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**Subject: State Aid SA.54537 (2020/NN) – Netherlands
Prohibition of coal for the production of electricity in the
Netherlands**

Excellency,

1. PROCEDURE

- (1) On 4 June 2019 the Commission requested information from the Dutch authorities pursuant to Article 108(1) of the TFEU regarding its intention to pass a law concerning the prohibition of the use of coal for the production of electricity. The Netherlands responded to the Commission's request on 13 June 2019.
- (2) Further requests for information were sent on 25 June 2019, 2 August 2019, and 23 September 2019 to which the Netherlands responded on 18 July 2019, 30 August 2019, 8 October 2019, 29 November 2019, 1 December 2019 and 10 March 2020.

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2. DETAILED DESCRIPTION OF THE MEASURE

2.1. Context and background

- (3) On 11 December 2019 the Netherlands adopted a law prohibiting the use of coal for the production of electricity¹ (hereafter: ‘the closure law’) by 1 January 2030 at the latest.
- (4) The aim of the closure law is to cut CO₂ emissions. The Netherlands, in part with a view to the Paris Agreement, has committed to achieving a 49% reduction in CO₂ emissions by 2030 (compared to 1990). In addition, on 20 December 2019 the Dutch Supreme Court² (Urgenda judgment) confirmed an earlier verdict, which ordered the State to achieve a significant reduction of CO₂ emissions already by 2020 (25% compared to 1990).
- (5) Before adopting the closure law, the Netherlands looked at alternative options, but these were considered less proportionate or effective to reach the required CO₂ reductions. This included the possibility to oblige coal fired power plants to use carbon capture and storage (CCS). However, the initiators of the first large scale demonstration project for CCS in Europe withdrew from the project in 2017. Hence, contrary to the initial expectations, CCS was not a possible way forward. The government also considered tightening the efficiency requirements for coal fired plants, but concluded that this would not lead to the same emission reductions.
- (6) There were five coal-fired power plants in the Netherlands when the closure law was adopted: Amercentrale 9, Eemshaven A/B, Engie Maasvlakte, MPP3 and Hemweg 8 (hereafter: Hemweg).
- (7) Power plants are mandated to close in accordance to article 2 of the closure law. The different dates to phase-out coal-fired power generation are specified in articles 3 and 3a of the closure law:
 - 1) Plants with an electrical efficiency below 44 %, which do not produce electricity from renewable biomass and do not produce heat from renewables are mandated to stop generating electricity by 1 January 2020;
 - 2) Co-firing units which can also generate electricity from renewable biomass or generate heat from renewables with an electrical efficiency of less than 44% are to be phased out by 31 December 2024;
 - 3) Production units with an electrical efficiency of 44 % or more are to be phased out before 1 January 2030.
- (8) Based on these criteria one of the five coal-fired power plants was mandated to cease generating electricity by 1 January 2020, namely Hemweg owned by Vattenfall.
- (9) Article 4 of the closure law further foresees the possibility of granting a compensation to an operator upon his request, provided the operator demonstrates that he is affected disproportionately by the prohibition compared to other operators of coal-fired production facilities.
- (10) Article 4 of the closure law was introduced because the Netherlands considers that the ban on coal affects rules on property within the meaning of article 1 of

¹ Staatsblad van het Koninkrijk der Nederlanden, Jaargang 2019, 493.

² The Netherlands vs. Urgenda (ECLI:NL:HR:2019:2006).

the First Protocol to the European Convention of Human Rights and Fundamental Freedoms (ECHR). Although the Netherlands is entitled to regulate the right of property of the coal-fired power plants by virtue of the common interest of protecting the climate, certain conditions must be met under the ECHR. This is notably the need to achieve a ‘fair balance’ between the common interest the government is pursuing and the individual interest of the power plants concerned.

- (11) Whilst the closure law grants a transition period of five to ten years to most power plants, Hemweg had to close by 1 January 2020. The transition period granted to the other power plants allows them to further recover investments and make additional profits. It also provides the opportunity to possibly convert to other generation fuels.
- (12) As Hemweg was not granted such a transition period, the Dutch government considers that it was unduly affected by the closure law. In order to put it on an equal footing with the other coal-fired power plants and to establish a ‘fair balance’ as required by the ECHR, it entered into a compensation agreement for its early closure with its owner Vattenfall.

2.2. The compensation

- (13) The closure requirement contained in article 2 of the closure law and the possibility of a compensation based on article 4 of the closure law has led Vattenfall to request a compensation for the early closure of Hemweg. The Dutch government considers that it is obliged, under Dutch law, to grant a compensation for the early closure, as closure prevents Hemweg from continuing to operate profitably and impinges on its property rights as enshrined in Dutch law. The Dutch government also considers that it was disproportionately affected by the introduction of the closure law requiring it to cease operating by the end of 2019, without a transition period.
- (14) The closure law was adopted on 11 December and the Dutch Ministry of Economic Affairs and Climate Policy granted compensation to the Hemweg power plant by decision of 20 December 2019. The decision stipulates that Vattenfall will receive EUR 52.5 mio. for the closure of the Hemweg power plant by the end of 2019.
- (15) The compensation amount was determined on a basis of the company specific data for the Hemweg plant. It reflects the foregone profits for the years [...], as Vattenfall conceded that considerable investments would have been necessary to run beyond that date.
- (16) The compensation amount granted to Hemweg for its early closure was based on information made available by Vattenfall. In order to reach an agreement on the compensation amount, the Ministry for Economic Affairs and Climate Policy was supported by independent experts, notably accountants and tax specialists who probed the assumptions on the basis of which the compensation was calculated to ensure it was kept to a minimum.
- (17) The compensation amount has been calculated as the present value of the net expected annual cash flows over [...], with two additional corrections for dismissal costs and tax advantage resulting from accelerated depreciation of the asset.

- (18) Expected annual cash flows are calculated as follows: expected gross margin minus expected operational costs minus expected corporation tax minus expected investment costs.
- a) Expected gross margins have been estimated by multiplying the expected production volumes –based on past unplanned unavailability rate - with expected hourly power prices coming from Vattenfall internal Monte Carlo “BOFIT” model.
 - b) Expected operational costs represent coal and CO₂ allowances costs, estimated using past efficiency rates of the plant.
 - c) Expected corporation tax and expected investment costs have also been estimated, in order to determine the net expected annual cash flows over the period [...].
 - d) Net Expected annual cash flows have then been discounted using the estimated weighted average cost of capital of the plant (9.1%).
- (19) The net present value of expected cash flows has been corrected for additional costs related to dismissal of staff and for tax advantage resulting from the accelerated depreciation of the plant.
- (20) Overall, the compensation amount for foregone profits, including additional costs related to the dismissal of staff on short notice, has been estimated at EUR 52.5 mio. Vattenfall has received EUR 52.5 mio. as a one-off payment.

2.3. The beneficiary

- (21) Hemweg was a profitable coal-fired power plant located in the city of Amsterdam, which started operating in 1994. It had a production capacity of 650 MWe and did not have the potential to be converted into a co-firing plant.
- (22) It was chosen for early closure due to its age and the fact that it was the most polluting coal fired power plant in the Netherlands (CO₂ per kWh). In 2018, it emitted 3.61 megatons of CO₂. This accounts for 2% of the Dutch CO₂ emissions that year, 4% of the CO₂ emissions of the undertakings subject to the Emissions Trading System (ETS) in the Netherlands, and 0.22% of the emissions from the undertakings subject to the ETS across Europe.

2.4. Legal basis

- (23) The legal basis for the compensation is article 4 of the closure law, which allows companies disproportionately affected by the requirement to cease generating electricity from coal to ask the Ministry of Economic Affairs and Climate Policy for a compensation.

3. ASSESSMENT OF THE MEASURE

3.1. Qualification of the measure as State aid

- (24) According to Article 107(1) TFEU, *"save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market"*.
- (25) The qualification of a measure as State aid requires the following conditions to be met cumulatively: a) the measure must be financed through State resources; b) it must grant a selective advantage liable to favour certain undertakings or the

production of certain goods; c) the measure must distort or threaten to distort competition and d) the measure must have the potential to affect trade between Member States.

- (26) The Netherlands considers that the measure does not constitute State aid, because the Dutch government is legally obliged to grant financial compensation and therefore no selective advantage is granted in favour of a certain undertaking.

3.1.1. Imputability and the involvement of State resources

- (27) In order for a measure to be categorised as being granted by a Member State or through State resources in any form whatsoever, it must (i) be given directly or indirectly through State resources and (ii) be imputable to the State.

- (28) In this case, the compensation amount was paid by the Ministry of Economic Affairs and Climate Policy, following request made by Vattenfall in accordance with article 4 of the closure law. It is therefore imputable to the State and involves State resources.

3.1.2. Existence of a selective advantage

- (29) The Netherlands is of the view that the measure constitutes a compensation for damages resulting from an act of the State and that it does not constitute a selective advantage for the beneficiary.

- (30) Following the judgment of the Court of Justice in the joined cases C-106 to C-120/87 (*Astéris*) it is considered that compensation for damages incurred as a result of State action does not confer an advantage on the recipients of the compensation:

*(23) "(...) that State aid, that is to say measures of the public authorities favouring certain undertakings or certain products, is fundamentally different in its legal nature from damages which the competent national authorities may be ordered to pay to individuals in compensation for the damage they have caused to those individuals."*³

- (31) The Commission considers that while the facts examined by the Court in Joined Cases C-106 to C-120/87 concerned compensation for the result of an unlawful State measure, the domestic legal order may apply the same principle as regards compensation for damages suffered as the result of lawful State measures. The fact that no selective advantage is conferred upon an undertaking does not depend on the lawfulness or unlawfulness of the measure but rather on the fact that a compensation granted under general principles of national law does not confer a selective advantage on an undertaking.

- (32) In order to conclude that the measure does not provide an advantage to the operator of Hemweg, it would therefore need to be established whether the Dutch expropriation rules give rise to an obligation to pay a compensation to Vattenfall and that the level of the compensation is equivalent to what would have been granted according to Dutch law.

- (33) As mentioned above, the Dutch authorities explain that the requirement on Hemweg to stop generating electricity affects the rules on property. Although

³ Judgment of the Court of 27 September 1988 in joined cases C-106 to 120/87 *Astéris AE and others v Greece and European Economic Community* [1988] ECR 05515, paragraphs 23 and 24.

the Netherlands is entitled to regulate the right of property of the coal-fired power plants by virtue of the common interest of protecting the climate, certain conditions must be met. In this respect, the Dutch authorities consider that it is necessary to achieve a 'fair balance' between the common interest the government is pursuing and the individual interest of the power plants concerned.

- (34) In the Netherlands, article 1 of the ECHR is applied directly by the judiciary and there is jurisprudence on the compensation for damages suffered due to State intervention. The jurisprudence provides details on the way in which the compensation for damages should be calculated⁴.
- (35) The jurisprudence recognises that when determining the compensation amount, choices need to be made and that these choices should be reasonable and acceptable. The compensation should be determined by comparing the situation in which the party finds itself following the intervention of the public authority compared with the hypothetical situation in which the party would have found itself if the public authority would not have taken a specific action. The loss of turnover suffered by the party will be determined by comparing both scenarios. Subsequently, potential savings or additional costs for the party due to the public measure will be taken into account.
- (36) Although the case law does not specify a detailed methodology to determine the encountered damage, it does recognise the central role independent experts can play to determine the scale of the damage⁵. In general, the judiciary follows the advice of the independent experts to determine the required compensation amount.
- (37) In addition, the Netherlands has started transferring these obligations into national law. Article 4:126 of the general administrative law on the compensation for damages is expected to enter into force on 1 January 2021⁶. It stipulates that parties have a right to compensation if a public authority creates damages that go beyond the normal social risks and if the party is disproportionately affected, compared to others. Any benefits or additional damages arising from the public authority's actions should also be taken into account when determining the compensation amounts.
- (38) The Netherlands considers that Hemweg has encountered damages following the introduction of the closure law that go beyond the normal social risks and as it had to close down by the end of 2019 is also disproportionately affected compared to others, as it is not provided with a transition period. It considers that the other installations, which have to close down after a transition period of five or ten years, were granted a compensation in kind, as they could continue to make profits or convert to other types of electricity generation. This possibility was not granted to Hemweg. The Netherlands does not, therefore, consider that the compensation granted to Hemweg provides it with an advantage, but rather alleviates it of a disadvantage it has encountered following the adoption of the closure law.

⁴ For example Supermarkt Haarlem (paragraph 13.1; ECLI:NL:RVS:2016:1652) and AH Cassandraplein (paragraph 11.1; ECLI:NL:RVS:2016:1650).

⁵ Notably ABRvS (paragraph 10.2; ECLI:NL:RVS:2016:1439).

⁶ Titel 4.5 of the Algemene wet bestuursrecht, Staatsblad 2013, nr. 50.

- (39) The Netherlands also brings forward that the compensation for Hemweg was calculated in line with the approach described in Dutch case law (see above). It also highlights that independent experts were hired to determine the correct compensation amount.
- (40) On this basis, the Commission concludes that in the present case the closure law impinges on Vattenfall's property rights, since it obliges Hemweg to close prematurely, in order to reduce CO₂ emissions in line with the public interest. It is therefore likely that a national court would grant a compensation to Hemweg.
- (41) The Dutch authorities have furthermore demonstrated that the compensation itself is based on a method that calculates the profits Hemweg would likely have generated if it would have continued generating electricity for a period of [...] more years. In addition, the compensation amount has been probed by independent experts.
- (42) Even if this implies that it is not the intention of the Dutch authorities to grant Vattenfall an advantage but merely a compensation for the effects of the measure, it cannot be concluded with certainty that, within the legal framework applicable in the Netherlands, a national court would have granted a compensation of the same amount (i.e. EUR 52.5 mio.).
- (43) Also, the Court has clarified that releasing an undertaking from a supposed structural or competitive disadvantage does not enable it to escape the classification as State aid⁷. The argument brought forward by the Netherlands that the measure aims at alleviating a disadvantage does not preclude a measure being categorised as State aid.
- (44) Based on the above, it cannot be excluded that the measure leads to a selective advantage for Vattenfall.

3.1.3. *Impact on competition and on trade between Member States*

- (45) The phase-out of coal-fired electricity generation means that the electricity these plants would have produced will now have to be produced by other generators, which is likely to affect the merit curve and hence the electricity wholesale price.
- (46) In view of the fact that the Dutch market is well-connected and coupled with the bidding areas of neighbouring countries, the Commission considers that the measure must be assumed to impact competition and trade between Member States.

3.1.4. *Conclusion regarding existence of State aid*

- (47) In line with the *Astéris* judgment, the Commission considers that where a measure solely grants to the affected undertaking the compensation for damages incurred, this compensation does not provide it with an advantage and hence does not constitute State aid in the meaning of Article 107(1) TFEU. The Commission also considers that a legal framework is in place in Dutch law that may entitle operators whose rights as owners are affected to a compensation and that it cannot be excluded that such right to compensation exists.

⁷ Judgment of the Court delivered on 26 October 2016 in Case C-211/15 P *Orange vs. Commission*, ECLI:EU:C:2016:798, points 44 - 45.

- (48) However, on the basis of the information provided by the Dutch authorities it cannot be concluded with a sufficient degree of certainty that a right to a compensation of EUR 52.5 mio. exists in the present case. Therefore, it cannot be excluded that the measure confers State aid on the undertaking concerned.
- (49) In any event, in the present case a definitive conclusion as to whether the measure provides the operator with an advantage and thus constitutes State aid pursuant to Article 107(1) TFEU does not have to be drawn because even if State aid were involved, the Commission considers that the measure is compatible with the internal market for the reasons explained in the following section.

3.2. Legality of the aid

- (50) The Commission notes that the Netherlands adopted the closure law on the 11 of December 2019 and took the decision to grant the compensation on 20 December 2019. It also notes that the compensation has been paid.
- (51) Pursuant to Article 108(3) TFEU the Member State shall not put State aid measures into effect until they are approved by the Commission.
- (52) The Commission notes that the Netherlands has closed Hemweg against a compensation before the measure had been approved by the Commission.
- (53) In as far as the measure constitutes State aid, the Commission regrets that the Netherlands did not respect the standstill obligation under Article 108(3) TFEU.

3.3. Compatibility assessment

- (54) On the basis of Article 107(3)(c) TFEU, the Commission may consider compatible with the internal market State aid to facilitate the development of certain economic activities within the European Union, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.
- (55) The Commission has assessed the compatibility of the measure directly under Article 107(3)(c) TFEU because no Guidelines have been adopted that provide guidance as to the Commission's assessment of similar measures. In particular, the measure is not covered by any of the categories described in Section 1.2 of the Guidelines on State aid for environmental protection and energy 2014-2020⁸ (hereafter: EEAG), as there are no provisions for aid to compensate for the closure of electricity generation plants.
- (56) In the absence of specific guidance by the EEAG, the measure must be assessed directly under Article 107(3)(c) TFEU.
- (57) To assess whether an aid measure can be considered compatible with the internal market, the Commission generally analyses whether the design of the aid measure ensures that the positive impact of the aid towards an objective of common interest exceeds its potential negative effects on trade and competition. It does so by assessing the following criteria:
- a) contribution to a well-defined objective of common interest;
 - b) need for State intervention;
 - c) appropriateness of the aid measure;
 - d) incentive effect;

⁸ OJ C 200, 28.6.2014, p. 1.

- e) proportionality of the aid;
- f) avoidance of undue negative effects on competition and trade between Member States;

Where the assessment demonstrates that the measure meets all of these criteria, the measure can be considered compatible with the internal market.

3.3.1. *Common objective*

- (58) In order to be compatible with Article 107(3)(c) TFEU, an aid must contribute to a well-defined objective of common interest. In the Communication on the Sustainable Europe Investment Plan, which is part of the European Green Deal, the Commission has recognised that the closure of coal fired power plants is an area which is crucial to achieve the transformation to a climate-neutral economy. Furthermore, the Communication stresses that future State aid policy should facilitate the phasing out of fossil fuels, in particular those that are most polluting.
- (59) The primary objective of the measure is to reduce CO₂ emissions in the Netherlands. In light of the EU's objective to reduce its greenhouse gas emissions progressively over time to achieve the transformation towards a low carbon economy and in view of the Paris Agreement, the Netherlands has committed to a 49% reduction in CO₂ emissions (compared to 1990) by 2030. In order to achieve this the Netherlands needs to reduce its CO₂ emissions substantially. Around a quarter of the country's emissions can be traced back to electricity generation and coal-fired power plants are by far the biggest emitters of greenhouse gases.
- (60) This is why the government adopted the closure law to phase-out coal fired generation by 2030. The closure law foresees the closure of five coal-fired power plants.
- (61) In addition, on 20 December 2019 the Dutch Supreme Court⁹ confirmed an earlier verdict, which ordered the State to achieve a significant reduction of CO₂ emissions already by 2020 (25% compared to 1990). The State decided to achieve this significant CO₂ reduction in part through the early closure of the Hemweg plant against a compensation, as it emitted around 3.6 megatons of CO₂ annually.
- (62) Hemweg was obliged by law to stop operating at the end of 2019. The plant was selected primarily on the basis of the degree of its pollution (in CO₂/kWh) and its age, as well as its inability to convert to non-fossil power generation. Being a profitable plant, it would have continued operating for [...] at least. As a consequence of its closure, Hemweg is no longer emitting CO₂ emissions and electricity will now be generated by other, less polluting plants instead.
- (63) Vattenfall requested and obtained, according to Article 4 of the closure law, to be compensated for the early closure of its power plant Hemweg.
- (64) In that respect, the Commission notes that the closure law obliged the most polluting plant to shut down in less than a month, whereas the others were given a transitional period from five to ten years to further recover investments, make additional profits and envisage the opportunity to possibly convert to other generation fuels.

⁹ The Netherlands vs. Urgenda (ECLI:NL:HR:2019:2006).

- (65) This early closure of Hemweg had therefore the result that the Netherlands are already reducing their CO₂ emissions. The positive effects on the environment, therefore, have been anticipated compared to the effects that will occur at a later stage, when the other plants, benefitting from the transitional period, will start to close down.
- (66) Not only the environmental benefits of reducing CO₂ emissions have started earlier compared to the other coal-fired power plants, but also earlier compared to the time span which would have likely elapsed if, instead of granting the compensation as they did, the Dutch authorities had to undergo national judicial proceedings.
- (67) The Netherlands notes that Hemweg is subject to the ETS. It could be argued that the measure leads to an increase of CO₂ allowances available on the market following the phase-out of this installation. Such an increase would result in a price drop of CO₂ allowances, which could potentially put at risk the environmental objective of the measure.
- (68) This issue was also examined by the Commission in 2016, when Germany intended to mothball and subsequently close eight lignite-fired power plant blocks¹⁰. At the time it was concluded that the effect of the closure of these coal-fired power plants with a joint generating capacity of 2 730 MW on the ETS price was expected to be minimal.
- (69) In the current case, the Netherlands argues that Hemweg had an installed capacity of 650 MW and was responsible for only 0.22% of the EU's CO₂ emissions falling under the ETS and that the price impact is, therefore, expected to be negligible. As a result, the Netherlands does not expect the closure of Hemweg to have a significant impact on the ETS price.
- (70) In view of the above, the Commission considers that the measure at hand contributes to an objective of common interest, namely the reduction of CO₂-emissions in the Netherlands.

3.3.2. *Need for State intervention*

- (71) In order to demonstrate the necessity of the measure it needs to be established that the measure is targeted towards a situation where aid can bring about a material improvement that the market alone cannot deliver.
- (72) Without State intervention the electricity market itself would not have achieved equivalent savings. As mentioned above, Hemweg was a profitable power plant and was expected to operate profitably until at least [...]. Only at that point would considerable investments have been necessary to ensure that the plant is still in compliance with required standards¹¹.
- (73) As already stated, the immediate closure of Hemweg, which therefore did not benefit from the transitional period allowing it to recoup the investment, make profit and reflect about possible conversion, followed by the compensation, allows the Netherlands to already reduce their CO₂ emissions, without having to wait for the outcome of the national proceeding that would have been very likely

¹⁰ Commission decision of 27.5.2016: Closure of German lignite-fired power plants (SA.42536).

¹¹ The Netherlands informed the Commission that Hemweg complied with the Industrial Emissions Directive (2010/75/EU) and the upcoming standards for Large Combustion Plants for the core power plant processes, which are applicable as of 17 August 2021 with a minor exception (reflected in the forecasted investments and deducted from the compensation amount).

initiated by Vattenfall in case they did not reach an agreement on the amount of the compensation.

3.3.3. *Appropriateness of the measure*

- (74) Looking at various policy options described in recital (5) the Netherlands came to the conclusion that an efficient measure to help it comply with the Urgenda judgment - which mandated CO₂ savings of 25% by 2020 compared to 1990 - was to order the closure of the Hemweg power plant by the end of 2019 against a compensation. The alternative measures were either technically not feasible or will not achieve the same environmental impact.
- (75) As already noted, the four coal-fired power plants benefitting from the transition period of five to ten years are still operating and continue, as a consequence, to emit CO₂ in the atmosphere. Therefore, even if these plants will have to shut down in a near future, the environmental benefit of their closure will concretise at a later stage. The compensation granted to Hemweg allowed the Dutch authorities to already reducing the CO₂ emission in the atmosphere.
- (76) The Commission considers that the Netherlands has assessed alternative measures and that the present measure is targeted at the environmental aim pursued whilst mitigating the impact on electricity market functioning and employment. Therefore, the Commission considers the measure to be an appropriate instrument to achieve CO₂ emission reductions that contribute to the national Dutch target of 25% by the end of 2020 and 49% by 2030.

3.3.4. *Incentive effect*

- (77) To establish whether the measure has an incentive effect, it must be demonstrated that it changes the behaviour of the undertaking concerned in such a way that it engages in an activity which it would not carry out without the aid or which it would carry out in a restricted or different manner.
- (78) The Commission recalls that Hemweg was a profitable coal fired power plant, which under current market conditions would have continued to generate electricity at least until [...]. Given that the measure forces it to stop generating electricity earlier than this, in exchange for compensation, there is a clear incentive effect on Hemweg, as without the compensation, Vattenfall would have probably tried to slow down the process of closing, by introducing national legal actions in order to receive compensation it esteemed to be entitled to.

3.3.5. *Proportionality of the aid*

- (79) Under Article 107(3)(c) TFEU the aid amount must be limited to the minimum needed to incentivise the desired outcome. Also the Communication on the Sustainable Europe Investment Plan has highlighted that the Commission would examine the proportionality of support for coal closures in particular¹². In the present case, it therefore needs to be assessed whether there is a risk of overcompensating the beneficiary.
- (80) The compensation granted is based on foregone profits until [...], when a major upgrade of the power plant would have been necessary for it to continue to operate. The amount of EUR 52.5 mio. reflects the outcome of negotiations between Vattenfall and the Ministry of Economic Affairs and Climate Policy,

¹² Section 4.3.4., p. 14.

assisted by independent experts. It is based on projections of future costs and revenues that the plant would have incurred if it would have continued operating for [...].

- (81) The Commission considers that the assumptions underlying the calculation are reasonable. Assumptions of plant efficiency and unplanned availability are based on historical figures over 2015-2017. The expected future cash flows have been discounted using a Weighted Average Cost of Capital in order to reflect corporate risks. The calculation of the compensation amount incorporates dismissal costs for staff, which have been estimated taking into account several parameters such as the number of full-time equivalent (FTE), average salary costs, social plan in place and natural staff turnover. The calculation of the compensation amount does not include any costs for early termination of contracts, because it has been showed that the termination of existing contracts would not lead to a prejudice for Vattenfall according to contractual notice periods. The calculation of the compensation amount incorporates the tax advantage resulting from the accelerated depreciation of the plant.
- (82) The Commission therefore considers the compensation is proportionate and does not represent an overcompensation.

3.3.6. Avoidance of undue negative effects on competition and trade between Member States

- (83) The negative effects of the measure on competition and trade must be sufficiently limited, so that the overall balance of the measure is positive.
- (84) As underlined in section 3.1.3 the measure has an effect on the competition on the internal electricity market. However, it appears from the assessment of the impact of the measure that these effects are limited due to the design of the measure and the current state of the electricity market.
- (85) Whilst the phase-out of Hemweg makes a considerable contribution to the environment, it will be replaced by other generators, selected on the basis of the price signal on the wholesale electricity market.
- (86) Therefore, the Commission finds that the aid does not lead to undue negative effects on competition and trade between Member States.

3.3.7. Conclusion regarding compatibility with the internal market

- (87) Consequently, the Commission concludes that, in view of the limited distortions of competition and trade resulting from the envisaged measure, the overall balance with regard to the increased level of environmental protection in the form of CO₂ emission reductions is positive.

4. CONCLUSION

The Commission accordingly concludes that the measure consisting in the compensation of Vattenfall for the closure of Hemweg by the Netherlands is compatible with the internal market in accordance with Article 107(3)(c) of the Treaty on the Functioning of the European Union.

Yours faithfully
For the Commission
Margrethe VESTAGER
Executive Vice-President