



EUROPEAN COMMISSION

Brussels,
C(2013)

**Subject: State aid/ Netherlands
Aid No SA.37251 (2013/N)
Guarantee scheme for agricultural enterprises**

Sir,

The European Commission (hereinafter the Commission) wishes to inform the Netherlands that, having examined the information supplied by your authorities on the State aid scheme referred to above, it has decided not to raise any objections to the relevant scheme as it is compatible with the internal market.

The Commission has based its decision on the following considerations:

1. PROCEDURE

- (1) By electronic notification of 4 November 2013, registered by the Commission on the same day, the Netherlands notified, according to Article 108(3) of the TFEU¹, the above mentioned aid scheme.

2. DESCRIPTION

- (2) The present notification prolongs and amends the existing guarantee scheme for agricultural enterprises, which has been approved by Commission decision C(2008)7611 of 4 December 2008 under State aid number N 358/2008.

¹ With effect from 1 December 2009, Articles 87 and 88 of the EC Treaty have become Articles 107 and 108, respectively, of the TFEU. The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 107 and 108 of the TFEU should be understood as references to Articles 87 and 88, respectively, of the EC Treaty where appropriate.

Zijne Excellentie de Heer Frans TIMMERMANS
Minister van Buitenlandse Zaken
Bezuidenhoutseweg 67
Postbus 20061
NL – 2500 EB Den Haag

(*) *Ce timbre porte sur l'ensemble des documents qui composent le dossier.*

- (3) The scheme concerns a general subsidy for the agricultural sector in the form of a State guarantee to take out loans for the investment in the establishment, acquisition, conservation, and improvement of agricultural enterprises active in primary production. Consequently, the scheme contributes to the modernisation, sustainability and innovation within agriculture and horticulture.
- (4) The envisaged amendments concern:
- (a) A prolongation of the duration of the scheme that is due to expire on 31 December 2013, until 31 December 2020.
 - (b) A new budget for the period 2014-2020.
 - (c) An adaption of the calculation of the aid intensity of the guarantee scheme due to an increase of the default risk percentage.
- (5) The Dutch authorities have provided information that all other conditions of Commission Decision N 358/2008 remain applicable and unchanged. Moreover, the Dutch authorities stated that the prolonged scheme will continue to fulfil the conditions of the Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees (hereafter: the Guarantee notice)² and the Community Guidelines for State aid in the agriculture and forest sector 2007-2013 (hereafter: the Guidelines)³. Given that the scheme extends beyond the duration of the current Guidelines, the Netherlands commit to adapt the scheme to make it compatible with the provisions in the future Guidelines.

2.1. Guarantee

- (6) The calculation of the default risk and aid intensity is based on the formula in footnote 29 of the Guarantee notice namely the difference between (a) the outstanding sum guaranteed, multiplied by the risk factor of the scheme ('risk' being the probability of default after inclusion of administrative and capital costs), and (b) any premium paid, i.e. (guaranteed sum × risk) – premium paid.

Firstly, the one-off premiums paid by the farmer to the credit institution remains the same i.e.:

- (a) General guarantee: premium of 3%. Maximum loan of EUR 600 000 of a total eligible investment of EUR 900 000 with a maximum guarantee of 80% of the loan: EUR 480 000.
- (b) Guarantee for starting young farmers: premium 1%. Maximum loan of EUR 1 200 000 of a total eligible investment of EUR 1 800 000 with a maximum guarantee of 80% of the loan: EUR 960 000.

² OJ C 155, 20.06.2008, p.10.

³ OJ C 319, 27.12.2006, p.1.

- (c) Guarantee plus: premium of 3%. Maximum loan of EUR 2 500 000 of a total eligible investment of EUR 3 750 000 with a maximum guarantee of 80% of the loan: EUR 2 000 000.⁴
- (d) Guarantee plus for subordinated loans: see 'Guarantee plus'.

Secondly, specific information has been provided which shows that between 1998 and 2012 the guarantees have a default average of 0.74%. The administrative costs are circa EUR 600 000 per year and there are no capital costs involved. On the basis of a guaranteed amount of circa EUR 517 million, the administrative costs constitute 0.1% which leads to a total default average of 0.84%. In the scheme approved by Commission decision N 358/20008 the default average was 0.7%.

When the formula is followed and calculated for the length of the maturity of the loan (20 years), the following new aid intensities can be concluded according to the different possible guarantees in connection with the premiums:

- General guarantee (until EUR 600 000): 4.67%
 - Guarantee for starting young farmer (until EUR 1 200 000): 7.17%
 - Guarantee plus (until EUR 2 500 000): 4.67%
 - Guarantee plus for subordinated loans (until EUR 2 500 000): 4.57%
- (7) As regards the 'guarantee plus' for subordinated loans (period of 10 instead of 20 years), the conditions are softer which subsequently increases the risk of default. This default average is 1.58% including the 0.1% of the administrative costs average. The aid intensity will therefore be lower than the 'guarantee plus' for normal loans and constitutes 4.57%.
- (8) The Dutch authorities submitted the report on the original guarantee scheme as approved in decision N 358/2008 to the Commission in compliance with the requirements spelled out in point 6 of the Guarantee notice. Moreover, they commit to the conditions in this point as regards presenting reports for the notification of an amended scheme and at the end of the period of validity of this scheme.

2.2. Investment aid

- (9) As mentioned in recital 5 above, the prolonged guarantee scheme will continue to fulfil the criteria in the Guidelines and in particular of chapter IV.A concerning aid for investment in agricultural holdings as approved in Commission Decision N 358/2008. In recap:
- (a) Article 2:70 (2) of the Regeling LNV-subsidies (Title 12: Guarantee) states that the investments will pursue the objectives of a reduction of production costs, an improvement and redeployment of production, an improvement in quality,

⁴ Commission decision N 112/2009 approved the increase of the maximum amount of the loan and the connected investment for the 'guarantee plus'. The amount of the 'guarantee plus' was changed from 1.200.000 Euro, on an investment of at least 1.800.000 Euro, to a maximum of 2.500.000 Euro, with an investment of at least 3.750.000 Euro.

and/or the preservation and improvement of the natural environment or the improvement of hygiene conditions or animal welfare standards.

- (b) Article 2:77 of the Regeling LNV-subsidies (Title 12: Guarantee) lays down the eligible expenses including the construction, acquisition or improvement of immovable property; the purchase or lease-purchase of machinery and equipment; general costs linked to the expenditure of aforementioned eligible expenses; costs for the purchase of second hand material for agricultural enterprises with a limited start base that are low in capital.
 - (c) Article 2:78 of the Regeling LNV-subsidies (Title 12: Guarantee) excludes some expenditure from aid including among other things costs connected with a leasing contract other than those listed in Article 4(4)(b) of Regulation (EC) No 1857/2006⁵, purchase of construction site, investment costs that contribute to the financial situation of the beneficiary but not to sector development.
 - (d) Article 1:15(1)(d) of the Regeling LNV-subsidies (Chapter 1: General provisions) states that no aid will be granted for costs in contravention with EU and national rules. Article 2:2 of the Regeling LNV-subsidies (Chapter 2: competitiveness) excludes among other things the following activities from aid: the purchase of production rights, animal rights and annual plants, the planting of annual plants, costs for the manufacturing of products which imitate or substitute for milk and milk products, legal fees.
- (10) The Dutch authorities confirmed that aid for the purchase of land will not cover more than 10% of the total eligible expenses of the investment.
- (11) Finally, the Dutch authorities have provided information about the relationship between the authorities and the credit facilities. This information shows that no (in)direct aid will be granted to the credit facilities as a result of the guarantee scheme.⁶

2.3 Title

- (12) Guarantee scheme for agricultural enterprises

2.4 Legal Basis

- (13) The legal basis of the scheme is comprised by the following acts:
- Kaderwet LNV-subsidies
 - Regeling LNV-subsidies

2.5 Duration

- (14) Aid can be granted from the date of Commission approval until 31.12.2020.

⁵ OJ L 358, 16.12.2006, p.3.

⁶ See the framework agreement as described in Article 2:73 (1)(a) of the Regeling LNV-subsidies.

2.6 Budget and intensity

- (15) The total budget for the period 2014 – 2020 is EUR 39 160 000. The annual budget is EUR 5 590 000. There is a margin of EUR 30 000 (difference between total amount and 7 times the annual amount) which serves as a buffer in case of rounding up numbers. The aid intensity will be at maximum 7.17 % per individual aid that is granted under this scheme.

2.7 Cumulation

- (16) The aid granted under this scheme could be combined with public support received from other local, regional, or Community schemes to cover the same eligible costs. The *Kaderwet LNV-subsidies* states that payments cannot be made when this would lead to overcompensation and provides for a system with checks and recovery.⁷ Instruments are thus put in place to ensure that the cumulation of the aid amount can never go beyond the 40% (or 50% for young farmers within five years of setting up) of the total eligible costs of the investment.

2.8 Beneficiaries

- (17) SMEs active in primary production in agriculture.

2.9 Outstanding recovery order and firms in financial difficulty

- (18) The Dutch authorities have committed to suspend the payment of the notified aid if the beneficiary still has at its disposal an earlier unlawful aid that was declared incompatible by a Commission decision (either concerning an individual aid or an aid scheme), until that beneficiary has reimbursed or paid into a blocked account the total amount of unlawful and incompatible aid and the corresponding recovery interest.
- (19) Firms in financial difficulty according to the definition set out in the Community Guidelines on State aid for rescuing and restructuring firms in difficulty⁸ are excluded from the scope of the scheme, in Article 2:1a of the *Regeling LNV-subsidies*.

2.10 Incentive element

- (20) The Dutch authorities have confirmed that aid will be granted only towards activities that begin after the Commission has authorised the aid measures and after the competent authority has accepted the application with a binding decision.

3. ASSESSMENT

- (21) The guarantee scheme for agricultural enterprises has been approved by the Commission in decision N 358/2008. This decision is based on the conditions laid down in the Guarantee notice and Chapter IV.A. of the Guidelines as well as in the general conditions of the Guidelines.

⁷ Articles 1:9 and 1:16 of the *Regeling LNV-subsidies*.

⁸ OJ C 244, 1.10.2004, p. 2.

- (22) The proposed amendments to the scheme consist of the prolongation of the duration of the scheme from 2014 until end 2020, a new annual budget of EUR 5.59 million, and an increase of the maximum aid intensity from 5.83% till 7.17% due to higher default risk. The Commission considers that the present modifications of the scheme do not alter the assessment in Commission decision N 358/2008 and therefore remits to the assessment on existence and compatibility of aid in the afore mentioned decision.
- (23) The Commission considers that the notified scheme meets all the conditions of the Guarantee notice, and the Guidelines. In particular:
- (a) The valuation of the aid intensity of the scheme is in line with the calculation of the aid element in guarantee schemes provided for in paragraphs 4.1 and 4.5 of the Guarantee notice.
 - (b) Aid will only be granted in respect of activities undertaken after the aid scheme has been set up and declared compatible with the Treaty by the Commission. The Dutch authorities have guaranteed that there is a necessary incentive element as the aid will not be granted in respect of work begun or activities undertaken before an application for aid has been properly submitted to the competent authorities and accepted by them with binding effect, clearly indicating the amount of aid to be granted or how this amount would be calculated (in line with point 16 of the Guidelines).
 - (c) The Dutch authorities have submitted the report on the original guarantee scheme to the Commission in compliance with the requirements spelled out in point 6 of the Guarantee notice. The Commission takes note of their commitment to present reports at the end of validity of the guarantee scheme and for the notification of an amended scheme.
- (24) The Commission takes note that firms in financial difficulty within the meaning of the Community Guidelines on State aid for rescuing and restructuring firms in difficulty are not eligible for funding.
- (25) In accordance with the Deggendorf ruling⁹, the Commission takes account of the commitment made by the Dutch authorities to suspend the payment of the notified aid if the beneficiary still has at its disposal an earlier unlawful aid that was declared incompatible by a Commission Decision (either concerning an individual aid or an aid scheme), until that beneficiary has reimbursed or paid into a blocked account the total amount of unlawful and incompatible aid including the corresponding recovery interest.
- (26) The Commission also notes that the Dutch authorities have promised that once the new rules enter into force, they will take appropriate measures to bring their existing aid schemes into line with the new provisions, taking into account any transitional periods as foreseen in these new rules.

⁹ See Judgment of the General Court of 13 September 1996, joined cases T-244/93 and T-486/93, *Textilwerke Deggendorf GmbH v Commission*, p. II-2288, paras 51 and 56 et seq.; confirmed by the judgment of the Court of Justice of 15 May 1997, case C-355/95 P, p. I-2575, paras 22 and 26 et seq.

- (27) For these reasons the guarantee scheme for agricultural enterprises as notified by the Dutch authorities, is in conformity with the conditions set out in the Guarantee notice and Chapter IV.A. of the Guidelines, and the general conditions of the Guidelines.

4. CONCLUSION

- (28) On the basis of the above considerations, the Commission concludes that the notified measure is compatible with Article 107(3)(c) of the TFEU.
- (29) If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days from the receipt of the present letter. If the Commission does not receive a reasoned request by this deadline, you will be deemed to have agreed to the disclosure to third parties and to the publication of the full text of this letter in the authentic language on the internet site:
<http://ec.europa.eu/competition/elojade/isef/index.cfm>.
- (30) Your request should be sent by registered letter or fax to:

European Commission
Directorate-General for Agriculture and Rural Development
Directorate Agricultural Legislation
Office: Loi 130 5/98A
B-1049 Brussels, Belgium
Fax No: 0032 2 2967672

Yours faithfully,

For the Commission

Dacian CIOLOȘ
Member of the Commission