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**Subject: State Aid SA.57552 (2020/N)  
Compensation scheme agricultural and horticultural undertakings  
COVID-19 – NL - Amendment SA.57217**

Excellency,

**1. PROCEDURE**

- (1) By electronic notification of 2 June 2020, registered by the Commission on the same day, the Netherlands notified, in compliance with Article 108(3) of the Treaty on the Functioning of the European Union (TFEU), amendments to the State aid scheme SA.57217 (2020/N) - “*NL LNV AGRI Compensation scheme agricultural and horticultural undertakings COVID-19*” (hereinafter: “the existing aid scheme”), which was approved by Commission decision C(2020)3143 final of 8 May 2020 (hereinafter: “the initial decision”) under Article 107(2)(b) TFEU (published on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>).
- (2) 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 1/1958<sup>1</sup> and to have this Decision adopted and notified in English.

**2. DESCRIPTION OF THE SCHEME**

**2.1. Objective**

- (3) By this notification, the Dutch authorities wish to amend the existing aid scheme, which is currently in force until 31 December 2020.

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\* Handling instructions for SENSITIVE information are given at <https://europa.eu/!db43PX>

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

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## **2.2. Description of the existing aid scheme**

- (4) The objective of the existing aid scheme is to provide compensation for the loss of income of agricultural sectors that are severely affected by the COVID-19 outbreak. This specifically concerns undertakings in sectors, which experience 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 have a major seasonal peak in production, staffing and turnover in the period March, April and May.
- (5) The above-mentioned combination occurs in the floricultural sector, in parts of the food horticultural sector and in the ware potato sector.
- (6) The existing aid scheme provides 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.
- (7) In addition, the existing aid scheme provides 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.
- (8) The now notified amendments pursue the same objectives as those of the existing aid scheme.

## **2.3. Legal basis**

- (9) The first national legal basis of the existing aid scheme is the draft decision 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)*”
- (10) The second national legal basis concerns the now notified amendments, which is the draft decision of the “*Scheme of the Ministry of Agriculture, Nature and Food Quality nr. WJZ/20150841, amending the compensation scheme agricultural and horticultural undertakings COVID-19*”.

## **2.4. Description of the notified amendments**

- (11) With the present notification, the Dutch authorities wish to amend the existing aid scheme, in order to remedy experienced bottlenecks and to improve the implementation of the existing aid scheme.
- (12) The amendments concern:

- a modification of the calculation of the loss of turnover with regard to undertakings active in the primary agricultural production of the floricultural and specialty horticultural sector that have expanded;
- a decrease of the minimum percentage of turnover of food-service related deliveries, expressed as a percentage of the total turnover, from 75% to 60% for undertakings in the specialty horticultural sector for the food-service market;
- additional evidence and
- an administrative change.

#### *2.4.1. Calculation of the loss of turnover of companies that have expanded*

- (13) The calculation of the loss of turnover is modified for the primary producers in the floricultural and specialty horticultural sector who expanded their production capacity after 12 March 2017 by means of an increase of their cultivated area by at least 10%.
- (14) It concerns companies that have grown/extended considerably in recent years due to large investments in the extension of their production capacity. The companies' turnover related to the increased cultivated area is not included in the turnover figures of the reference period 2017 to 2019. Consequently, these companies would, unintentionally, not, or to a lesser extent, be eligible for compensation under the existing aid scheme.
- (15) The Dutch authorities estimate that about thirty companies are concerned by this situation and would therefore fall outside the scope of the existing aid scheme, because the standard calculation does take account of the specific situation of companies that have expanded.
- (16) In order to remedy this non-intended situation, the Dutch authorities have amended the legal basis of the existing aid scheme (recitals (9) and (10)) by adding a new sub article, which adds an adapted calculation method with regard to the loss of turnover for companies that have expanded.
- (17) That calculation method, as described below in recitals (18) and (19), applies to the affected producers in the horticultural and specialty horticulture sector, which have expanded their cultivated area after 12 March 2017 by at least 10%. Only the increase of cultivated area is taken into account. Areas related to, among others, processing and storage, as well as other non-cropped areas do not count as cultivated area.
- (18) The loss of turnover for this specific group of companies will be determined by comparing the turnover of the reference period 2017 to 2019 with the turnover of the relevant period in 2020 based on the turnover per square meter of agricultural area. As a next step, the difference is multiplied by the number of square meters of cultivated area designated for ornamental plants or for horticulture for the food sector in 2020.

- (19) The Dutch authorities have explained that the now notified calculation method is tailored to the specific situation of the expanding companies concerned, because it includes the comparison of figures, which are representative for their situation.<sup>2</sup>

2.4.2. *Decrease of the minimum percentage of turnover of food-service related deliveries*

- (20) A limited number of undertakings in the specialty horticultural sector could not meet the threshold of 75%<sup>3</sup> regarding their food-service related deliveries and therefore would not be able to benefit from compensation for loss of income under the existing aid scheme. In order to render the existing aid scheme more effective, the Dutch authorities wish to enable these undertakings to apply for aid under the existing aid scheme. Therefore, with regard to undertakings active in the specialty horticultural sector for the food-service market, the minimum percentage of food-service related deliveries (turnover/gross margin from food-service related deliveries expressed as a percentage of the total turnover/gross margin<sup>4</sup>) is decreased from 75% to 60%<sup>5</sup>.

2.4.3. *Additional required evidence.*

- (21) In some specific situations the potato producers need to provide the following additional evidence regarding the origin and delivery of potatoes:
- documented proof on the basis of a form prescribed by the Ministry, in case weighing bills or invoices, due to the absence of sales, cannot be provided;
  - other certificates of an accredited organization, as approved by the Ministry, which are similar to the VVA-certificate, VVAK-certificate or Global G.A.P-certificate;
  - an audit report from a chartered accountant with regard to all aid or allowances received from any other source, in the form of a model made available by the Ministry, or similar document accepted by the Ministry.

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<sup>2</sup> Calculation example in case of expansion during reference period 2017-2019:  
Total square meters (m<sup>2</sup>): 2017 = 35,000 m<sup>2</sup>, 2018 = 65,000 m<sup>2</sup>, 2019 = 65,000 m<sup>2</sup>.  
Average turnover 12 March until 11 June 2017/2018/2019: € 1,000,000. Average m<sup>2</sup> 2017/2018/2019: 55,000 m<sup>2</sup> ((35,000+65,000+65,000)/3). Average turnover per m<sup>2</sup>: € 18.18/m<sup>2</sup> (1,000,000/55,000).  
Turnover 12 March until 11 June 2020: € 700,000. Square meters 2020: 65,000m<sup>2</sup>. Turnover per m<sup>2</sup>: € 10.77/m<sup>2</sup> (700,000/65,000).  
Loss in turnover: € 18.18 - € 10.77 = € 7.41 per m<sup>2</sup> x 65,000 m<sup>2</sup> = € 481,650 (48%).  
Entrepreneurial risk: (30% of € 481,650) = € 144,495. Remaining amount € 481,650 - € 144,495 = € 337,155. Max 70% is compensated: 0.7 \* € 337,155 = € 236,008.

<sup>3</sup> As mentioned in footnote 4 of the initial decision.

<sup>4</sup> Turnover for primary producers and gross margin for traders, as mentioned in footnote 5 of the initial decision.

<sup>5</sup> The compensation for undertakings in the specialty horticultural sector for the food-service only takes account of their turnover and loss of turnover, which relates to direct or indirect deliveries to closed undertakings in the hotel and catering sector, on the condition that the minimum percentage of food-service related deliveries of the agricultural undertakings amounts to at least 60% of their entire turnover. The type of closed undertakings in the hotel and catering sector to which the food-service related deliveries normally take place are identified by the SBI codes (Standard Business Codes), mentioned in the annex to the notified aid scheme.

#### 2.4.4. *Administrative change*

- (22) As a consequence of the modifications proposed for the floricultural and horticultural sector, the period for submission of applications by undertakings of those sectors will be prolonged by two weeks from 4 June 2020 until 18 June 2020. The period of eligibility in 2020, the reference period of the years 2017 to 2019 and the duration of the aid scheme remain unchanged.
- (23) All the other provisions of the existing aid scheme remain unchanged as described in the initial decision.

### 3. ASSESSMENT

#### 3.1. Lawfulness of the scheme

- (24) The amended aid scheme was notified to the Commission on 2 June 2020. It has not been implemented yet. Therefore, the Netherlands comply with their obligation under Article 108(3) TFEU. The Commission takes note of the fact that the amended aid scheme will enter into force only after approval by the Commission.

#### 3.2. Existence of State aid

- (25) 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.
- (26) The existence of aid within the meaning of Article 107(1) TFEU was established in the initial decision (see recital (55) of the initial decision). The notified amendments do not affect the Commission's assessment in this respect, since the modifications do not alter the fulfilment of the conditions of the existence of aid. The Commission therefore refers to the assessment made in recitals (50) to (55) of the initial decision, which apply also to these modifications.

#### 3.3. Compatibility

- (27) The Commission has examined the notified measure pursuant to Article 107(2)(b) TFEU.
- (28) Pursuant to 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.
- (29) In its initial decision, the Commission concluded that the existing aid scheme was compliant with Article 107(2)(b) TFEU and the compatibility conditions set out by the European Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020<sup>6</sup> (hereinafter "the Guidelines"). As regards

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<sup>6</sup> 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.

the assessment of the existing aid scheme, reference is made to recitals (56) to (102) of the initial decision.

- (30) In recital (63) of the initial decision, the Commission concluded that the COVID-19 outbreak can be considered as an exceptional occurrence within the meaning of Article 107(2)(b) TFEU. The proposed modifications to the existing aid scheme (recital (12) of this decision) do not affect the assessment made in this regard (recitals (58) to (62)) of the initial decision). Therefore, the Commission sees no reason to alter its finding in this regard.
- (31) In recital (70) of the initial decision, the Commission concluded that the direct link between the damage caused by the exceptional occurrence and the aid is ensured. The proposed modifications to the existing aid scheme (recital (12) of this decision) do not affect the assessment made in this regard (recitals (64) to (70) of the initial decision). Therefore, the Commission sees no reason to alter its conclusion in this regard.

### *3.3.1. Application of the specific provisions defined in the Guidelines.*

- (32) As regards the notified amendment of the aid scheme, the Guidelines specify 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 exceptional occurrences is compatible with the internal market pursuant to Article 107(2)(b) TFEU.
- (33) The Commission considers that the notified amendment regarding the adapted calculation method for the loss of turnover regarding companies that have expanded during the reference years 2017 to 2019 (recitals (13) to (19)) is relevant. The adapted calculation method applies only to companies in the floricultural and horticultural sector that have expanded their cultivated area with at least 10%. The calculation method with regard to other companies that have not expanded their cultivated area with at least 10% remains unchanged as described in recitals (32) and (33) of the initial decision.
- (34) The comparison of the turnover of companies that have expanded, based on the turnover per square meter of cultivated area (recital (18)) is justified. The adapted calculation method applies only to an increase of at least 10% of the cultivated area (recital (17)). Furthermore, the threshold of 70% of loss of turnover, the aid intensity of 70% and the maximum aid amounts per beneficiary of the existing aid scheme remain unchanged and applicable to this specific group of beneficiaries. Therefore, the Commission considers that the adapted calculation method for the loss of turnover of the expanding companies, as notified by the Netherlands, does not lead to overcompensation.
- (35) Furthermore, the Commission finds that the Dutch authorities have provided sufficient justification that companies that are in principle eligible for aid, which made (large) investments in the extension of the agricultural area, should not be excluded from aid under the scheme (recitals (13) to (19)). The adapted calculation method with regard to companies that have expanded, which takes account of a representative comparison of figures determining the loss of turnover, is therefore appropriate.

- (36) The adapted calculation method for primary producers in the floricultural and specialty horticultural sector that have extended their cultivated area does not alter the calculation method of aid for the other beneficiaries under the approved scheme.
- (37) Under the existing aid scheme, the calculation of the loss of income is made on the basis of the loss of turnover, by comparing the period in 2020 with the average of a three-year reference period and has been assessed by the Commission as consistent with point 341 of the Guidelines (recital (95) of the initial decision). The now notified adapted calculation method for primary producers in the floricultural and specialty horticultural sector that have expanded maintains the comparison with the three-year reference period and therefore fulfils the conditions of point 341 of the Guidelines.
- (38) In addition, 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 Commission considers that it follows from recitals (13) to (19) and (33) to (35) that the adapted calculation method based on square meters, which is tailored to firms that have expanded their cultivated area by more than 10%, is representative, does not lead to overcompensation and therefore, complies with the conditions of point 344 of the Guidelines.
- (39) The modification concerning the decrease of the minimum percentage, from 75% to 60% (recital 20)), with regard to the turnover of food-service related deliveries by undertakings active in the specialty horticultural sector, aims to support all specialised food-service companies, which comply with the basic principles of the aid scheme. Companies, which do not fulfil the requirement of the minimum turnover of 60% are not eligible for aid. The aid intensity remains unchanged at 70%, as mentioned in the initial Decision. Therefore, the Commission considers that the modification is appropriate and proportionate in order to fulfil the objectives of the aid scheme.
- (40) The modification regarding supplementary evidence required from beneficiaries in the potato sector mentioned in recital (21) contributes further to the compliance of the aid scheme with regard to the proportionality of the aid and the safeguards mentioned in recitals (71) to (82) of the initial decision.
- (41) The Commission considers that the prolongation of the period for submission of applications (recital (22)) by undertakings of the floricultural and horticultural sector with two weeks until 18 June 2020 is an administrative change, which is in line with the other proposed modifications and does not influence the compatibility assessment made in the initial decision. All other periods and deadlines, regarding eligible costs, reference period and the duration of the aid scheme remain unchanged (recital (22)).
- (42) Following the above, the Commission considers that the notified amendments are appropriate, proportionate and necessary to achieve the objectives of the existing aid scheme more effectively, and that they comply with the conditions of the Guidelines.



- (43) The Commission notes that apart from the modifications mentioned in recital (12), there are no other alterations to the existing aid scheme (recital (23)).
- (44) Based on the above mentioned the Commission finds that the notified amendments do not affect the compatibility analysis of the existing aid scheme as set out in recitals (56) to (102) of the initial decision.
- (45) Therefore, the Commission has no reasons to alter its opinion of the initial decision and considers that the amended aid scheme remains compatible with the internal market.

#### **4. CONCLUSION**

The Commission has accordingly decided not to raise objections to the aid 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.

The decision is based on non-confidential information and is therefore published in full on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

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**