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**Subject: State Aid SA.61300 (2021/N) – The Netherlands  
COVID-19: Aid to zoos under section 3.1 of the Temporary  
Framework**

Excellency,

## 1. PROCEDURE

- (1) By electronic notification of 5 February 2021, following pre-notification contacts, the Netherlands notified the above-mentioned scheme (“the measure”) under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (“the Temporary Framework”).<sup>1</sup>

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<sup>1</sup> 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, as amended by Communication from the Commission C(2020) 2215 final of 3 April 2020 on the Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 112I, 4.4.2020, p. 1, by Communication from the Commission C(2020) 3156 final of 8 May 2020 on the Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 164, 13.5.2020, p. 3, by Communication from the Commission C(2020) 4509 final of 29 June 2020 on the Third Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 218, 2.7.2020, p. 3, by Communication from the Commission C(2020) 7127 final of 13 October 2020 on the Fourth Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak and amendment to the Annex to the Communication from the Commission to the Member States on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance, OJ C 340 I, 13.10.2020, p. 1 and by Communication from the Commission C(2021) 564 final of 28 January 2021 on the 5th Amendment to the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak and amendment to the Annex to the Communication from the

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- (2) The Netherlands exceptionally agrees to waive its rights deriving from Article 342 TFEU, in conjunction with Article 3 of Regulation 1/1958,<sup>2</sup> and to have this Decision adopted and notified in English.

## 2. DESCRIPTION OF THE MEASURE

- (3) The Netherlands considers that the COVID-19 outbreak continues to affect the real economy.
- (4) The number of confirmed cases in the Netherlands on 12 January 2021 was 883 135. As in other countries, in response to the COVID-19 outbreak the Netherlands has taken sequential mitigation measures to prevent the spread of COVID-19 in the country. Non-compliance with the limitations imposed or violation of the rules was and is generally subject to sanctions.
- (5) On 12 March 2020, the Dutch authorities cancelled events with more than 100 visitors throughout the Netherlands. This included museums, concert halls, theatres, sports clubs and sport competitions. Zoos in the Netherlands were closed from 15 March 2020 onwards by the local competent authorities (called “safety regions” [*veiligheidsregio's*]) based on emergency decrees [*noodverordeningen*]. The closure of the zoos was temporary and they gradually reopened since 15 May 2020, albeit with restrictions such as the rule to ensure a 1,5 meter distance between visitors.
- (6) According to the Dutch authorities, the impact of the closure on zoos was significant. Under normal circumstances zoos hardly make a profit and many of them have a not for profit status. The Dutch authorities estimate that the different measures that they adopted to limit the spread of COVID-19 led to a drop in revenues for zoos of about EUR 150 million in 2020.
- (7) According to the Dutch authorities, during spring and summer, zoos normally build up a buffer that they need in winter to take care of the animals and keep the zoo operational. Zoos have high expenses for animal care (staff, heating, food, environmental enrichment, cleaning) and ensuring the safety of animals, visitors and staff. Ensuring safety of visitors goes hand in hand with ensuring safety of animals and staff. Generally, those costs do not vary when the zoos are closed.
- (8) Due to COVID-19-related measures, zoos continued to suffer financially even when they were allowed to be open again.
- (9) 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.

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Commission to the Member States on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance, OJ C 34, 1.2.2021, p. 6.

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

- (10) The Netherlands confirmed 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 compatibility assessment of the measure is based on Article 107(3)(b) TFEU, in light of sections 2 and 3.1 of the Temporary Framework.

### **2.1. The nature and form of aid**

- (11) The measure is a scheme providing aid in the form of direct grants.

### **2.2. Legal basis**

- (12) The legal basis for the measure is the *Kaderwet EZK- en LNV subsidies*<sup>3</sup>, *Kaderbesluit nationale EZ subsidies*<sup>4</sup> and the (draft) *Regeling subsidie dieren tuinen COVID-19*.

### **2.3. Administration of the measure**

- (13) The Minister of Agriculture, Nature and Food quality is the granting authority. The RVO (Netherlands Enterprise Agency) will implement the measure. RVO is a part of the Ministry of Agriculture, Nature and Food quality.

### **2.4. Budget and duration of the measure**

- (14) The estimated budget of the measure is EUR approximately 9 million.
- (15) Zoos can submit an applications for aid between 16 February and 6 March 2021. A decision on the application will be taken within 26 weeks after the final day of the application period. In any event, the granting date will be no later than 31 December 2021.

### **2.5. Beneficiaries**

- (16) The final beneficiaries of the measure are zoos (excluding petting zoos and animal shelters). All zoos that can benefit from the measure are SMEs<sup>5</sup> active in the Netherlands.
- (17) Aid may not be granted under the measure to medium<sup>6</sup> and large enterprises that were already in difficulty within the meaning of the General Block Exemption

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<sup>3</sup> <https://wetten.overheid.nl/BWBR0007919/2019-01-01>.

<sup>4</sup> <https://wetten.overheid.nl/BWBR0024796/2018-01-01>.

<sup>5</sup> As defined in Annex I to Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187, 26.6.2014, p. 1.

<sup>6</sup> As defined in Annex I to Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187, 26.6.2014, p. 1.

Regulation (“GBER”)<sup>7</sup> on 31 December 2019. Aid may be granted to micro and small enterprises that were in difficulty within the meaning of the GBER on 31 December 2019, if those enterprises, at the moment of granting the aid, are not subject to collective insolvency procedure under national law and they have not received rescue aid<sup>8</sup> or restructuring aid.<sup>9</sup>

## **2.6. Sectoral and regional scope of the measure**

- (18) The measure applies to zoos (all of them SMEs) in the Netherlands. The criteria to receive aid are set in such a way that petting zoos and animal shelters are excluded.

## **2.7. Basic elements of the measure**

- (19) Under the measure, the Dutch government will provide direct grants covering up to 100% of the zoos’ costs linked to animal care (‘eligible costs’) incurred in the period 15 May 2020 until 30 September 2020 (‘compensation period’).<sup>10</sup> Costs linked to animal care constitute approximately 50% of the overall costs of a zoo and include the following:
- Staff costs for animal care. That activity equals to approximately 70% of the overall staff costs since approximately 45% of the staff take care of the animals and, about 25% of the staff facilitates their work.
  - The costs for food, heating, environmental enrichment, cleaning, veterinary costs, etc.
  - Costs to make sure that animals, visitors and staff stay safe.
- (20) The exact percentage of eligible costs for which aid will be granted depends on the turnover loss in the compensation period compared to the period 15 May until 30 September 2019 (‘reference period’).
- (21) The formula to calculate the aid is as follows: [fixed costs for animal care in EUR] \* [percentage loss of turnover in the compensation period, compared with the reference period]. An example is provided below:
- Calculation example:

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<sup>7</sup> As defined in Article 2(18) of Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187, 26.6.2014, p. 1.

<sup>8</sup> Alternatively, if they have received rescue aid, they have reimbursed the loan or terminated the guarantee at the moment of granting of the aid under the notified measure.

<sup>9</sup> Alternatively, if they have received restructuring aid, they are no longer subject to a restructuring plan at the moment of granting of the aid under the notified measure.

<sup>10</sup> For the period before 15 May 2020, zoos can also receive aid, see the measure approved in case SA.59706.

- Costs for animal care in the compensation period: EUR 1.3 million;
  - Loss of turnover in the compensation period compared with the reference period: 15%;
  - Aid: EUR 1.3 million \* 15% = EUR 195 000.
- (22) Other State aid for the same compensation period for the same eligible costs will be deducted from the costs of animal care.
- (23) For zoos that have a turnover loss that would lead to aid of more than EUR 1.8 million, the aid will be capped at EUR 1.8 million; all figures used must be gross, that is, before any deduction of tax or other charges.

## **2.8. Cumulation**

- (24) The Dutch authorities confirm that aid granted under the measure may be cumulated with aid under de minimis Regulations<sup>11</sup> or the GBER provided the provisions and cumulation rules of those Regulations are respected.
- (25) 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.
- (26) 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 3.1 of the Temporary Framework, the overall maximum cap per undertaking, as set out in points 22(a) of that framework, will be respected.

## **2.9. Monitoring and reporting**

- (27) 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 100 000 granted under the on the comprehensive national State aid website or Commission's IT tool within 12 months from the moment of granting<sup>12</sup>).

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<sup>11</sup> Commission Regulation (EU) No 1407/2013 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 (OJ L 352, 24.12.2013, p. 1), and Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest (OJ L 114, 26.4.2012, p. 8).

<sup>12</sup> Referring to information required in Annex III to the GBER.

### 3. ASSESSMENT

#### 3.1. Lawfulness of the measure

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

#### 3.2. Existence of State aid

- (29) 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.
- (30) The measure is imputable to the State, since it is administered by the RVO (recital (13)) and it is based on the legal act in recital (12). It is financed through State resources, since it is financed by public funds (see recital (11)).
- (31) The measure confers an advantage on its beneficiaries in the form of direct grants (see recital (11)) that they would not have been able to receive under normal market conditions.
- (32) The advantage granted by the measure is selective, since it is awarded only to undertakings that are a zoo and meet the eligibility requirements of the measure (see recitals (16) and (18)).
- (33) The measure is liable to distort competition, since it strengthens the competitive position of its beneficiaries. It also affects trade between Member States, since the beneficiaries are active in sectors in which intra-Union trade exists.
- (34) In view of the above, the Commission concludes that the measure constitutes State aid within the meaning of Article 107(1) TFEU.

#### 3.3. Compatibility

- (35) 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.
- (36) 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*”.
- (37) 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*”.

- (38) The measure aims at providing liquidity to zoos at a time when the normal functioning of markets is severely disturbed by the COVID-19 outbreak and that outbreak is affecting the wider economy and leading to severe disturbances of the real economy of Member States.
- (39) 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. Furthermore, the measure has been designed to meet the requirements of a specific category of aid (“*Limited amounts of aid*”) described in section 3.1 of the Temporary Framework
- (40) 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:
- The aid takes the form of direct grants (recital (11)).  
  
The overall nominal value of the grants will not exceed EUR 1.8 million per undertaking; all figures used must be gross, that is, before any deduction of tax or other charges (see recital (23)). The measure therefore complies with point 22(a) of the Temporary Framework;
  - Aid is granted under the measure on the basis of a scheme (see recital (11)) with an estimated budget as indicated in recital (14). The measure therefore complies with point 22(b) of the Temporary Framework;
  - Aid may not be granted under the measure to medium<sup>13</sup> and large enterprises that were already in difficulty on 31 December 2019 (see recital (17)(16)). The measure therefore complies with point 22(c) of the Temporary Framework. Aid may be granted to micro and small enterprises that were in difficulty on 31 December 2019, if those enterprises, at the moment of granting the aid, are not subject to collective insolvency procedure under national law and they have not received rescue aid<sup>14</sup> or restructuring aid<sup>15</sup> (see recital (17)). The measure therefore complies with point 22(c)bis of the Temporary Framework;
  - Aid will be granted under the measure no later than 31 December 2021 (see recital (15)). The measure therefore complies with point 22(d) of the Temporary Framework;
- (41) The Dutch authorities confirm that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected (recital (27)). 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

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<sup>13</sup> As defined in Annex I to the GBER.

<sup>14</sup> Alternatively, if they have received rescue aid, they have reimbursed the loan or terminated the guarantee at the moment of granting of the aid under the notified measure.

<sup>15</sup> Alternatively, if they have received restructuring aid, they are no longer subject to a restructuring plan at the moment of granting of the aid under the notified measure.

Temporary Framework are respected and the cumulation rules of the relevant Regulations are respected (recitals (24) to (26)).

- (42) 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/elojade/isef/index.cfm>.

Yours faithfully,

For the Commission

Margrethe VESTAGER  
Executive Vice-President

