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**Subject: State Aid SA.63576 (2021/N) – Netherlands
NL_LNV_AGRO_EIA Aid scheme financing uncovered fixed costs
agricultural and horticultural undertakings COVID-19**

Excellency,

1. PROCEDURE

- (1) By electronic notification of 17 June 2021, the Netherlands notified support for uncovered fixed costs (Subsidy scheme financing uncovered fixed costs agricultural and horticultural undertakings COVID-19, the “measure”) under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (the “Temporary Framework”).¹
- (2) The Netherlands exceptionally agrees to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union (“TFEU”), in conjunction with Article 3 of Regulation 1/1958² and to have this Decision adopted and notified in English.

¹ Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 91I, 20.3.2020, p. 1.

² Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

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2. DESCRIPTION OF THE MEASURE

- (3) The Netherlands considers that the COVID-19 outbreak affects the real economy. The measure forms part of an overall package of measures and aims to ensure that sufficient liquidity remains available in the market, to counter the liquidity shortage faced by undertakings because of the outbreak, to ensure that the disruptions caused by the outbreak do not undermine the viability of the undertakings and thereby to preserve the continuity of economic activity during and after the outbreak.
- (4) The Netherlands confirms that the aid under the measure is not conditioned on the relocation of a production activity or of another activity of the beneficiary from another country within the EEA to the territory of the Member State granting the aid. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA.
- (5) The compatibility assessment of the measure is based on Article 107(3)(b) TFEU, in light of sections 2 and 3.12 of the Temporary Framework.

2.1. The nature and form of aid

- (6) The measure provides aid in the form of direct grants.

2.2. Legal basis

- (7) The legal basis for the measure is (i) the “Kaderwet EZK- en LNV-subsidies” (“Framework Act for the granting of subsidies by the Minister for the Economy Affairs and the Ministry of Agriculture, Nature and Food Quality”)³, and (ii) the draft of the “Regulation for subsidies for the financing of uncovered fixed cost of agricultural and horticultural undertakings COVID-19” (“Ontwerp-regeling subsidie financiering ongedekte vaste kosten land- en tuinbouwbedrijven COVID-19”) of the Ministry of Agriculture, Nature and Food Quality (hereinafter the “draft regulation”).⁴

2.3. Administration of the measure

- (8) The Netherlands Enterprise Agency (“Rijksdienst voor Ondernemend Nederland”) (hereinafter “RVO”) of the Ministry of Economic Affairs and Climate Policy is, on behalf of the Ministry of Agriculture, Nature and Food quality, responsible for administering the measure.

2.4. Budget and duration of the measure

- (9) The estimated budget of the measure, which is financed from the general budget of the State, is EUR 20 million.

³ Act of 29 February 1996 laying down rules for the granting of subsidies by the Minister for Economic Affairs, as into force since 1 January 2019, Dutch Official Journal (“Staatsblad”) with reference number [Stb. 1996, 180]. The last change to the law was signed into law on 5 December 2018 [Stb. 2018, 487]. A consolidated version of the law can be found here, alongside links to all relevant publications in the NL Official Journal: <https://wetten.overheid.nl/BWBR0007919/2019-01-01>

⁴ Draft Regulation of the Ministry of Agriculture, Nature and Food Quality, No. WJZ/21055186.

- (10) Aid may be granted under the measure as from the RVO's approval of the successful applications until no later than 31 December 2021.

2.5. Beneficiaries

- (11) The final beneficiaries of the measure are SMEs and large enterprises⁵ active in the Netherlands. Financial institutions are excluded as eligible final beneficiaries.
- (12) Aid may not be granted under the measure to undertakings that were already in difficulty within the meaning of the Agricultural Block Exemption Regulation⁶ on 31 December 2019.

2.6. Sectoral and regional scope of the measure

- (13) The measure is open to primary producers in the agricultural and horticultural sector and it applies to the whole territory of the Netherlands.

2.7. Basic elements of the measure

- (14) The COVID-19 outbreak has major consequences for agricultural companies. The objective of the notified measure is to support these undertakings through direct grants, thus maintaining their liquidity despite the reduction or suspension of their activities due to the COVID-19 crisis. The undertakings concerned are confronted with continuing high fixed costs and a lack of turnover due to the Dutch corona measures. Eligible undertakings must be active in the primary agricultural and horticultural production and have suffered a decline in turnover during the relevant eligible period between 1 January 2021 and 30 June 2021 of at least 30%, compared to the same period in 2019.
- (15) The definition of "turnover" in Article 1 of the draft regulation is based on net turnover in the meaning of Article 2:377(6) of the Dutch Civil Code. This must correspond to the turnover amount included in the annual financial statements of a company.
- (16) The definition of turnover used in the draft regulation is also in line with the turnover as defined in the Turnover Tax Act 1968. The amount for which a turnover tax declaration is submitted in accordance with the provisions of this Act counts as turnover under the measure.
- (17) Turnover related to activities exempted from turnover tax and from activities abroad must be accounted for separately from the turnover tax return and be proven by the financial administration or other evidence. .
- (18) The eligible undertakings must be registered in the Dutch Trade Register on 15 March 2020. The beneficiaries of the measure are all small, medium sized or large undertakings active in the primary agricultural and horticultural sector as

⁵ As defined in Annex I to Commission Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 193, 1.7.2014, p. 1.

⁶ As defined in Article 2(14) of Commission Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 193, 1.7.2014, p. 1.

registered within a specified range of codes of the Standard Industrial Classifications (Standaard Bedrijfsindeling, SBI) and specified in the draft regulation. The Dutch authorities estimate that about 200 primary producers of agricultural products will apply for aid.

- (19) The period during which beneficiaries can submit their application for aid is scheduled from 1 July 2021 until 31 August 2021. However, the period for submission of applications will only start after the notification of the Commission decision on the approval of the measure.
- (20) The aid will be provided in the form of direct grants. It will be granted for uncovered fixed costs incurred between 1 January 2021 and 30 June 2021.
- (21) According to the Dutch authorities, uncovered fixed costs for which aid can be granted under this scheme are fixed costs incurred by undertakings which were not covered by profits or any other sources during the eligible period (i.e. by income minus variable costs). One-off impairment losses will not be eligible for aid. The aid under this measure may be granted based on forecasted losses, while the final amount of aid will be determined after realisation of the losses on the basis of audited accounts.
- (22) Eligible fixed costs are the depreciation of fixed assets and other operating expenses. Depreciation of fixed assets is the depreciation of sustainable means of production, such as machinery, buildings, means of transport and software. The other operating expenses include operating expenses that do not relate to the purchase value of turnover and the depreciation of fixed assets. For agriculture, the costs of caring for plants and animals are also included in the fixed costs, as they cannot be avoided, even if turnover is not achieved.
- (23) The agricultural companies can apply for aid for the first and second quarter of 2021, up to a maximum aid intensity of 70% of the uncovered fixed costs with a maximum amount of EUR 550 000 for SMEs and EUR 600 000 for large enterprises per quarter.
- (24) The total aid amount per undertaking will not exceed the overall cap of EUR 1.1 million for SME's and EUR 1.2 million for large enterprises. All figures are before deduction of any tax or other charges.
- (25) Once the RVO has approved the application for aid (recital (19)), a one-off advance of 80% of the aid amount is paid, which is based on the estimate of the uncovered fixed cost included in the application for aid.
- (26) The final amount of the aid is determined on the basis of a formal application, which the beneficiary submits between 1 October 2021 and 30 November 2021 and which includes the turnover of the eligible period, the reference period, the uncovered fixed costs and statements by the beneficiary, an accountant or an external financial expert with regard to turnover and uncovered fixed costs. The Dutch authorities confirmed that RVO verifies and calculates the final amount of aid and that any payment exceeding the final amount will be recovered. In this regard, RVO uses, among others, relevant data already submitted under the TVL scheme (see recital (27)), reference data from the Tax Department as well as information from the Fiscal Information and Investigation Service (FIOD) and data from internal checks conducted by the RVO staff. The Tax Department's

data is used for verification purposes and concerns data on the applicants' turnover. If needed, the applicant can be requested to supply additional evidence. Furthermore, RVO carries out additional targeted checks, also after the final granting of the aid, with a view to potential risks of abuse and fraud.

- (27) The aid of the measure will be reduced by the amount of liquidity support for fixed costs in the same period to which the beneficiaries are entitled under the previously approved aid scheme "*COVID-19: direct grant scheme to support the fixed costs for small and medium-sized enterprises affected by the COVID-19 outbreak*" ("*Tegemoetkoming Vaste Lasten, (TVL)*")⁷.
- (28) Undertakings may apply for aid under the notified measure only if they have already applied for the maximum amount of aid for which they can be eligible under the TVL.
- (29) Non-agricultural producers and all agricultural undertakings that were in difficulty on 31 December 2019 will be excluded (recital (12)). The Dutch authorities have chosen not to use the derogation of section 3.12 point 87 under f of the Temporary Framework, therefore no aid will be granted to micro and small undertakings that were in difficulty on 31 December 2019.
- (30) Any amount received from other instruments or sources (e.g. aid or insurance premiums) to cover the same eligible costs will be deducted from the amount, which could be granted under the notified measure.
- (31) 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), European Union Solidarity Fund (EUSF) or the Coronavirus Response Investment Initiative (CRII).

2.8. Cumulation

- (32) The Dutch authorities confirm that aid granted under the measure may be cumulated with aid under the agricultural de minimis Regulation⁸ or the Agricultural Block Exemption Regulation⁹ provided the provisions and cumulation rules of those Regulations are respected.

⁷ The aid scheme "*COVID 19: direct grant scheme to support fixed costs of small and medium-sized enterprises affected by the COVID-19 outbreak*" has been approved under section 3.1 of the Temporary Framework by State aid measure SA.57712 (2020/N) and amended by SA.59535 (2020/N), SA.60166 (2021/N) and SA.62241 (2021). This aid scheme has a maximum aid amount of EUR 225 000 per agricultural company.

⁸ Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the agriculture sector (OJ L 352, 24.12.2013 p. 9).

⁹ Commission Regulation (EC) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union, OJ L 193, 1.7.2014, p. 1.

- (33) The Dutch authorities confirm that aid under the notified measure may be cumulated with other forms of Union financing, provided that the maximum aid intensities indicated in the relevant Guidelines or Regulations are respected.
- (34) The Dutch authorities confirm that aid granted under the measure may be cumulated with aid granted under other measures approved by the Commission under other sections of the Temporary Framework provided the provisions in those specific sections are respected.
- (35) The Dutch authorities confirm that if the beneficiary receives aid on several occasions or in several forms under the measure or aid under other measures approved by the Commission under section 3.12 of the Temporary Framework, the overall maximum cap per undertaking, as set out in point 87(d) of that framework, will be respected.
- (36) The Dutch authorities confirm that aid granted under the measure shall not be cumulated with other aid for the same eligible costs.

2.9. Monitoring and reporting

- (37) The Dutch authorities confirm that they will respect the monitoring and reporting obligations laid down in section 4 of the Temporary Framework (including the obligation to publish relevant information on each individual aid above EUR 10 000 on the comprehensive national State aid website or Commission's IT tool within 12 months from the moment of granting¹⁰).

3. ASSESSMENT

3.1. Lawfulness of the measure

- (38) By notifying the measure before putting it into effect, the Dutch authorities have respected their obligations under Article 108(3) TFEU (see recital (19)).

3.2. Existence of State aid

- (39) 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.
- (40) The measure is imputable to the State, since it is administered by the Netherlands Enterprise Agency on behalf of the Ministry of Agriculture, Nature and Food quality (recital (8)) and it is based on the national legal basis mentioned in recital (7). It is financed through State resources, since it is financed by public funds (recital (9)).
- (41) The measure confers an advantage on its beneficiaries in the form of direct grants. The measure thus confers an advantage on those beneficiaries, which they would not have had under normal market conditions.

¹⁰ Referring to information required in Annex III to Commission Regulation (EU) No 702/2014.

- (42) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, in particular undertakings active in the primary horticulture and agricultural sector excluding the financial sector.
- (43) 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.
- (44) In view of the above, the Commission concludes that the measure constitutes aid within the meaning of Article 107(1) TFEU. The Dutch authorities do not contest that conclusion.

3.3. Compatibility

- (45) Since the measure involves aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether that measure is compatible with the internal market.
- (46) Pursuant to Article 107(3)(b) TFEU the Commission may declare compatible with the internal market aid “*to remedy a serious disturbance in the economy of a Member State*”.
- (47) By adopting the Temporary Framework on 19 March 2020, the Commission acknowledged (in section 2) that “*the COVID-19 outbreak affects all Member States and that the containment measures taken by Member States impact undertakings*”. The Commission concluded that “*State aid is justified and can be declared compatible with the internal market on the basis of Article 107(3)(b) TFEU, for a limited period, to remedy the liquidity shortage faced by undertakings and ensure that the disruptions caused by the COVID-19 outbreak do not undermine their viability, especially of SMEs*”.
- (48) The measure aims at ensuring sufficient liquidity of undertakings active in primary agricultural at a time when the outbreak is affecting the wider economy and leading to severe disturbances of the real economy of Member States.
- (49) The measure is one of a series of measures conceived at national level by the Dutch authorities to remedy a serious disturbance in their economy. The measure covers uncovered fixed costs of undertakings for which the COVID-19 outbreak resulted in the suspension or reduction of their business activity, thus contributing to the preservation of the viability, production infrastructure and social stability in rural areas. The importance of the measure to ensure the viability of primary producers in the agricultural and horticultural sectors, by means of aid for the uncovered fixed costs of undertakings, for which the COVID-19 outbreak resulted in the suspension or reduction of their business activity, is widely accepted by economic commentators and the measure is of a scale, which can be reasonably anticipated to produce effects across the entire primary agriculture and horticulture sector in the Netherlands. Furthermore, the measure has been designed to meet the requirements of a specific category of aid (“aid in the form of support for uncovered fixed costs”) described in section 3.12 of the Temporary Framework.

- (50) The Commission accordingly considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State and meets all the conditions of the Temporary Framework. In particular:
- Aid is granted under the measure no later than 31 December 2021 and covers uncovered fixed costs incurred during the period from 1 January 2021 to 30 June 2021. The measure therefore complies with point 87(a) of the Temporary Framework.
 - Aid is granted under the measure on the basis of a scheme to undertakings that suffer a decline in turnover during the relevant eligible period of at least 30% compared to the same period in 2019 (recital (14)). The measure therefore complies with point 87(b) of the Temporary Framework.
 - Uncovered fixed costs are defined under the measure in accordance with point 87(c) of the Temporary Framework and the aid intensity will not exceed 70% of the uncovered fixed costs. The losses of undertakings from their profit and loss statements during the eligible period¹¹ are considered to constitute uncovered fixed costs. The aid under this measure may be granted based on forecasted losses, while the final amount of aid will be determined after realisation of the losses on the basis of audited accounts and on the basis of tax accounts (recitals (15), (16), (17) and (26)). The Commission notes that the calculation of the final amount takes account of relevant data of both financial accounts and turnover-tax accounts, thus reflecting the turnover and uncovered fixed cost needed to establish the aid of the beneficiary. In addition, the Dutch authorities explained that the method enables an effective implementation of the measure and limits the administrative burden. The Commission finds this approach appropriately justified as it contributes to an efficient and accurate implementation of the measure. Any payment exceeding the final amount of the aid must be recovered (recital (26)). The measure therefore complies with point 87(c) of the Temporary Framework.
 - The aid takes the form of direct grants (recital (6)). The overall nominal value of the direct grants will not exceed EUR 1.1 million per SME and not exceed EUR 1.2 million per large enterprise. All figures used must be gross, that is, before any deduction of tax or other charges (recital (24)). The measure therefore complies with point 87(d) of the Temporary Framework.
 - The aid under the measure shall not be cumulated with other aid for the same eligible costs (recitals (36)). The measure therefore complies with point 87(e) of the Temporary Framework.
 - Aid may not be granted under the measure to undertakings that were already in difficulty on 31 December 2019 (recitals (12) and (29)). The measure therefore complies with point 87(f) of the Temporary Framework.

¹¹ One-off impairment losses are not included in the calculation of the losses.

- (51) The Dutch authorities confirm that the aid under the measure is not conditioned on the relocation of a production activity or of another activity of the beneficiary from another country within the EEA to the territory of the Member State granting the aid. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA (recital (4)).
- (52) The Dutch authorities confirm that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected (recital (37)). The Dutch authorities further confirm that the aid under the measure may only be cumulated with other aid, provided the specific provisions in the sections of the Temporary Framework and the cumulation rules of the relevant Regulations are respected (recitals (32) to (35)).
- (53) The Commission therefore considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State pursuant to Article 107(3)(b) TFEU since it meets all the relevant conditions of the Temporary Framework.

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(3)(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/eojade/isef/index.cfm>.

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President