



EUROPEAN COMMISSION

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Embargo VISTA illimité()*

Subject : **State Aid - Netherlands**
 SA.39008 (2014/N) ex SA.39008 (2014/PN)
 Animal Health Fund

Sir,

The European Commission ("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 pursuant to Article 107(3)(c) of the Treaty on the Functioning of the European Union ("TFEU").

The Commission has based its decision on the following considerations:

1. PROCEDURE

- (1) By letter of 8 August 2014, registered by the Commission the same day, the Permanent Representation of the Kingdom of the Netherlands to the European Union notified according to Article 108(3) of the TFEU, the above mentioned aid scheme. This notification followed a pre-notification submitted by the Dutch authorities on 1 July 2014, registered by the Commission on the same day.
- (2) The Commission requested additional information by letters of 10 October 2014, 13 January 2015 and 13 May 2015, which the Dutch authorities provided by letters of 13 November 2014, 26 February 2015 and 29 May 2015 respectively, all registered by the Commission on the same day as received. Complementary information to the second letter was sent by the

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

Dutch authorities by e-mail of 1 April 2015, registered by the Commission on the same day.

2. DESCRIPTION

2.1. Title

- (3) Animal Health Fund

2.2. Objective

- (4) With this notification the Dutch authorities intend to adapt their national system of prevention, control and eradication of animal diseases to the European Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020¹ ("the Guidelines"). In parallel the Ministry of Economic Affairs takes over full competences for regulation and implementation of the measures concerned and the levying of parafiscal charges for partial financing of the aid measures.
- (5) Before these competences were shared between the Ministry of Economic Affairs and the Product Boards (*Productschappen*) concerned (Product Board for Poultry and Eggs, Product Board for Livestock and Meat, and Product Board for Dairy). These Product Boards, governed by public law, were empowered by the State for levying of the parafiscal charges and partially for implementation of the aid measures in their respective sectors. They have ceased to exist as from 1 January 2015.
- (6) The notified aid scheme will replace two existing aid schemes. The aid schemes concerned are:
- Aid for prevention and eradication of animal diseases (N 515/2009) approved by Commission decision No C (2009) 8106 final of 28. 10. 2009.
 - Aid for the combat of the Aujeszky disease (SA 32034) approved by Commission decision C (2011) 1710 final of 16.3.2011.

2.3. Legal basis

- (7) The Law on Health and Well-being of Animals (*Gezondheids- en welzijnswet voor dieren*), hereinafter GWWD, is the framework legal basis of the aid scheme. The GWWD contains general and specific provisions on the measures for prevention, control and eradication of animal diseases and the charging of the levies for its financing. It also governs the function of the Animal Health Fund (*Diergezondheidsfonds*), which is responsible for the collection of the aforementioned levies and the payment of the aid at hand.
- (8) In accordance with Article 111 of the GWWD national provisions can be introduced through administrative acts (*algemene maatregel van bestuur*),

¹ OJ C 204, 1.7.2014, p. 1.

which can deviate from the provisions of the GWWD in order to comply with Union legislation.

- (9) On basis of the GWWD a number of detailed ministerial decisions (*besluiten*) and schemes (*regelingen*) has been adopted governing the present scheme.
- (10) These are:
- Scheme for prevention, combat and monitoring of contagious diseases, zoonoses and TSE's (*Regeling preventie, bestrijding en monitoring van besmettelijke dierziekten en zoönosen en TSE's*)
 - Decision on Zoonoses (*Besluit zoönosen*)
 - Scheme for temporary measures regarding animal diseases (*Regeling tijdelijke maatregelen dierziekten*)
- (11) Furthermore, the following decisions determine the levies for eradication and prevention of animal diseases:
- Decision on the levy for combating of animal diseases (*Besluit heffing bestrijding dierziekten*)
 - Decision on the levy for prevention of animal diseases (*Besluit heffing preventie dierziekten*)
- (12) Article 12a of the latter Decision provides that by ministerial acts provisions can be established in order to secure that payments of the Animal Health Fund are only done in accordance with Articles 107 and 108 TFEU.
- (13) The same Article is also a legal basis for the scheme for the yearly agricultural census (*Regeling landbouwtelling en gecombineerde opgave 2015*), (hereinafter: "Agricultural Census Scheme"). The Agricultural Census Scheme addresses all agricultural enterprises in the Netherlands and contains a specific paragraph on the issue of the expenditure of the Animal Health Fund. Article 5(1) of the Agricultural Census Scheme provides that payments of the Animal Health Fund for measures and provisions concerning the prevention and eradication of animal diseases can only be done in compliance with Part I and Part II, section 1.2.1.3. of the Guidelines.

2.4. Form of the aid

- (14) Aid for prevention, control and eradication measures is granted in kind in the form of subsidised services and is paid directly to the veterinarian or the laboratory. With specific regard to (a) the costs for the purchase, storage, administration and distribution of vaccines, medicines, substances for the treatment of animals as well as (b) the costs for slaughtering or culling of animals or the destruction of animal products, aid can be granted either in kind or paid directly to the beneficiaries. Aid for compensation is paid directly to the undertaking concerned on the basis of Article 86 GWWD.

2.5. Duration

- (15) From the date of the Commission decision to 31 December 2021.

2.6. Budget

- (16) The Dutch authorities estimate an overall budget for the period 2015–2021 ranging between € 245 million and € 863 million; the minimum estimated amount includes only the prevention costs whilst the maximum estimated amount includes also the costs caused for the eradication in the event of a serious outbreak of an animal disease.

2.7. Beneficiaries

- (17) All types of undertakings active in the primary agricultural production.

2.8. Description of the aid scheme

- (18) This notified aid scheme constitutes a general framework for all more detailed aid schemes relating to prevention, control and eradication of animal diseases. Those more detailed aid schemes and the system of levies (apart from the charging of such levies) remain in principle unchanged as regards their substance (see recitals (4)-(5)); only the way of administration of granting of the aid and charging the levies changes. The system of prevention, control and eradication of animal diseases in general has already been approved by the Commission several times, the latest approvals being done with the decisions on the aid schemes mentioned in recital (6).
- (19) The Animal Health Fund (*Diergezondheidsfonds*) is responsible for collecting the revenues of the levies and administering the aid expenditure. The budget of this fund is administered by the Minister of Economic Affairs (hereinafter: the Minister) on basis of Article 95 of the GWWD. This Article defines the revenues and the expenses of this Fund.
- (20) The revenues of the Animal Health Fund for this aid scheme come from two sources:
- Contributions from the budget of the Ministry of Economic Affairs
 - The revenues of the levies (see recital (11))
- (21) The expenditure is limited to prevention, control and eradication of animal diseases which are recognised by the Minister as contagious if they fulfil the criteria laid down in Article 15(1) of the GWWD. Thus the revenues of the levies are destined exclusively for expenditures incurred under this scheme.
- (22) The animal diseases which are subject to the notified aid scheme are laid down in paragraph 1 of the Scheme on prevention, eradication and monitoring of contagious animal diseases and zoonoses and TSE's and in the Decision on zoonoses. The Dutch authorities confirm that at present only diseases are covered which are referred to in the list of animal diseases established by the World Organisation for Animal Health, or animal diseases

and zoonoses listed in Annexes I and II to Regulation (EU) No 652/2014 of the European Parliament and of the Council².

- (23) The notified aid scheme is limited to the animal categories for which levies are charged: pigs, poultry, cattle, sheep and goat, and the production of vaccine eggs for hatching.
- (24) The basic provision **for prevention measures** is Article 17(1) of the GWWD, in which the different preventive measures are defined in general terms. These measures are laid down in more detail in the Scheme for prevention, eradication and monitoring of contagious diseases, zoonoses and TSE's and in the Scheme for temporary measures regarding animal diseases.
- (25) These measures are (a) blood sampling for analyses, (b) tests and other screening measures, (c) purchase, storage, administration and distribution of vaccines, medicines, substances for the treatment of animals, and (d) preventive slaughtering or culling of animals or the destruction of animal products.
- (26) The **control and eradication measures** are specified in Articles 21 and 22 of the GWWD. The Minister is empowered to take the necessary measures regarding eradication of contagious diseases under the provisions of the GWWD when a disease has broken out or is established by the Minister.
- (27) The specific measures, as defined in Articles 21 and 22 of the GWWD are the slaughtering of sick and suspect animals, the culling of slaughtered, dead, sick and suspect animals and of infected products and items which can constitute a danger for further spreading of the disease, the cleaning and disinfection of the holding and equipment, and the treatment of animals in performing tests and purchasing, storing, administering and distributing vaccines, medicines and substances for the treatment of animals.
- (28) The Minister can also put these concrete detailed measures to be taken as consequence of an outbreak of a contagious disease in form of a specific application scheme based on Article 17 GWWD.
- (29) In addition, the prevention, control and eradication measures for the animal diseases with the biggest impact are described in detailed strategy documents. These strategy documents include a detailed description of the necessary prevention, control and eradication measures. These documents are published on the Government's website <http://wetten.overheid.nl/zoeken/>. Furthermore, for the most important diseases, e.g. swine fever and avian flu, model regulations exist that determine the rules in case of an outbreak or suspicion of an outbreak of these diseases.
- (30) The Dutch authorities state that there is no aid in relation to measures in respect of which Union legislation provides that the cost of such measures is to be borne by the beneficiary.

² OJ L 189, 27.6.2014, p. 1.

- (31) Article 86(5) of the GWWD stipulates that no individual aid will be granted where it is established that the disease was caused deliberately or by the negligence of the beneficiary.
- (32) The Dutch authorities commit that, if a new aid measure has to be introduced, this measure shall be set up within three years after the outbreak of this disease. Aid will be paid within four years from that date.
- (33) **Aid measures for compensation of damage** are based on Article 86 GWWD. The compensation amounts to 50 % of the value of an animal slaughtered in case of suspicion of or infection by a contagious disease. The calculation of the damage is based on the value of the animal in healthy state before the outbreak of the disease. Compensation will only be paid for costs or losses which are a direct consequence of the disease. Furthermore, other products linked to the animals which have to be destroyed can be compensated (up to 100% of the market value) based on Article 22(1) f of the GWWD.
- (34) However, if the animal breeder saves costs as consequence of the disease outbreak, these are deducted from the compensation amount.
- (35) The compensation value of the animals is fixed by attested experts according to instructions of the Minister based on Article 88 of the GWWD. The value of the slaughtered sick and suspected animals is the market value of the animals in healthy state before the outbreak of the disease.
- (36) It is a condition for granting the compensation that the necessary measures for prevention and eradication of this disease have been taken (see Article 85 GWWD). Aid can only be given if the outbreak is confirmed by the Dutch authorities.
- (37) The aid is partly financed through different **levies**, which are laid down in the two decisions delineated above in recital (11).
- (38) The levies are specified by animal species and are based on:
- a. the average number of poultry, cattle, sheep and goat kept on a farm
 - b. the number of sheep and goat kept on other places than a farm
 - c. the producing of vaccine eggs for hatching
 - d. the trading of pigs from a farm for slaughtering or transfer outside the Netherlands. Pigs which have been for less than two months in the Netherlands are exempt from this tax.
- (39) In the poultry sector the levies are differentiated by species (chickens, turkeys and ducks) and by animal category: chicks, laying hens, poultry for meat production, and parental animals for breeding. The levies on laying hens are differentiated according to the production system (cages, free-range, organic production).

- (40) Furthermore the amount of the levies in the poultry sector is differentiated according to the purpose:
- general costs of prevention respectively eradication of diseases
 - costs for prevention, respectively eradication of zoonotic salmonella
 - in the case of prevention: costs for prevention of bacteria, which are resistant against medicines.
- (41) In the cattle sector the levies are differentiated by age of animals and production purpose (meat or milk production).
- (42) In addition, the levies for prevention in the cattle and pig sector are also differentiated according to the purpose.
- general costs of prevention of diseases
 - costs for prevention of bacteria, which are resistant against medicines
- (43) The amounts of the levies per animal applicable at present are laid down in detail in Articles 3 to 15 of the Decision on the levy for combating of animal diseases, respectively Articles 4 to 12 of the Decision on the levy for prevention of animal diseases. Both decisions can be consulted on the Governments' website reproduced in recital (29).
- (44) As a consequence of the differentiated system described above (recitals (38) to (42)), notably in the poultry sectors, there are more than 150 individual levy amounts. The most relevant levies (in terms of production value linked to the sectors concerned) are laid down as example:
- levy on the trading of pigs:
 - eradication: € 0,08 per pig
 - prevention: € 0,01 per pig for general prevention costs
€ 0,004 per pig for prevention of bacteria, which are resistant against medicines.
 - levy on keeping of cattle destined for milk production:
 - eradication: € 1,17 per cow
 - prevention: € 0,80 per cow for general prevention costs
€ 0,05 per cow for prevention of bacteria, which are resistant against medicines.
- (45) The aid measures for eradication of diseases are financed fully (100%) and those for prevention by 50%, through the revenues of the parafiscal charges by the sectors concerned. The contributions paid through the levies are used for the sectors which have paid them.

- (46) The parafiscal charges are calculated in a way that they cover the normal expenditure of the Fund (prevention, control and eradication of small disease outbreaks). In case of major disease outbreaks the State will cover *ad interim* the additional costs. As from 2018 the Dutch authorities can review and modify the tax amounts for the period 2018 to 2020. They can also be raised when the Fund's resources are insufficient.
- (47) The Dutch authorities commit that the aid and any other payments received by the beneficiary, including payments under other national or Union measures or insurance policies for the same eligible costs will not exceed 100% of the eligible costs.

2.9. Transparency

- (48) The authorities of the Netherlands commit that as from 1st July 2016 they will comply with the transparency obligations and publish on a comprehensive State aid website the information as defined in point 128 of the Guidelines. Thus, they will publish the full text of the State aid scheme and its implementing provisions, as well as the identity of the granting authority online on the aforementioned site. The identity of the individual beneficiaries, the form and amount of aid granted to each beneficiary, the date of granting, the type of undertaking, the region in which the beneficiary is located and the principal economic sector in which the beneficiary has its activities, will also be published on the aforementioned site unless the aid does not exceed € 60 000 for the beneficiary. The aid schemes will not be put in place before they are published online. The information will remain available online for at least 10 years.
- (49) The Dutch authorities confirm that the annual report will contain information on the diseases concerned under section 1.2.1.3 of the Guidelines.

2.10. Cumulation

- (50) The Dutch authorities confirm that this aid will neither be **cumulated** with *de-minimis* aid nor with any other State or Community aid in relation to the same eligible costs.

2.11. General Exclusions

- (51) Article 5 (3) of the Agricultural Census Scheme provides that the undertaking is not eligible for payments out of the Animal Health Funds, if
- a. it is an undertaking in difficulties within the meaning of point 35(15) of the Guidelines, it will be excluded from the scheme³ and/or
 - b. if there is an outstanding recovery to this undertaking that has benefited from earlier unlawful aid declared incompatible by a Commission Decision.

³ See OJ C 244, 1.10.2004, p. 2.

3. ASSESSMENT

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

- (52) For Article 107(1) of the TFEU to apply, the aid must be granted by a Member State or through State resources in any form whatsoever. It must constitute economic advantage for the beneficiaries. Further, it must be selective, in the sense that it must be granted to certain undertakings, and the aid must be liable to distort competition and affect inter-state trade within the Union.
- (53) The scheme in question confers an advantage on its recipients. This advantage is granted through State resources and it favours undertakings active in the primary agricultural production in the animal sectors (poultry and eggs, beef, milk, sheep and goat) by strengthening their position on the market. According to the case law of the Court of Justice, the mere fact that the competitive position of an undertaking is strengthened compared to other competing undertakings, by giving it an economic benefit which it would not otherwise have received in the normal course of its business, points to a possible distortion of competition.⁴
- (54) Pursuant to the case law of the Court of Justice, aid to an undertaking is capable of affecting trade between Member States where that undertaking operates in a market open to intra-EU trade.⁵ The beneficiaries of aid operate in the markets for animal products where intra-EU trade takes place. The sectors concerned are open to competition at EU level and therefore sensitive to any measure in favour of the production in one or more Member States. Therefore, the present scheme is liable to distort competition and to affect trade between Member States.
- (55) However, since the aid is financed through parafiscal levies, the question whether or not the revenue of parafiscal levies can be regarded as State resources, needs to be discussed. It should be noted that for State resources no distinction needs to be made between cases in which the aid is being granted directly by the State or by public or private bodies that have been appointed or created by the State.⁶
- (56) In its judgment in *Doux Élevage*⁷ the Court of Justice concluded that a national authority's decision extending, to all those working in an agricultural sector, an agreement which introduces a contribution within the framework of an interbranch organisation recognised by the national authority and thus makes that contribution compulsory with a view to enabling the implementation of measures on communication, promotion, external

⁴ Judgment of the Court of 17 September 1980 in Case 730/79 *Philip Morris Holland BV v Commission of the European Communities*, ECLI:EU:C:1980:209.

⁵ See in particular the judgment of the Court of 13 July 1988 in Case 102/87 *French Republic v Commission of the European Communities*, ECLI:EU:C:1988:391.

⁶ See the judgments of 13 March 2001 in Case C-379/98 *PreussenElektra AG v Schlesweg AG*, para. 58, and 20 November 2003 in Case C-126/01 *Ministère de l'Économie, des Finances et de l'Industrie v GEMO SA*, para. 23.

⁷ Judgment of 30 May 2013 in Case C-677/11, *Doux Élevage SNC and Coopérative agricole UKL-ARREE v Ministère de l'Agriculture*, not yet reported in the ECR, paras. 32, 35 and 38

relations, quality assurance, research and defending the interests of the sector concerned does not constitute State aid.

- (57) In its judgment, the Court considered that the contributions in question came from private economic operators which carried out an activity on the markets concerned, which meant that this mechanism did not involve any direct or indirect transfer of State resources. The funds created by the payments did not pass via the State budget or via another public entity and the State did not relinquish any resources in any form whatsoever (such as taxes, charges, contributions or other), which, under national legislation, should have been paid into the State budget.
- (58) Unlike the case cited above, the parafiscal levies in the aid scheme at hand are established by the State, and not by the professional body that represents the sector, as it becomes clear from recitals (11) and (46). Indeed, the levies are based on ministerial Decisions (recital (11)) can be changed by the Dutch authorities (recital (46)) and serve as an instrument for the implementation of policies established by the State (recital (7)).
- (59) Furthermore, although the levies are destined exclusively for the aid measures (recital (21)), the aid is not exclusively financed through the revenues of the parafiscal levies but also through the budget of the Ministry of Economic Affairs.
- (60) What is more, the method and amount of the contributions are set by the State, and not by the relevant professional bodies, as described in recitals (37)-(46). The Animal Health Fund, a public law body controlled by the State, administers the scheme (see recital (19)).
- (61) Thus, in light of recitals (58)–(60) above the cumulative conditions of the *Doux Élevage* jurisprudence are not fulfilled and the revenues from the parafiscal levies in the case at hand are attributable to the State and do in fact constitute State resources.
- (62) In light of the above, the conditions of Article 107(1) of the TFEU are fulfilled. It can therefore be concluded that the proposed scheme constitutes State aid within the meaning of that Article. The aid may only be considered compatible with the common market if it can benefit from one of the derogations provided for in the TFEU.

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

- (63) The aid scheme was notified to the Commission on 8 August 2014. It has not been implemented before. Therefore, the Netherlands have complied with their obligation under Article 108(3) TFEU.

3.3. Compatibility of the aid

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

- (64) Under Article 107(3)(c), an aid may be considered compatible with the internal market, if it is found to facilitate the development of certain economic activities or of certain economic areas, where such aid does not

adversely affect trading conditions to an extent contrary to the common interest.

- (65) For this derogation to be applicable, the aid must fulfil the requirements of the relevant Union State aid legislation.

3.3.2. Application of the European Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020

- (66) As regards the notified aid scheme, Part II, Section 1.2.1.3. of the Guidelines is applicable. According to point (364) of the Guidelines, such aid can be declared compatible if it complies with the common assessment principles of the Guidelines and with the specific conditions of Section 1.2.1.3.

3.3.2.1. Conditions set out in Section 1.2.1.3 of Part II of the Guidelines

- (67) It should be noted that, as described in recital (13), Article 5(1) of the Agricultural Census Scheme provides that payments of the Animal Health Fund for measures and provisions concerning prevention and eradication of animal diseases can only be done in compliance with Part I and Part II, section 1.2.1.3. of the Guidelines. Furthermore, recital (8) notes that the framework legal basis of the aid scheme, GWWD, allows even for derogations from its provisions through administrative acts in order to comply with the TFEU. One of these administrative acts is the Decision on the levy for prevention of animal diseases. As stated in recital (12), Article 12a of that Decision provides that by ministerial acts rules can be established in order to secure that payments of the Animal Health Fund are only done in accordance with Articles 107 and 108 of the TFEU.
- (68) Recital (17) confirms that this aid scheme applies only to undertakings active in the primary agricultural production, as provided for in point (365) of the Guidelines.
- (69) As required by point (366) of the Guidelines, recitals (10) and (18)-(22) indicate that aid will only be paid in relation to animal diseases for which Union or national rules exist, whether laid down by law, regulation or administrative action; and as part of a public programme at Union, national or regional level for the prevention, control or eradication of the animal disease concerned (see also recital (29)); or emergency measures imposed by the competent public authority (see recital (28)).
- (70) The prevention, control and eradication measures are detailed in the public programmes referred to in recital (10) and are further described in recitals (24)–(27) and (29). Therefore, they fulfil the condition in point (367) of the Guidelines.
- (71) As stated in recital (30), the Dutch authorities have undertaken that the aid will not relate to measures in respect of which Union legislation provides that the cost of such measures is to be borne by the beneficiary, as provided for in point (368) of the Guidelines.
- (72) Point (370) of the Guidelines prohibits granting individual aid where it is established that the disease was caused deliberately or by the negligence of

the beneficiary. This is reiterated in recital (31) and is included in the legal basis of the aid scheme at hand.

- (73) Pursuant to point (371) of the Guidelines, recital (22) states that aid will only be granted in respect of diseases referred to in the list of animal diseases established by the World Organisation for Animal Health or the animal diseases and zoonoses listed in Annexes I and II to Regulation (EU) No 652/2014 of the European Parliament and of the Council.
- (74) Moreover, the Dutch authorities have committed, as indicated in recital (32), that measures for new aids will be introduced within three years after the outbreak of this disease while the aid will be paid within four years from that date, in line with point (372) of the Guidelines.
- (75) According to recital (49), the Dutch authorities commit to include information on diseases concerned under section 1.2.1.3 of the Guidelines, thereby fulfilling the requirement of point (373) of the Guidelines, which cross-refers to point (728) of the Guidelines.
- (76) As detailed in recitals (24)–(25) the eligible costs with regard to prevention measures correspond to those in point (374) of the Guidelines.
- (77) As to the eligible costs of control and eradication measures, these are described in recitals (26)–(27) and are in compliance with point (375) of the Guidelines.
- (78) In accordance with point (376) of the Guidelines, recital (14) states that aid for prevention, control and eradication measures is granted in kind in the form of subsidised services and is paid directly to the veterinarian or the laboratory. Furthermore, aid for (a) the costs for the purchase, storage, administration and distribution of vaccines, medicines, substances for the treatment of animals as well as (b) the costs for slaughtering or culling of animals or the destruction of animal products, aid can be granted either in kind or paid directly to the beneficiaries.
- (79) With specific regard to aid to make good damage caused by animal diseases, recital (33) describes that the compensation will be calculated in relation to costs or losses which are a direct consequence of the disease, including products linked to the animals which have to be destroyed. In addition the calculation of the compensation will take place on the basis of a public programme or measure referred to in point 366(b) of the Guidelines (see to this effect recital (69) and the recitals referred to therein). It is therefore in compliance with point (377) of the Guidelines.
- (80) At the same time in accordance with point (379) of the Guidelines, recital (33) states that the market value of the animals referred to in point (377)(a) of the Guidelines, will be determined on the basis of their value immediately before any suspicion of the animal disease arose or was confirmed.
- (81) However, as required for in point (378) of the Guidelines, the amount of the aforementioned aid for compensation will be reduced by any costs not directly incurred due to the animal disease which would otherwise have been incurred by the beneficiary. This is stated in recital (34).

- (82) Recital (36) provides that aid for compensation under this scheme will be limited to the costs and damage caused by animal diseases for which the Dutch authorities have formally recognised an outbreak. The scheme is therefore in compliance with point (380) of the Guidelines.
- (83) Lastly, regarding solely aid paid for compensation under this scheme, recital (14) states that the aid will be paid directly to the undertaking concerned. This is in conformity with point (369) of the Guidelines.
- (84) Pursuant to point (382) of the Guidelines, recital (47) indicates that the aid and any other payments received by the beneficiary, including payments under other national or Union measures or insurance policies for the same eligible costs will not exceed 100% of the eligible costs. Furthermore, the Dutch authorities confirmed, as described in recital (50) that aid under this scheme will neither be **cumulated** with *de minimis* aid nor with any other State or Community aid in relation to the same eligible costs

3.3.2.2. Common assessment principles

- (85) According to points (38) and (364) of the Guidelines, the common assessment principles apply to aid granted in accordance with Article 107(3)(c) TFEU.

Contribution to a common objective

- (86) The notified aid scheme contributes to a common objective in accordance with points (43) and (44) of the Guidelines. As described in recital (4), the aim of the notified aid scheme is the prevention, control and eradication of animal diseases. Thereby, it ensures a viable food production and is closely related to the CAP. There is further a presumption that it contributes to the objectives of rural development, since the Commission has gained sufficient experience in this respect, as provided for in point (48) of the Guidelines.
- (87) Furthermore, it contributes to achieving a higher animal health status for the Union, which is one of the specific objectives laid down in Article 2, paragraph 1 (b) of Regulation (EU) No 652/2014 and can be considered as objective of common interest in accordance with Article 107(3) TFEU (see point (39)(a) of the Guidelines).
- (88) The aid measure has no **environmental impact**. The aid has not the objective and in fact cannot be used to increase production. As consequence, there is no increase of use of scarce resources or additional pollution. Therefore it can be concluded that no negative impact on the environment within the meaning of point (52) of the Guidelines can be identified.

Need for State intervention & Appropriateness of aid

- (89) In falling under Part II of the Guidelines and fulfilling the specific conditions laid down in Section 1.2.1.3 of said Part, the notified aid scheme complies with the principles of a need for State intervention on the basis of point (55) of the Guidelines and of the appropriateness of aid on the basis of point (57) of the Guidelines. In addition, as stated in recital (14), aid to compensate for the prevention, control and eradication of animal diseases is granted to the

final beneficiaries in kind whilst it is paid directly to the provider of the service or activity in question, as required in point (64) of the Guidelines.

Incentive effect and need for aid

- (90) Pursuant to point (75)(f) of the Guidelines, there is no requirement for an incentive effect for aid to compensate for the costs of eradication of animal diseases in accordance with Section 1.2.1.3 of Part II of the Guidelines. As to aid granted for the prevention and control of animal diseases based on said Section of Part II of the Guidelines, the Commission considers the aforementioned point (75)(f) of the Guidelines to apply to it as well in light of the common objectives pursued by measures for the control, prevention and eradication of animal diseases and plant pests. This applies to all notifications submitted as of the date of the present decision. However, in order to provide Member States and undertakings with legal certainty, the Commission will include a specific reference to aid to prevent and control animal diseases and plant pests by amending point (75)(f) of the Guidelines.

Proportionality of the aid & Cumulation

- (91) As described in recitals (24)-(27), (33)-(35) and (47), the aid amount will not exceed the eligible costs whereas the eligible costs are calculated accurately and the maximum aid intensities foreseen in Section 1.2.1.3 of Part II of the Guidelines are respected. Furthermore, the aid scheme does not allow for a cumulation of the aid provided for in recital (50) above. Thus, it is in line with points (84), (99) and (100) of the Guidelines and the principle of proportionality of the aid is respected.

Avoidance of undue negative effects on competition and trade

- (92) Since the present scheme fulfils the conditions and in particular does not exceed the relevant maximum aid intensities laid down in the applicable Section of Part II of the Guidelines, as stated in recital (47), the Commission considers, in line with point (113) of the Guidelines, that any negative effect on competition and trade is limited to the minimum.

Transparency

- (93) As to the principle of transparency, points (128), (131) and (132) of the Guidelines are relevant here. These requirements are fulfilled as provided for in recitals (48)-(49), whereby the authorities of the Netherlands commit to publish all the necessary information on a comprehensive website.
- (94) Therefore, the aid in the case at hand complies with the common assessment principles of the Guidelines.

3.3.2.3. The parafiscal levy

- (95) According to point (29) of the Guidelines, Member States are requested to notify a parafiscal levy used for financing an aid measure if this forms an integral part of the aid measure. In compliance with this the Dutch authorities notified the parafiscal levy being used to finance the current scheme as described in recitals (11) and (37)-(46).

- (96) Since State aid financed by a **parafiscal charge** is involved, the Commission must examine both the measures financed, i.e. the aid, and the way they are financed. According to the Court, where the method of financing the aid, in particular through compulsory contributions, forms an integral part of the aid measure, the Commission must take that method of financing into account when examining the aid.⁸
- (97) In order to define whether the measure forms an integral part of the aid measure, several elements should be taken into account: the levy revenue should be allocated for the financing of the aid⁹, the tax must be hypothecated to the aid measure under the relevant national rules¹⁰, and the amount of the tax should have a direct impact on the amount of State aid¹¹.
- (98) First, with regard to the first criterion, the whole amount of the revenue of the parafiscal charges goes directly to the Animal Health Fund which serves for financing this aid scheme (see recital (21)) and the tax rates are calculated in a way that they cover the normal expenditure of the Fund (see recital (46)). This means that the levy solely benefits the notified aid for the prevention, control and eradication of animal diseases without being affected to or transiting through the general state budget. The levy must therefore be considered as being exclusively allocated for the financing of the aid, on basis of the relevant national rules.
- (99) With regard to the second criterion, the eradication measures of the aid scheme are covered fully by the levy whereas the prevention measures are covered by 50% (see recital (45)). Furthermore, as stated in recital (46), the parafiscal charges are calculated in a way that they cover the normal expenditure of the Fund whilst the levy can be changed in order to cover the amount of aid required for this aid scheme. Thus, although the State commits to cover ad interim additional costs that may arise in case of major disease outbreaks, there seems to be a hypothecation of the tax to the aid at hand, which is further directly affected by the amount of the tax.
- (100) In light of the above the Commission considers that the levy in the case at hand seems to form an integral part of the aid scheme, and should therefore be taken into account by the Commission when examining the aid.
- (101) A levy may be regarded as discriminatory internal taxation prohibited by Article 110 TFEU if the levy revenue is used for the benefit of domestic products only, so that the advantages accruing from it fully or partly offset

⁸ See for example the judgment of the Court of 21 October 2003 in joined cases C-261/01 and C-262/01, *Van Calster* [2003] ECR 12249.

⁹ Judgments of the Court of 13 January 2005 in Case C-174/02, *Streekgewest Westelijk Noord-Brabant* [2005] ECR 85, paragraph 26; and of 7 September 2006 in case C-526/04, *Laboratoires Boiron* [2006] ECR 7529, paragraph 44.

¹⁰ Judgments of the Court of 13 January 2005 in Case C-174/02, *Streekgewest Westelijk Noord-Brabant* [2005] ECR 85, paragraph 26 ; and of 27 October 2005 in Joined cases C-266/04 to C-270/04, C-276/04 and C-321/04 to C-325/04, *Nazairdis* [2005] ECR 9481, paragraphs 46-49; Judgment of the Court of 22 December 2008 in Case C-333/07, *Société Régie Networks v. Direction de contrôle fiscal Rhône-Alpes Bourgogne* [2008] ECR I-10807, paragraph 99.

¹¹ Judgments of the Court of 13 January 2005 in Case C-174/02, *Streekgewest Westelijk Noord-Brabant* [2005] ECR 85, paragraph 28; and of 15 June 2006, *Air Liquide*, [2006] ECR 5293, paragraph 46; Judgment of the Court of 22 December 2008 in Case C-333/07, *Société Régie Networks v. Direction de contrôle fiscal Rhône-Alpes Bourgogne* [2008] ECR I-10807, paragraph 99.

the charge borne by those products. If the scheme discriminates between imported products and national products, the Commission cannot qualify the scheme as being compatible as the method of financing the aid would then infringe Article 110 TFEU.¹²

- (102) In that respect, the Court has found that, in situations where a charge is imposed on domestic and imported products according to the same criteria, *"it may be necessary to take into account the purpose to which the revenue from the charge is put. Thus, if the revenue from such a charge is intended to finance activities for the special advantage of the taxed domestic product, it may follow that the charge imposed on the basis of the same criteria nevertheless constitutes discriminatory taxation in so far as the fiscal burden on the domestic products is neutralized by the advantages which the charge is used to finance whilst the charge on the imported product constitutes a net burden"*¹³. The Commission has to examine therefore whether the aid scheme does not create such a net burden for imported products or, in other words, whether these products equally benefit from the aid measures that the levies imposed are meant to finance.
- (103) As confirmed by the Dutch authorities, the levy is not charged on the import of animals. Rather, it is based on the average number of animals kept on the farm or on other places and may therefore – at least indirectly – be also charged on imported animals. The levy based on the trading of pigs can also be charged on imported pigs, since the period for exemption of two months as laid down in the levy decision is not sufficient to exclude imported pigs. However, to the extent that the levy is charged on imported animals, these benefit equally from the notified aid scheme. Therefore, there is no discrimination due to the origin of the animals. The same reasoning and conclusion apply for the levy on pigs, which have not yet obtained Dutch origin.
- (104) Furthermore, the Dutch authorities state that they have no information that a comparable levy is charged on animals in potential countries of origin. However, should the Dutch authorities receive clear information, which reveals that other Member States apply a comparable levy on those animals which are charged in the Netherlands, they commit to revise the tax regulation in a way to prevent a double levy on the same animals.
- (105) As regards exports, the Dutch authorities state that there is no specific levy on the export of animals either. However, the levies are also charged on animals or vaccine eggs for hatching destined for export. In any case, as argued above, animals destined for export benefit equally from the aid scheme as long as they are in the Netherlands, since measures for prevention, control and eradication are taken before they are exported. The same applies for vaccine eggs for hatching destined for export. Therefore, there is no discrimination against animals or vaccine eggs destined for export.

¹² Judgment of the Court of 21 October 2003 in Joined cases C-261/01 and C-262/01, *Van Calster* [2003] ECR I-12249, paragraph 48.

¹³ Judgment of the Court of 11 March 1992 in Joined Cases C-78/90, C-79/90, C-80/90, C-81/90, C-82/90 and C-83/90, *Compagnie commerciale de l'ouest* [1992] ECR I-1847, paragraph 26.

- (106) In relation to the judgments in *Freskot*¹⁴, the Dutch authorities provided the necessary information to demonstrate that the levy does not breach common market organisation (CMO) rules (i.e. the charges do not create competitive disadvantages by affecting market prices). In this respect, the levy charged is of low value and constitutes a fraction of the market price of the animals. Besides, the Dutch authorities add that market prices for the products concerned are essentially determined through the combined effects of supply and demand on the EU market, the world market and through international agreements (such as WTO agreements). Therefore, the Commission considers that it is unlikely that cost increases as consequence of the levies have an influence on the market prices, and that the levies do not have a significant impact on trade, in particular on price formation.
- (107) On the basis of above, it can be concluded, that, the financing of the aid through parafiscal charges raises no objections.

4. CONCLUSION

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

If any parts of this letter are covered by the obligation of professional secrecy according to the Commission communication on professional secrecy and should not be published, please inform the Commission within fifteen working days of notification of this letter. If the Commission does not receive a reasoned request by that deadline the Netherlands will be deemed to agree to the publication of the full text of this letter.

If the Netherlands wish certain information to be covered by the obligation of professional secrecy please indicate the parts and provide a justification in respect of each part for which non-disclosure is requested.

Your request should be sent electronically via the secured e-mail system Public Key Infrastructure (PKI) in accordance with Article 3(4) of Commission Regulation (EC) No 794/2004¹⁵, to the following address: agri-state-aids-notifications@ec.europa.eu.

For the Commission

PHIL HOGAN
Member of the Commission

¹⁴ Judgement of the Court of 22 May 2003 *Freskot AE v Elliniko Dimosio* in Case C-355/00 [2003] ECR I-5263.

¹⁵ Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 140, 30.4.2004, p. 1).