in agriculture and horticulture) the Dutch

⁴¹ Official Journal L 296 , 21/11/1996 P. 55-63

authorities have explained that the beneficiaries are undertakings. The disposal, storage and use of rainwater for use as process water is not obligatory for undertakings, which means that all related investments must be considered as eligible costs in the sense of the environmental aid guidelines. The Commission has assessed aid in this category pursuant to section 3.1.1 of the environmental aid guidelines (aid for undertakings which go beyond Community standards or which increase the level of environmental protection in the absence of Community standards).

163. The Commission notes that the draft scheme will only be available for innovative projects and will not be used for adjustment to already existing standards or in support of already more widely available techniques which are not yet subject to Community legislation. The Netherlands has confirmed that the eligible costs are calculated in accordance with the applicable requirements of the environmental aid guidelines, as laid down in points 73 to 84, and in support of this provided a detailed calculation example of a project in this category regarding 'sustainable water chains'. From this it must be concluded that the maximum aid intensity of 50% is respected. According to the Commission, this kind of aid can be declared compatible with the common market, considering that the criteria of section 3.1.1. have been met.

164. Regarding aid for projects in categories (c) the treatment of wastewater using as yet unavailable techniques for construction of a closed water system to replace open systems, (d) the treatment of wastewater using for the Netherlands as yet unavailable, innovative and sustainable systems for recovery and recycling of substances present in that wastewater to replace existing systems operating without such recovery and recycling, (e) the treatment of wastewater, or preparation of drinking water with a reduction of at least 50% in energy use in the existing installations or plant to be replaced, with improved or equal purification results, (f) the treatment of wastewater polluted with priority substances using a system reducing by at least 50% the wastewater value of these substances with respect to their wastewater value in existing plant or installations to be replaced, the Netherlands has explained the following. Such projects can be carried out either by the producer of wastewater or by other undertakings.

165. As regards water purification *projects of waste producers*, the Commission considers that aid for such projects can be declared compatible with the common market under section 3.1.1 of the environmental aid guidelines as it concerns a beneficiary's own activities, provided the requirements of point 74 of the environmental aid guidelines are met and the aid intensity amounts to a maximum of 50% of the eligible costs, as described in points 80 to 84. The Netherlands has explained that the draft scheme only supports innovative projects, which rise above the existing standards or are developed in the absence of standards. The Dutch authorities have also confirmed by way of a detailed calculation example, that the eligible costs are calculated in conformity with the requirements of the environmental aid guidelines (pursuant to points 80 to 84) and that the aid does not exceed the applicable maximum aid intensity of 50%.

166. In the Commission's view, aid for water purification *projects carried out by other undertakings* can be declared compatible with the common market on the basis of Section 3.1.9 of the environmental aid guidelines. The Dutch authorities have demonstrated that the conditions of section 3.1.9, set forth in points 126 and 127 of the environmental aid guidelines, are complied with. Moreover, the Netherlands has shown, by way of a detailed calculation example for a project in this (sub)category, that the eligible costs are calculated

in conformity with the requirements of the environmental aid guidelines (points 130 and 131) and that the maximum aid intensity set out in point 128 is respected.

Category K: "other innovative and high-quality projects"

167. The Netherlands has confirmed that aid for projects in category K regarding other innovative and high-quality projects shall be individually notified to the Commission pursuant to Article 88(3) of the EC Treaty and has included a specific provision to this end in the draft scheme⁴².

Incentive effect

168. As set out in section 3.2, points 142 until 146, of the environmental aid guidelines State aid must have an incentive effect. To demonstrate the incentive effect of a measure, the Member State concerned must prove that without the aid, that is to say, in the counterfactual situation, the more environmentally friendly alternative would not have been retained (cf. the criteria of point 146 of the environmental aid guidelines).

169. With respect to the incentive effect of the aid the Netherlands has explained the following. From the moment of publication and entry into force of the draft scheme (and after the Commission has declared the measure compatible with the common market), it creates an automatic right to receive aid without there being required any further administrative actions by the State. The beneficiary cannot already have started the projects. Furthermore, the projects in question would never be engaged in under market terms. Without the draft scheme, according to the Dutch authorities, the projects would simply not be carried out. Namely, in the counterfactual situation without the draft scheme, the financial means for the implementation of innovative investments for the benefit of the environment would not be available and a higher interest fee would have to be paid. Because of the increased risk (innovative environmental projects are generally more risky than existing technologies) the projects in question would not materialise. In this respect the authorities have explained that banks in the Netherlands have indicated that, without the draft scheme, such projects would not have been financed. According to the Commission, the incentive effect of the aid is therefore adequately ensured.

Detailed assessment

170. The Dutch authorities have committed to notify individually any aid which exceeds the thresholds of point 160 of the environmental aid guidelines with regard to measures subject to a detailed assessment. In their letter of 3 September 2008, the authorities have confirmed that this commitment would be reflected in the draft green projects scheme 2009.

3.3 Aid in all categories

171. Based on the information provided by the Dutch authorities, the Commission is satisfied that financial support under categories A.8 (biodiversity), G.4 (projects for the generation by the owner-occupier of heat and electricity by means of a micro-generation installation), G.5 (projects for the installation by the owner-occupier of a

⁴² See article 7 sub 2 of the draft scheme.

heat pump), H.3 (renovation of existing dwellings by owner-occupier), I.1 (creation of cycle paths and cycle shelters), J.1.a (separate arrival and disposal of rainwater) and J.1.c (separate disposal of rainwater for discharging on surface water), J.2a (the preparation of drinking water from wastewater flows); and J.2b (the preparation of drinking water using as yet unavailable, innovative, sustainable methods) does not comprise State aid.

172. The Dutch authorities ensure that in the case of cumulation of aid from different sources, the total level of aid for the same project will not exceed the allowable aid intensities⁴³.

3.4 Compatibility with the common market of the aid in favour of investment funds

173. As regards the advantage at the second level, the investment funds, the Commission considers that such aid does not fall within the scope of the agriculture guidelines, the fisheries guidelines or the environmental aid guidelines and its compatibility has to be assessed directly on the basis of Article 87(3)(c) of the EC Treaty.

174. As indicated above, the amendments to the current scheme all concern changes in project categories. The Dutch authorities have confirmed that the draft scheme will not result in modifications at the level of the investment funds. The conclusions of the Commission in this regard, as set out in paragraphs 39 until 45 of the decision of the Commission of 25 August 2006, remain valid therefore and must be regarded as repeated and included in this decision.

175. In particular, the Commission notes that the advantage to the investment funds provides a necessary incentive to private intermediaries to transfer the aid to the final beneficiaries. The role of financial institutions is a crucial and necessary element in the design of the scheme as, on the one hand, the institutions attract savings from private individuals, whereas on the other hand they actively advise extra environmental measures if this means that projects will become eligible for a green certificate and thus for green funding. Moreover, the conditions under which financial institutions can participate in the scheme are such as to minimise any aid in their favour. The Commission accepts therefore that the aid to the investment funds is necessary for the functioning of the whole scheme, proportionate in order to reach its objectives and, given the very limited scope of the aid, the Commission considers it unlikely that any impact would be such as to give rise to an undue distortion of competition and adversely affect trading conditions.

176. On the basis of these considerations, the Commission finds that any aid in favour of the investment funds is compatible with the common market on the basis of Article 87(3)(c) of the EC Treaty.

3.5 Conclusion

177. In conclusion the State aid for projects in the various categories fulfils the conditions laid down in the agriculture guidelines, the fisheries guidelines and the environmental aid guidelines and partially it can be found compatible directly on the basis of Article 87(3)(c) of the EC Treaty.

⁴³ See new article 4 sub 1.f of the draft scheme.

IV. DECISION

178. On the basis of the foregoing assessment, the Commission has decided not to raise objections against the notified measure, since it fulfils the conditions to be considered compatible with Article 87 (3)(c) EC Treaty.
179. The Commission reminds the authorities of the Netherlands that, in accordance with Article 88 (3) of the EC Treaty, plans to refinance, alter or change this scheme have to be notified to the Commission pursuant to provisions of Commission Regulation (EC) No 794/2004⁴⁴.

If this letter contains confidential information which should not be published, please inform the Commission within fifteen working days from 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/community_law/state_aids/state_aids_texts_nl.htm

Your request should be sent by registered letter or fax to:

European Commission
Directorate-General of Competition
State Aid Greffe
B-1049 BRUSSELS
Fax n°: 00-32-2-296 1242

Yours faithfully,
For the Commission

Neelie KROES
Member of the Commission

⁴⁴ Commission Regulation (EC) No 794/2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 [now 88] of the EC Treaty; OJ L 140, 30.4.2004, p.1.