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Subject: **State aid / Netherlands**
SA.57217 (2020/N)
NL LNV AGRI Compensation scheme agricultural and horticultural undertakings COVID-19

Excellency,

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(2)(b) 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 30 April 2020, registered by the Commission on the same day, the Netherlands notified, according to Article 108(3) TFEU, the above mentioned aid scheme. The Netherlands sent additional information on 5 and 7 May 2020.
- (2) The Dutch authorities confirm that the notification does not contain confidential information.

* Handling instructions for SENSITIVE information are given at <https://europa.eu/ldb43PX>

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- (3) The Netherlands exceptionally agree to waive their rights deriving from Article 342 of the Treaty on the Functioning of the European Union (“TFEU”), in conjunction with Article 3 of Regulation 1/1958¹ and to have this Decision adopted and notified in English.

2. DESCRIPTION

2.1. Title

- (4) NL LNV AGRI Compensation scheme agricultural and horticultural undertakings COVID-19

2.2. Objective

- (5) A number of agricultural sectors are severely affected by the COVID-19 outbreak. This specifically concerns a combination of the following situations, where: (i) the production continues while hardly any turnover is made, (ii) the products have a poor or unsustainable quality due to perishability and for which no or limited alternative applications exist, and (iii) companies in the period March, April and May have a major seasonal peak in production, staffing and turnover.
- (6) The above combination occurs in the floricultural sector, in parts of the food horticultural sector and in the ware potato sector.
- (7) The objective of the aid scheme is to provide compensation to arable farmers who are growers of potatoes, which are used for processing, for the damage caused by the collapse in demand for their potatoes as a consequence of the measures taken in the Netherlands and many other countries to combat the COVID-19 pandemic.
- (8) The objective of the scheme is also to provide compensation to both farmers and traders in the floricultural sector (live trees and other plants, bulbs, roots and the like, cut flowers and ornamental foliage sector) and the specialty horticultural sector for the food-service market (deliveries to hotels, restaurant, cafes, canteens and the catering sector) for damage caused by the collapse in demand for their products as a consequence of the measures taken in the Netherlands and many other countries to combat the COVID-19 pandemic.

2.3. Legal basis

- (9) The legal basis is the draft of the “*Scheme of the Ministry of Agriculture, Nature and Food Quality nr. WJZ/20120212 to compensate undertakings in certain agricultural product sectors for damage caused by measures to prevent further spreading of COVID-19 (Compensation scheme agricultural and horticultural undertakings COVID-19)*”.

¹ Regulation No 1/1958 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

2.4. Duration

- (10) From the date of the notification of the Commission decision until 31 December 2020.

2.5. Budget

- (11) The overall budget for the aid scheme is EUR 650 million, which is financed by the general budget of the Netherlands, of which EUR 50 million to compensate potato growers and EUR 600 million to aid farmers and traders in the floricultural sector and undertakings in the specialty horticultural sector.

2.6. Beneficiaries

- (12) The aid is available to undertakings in the agricultural sector, which fulfil the eligibility criteria. The number of beneficiaries is estimated at about 1,500 potato growers, 4,000 undertakings in the floricultural sector and 200 undertakings in the specialty horticultural sector.
- (13) The aid under the scheme will not be granted to:
- undertakings which are subject to a procedure of liquidation or suspension of payment at the date of applications;
 - undertakings that have benefited from earlier unlawful aid declared incompatible by a Commission Decision (either as an individual aid or an aid under an aid scheme being declared incompatible), until that undertaking has reimbursed or paid into a blocked account the total amount of unlawful and incompatible aid and the corresponding recovery interest.
 - undertakings that are/were responsible for the damage suffered and/or did not conduct their activities with due diligence or in compliance with applicable legislation or did not take any measure to mitigate their damage.

2.7. Description of the measures

2.7.1. Background

- (14) From Monday 9 March 2020 onwards, the Dutch cabinet has taken far-reaching national health measures to combat the further spread of the coronavirus (COVID-19). These health measures have enormous consequences for income in a number of sectors in particular. Firstly, this concerns certain establishments that were forced to close from Sunday evening, 15 March 2020 inter alia catering and hospitality outlets. In the Netherlands, but also in most other European countries and elsewhere, similar measures were taken with similar outcomes: large-scale closing of catering and hospitality outlets for processed potato food products.
- (15) The Netherlands confirmed that while some recommendations to avoid dissemination are progressively lifted, the recommendations and prohibitions made by the Dutch Government to undertakings to suspend all activities that

are not essential, so as to avoid dissemination of the virus are still and will remain in force, e.g. prohibition against all gatherings until 1 June and of more than 30 people as of 1 June and closing of the Dutch borders, in order to accompany a slow and controlled return to normal business conditions. Moreover, restrictions that are lifted may be reinstated immediately if the dissemination of the virus makes this necessary.

- (16) As a result, sales of products in the catering and hospitality industry have largely stalled. This particularly affects the sale of frozen and/or cool-fresh potato products.
- (17) Many growers of potatoes intended for processing in the potato processing food industry into frozen and/or cool-fresh potato products (hereinafter: potatoes for processing) whose potatoes had not yet been purchased by the potato processing food companies were confronted with the total or partial reduction of demand for their potatoes from 15 March 2020, as buyers cancelled contracts and stopped the conclusion of new contracts. The drop in demand for frozen and/or cool-fresh potato products has not been compensated by higher demand for other products made with these potatoes.
- (18) Consequently, in the Netherlands about 1 to 1.5 million tons of potatoes for processing in the potato processing food industry remain in storage on farms. This is the case not only in the Netherlands but also in other countries in the EU, with as a result that at the EU level at least 2.65 million tons of potatoes (estimate) are in storage. Of the total of about 7,000 ware potato growers in the Netherlands², estimated 1,500 still had large stocks of chipping potatoes on 16 March 2020, which are near to worthless due to the drop in demand and of the market price. Given this large amount in storage, it is very unlikely that these potatoes will find a regular buyer, as trade in these potatoes came more or less to a halt. Where there was still a market for some of these potatoes, prices have dropped by 90% or even more. Just before 16 March 2020, the market price of this type of potatoes was on average about 15 eurocents per kilogram³.
- (19) As potatoes are perishable and their quality drops over time (and due to higher temperatures), it is necessary to implement solutions for the disposal of the potatoes still in storage. It is undesirable that potatoes for processing are spread out on the fields, as this will create a long-lasting phytosanitary risk, and these potatoes could cause the development of diseases and jeopardize new plantations.
- (20) Solutions in which these potatoes still have some positive value are solutions in which they are used for production of low value food products, feed and fuel (as biomass for anaerobic digestion). However, as mentioned in recital (18), the value of the potatoes for these uses is near to worthless, due to the low value of these products and even negative due to the costs of transport and storage costs.

² Source Netherlands Statistics, CBS.

³ In the period September 2019 to February 2020 and over a longer period of several years, the average price of chipping potatoes for processing varies around EUR 0.15.

- (21) Beginning on 12 March 2020, the date on which Italy closed its borders as part of far reaching measures to contain the spreading of the virus and when other countries followed, the largest Dutch auction in the floricultural sector saw a sharp decrease in sales of products. Within a few days, the sales decreased by 70% and products were to be destroyed because of the lack of other sales channels.
- (22) The floricultural sector is characterised by its seasonality where most of the annual turnover takes place during spring, when catering and hospitality outlets in the Netherlands (and other countries) were closed. Specialty food-service products also saw a large decrease in sales.

2.7.2. Eligible costs and modalities for compensation for the potato sector

- (23) About 1,500 potato growers have been left with large stocks of chipping potatoes, which are near to worthless due to the collapse in demand and price for their potatoes.
- (24) As a consequence, of the remaining about 1.5 million tons of chipping potatoes left on farms in Netherlands on 16 March 2020, the potato processing food companies in the Netherlands expect to process only about 500,000 tons.
- (25) The aid concerns compensation for the damages of the farmers involved, which is the the material damage to assets in the potato sector. For the purposes of this scheme, the Netherlands will apply the following method for calculating the compensation for such damage. The potatoes for processing are one of the most important crops for arable farmers in the Netherlands, who apply crop rotation. Given their high financial yields in comparison to most other crops in their cropping plan, the loss of the financial yields from the potato crop has a significant effect on the income of the farmers concerned.
- (26) The compensation is only available for the stocks of potatoes of arable farmers, who on 15 March 2020 had not yet supplied (part of) their chipping potato harvest for the season 2019/2020 and only for the amount of chipping potatoes, which were meant to be sold and processed in the period from 16 March to 31 August 2020, but which cannot be sold to the potato processing industry and processed to French fries or other frozen and/or cool-fresh potato products.
- (27) The reference period with regard to the potatoes grown reflects the start of the growing season 2019/2020 until and including the last month before the outbreak of COVID-19 (February 2020) and the measures taken by different governments as a result. The reason for choosing this period as a reference period is that potato growers in the Netherlands apply crop rotation, growing potatoes only once every three years, and other crops (beet, carrot, wheat) in the other years, therefore using a period of three years would not be representative. In addition, by using the period of September 2019 until February 2020 as a reference, only farmers who have effectively harvested potatoes in the previous growing season and are now facing problems in selling their products will be able to apply for a compensation.

(28) The provisions mentioned in recital (26) that (i) ‘only for the amount of chipping potatoes, which were meant to be sold and processed in the period from 16 March to 31 August 2020 and which (ii) cannot be sold to the potato processing industry and processed to French fries or other frozen and/or cool-fresh potato products, limit the amount of compensation during the entire duration of the measure. Firstly, because the maximum quantity of potatoes eligible for compensation is fixed to the potatoes in stock on 15 March 2020. Secondly, because any quantity of potatoes delivered to another destination during the period mentioned has to be evidenced (recital (37)). Thus, this mechanism ensures that in the case that the measures to combat COVID-19 are gradually lifted, and if as a result the deliveries to the processing industry were to increase again, the compensation under the scheme will be based on the reduced amount of potatoes not sold to the potato processing industry.

(29) The Dutch government intends to compensate the damage for maximum of EUR 0.06 per kg, which is 44% of the average growing costs (see also recital (41)).

2.7.3. Eligible costs and modalities for compensation for the floricultural sector and the specialty horticultural sector for the food-service market

(30) The markets were also closed for the floricultural sector and the specialty horticultural sector for the food-service market. Inside and outside Europe lock-downs are implemented and different parts of retail are closed (flower shops, garden centres, construction centres (where flowers and plants are sold), catering and hospitality outlets). These sectors do not provide products to basic retail shops, which were allowed to stay open during the lock-down measures as they provide vital food-supplies. In addition, these are mainly fresh products with a short shelf life or a short window for sales (flowering garden plants). Furthermore, products are marketed as freight on passenger flights. Due to closed airways, marketing possibilities decreased.

(31) For the purposes of this scheme, the Netherlands set up a two-step approach for calculating the compensation for such damage as described in the following recitals. The Dutch authorities acknowledge that the turnover decline is in general not a sufficient reference for the damage suffered (as opposed to net losses). However, in their view, under the current exceptional circumstances and considering the wide-ranging activities of the aid recipients, turnover decline is one of the available elements for calculating the amount of the compensation.

(32) First, the initial amount of the compensation for the loss of income of the undertakings in the floricultural sector and the specialty horticultural sector for the food service market⁴ is measured as the decrease in turnover (or gross margin⁵) in the period from 12 March to 11 June 2020, in comparison to the average turnover over the same period in the years 2017-2018-2019. Because

⁴ The compensation for undertakings in the specialty horticultural sector for the food service only takes account of the turnover and loss of turnover, which relates to direct or indirect deliveries to closed undertakings in the hotel and catering sector. The type of undertaking is determined by the SBI codes (Standard Business Codes), mentioned in the annex to the notified aid scheme), on the condition that this turnover amounts to at least 75% of the entire turnover of those undertakings.

⁵ Turnover for primary producers and gross margin for traders.

the first 30% of the decrease of the turnover is considered as entrepreneurial risk, this part is not compensated. The companies with more than 30% decrease in turnover are eligible for compensation. Thus, 70% of the decrease of their turnover is compensated at an aid rate of 70%, with a maximum per holding (see also recital (42)).

- (33) Second, the final compensation paid will be established following the submission of the final payment request based on the real loss of turnover/gross margin in the period from 12 March 2020 to 11 June 2020, proven by a certified auditor (recital (37)). This method ensures that in case, the measures to combat COVID-19 are gradually lifted, and if, because of that, the sales of the floricultural and horticultural products increase again, the compensation under the scheme will be automatically based on the reduced amount of the actual loss of turnover in the period concerned.

2.7.4. Administration of the measure

- (34) The granting authority and competent authority to manage the scheme is the “*Rijksdienst voor Ondernemend Nederland (RVO)*” (Netherlands Enterprise Agency), which will check in all individual cases whether the beneficiary complies with all terms set by the granting authority.
- (35) The time period in which beneficiaries can submit their applications for aid (recital (37)) is from 7 May 2020 until 4 June 2020. No aid is granted or paid out before the notification of the approval decision by Commission
- (36) All applications for aid will be assessed by the RVO, following which an advance payment of 30% (potato sector) or 50% (floricultural and horticultural sector) may be made, which will be deducted from the definitive compensation.
- (37) The methodology used for assessing the damage per beneficiary, includes the following supporting documents/information to be submitted in the application for aid by beneficiaries⁶ to the granting authority:

Potato sector:

- harvest year and field data;
- amount of chips potatoes that were still in storage on 15 March 2020;
- an estimate of the quantity of French fry potatoes per parcel that cannot be delivered to the potato processing food industry between 16 March 2020 and 31 August 2020 for the production of frozen and/or chilled-fresh potato products or to wholesalers or retailers;
- a statement that the affected grower complies with the requirements of the scheme at the time of application;
- a statement that the French fry potatoes for which compensation is requested are not supplied to the potato processing food industry for the

⁶ The application procedure consists of two main steps. First, the application for aid by the beneficiary (recital (37)), which includes among others, statements based on estimates, and second, the final payment application by the beneficiary (recital (38)), which includes proof of real amounts on the basis of which the definitive amount of compensation is established.

production of frozen and/or chilled potato products or to wholesalers or retailers;

- a statement that the potatoes for which an allowance is being claimed have not previously been traded on the commodity futures exchange.

Floricultural and horticultural sector:

- a statement that the affected company complies with the requirements of the scheme at the time of application;
- an estimate of the expected turnover/gross profit in the period from 12 March 2020 to 11 June 2020, and an estimate of the average turnover/gross profit in the period from 12 March to 11 June 2017, 2018 and 2019 and an estimate of the difference between them.

- (38) The methodology used for assessing the damage per beneficiary, includes the following supporting documents/information to be submitted in the final payment application of the beneficiaries to the granting authority, on the basis of which the definitive amount of compensation granted is established:

Potato sector:

- the proof of how many French fry potatoes have been delivered to a destination other than that of the potato-processing food industry for the production of deep-frozen and/or refrigerated, fresh potato products, or in wholesale or retail trade between 16 March 2020 and 31 August 2020, by means of CMR bills of loading, weighing bills and invoices;
- the evidence that the potatoes really belong to the harvest of 2019 in the Netherlands, by one or more of the following valid food safety certificates: VVA-certificate, VVAK-certificate or Global G.A.P certificate.

Floricultural and horticultural sector:

- proof showing the actual loss of turnover/gross margin in the period from 12 March 2020 to 11 June 2020, provided by means of a report by a certified auditor according to a model made available by the Ministry of Agriculture, Nature and Food Quality;
- a report by a certified auditor on the turnover/gross margin in the period from 12 March to 11 June for the years 2017, 2018 and 2019, in accordance with a model or comparable document made available by the Ministry of Agriculture, Nature and Food Quality, clearly showing the turnover/gross profit of these periods.

- (39) For the floricultural and horticultural sectors, all documents have to be submitted by the beneficiaries by 31 August 2020. For the potato sector, the deadline is 15 September 2020. The final payments will be made within two months after all the documents proving the damage have been submitted.

- (40) In addition to the above mentioned, the notified aid scheme includes the following conditions and commitments by the Dutch authorities:

- any payment exceeding the damage suffered as a direct consequence of the COVID-19 outbreak will be recovered;

- payments made to beneficiaries shall be net of any amount recovered through insurance, litigation, arbitration or other source for the same damage. If the aid is paid out before the insurance, the authorities will recover the insurance amount from the beneficiary;
- provision of a report no later than one year after the date of the Commission decision, specifying the amount of compensation and recoverable advances granted.

2.8. Aid and aid intensity

- (41) The aid for potato growers is a maximum of EUR 0.06 per kilogram of chipping potatoes, which is a maximum aid intensity of 44% of the average growing costs⁷. Depending on the available budget for the potato sector and the total amount of eligible potatoes, the aid per kilogram and thus the aid intensity can be lower⁸. In addition, a maximum aid amount of EUR 150,000 per undertaking applies.
- (42) The aid intensity for undertakings in the floricultural sector and the specialty horticultural sector for the food-service market is 70% of the eligible costs⁹. The aid is limited to the following maximum aid amount per undertaking¹⁰, depending on the undertaking's size:

Average turnover/gross margin of an undertaking in the period 12 March to 11 June in 2017-2018-2019 (EUR)	Maximum aid amount per undertaking (EUR)
< 200,000,-	100,000
200,000,- to 500,000,-	250,000
500,000,- to 3,000,000	500,000
> 3,000,000,-	1,000,000

- (43) The form of the aid is a direct grant, which is directly paid to the beneficiary.
- (44) The aid to beneficiaries is reduced by the amount by which the costs of the undertaking have decreased because of the COVID-19 outbreak.

⁷ The compensation is fixed as an amount of EUR/kg, which is the result of the total number of eligible kilograms and the total available budget of EUR 50 million, with a maximum of EUR 0.06/kg. Based on the average cost of growing potatoes for processing per hectare of EUR 6,850⁷ and a yield of 50,000 kg/ha, the maximum aid intensity is 44% ((EUR 0,06 * 50.000 kg) / 6,850 = 44%).

⁸ In reality the aid intensity can and probably will be lower, as the compensation of EUR 0.06/kg is a maximum. Given the total budget of EUR 50 million, the aid paid per kilogram is lower when the total quantity of eligible potatoes is higher than 833,333 tons. For example, in case the total quantity of eligible potatoes is 1 million tons (as expected), the compensation per kilogram is EUR 0.05 (EUR 50,000,000 / 1,000,000 tons). The aid intensity in that scenario is 36% ((EUR 0.05 * 50.000 kg) / 6,850 = 36%).

⁹ Calculation example: • Average turnover 12 March – 11 June 2017, 2018, 2019: EUR 1.500.000. • Turnover 12 March – 11 June 2020: EUR 500.000. • Decrease in turnover 12 March – 11 June 2020 compared to average in the same period in 2017-2019: EUR 1.000.000 (EUR 1.500.000 - EUR 500.000). • Beyond a 30%-decrease in turnover, the measure is applicable. Entrepreneurial risk: EUR 300.000 (= 30% of EUR 1.000.000). • Decrease in turnover as base for compensation (eligible costs): EUR 700.000 (EUR 1.000.000 - EUR 300.000 or 70% of EUR 1.000.000). • Compensation = 70% of EUR 700.000: EUR 490.000, which falls within the scope of the maximum compensation for this company of EUR 500.000.

¹⁰ These maximum amounts are not applicable to auctions. The maximum amount of aid for auctions is 7% of the total loss of revenue of its members.

2.9. Cumulation

- (45) Aid under the scheme cannot be cumulated with other aid for the same eligible costs.
- (46) The compensation will be reduced by any other aid or benefits (including insurance benefits) received in respect of COVID-19 that relates to the same damage. In addition, other national aid related to COVID-19 not consisting of liquidity aid will be deducted.
- (47) For this purpose, information regarding insurance benefits and aid received under Articles 219, 221 or 222 of Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organization of the markets in agricultural products¹¹ has to be submitted by the beneficiary.
- (48) The aid is entirely financed by the State budget. In the Netherlands, there is no other aid scheme that pays for this type of damage to farmers. The Dutch authorities have confirmed that the scheme is not co-financed by the European Regional Development Fund (ERDF), European Social Fund (ESF), Cohesion Fund (CF), European Agricultural Fund for Rural Development (EAFRD), European Maritime and Fisheries Fund (EMFF) or European Union Solidarity Fund (EUSF).

3. ASSESSMENT

3.1. Lawfulness of the aid

- (49) The aid scheme was notified to the Commission on 30 April 2020. It has not been implemented yet. Therefore, the Netherlands has complied with its obligation under Article 108(3) TFEU.

3.2. Existence of aid

- (50) For a measure to be categorised as aid within the meaning of Article 107(1) TFEU, all the conditions set out in that provision must be fulfilled. First, the measure must be imputable to the State and financed through State resources. Second, it must confer an advantage on its recipients. Third, that advantage must be selective in nature. Fourth, the measure must distort or threaten to distort competition and affect trade between Member States.
- (51) The measure is imputable to the State, since it is administered by the Netherlands Enterprise Agency (recital (34)) and it is based on the national legal basis mentioned in recital (9). It is financed through State resources since it is financed by the general budget of the Netherlands (recitals (11) and (48)).

¹¹ Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organization of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007. (OJ L 347 of 20.12.2013, P. 671).

- (52) The measure confers an advantage on its beneficiaries in the form of a direct grant (recital (43)). The measure thus relieves those beneficiaries of costs, which they would have had to bear under normal market conditions.
- (53) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, in particular to undertakings in the potato, floricultural and horticultural sectors (recital (12)).
- (54) The measure is liable to distort competition, since it strengthens the competitive position of its beneficiaries. It also affects trade between Member States, since those beneficiaries are active in sectors in which intra-Union trade exists.
- (55) In view of the above, the Commission concludes that the measure constitutes State aid within the meaning of Article 107(1) TFEU. The Netherlands authorities do not contest that conclusion.

3.3. Compatibility of the aid

- (56) Since the measure involves State aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether that measure is compatible with the internal market. The Commission has examined the notified measure pursuant to Article 107(2)(b) TFEU. This assessment has led to the following observations.
- (57) Under Article 107(2)(b) TFEU, aid shall be considered compatible with the internal market if it is found to make good the damage caused by natural disasters or exceptional occurrences.

3.3.1. The COVID-19 outbreak is an exceptional occurrence

- (58) Following the first reports of cases of acute respiratory syndrome (COVID-19) in the Wuhan municipality in China at the end of December 2019, the Chinese authorities have identified a novel coronavirus (SARS-CoV-2) as the main causative agent, which had not been previously identified in humans. The outbreak has rapidly evolved, affecting not only other parts of China but has also spread to the majority of countries worldwide, including almost all EU Member States. Outbreaks of novel virus infections among people are always a public health concern and can have a significant economic impact. Specific sectors and areas are particularly affected by the outbreak, be it because of national outbreak control measures, travel restrictions or supply chain disruptions.
- (59) The World Health Organization (“WHO”) has declared the risk that COVID-19 will spread and have a global impact to be very high. According to WHO reports and observations of the current situation, the spread of COVID-19 can result in far-reaching disruption of various economic sectors. This disruption is thus clearly outside the normal functioning of the market. In order to avoid an exponential increase in the number of cases, accompanied by social alarm and severe economic consequences, containment measures need to be adopted.
- (60) On 11 March 2020, the WHO characterised the COVID-19 disease as a pandemic. The public health risk deriving from the absence of therapeutics or

vaccines for the novel COVID-19 virus determine the exceptionality of the circumstances. The rapidity of the spread can cause enormous consequences both in terms of fatal outcomes in high-risk groups and in terms of economic and societal disruption.¹² The necessity to adopt and encourage the respect of measures aimed at interrupting transmission chains stems from this acknowledgement.

- (61) In March-April 2020, Member States adopted various measures that aim to limit the spread of the coronavirus, e.g. travel restrictions for non-essential travels, closure of borders, closure of non-essential shops, obligation for companies to organise working from home for every position where this is possible and various social distancing measures. Measures taken in the Netherlands include amongst others, social distancing, working from home and the closure of schools, crèches, sport clubs, saunas, cafes and restaurants, as well as the prohibition of public events. The measures taken by the Netherlands, Member States and other countries in particular hit the sectors supported under the present schemes as they operate on the world market for their products.
- (62) In view of the above, this event qualifies as an exceptional occurrence, as it was not foreseeable and is clearly distinguishable from ordinary events, by its character and its effects on the affected undertakings and the economy in general, and therefore falls outside the normal functioning of the market.
- (63) In this context, the COVID-19 outbreak can be considered as an exceptional occurrence within the meaning of Article 107(2)(b) TFEU.¹³

3.3.2. *Causal link between the damage to be compensated for by the notified scheme and the COVID-19 outbreak*

- (64) The Court has held that only damage caused by natural disasters or exceptional occurrences may be compensated for under Article 107(2)(b) TFEU. It follows that there must be a direct link between the damage and the exceptional occurrence, which the State aid measure provides compensation for and that as precise an assessment as possible must be made of the damage suffered by the beneficiary concerned.¹⁴ The COVID-19 outbreak qualifies as exceptional occurrence (see recital (63)).
- (65) The Commission has examined the notified scheme pursuant to Article 107(2)(b) TFEU. This assessment has led to the following observations:
- (66) As a result of the latest developments of COVID-19, from Monday 9 March 2020, the Netherlands have taken far-reaching national health measures to

¹² ECDC's Rapid Risk Assessment, Outbreak of novel Coronavirus disease 2019 (COVID-19): increase transmission globally – fifth update, 2 March 2020.

¹³ See Commission Decision of 12 March 2020 in State aid case SA.56685 (2020/N) – Denmark – Compensation scheme for cancellation of events related to COVID-19, Commission Decision of 31 March 2020 in State aid case SA.56765 (2020/N) – France – CODIV-19 Moratoire sur le paiement de taxes et redevances aéronautiques en faveur des entreprises de transport public aérien sous licences d'exploitation délivrées par la France and Commission Decision of 24 April 2020 in State aid case SA.57061 (2020/N) – Sweden – Compensation for the damage caused by the COVID-19 outbreak to Scandinavian Airlines.

¹⁴ See Joined Cases C-346/03 and C-529/03 Atzeni and Others [2006] ECR I-1875, paragraph 79 and the case-law cited; Case C-73/03 Spain v Commission, judgment of 11 November 2004, paragraph 37.

combat the further spread of COVID-19. These include amongst others, social distancing, home working and the closure of schools, crèches, sport clubs, saunas, cafes and restaurants, as well as the prohibition of public events. This recommendation aims at avoiding the dissemination of the virus.

- (67) These health measures have enormous consequences for income in a number of sectors in particular. This concerns certain establishments that were forced to close from Sunday evening, 15 March 2020 inter alia catering and hospitality outlets.
- (68) As a consequence of the economic implications of the Covid-19 outbreak for business, and the recommendation by the Dutch authorities, the Netherlands have considered the possibilities available to help mitigate the negative economic consequences that the COVID-19 outbreak has already had and will have for Dutch business. Therefore, the notified measure is directly linked to the COVID19 outbreak, which qualifies as an exceptional occurrence.
- (69) As described in recitals (14) to (22) of this Decision, in the present aid scheme only beneficiaries in certain agricultural sectors establishing a direct link between the damage suffered and the health measures taken as a direct result of the COVID-19 outbreak recommendation of 9 March 2020 to prevent the spread of the virus on the national territory shall be entitled to compensation.
- (70) The direct link between the damage caused by the exceptional occurrence and the aid is therefore ensured. The scheme provides that aid will be reduced following a reduced impact of the COVID-19 measures (recital (74)). Furthermore, the Netherlands confirmed that while some recommendations to avoid dissemination are progressively lifted, the recommendations and prohibitions made by the Dutch Government to undertakings to suspend all activities that are not essential to avoid dissemination of the virus are still and will remain in force, e.g. prohibition against all gatherings until 1 June 2020 and of more than 30 people as of 1 June 2020 and closing of the Dutch borders, in order to accompany a slow and controlled return to normal business conditions. Moreover, restrictions that are lifted may be reinstated immediately if the dissemination of the virus makes this necessary (recital (15)). The Commission considers therefore, that the implementation of the different measures under the scheme until 11 June 2020, respectively 31 August 2020 reasonable in this context.

3.3.3. *Proportionality of the aid measure*

- (71) In order to be compatible with Article 107(2)(b) TFEU, the aid must be proportional to the damage caused by the exceptional occurrence. Aid must not result in overcompensation of damage; it should only make good the damage caused by the exceptional occurrence.
- (72) As described above, the actual damage of the companies in the sectors concerned is the material damage to assets in the potato sector (recital (26)) and the loss of income measured on the basis of the decrease of turnover (recital (32)) in the new circumstances (after the COVID-19 outbreak and governmental measures) compared to the turnover incurred before these events, in the floricultural and horticultural sector. In light of the exceptional circumstances, such as the large number of beneficiaries, the combination of

events in the agricultural product sectors concerned (recital (5)) and the urgent need for a support measure to be implemented, the Commission can accept the calculation of the amount of the damage to be compensated based on the elements as mentioned in sections 2.7.2 and 2.7.3 of this decision.

- (73) The scheme in the present case compensates the material damage to stocks and the loss of income measured on the basis of the decline of turnover. Bearing in mind that the eligible costs are limited to a maximum, the compensation is limited by maximum aid intensities (fairly below 100%) and maximum aid amounts per undertaking, and that a claw-back mechanism is put in place, the scheme sufficiently ensures that there is no overcompensation for any of the sectors covered.
- (74) As described in recitals (28) and (33) the calculation method of the compensation ensures that if the measures to combat COVID-19 are gradually lifted during the period of the scheme, the amount of compensation to beneficiaries will be reduced.
- (75) The Dutch authorities have put in place the following safeguards, so that the compensation under the notified measure does not exceed what is necessary to make good the damage and thus meets the above-mentioned criteria.
- (76) First, the amount of compensation partially covers the decline in turnover experienced by the companies in the floricultural sector and the specialty horticultural sector in comparison to the reference period (recital (32)). Also, the compensation for the material damage of the potato stock is limited (recitals (28) and (29)).
- (77) Second, as described in recital (46) of this Decision, payments made to beneficiaries are net of any amount recovered through insurance, litigation, arbitration or other source for the same damage. If the aid is paid before the insurance, the Netherlands will recover the insurance amount from the beneficiary. Additionally, as described in recital (13), the benefit of the aid is excluded for any applicant who is responsible for the damage suffered and/or who did not conduct their activities with due diligence or in compliance with applicable legislation or did not take any measure to mitigate its damage.
- (78) Third, as described in recital (38) of this Decision, the final payment application to the Netherlands Enterprise Agency must include evidence, such as documents, certificates, auditors reports of the real eligible costs for which the company applies for compensation. All applications accompanied by the relevant evidence are verified by the Netherlands Enterprise Agency.
- (79) Fourth, if, following the final payment application (recital 38)) the definitive compensation is lower than stated in the company's initial application for aid, (recital (37)), the compensation paid will be based on that lower real amount of damage, thus avoiding overcompensation.
- (80) Fifth, the aid to beneficiaries is reduced by the amount by which the costs of the undertaking have decreased because of the COVID-19 outbreak (recital (44)).

- (81) Sixth, provision of a report no later than one year after the date of the Commission decision, specifying the amount of compensation and recoverable advances granted (recital (40)).
- (82) Therefore, the Commission finds that the scheme includes during its entire duration sufficient safeguards that the aid covers only damage, which is caused by the COVID-19 measures and that the aid is proportional.

3.3.4. *Application of the specific provisions defined in the European Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020¹⁵ (hereinafter "the Guidelines")*

- (83) As regards the notified aid scheme, the Guidelines specify, in particular in Part II, Chapter 1, Section 1.2.1.1: "*Aid to make good the damage caused by natural disasters or exceptional occurrences*", in which context and under what conditions aid with regard to natural disasters or exceptional occurrences is compatible with the internal market pursuant to Article 107(2)(b) TFEU. Point (327) of the Guidelines provides that such aid is considered compatible with the internal market if it fulfils the conditions laid down in that Section.
- (84) This scheme relates to aid in the agricultural sector, as mentioned by recitals (7) and (8). Therefore, it is consistent with point 328 of the Guidelines.
- (85) As laid down in point 329 of the Guidelines, the notion of 'exceptional occurrence' referred to in Article 107(2)(b) of the Treaty must be interpreted restrictively.
- (86) Pursuant to point 330 of the Guidelines the Commission will continue assessing the proposals for the granting of State aid under Article 107(2)(b) TFEU on a case-by-case basis, taking into account its past practice in this field. The COVID-19 outbreak can be considered as an exceptional occurrence under Article 107(2)(b) TFEU as concluded in recital (63). The notified aid scheme has as an objective to compensate undertakings in the agricultural sector for the damage caused by the collapse in demand for their products, as a consequence of the measures taken in the Netherlands and many other countries to combat the COVID-19 pandemic. The notified scheme is assessed in accordance with the provision laid down in point 330 of the Guidelines.
- (87) Point 331(a) of the Guidelines lays down that the competent authority of the Member State must have formally recognised the character of the event as an exceptional occurrence. As concluded in recital (63), the Commission considers that the coronavirus outbreak qualifies as an exceptional occurrence within the meaning of Article 107(2)(b) TFEU. As a result, the interventions by the Netherlands to compensate for the damage linked to the outbreak are justified.
- (88) Point 331(b) of the Guidelines provides that there must be a direct causal link between the exceptional occurrence and the damage suffered by the undertaking. It follows from recital (70) that point 331(b) of the Guidelines is complied with.

¹⁵ OJ C 204 of 1.7.2014, p. 1. Amended by the Notices published in OJ C 390, 24.11.2015, p. 4. OJ C 139, 20.4.2018, p. 3 and OJ C 403, 9.11.2018, p. 10.

- (89) Point 332 of the Guidelines is not relevant to the notified aid scheme as criteria on the basis of which the formal recognition referred to in point 331(a) is deemed to be granted, are not established in advance.
- (90) As indicated in recital (43), according to the notified aid scheme, support will be directly paid to the beneficiaries in the form of direct grants, in compliance with point 333 of the Guidelines.
- (91) In line with point 334 of the Guidelines, it follows from recital (10) that the scheme will be established within three years from the date of the outbreak of the occurrence of COVID 19 and from recital (39) that the payments of the aid will be completed within four years from that date.
- (92) Since the notified aid scheme is not an ex-ante scheme, the points 335 and 336 of the Guidelines are not applicable.
- (93) In accordance with point (337) of the Guidelines, it follows from recital (70), that the eligible costs are the costs of the damage which results from the exceptional occurrence, which will be assessed by a public authority.
- (94) The material damage to assets, stocks of potatoes, covered by this scheme is described in recital (26) and is consistent with the type of assets mentioned in point 338(a) of the Guidelines. The calculation of the material damage under the scheme is based on the economic value of the affected asset before the exceptional occurrence and it does not exceed the decrease in fair market value caused by exceptional occurrence (recitals (29) and (41)). Therefore, the provisions of point 340 of the Guidelines with regard to the calculation of the material damage to assets are complied with.
- (95) The type of damage covered by this scheme, the loss of income in the floricultural and horticultural sector, is described in recital (32) and is consistent with point 338(b) of the Guidelines. Recitals (34), (37) and (38)), describing the procedure for implementing this programme demonstrate that the damage will be calculated at the individual beneficiary level, as required under point 339 of the Guidelines. Under the scheme, the loss of income is calculated on the basis of the loss of turnover, by comparing with the average of a reference period. As turnover is the result of prices and quantities of the products concerned this calculation is consistent with point 341 of the Guidelines.
- (96) Moreover, recital (32) confirms that with regard to beneficiaries in the specialty horticultural sector for the food-service market, the scheme at hand only covers the damage that is related to the activities of the undertaking that are affected by the COVID-19 health measures. In addition, recitals (37) and (38) provide for the submission of supporting documents, such as certificates, reports, bills of loading, weighing bills and invoices, by the beneficiary for purposes of proving the exact compensation cost of the damage.

- (97) Point 342 of the Guidelines sets that the aid amount may be increased by other costs incurred by the beneficiary due to the exceptional occurrence and it must be reduced by any costs not incurred because of the natural disaster or the exceptional occurrence, which would otherwise have been incurred by the beneficiary. The notified scheme does not include other costs than the material damage and loss of income pursuant to point 338(a) and 338(b) of the Guidelines. Furthermore, the notified scheme defines that the aid must be reduced by any costs not incurred because of the exceptional occurrence (recital (44)). Therefore, the provisions of point 342 of the Guidelines are complied with.
- (98) Point 343 of the Guidelines is not applicable to the notified scheme, because the calculation of the loss of income under the scheme does not use indexes but instead is based on real verifiable amounts. The calculation of the material damage to potato stocks complies with point 340 of the Guidelines (recital (94)) and loss of income in the floricultural and horticultural sector is in line with point 341 of the Guidelines (recital (95)).
- (99) Pursuant to point 344 of the Guidelines the Commission will accept other methods for the calculation of damage provided it is satisfied that these are representative, not based on abnormally high yields and do not result in the overcompensation of any beneficiary. The measurement of the extent of the damage may be tailored to the specific characteristics of each type of product using indexes. As mentioned above the Commission considers that the calculation of the material damage and the loss of income is in line with points 340 and 341 of the Guidelines, therefore point 344 does not apply to the notified scheme.
- (100) The maximum aid intensities under the scheme for the sectors concerned are 44% (recital (41)) and 70% (recital (42)) of the eligible costs. Any other compensation (including insurance payments), that is received for the same damage will be deducted from the compensation under the present scheme (recital (46)). The damage is only partially compensated. These elements mean that the aid is proportionate, as concluded in above in section 3.3.3. Since compensation under the scheme is lower than the maximum percentage of 100% of the eligible costs as required by point 345 of the Guidelines, the condition of point 345 of the Guidelines is fulfilled.
- (101) The Commission also notes that the aid will not be granted to undertakings subject to a procedure of liquidation or suspension of payment at the date of application, and undertakings, which are subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market (recital (13)).
- (102) On the basis of the above-mentioned considerations, the notified aid scheme fulfils the applicable conditions of the Guidelines and is eligible for the derogation provided for in Article 107(2)(b) TFEU.

4. CONCLUSION

The Commission has accordingly decided not to raise objections to the amended aid scheme on the grounds that it is compatible with the internal market pursuant to Article 107(2)(b) of the Treaty on the Functioning of the European Union

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

CERTIFIED COPY
For the Secretary-General,

Jordi AYET PUIGARNAU
Director of the Registry
EUROPEAN COMMISSION