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**Subject: State Aid SA.103614 (2022/N) – The Netherlands
COVID-19: Temporary subsidy for events 2022**

Excellency,

1. PROCEDURE

- (1) By electronic notification of 5 July 2022, the Netherlands notified the above-mentioned scheme (the “measure”) in compliance with Article 108(3) of the Treaty on the Functioning of the European Union (TFEU). The Dutch authorities provided supplementary information on 8 July 2022.
- (2) The Netherlands exceptionally agrees to waive its rights deriving from Article 342 TFEU, in conjunction with Article 3 of Regulation 1/1958¹ and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURE

- (3) In response to the COVID-19 pandemic, over time, the Dutch authorities have implemented certain health measures, among which prohibition of events by ministerial regulations adopted on the basis of article 58i of the Public Health Act.

¹ 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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Because of these measures, economic actors had to cancel or reschedule their events. Under normal economic circumstances, cancellation insurances with pandemic or force majeure coverage are available. However, the Dutch authorities note that during the COVID-19 pandemic, insurance companies have eliminated pandemic coverage for new insurances and no longer insure new events that are cancelled due to COVID-19 prohibition by public authorities.

- (4) In 2021 Dutch authorities implemented two compensation schemes² that aimed to compensate organisers of events for the damage they suffered from the cancellation of scheduled events as a result of prohibitions on the basis of a ministerial regulation pursuant to the Public Health Act. The present scheme addresses events that were to be held in the period between 1 January 2022 to 30 September 2022, if they have been prohibited by ministerial regulations.
- (5) The Dutch authorities have implemented a full event ban in the period from 19 December 2021 to 26 January 2022 and a ban for events without a fixed seat, such as festivals, in the period from 26 January 2022 to 18 February 2022.
- (6) In that context, the Dutch authorities notified the current scheme, based on Article 107(2)(b) TFEU.

2.1. The nature and form of aid

- (7) The measure provides aid in the form of direct grants and repayable advances.

2.2. Legal basis

- (8) The legal bases for the measure are (i) the Framework Act for subsidies for the Ministry of Economic Affairs and Climate Policy and the Ministry of Agriculture, Nature and Food Quality (Kaderwet EZK- en LNV-subsidies)³, (ii) the Framework Order in Council for subsidies for the Ministry of Economic Affairs and Climate Policy and the Ministry of Agriculture, Nature and Food Quality (Kaderbesluit nationale EZK- en LNV-subsidies)⁴ and (iii) the draft ministerial Regulation “Tijdelijke subsidieregeling evenementen 2022” (draft ministerial Regulation Temporary subsidy events 2022 - hereinafter “the draft Regulation”)⁵. The draft Regulation will be adopted and published and will enter into force after notification of the Commission Decision approving the notified measure.

2.3. Administration of the measure

- (9) The Ministry of Economic Affairs and Climate Policy is responsible for administering the measure. The “Rijksdienst voor Ondernemend Nederland (‘RVO’)” (the “Netherlands Enterprise Agency”), which is part of the Ministry of

² Decision C(2021) 4328 final of 11.6.2021 in case SA.62743 – The Netherlands COVID-19: Guaranteed Compensation Scheme for Annulled Events, OJ C/260/2021, of 2.7.2021 p.42 as amended by decision C(2021) 7671 final of 24.10.2021 in case SA.100223) – The Netherlands COVID-19: Amendment of Guaranteed Compensation Scheme for Annulled Events (SA.62743 OJ C/511/2021 of 17.12.2021, p.12 , and decision C(2022)1044 final of 18.2.2022 in case SA.100781 – The Netherlands COVID-19: Temporary additional subsidy events , OJ C/090/2022 of 25.2.2022, p.10.

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

⁴ <https://wetten.overheid.nl/BWBR0024796/2021-03-09>

⁵ Draft Regulation No WJZ/21320612, provided by the Dutch authorities with the notification.

Economic Affairs and Climate Policy, is the body responsible for the implementation of the measure.

2.4. Budget and duration of the measure

- (10) The estimated budget of the measure is EUR 475 million. The measure is not co-financed by Union Funds.
- (11) The measure covers events that were or are planned to take place fully or partially in the Netherlands between 1 January 2022 (inclusive) and 30 September 2022 (inclusive) and which is cancelled due to a prohibition imposed by ministerial regulation adopted pursuant to Article 58i of the Public Health Act. Beneficiaries can submit an application to participate in the measure at least 3 weeks before the scheduled start date of the event or within 12 weeks from the entry into force of the draft Regulation for events with a scheduled start date before or less than 6 weeks after the entry into force of the draft Regulation. The Dutch authorities expect payment of the aid to take place within 19 weeks from the request for the award of the compensation.

2.5. Beneficiaries

- (12) The beneficiaries of the measure are natural or legal persons registered in the Dutch commercial register, including non-profit organisations, except legal persons governed by public law or administrative bodies⁶. The beneficiaries of the measure are SMEs and large enterprises⁷.
- (13) Aid may not be granted under the measure to medium⁸ and large enterprises that were already in difficulty within the meaning of the Block Exemption Regulations⁹ on 31 December 2019.

2.6. Sectoral and regional scope of the measure

- (14) The measure is open to all sectors for their event organising activity. The draft Regulation defines events as project-organised, one-day or multi-day physical events accessible to the public¹⁰, taking place within a limited time of 14 days, in a place other than:
 - (a) a dwelling or on an associated property;

⁶ Events organised by a governmental organisation (for example local council) are not eligible.

⁷ 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 (“GBER”), and 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 (“ABER”) Annex I of Commission Regulation (EU) No 1388/2014 of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 369, 24.12.2014, p. 37 (“FIBER”)

⁸ As defined in Annex I to the GBER, Annex I to the ABER and Annex I to the FIBER.

⁹ As defined in Article 2(18) of the GBER and Article 2(14) to the ABER and Article 3(5) of the FIBER.

¹⁰ With payment of fee or without payment of fee.

- (b) buildings and enclosed places to profess religion or belief; or
 - (c) a building or outdoor space dedicated to performing arts on the basis of regular performing arts programming.
- (15) The measure applies to the whole territory of the Netherlands.

2.7. Basic elements of the measure

- (16) The measure compensates costs of organising an event, as defined in recital (14), which was planned to take place between 1 January 2022 (inclusive) and 30 September 2022 (inclusive) and was cancelled due to a prohibition imposed by ministerial regulation adopted pursuant to Article 58i of the Public Health Act on the basis of the epidemiological picture of COVID-19 prohibiting events from taking place (hereinafter “the event ban”).¹¹ Events with eligible costs below EUR 2 500 will not be compensated by the measure.
- (17) Eligible costs are the costs directly attributed to the event to the extent it would take place in the Netherlands, that is, all reasonable actual costs incurred and commitments made prior to the event ban, in connection with the organisation of the event¹², excluding purchases of fixed assets, fixed costs¹³, costs funded under the temporary emergency measure bridging employment¹⁴, licensing fees and franchising fees. Management fees are eligible up to 5% of total eligible costs. Any amount obtained from insurance or other public compensation schemes and revenues related to the event¹⁵ will be deducted from the eligible costs. Costs incurred before submission of the application for participation in the measure are eligible if they were incurred after 20 January 2021.
- (18) Eligible costs may also include costs of rescheduling an event to a later date (in this case, only the costs of one rescheduling are eligible). Costs of rescheduling are only compensated if the following cumulative conditions are met:
- (a) The event which was rescheduled was to be held between 1 January 2022 (inclusive) and 30 September 2022 (inclusive) and the newly rescheduled date is during the same period;
 - (b) The event has been rescheduled because of the prohibition to hold the event at the planned date;
 - (c) The costs of rescheduling the event were lower than the costs of full annulment;

¹¹ Therefore, the measure does not provide compensation in case the event is cancelled by the event organiser due to lack of interest by the public, reduced profitability from limited number of participants because of COVID-19 measures, bad weather or any circumstances unrelated to a COVID-19 prohibition measure pursuant to the Public Health Act.

¹² Such as costs for dressing rooms, security and crowd control measures, lighting, stage construction and rigging, renting of audiovisual equipment, catering.

¹³ Depreciation of fixed assets and other fixed operating costs except personnel costs.

¹⁴ This emergency measure of general nature, available to all enterprises whose employees are subject to Dutch income tax and social levies, provides compensation for the wage costs of personnel in connection with the fall in turnover as a result of the COVID-19 outbreak.

¹⁵ Such as contributions from third parties, including subsidies from municipalities and sponsorships paid to the organiser, irrespective of whether or not the event in question has taken place.

- (d) The event organiser has informed the Ministry of its intention to reschedule the event prior to the original start date of the event, unless the draft Regulation entered into force after that date;
 - (e) There has been no event ban on the newly scheduled date, at the time of rescheduling the event; and
 - (f) The rescheduled event on the newly scheduled date between 1 January 2022 (inclusive) and 30 September 2022 (inclusive) was prohibited due to an event ban.
- (19) Beneficiaries must take all reasonable measures to limit the eligible costs¹⁶. Beneficiaries must also ensure that such costs are at all times clearly and easily identifiable.
- (20) Applicants can request compensation up to 100% of the eligible costs. For events planned to take place between 1 January 2022 and 31 March 2022, the compensation takes the form of a grant for up to 90% of the eligible costs and of a repayable advance beyond that percentage. For events planned to take place between 1 April 2022 and 30 September 2022, the compensation takes the form of a grant for up to 80% of the eligible costs and of a repayable advance beyond that percentage.
- (21) The application for the participation in the measure (recital (11)) must include the following information:
- (a) Information regarding the event organiser (such as name, registration number, address, bank account, contact details);
 - (b) Information regarding the event (name, planned date, estimated number of visitors, type of event, location of event);
 - (c) The budget of the event with description of the costs, to the extent that the event would take place in the Netherlands and the percentage of eligible costs the beneficiary wishes to see compensated;
 - (d) If an event has already been cancelled, an exploitation plan in respect of the cancelled event, including at least a statement of the costs incurred, the commitments made and the revenue realised and, if an earlier edition of the event has taken place, an exploitation plan of that previous edition;
 - (e) An insurance policy of a cancellation insurance for the cancelled event, if applicable.
 - (f) A declaration by the applicant that he will comply with all health regulations and restrictions when organising the event, if no event ban has yet been adopted before the planned start date of the event.
- (22) Following the application for participation in the measure, a ministerial decision providing the beneficiary a legal entitlement to compensation in case of an event ban (i.e. an eligibility decision) will define the maximum amount of aid. That amount is calculated on the basis of the cost estimates laid down in the submitted budget and the funding rate requested by the beneficiary (recital (21)(c)). The

¹⁶ For example, annulment or renegotiation of contracts with suppliers once the event ban is known. Reasonably avoidable costs are not eligible.

same (or lower) funding rate will be applied in the case of the actual award of the compensation.

- (23) Beneficiaries that have been included in the measure must submit a request for the award of the compensation no later than 13 weeks after the date of adoption of the event ban requiring the event to be cancelled or 13 weeks after the ministerial decision providing the requesting beneficiary the legal entitlement to compensation (recital (22)).
- (24) The request for the award of the compensation (recital (23)) must include the following information/documentation:
- (a) The percentage of eligible costs for which award of the compensation is requested, in case that percentage is lower than initially requested (recital (21)(c));
 - (b) A prior authorisation by a competent Dutch authority or a written statement by the relevant authority that such an authorisation, if needed, would have been granted absent the event ban;
 - (c) A prior notification to a competent Dutch authority or a statement by the relevant authority that the authority would not have objected to the event absent the event ban, if the event required a prior notification to a competent Dutch authority;
 - (d) A guarantee¹⁷ for repayment of the aid in the form of repayable advance, from the highest controlling company within the group established in the Netherlands, in case the beneficiary is part of a group¹⁸;
 - (e) A complete overview of all the invoices that were paid including the recipients of the payments, in case of compensation lower than EUR 25 000¹⁹.
- (25) Within 6 weeks from the request for the award of the compensation (recital (23)) the beneficiaries must submit:
- (a) A declaration by an independent expert (auditor, accountant, fiscal advisor) that the requested compensation only concerns actual costs and the declared costs and revenues are correct in case of compensation between EUR 25 000 and EUR 125 000;
 - (b) An audit report by an auditor or accountant, for compensation of EUR 125 000 or more.
- (26) The draft Regulation provides for an advance payment of 50% of the aid, payable within 2 weeks from the request for the award of the compensation. The Dutch authorities expect that the full amount of the aid will be paid within 19 weeks from the request for the award of the compensation (recital (11)).

¹⁷ By means of a guarantee agreement (in accordance with a means made available by the Ministry of Economic Affairs and Climate Policy) or by a declaration of Article 403(1)(f) of Book 2 of the Civil Code.

¹⁸ Therefore not an autonomous enterprise as defined in Annex I to the GBER, Annex I to the ABER and Annex I to the FIBER.

¹⁹ To be verified by the RVO.

- (27) The Dutch authorities confirm that:
- (a) Any payment exceeding the damage suffered as a direct consequence of the eligible restrictions will be recovered;
 - (b) The payment made to beneficiaries will be net of any amount recovered by insurance, litigation, arbitration or other source for the same damage;
 - (c) In case the aid is paid out before any insurance or other source for the same damage, the Dutch authorities will recover the insurance amount from the beneficiary;
 - (d) The benefit of the aid is excluded for any applicant who is responsible for the damage suffered and/or did not conduct his activities with due diligence or did not take any measure to mitigate its damage.

2.8. Cumulation

- (28) The Dutch authorities confirm that aid under the scheme cannot be cumulated with other aid for the same eligible costs.
- (29) The Dutch authorities consider that liquidity measures of a more general nature, such as aid in the form of soft loans, guarantees on loans or loans with subsidised interest rates under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (the “Temporary Framework”)²⁰, address the need for enterprises to have sufficient liquidity to maintain a certain level of economic activity during the pandemic and its restrictions, and thus pursue an objective which is different from that of the notified measure.
- (30) The costs covered by the measure are those directly attributed to the event cancelled due to an event ban (recitals (16) and (17)). The Dutch authorities consider that the non eligibility of fixed costs for compensation under the measure (recital (17)) prevents the risk of cumulation with their direct grant scheme to support the fixed costs for enterprises affected by the COVID-19 outbreak²¹ under section 3.1 of the Temporary Framework.
- (31) The Dutch authorities also consider that the fact that the measure does not allow for compensation of licensing costs or of investments in fixed assets (recital (17)) further prevents cumulation with liquidity measures that have been used by the beneficiary for investments.

2.9. Monitoring and reporting

- (32) The Dutch authorities commit to provide a report, no later than one year after the date of the Commission’s Decision, specifying the amount of compensation and

²⁰ 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 Commission Communications C(2020) 2215 (OJ C 112I, 4.4.2020, p. 1), C(2020) 3156 (OJ C 164, 13.5.2020, p. 3), C(2020) 4509 (OJ C 218, 2.7.2020, p. 3), C(2020) 7127 (OJ C 340I, 13.10.2020, p. 1) and C(2021) 564 (OJ C 34, 1.2.2021, p. 6).

²¹ C(2020) 4442 final of 26.6.2020 in case SA.57712 – The Netherlands - COVID-19: direct grant scheme to support the fixed costs for small and medium-sized enterprises affected by the COVID-19 outbreak, OJ C/294/2020 of 4.9.2020, p.16, as amended with SA.59535, SA.60166, SA.62241, SA.63257, SA.63984, SA.100829, SA.101235, SA.101892.

recoverable advances granted and including a summary of all recoveries ordered under the aid measure.

3. ASSESSMENT

3.1. Lawfulness of the measure

- (33) 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

- (34) 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.
- (35) The measure is imputable to the State, since it is administered by the Ministry of Economic Affairs and Climate Policy and implemented by the RVO (recital (9)) and it is based on the national legal basis mentioned in recital (8). It is financed through State resources, since it is financed by public funds (recital (10)).
- (36) The measure confers an advantage on its beneficiaries in the form of direct grants and repayable advances (recital (7)). The measure thus confers an advantage on those beneficiaries that they would not have had under normal market conditions.
- (37) The advantage granted by the measure is selective, since it is awarded only to certain undertakings (recital (12)) and for certain types of events (recital (14)).
- (38) 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 (recital (14)).
- (39) 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

- (40) 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.
- (41) The Commission has examined the notified scheme pursuant to Article 107(2)(b) TFEU.

3.3.1. *The notion of exceptional occurrences with the meaning of Article 107(2)(b) TFEU*

- (42) Article 107(2)(b) TFEU provides that aid to make good damage caused by natural disasters or exceptional occurrences shall be compatible with the internal market. Neither the TFEU nor other Union legislation contains a precise definition of the notion of exceptional occurrence. As they constitute exceptions to the general prohibition of State aid within the internal market laid down in Article 107(1) TFEU, the Commission, in line with the consolidated Union case-law²² has consistently held that the notions of ‘natural disaster’ and ‘exceptional occurrence’ referred to in Article 107(2)(b) TFEU must be interpreted restrictively.
- (43) The characterisation of an event as being an exceptional occurrence is made by the Commission on a case-by-case basis, having regard to its previous practice in the field.²³
- (44) In that regard, the following indicators relating to the event concerned must be cumulatively met: (i) unforeseeable or difficult to foresee²⁴; (ii) significant scale/economic impact²⁵, and (iii) extraordinary²⁶.

3.3.2. *COVID-19 outbreak as an exceptional occurrence*

- (45) Following the first reports of cases of acute respiratory syndrome (COVID-19) in the Chinese Wuhan municipality at the end of December 2019, the Chinese authorities identified a novel coronavirus (SARS-CoV-2) as the main causative agent, which had not been previously identified in humans. The outbreak has rapidly evolved, affecting not only other parts of China but has also spread to the

²² Judgment of the Court of Justice of 11 November 2004, *Spain v Commission*, C-73/03, EU:C:2004:711, paragraph 37 and judgment of the Court of Justice of 23 February 2006, *Atzeni and others*, in Joined Cases C-346/03 and C-529/03, EU:C:2006:130 paragraph 79.

²³ Exceptional occurrences which have been accepted in the past by the Commission include war, internal disturbances and strikes, and, with certain reservations and depending on their extent, major industrial accidents which result in widespread economic loss, see *Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020*, paragraph 330 (OJ C 204, 1.07.2014, p. 53).

²⁴ Commission Decision of 1 August 2008, case SA.32163, Remediation of damage to airlines and airports caused by seismic activity in Iceland and the volcanic ash in April 2010, Slovenia, recital 31.

²⁵ Elements taken into account by the Commission to consider that the occurrence reached a significant scale: negative consequences cannot be contained (Commission Decision of 4 October 2000 on case NN 62/2000, Régime temporaire d'aides aux entreprises victimes des intempéries et de la marée noire –France), or because of the number of dead or injured people (Commission Decision of 11 April 2012 on case SA.33487, Agricultural and fisheries aid to compensate for damage due to exceptional occurrence (red mud "Aluminium accident"), Hungary, recital 35; Commission Decision of 2 May 2002 on case N241/2002, Régime en faveur des entreprises victimes de la catastrophe industrielle de Toulouse, France, recital 19), the immense ecological and economic damage (Commission Decision of 11 April 2012 on case SA.33487, recital 36), the amount of material damage despite the local character of the industrial accident (Commission Decision of 2 May 2002 on case N 241/2002, recital 19).

²⁶ In its Decision of 19 May 2004 in case C-59/2001 (OJ L 62, 2007, p. 14), the Commission considered that the (alleged) fall in sales of poultry meat in a Member State not directly affected by the dioxin contamination, did not constitute in itself an exceptional occurrence. It was yet an unforeseeable event, but formed part of the normal commercial risks to which an undertaking is exposed.

majority of countries worldwide, including all Member States. Outbreaks of novel virus infections among people are always of public health concern and can have a significant economic impact. Specific sectors and areas are particularly affected by the outbreak and governmental restrictions and recommendations, be it directly or indirectly.

- (46) The declaration of the World Health Organization of a pandemic associated with the public health risk deriving from the absence of therapeutics or vaccines for COVID-19, determined the exceptional nature of the circumstances. The rapidity of the spread could cause enormous consequences both in terms of fatal outcomes in high-risk groups and in terms of economic and societal disruption. The necessity to adopt and encourage the respect of measures aimed at interrupting transmission chains stems from that acknowledgement. Such measures resulted in far-reaching disruption of various economic sectors, which is clearly outside the normal functioning of the market.
- (47) In view of the above, this event qualifies as an exceptional occurrence because: (i) it was not foreseeable; (ii) it is clearly distinguishable from ordinary events by its character and effects on both the undertakings directly affected and the economy as a whole; and (iii) it lies outside of the normal functioning of the market.²⁷
- (48) In that context, the COVID-19 outbreak can be considered as an exceptional occurrence within the meaning of Article 107(2)(b) TFEU.

3.3.3. Causal link between COVID-19 outbreak and damage compensated by the measure

- (49) The measure compensates up to 100% (recital (20)) of the eligible costs (recital (17)) of an event planned to take place between 1 January 2022 (inclusive) and 30 September 2022 (inclusive) that is cancelled as a result of a public measure pursuant to the Public Health Act on the basis of the epidemiological picture of COVID-19 (recital (16)). The proposed aid measure therefore does not provide for compensation in case the event is cancelled by the event organiser due to lack of interest by the public, reduced profitability from limited number of participants because of COVID-19 measures, bad weather or any circumstances unrelated to a prohibition measure.
- (50) The damage compensated by the measure corresponds to the costs directly attributed to the cancelled event due to an event ban after deduction of amounts obtained from insurance or other public compensation schemes and revenues related to the event (recitals (17), (27)(b) and (27)(c)). Therefore, the measure only compensates damage resulting from the cancellation of events due to an event ban decided by public authorities (including in the case of rescheduled events).
- (51) Therefore, the Commission considers that the measure compensates damage caused by the COVID-19 outbreak.

²⁷ See judgment of 17 February 2021, *Ryanair v Commission*, T-259/20, EU:T:2021:92, paragraph 26.

3.3.4. *Proportionality of the aid measure*

- (52) In order to be compatible with Article 107(2)(b) TFEU, the aid must be proportional to the damage caused by the exceptional occurrence. Aid must not result in overcompensation of damage; it should only make good the damage caused by the exceptional occurrence.
- (53) The measure aims to cover costs that an event organiser would otherwise cover in the absence of the exceptional occurrence (had the event not been annulled as a result of the ban). It ensures that aid is limited to the damage caused by the event ban by providing compensation for reasonable costs directly attributed to the cancelled event due to an event ban (recitals (17) and (18)). Those costs will be net of revenues and any amount obtained from insurance, litigation, arbitration or any other source, including other public compensation schemes (recitals (17), (27)(b) and (27)(c)).
- (54) Beneficiaries must show due diligence (recitals (19) and (27)(d)) and ensure that costs are at all times clearly and easily identifiable (recital (19)).
- (55) The actual compensation depends on the actual costs incurred. If the amount of the maximum allowed compensation for a beneficiary, calculated on budgeted costs (recital (22)), is higher than the compensation deriving from actual costs the surplus cannot be claimed, since the funding rate cannot go beyond what the beneficiary claimed (recital (22)).
- (56) As a control procedure providing assurance of completeness and accuracy of claimed costs, a compensation of EUR 25 000 or more is subject to a declaration by an independent expert (recital (25)(a)) or an audit report (recital (25)(b)) and a compensation of less than EUR 25 000 is subject to controls of invoices by the RVO (recital (24)(e)).
- (57) While the other COVID-19 related measures (recitals (28) to (31)) aimed to ease liquidity constraints and to preserve economic continuity and employment at a time when undertakings have difficulty to access external finance, the present measure seeks to compensate the beneficiaries for the damage they directly suffered from the event bans, during a specific period. Moreover, the different and limited nature of the costs compensated by the scheme prevents cumulation of aid with other COVID-19 related measures and therefore reduces the risk of overcompensation. The Dutch authorities also confirmed that any payment exceeding the damage suffered as a direct consequence of the eligible restrictions will be recovered (recital (27)(a)).
- (58) In light of those safeguards, and taking into account the limited period covered by the compensation, the Commission considers that the compensation under the measure will not exceed the damage directly suffered by each beneficiary from the COVID-19 pandemic and related measures by public authorities.
- (59) To the extent that the scheme applies to the agricultural, fishery and aquaculture sectors, the Commission recalls that it adopted guidelines on the interpretation of

Article 107(2)(b) TFEU in those sectors²⁸. Those guidelines reflect the general principles of interpretation of Article 107(2)(b) TFEU. As already recalled, that provision must be subject to a narrow interpretation (recitals (42) to (44)). It applies in situations of exceptional occurrence; in the present case, the Commission concludes in this Decision that the COVID-19 outbreak constitutes such an exceptional occurrence (recitals (45) to (48)). The present scheme aims at compensating the damage resulting from the exceptional occurrence. The aid benefits directly each undertaking concerned. The scheme is established shortly after the date of the occurrence of the event that causes the damage (recital (4)), and the aid must be applied for within a certain time after the scheme enters into force (recitals (11) and (23)) and granted within a certain time after application (recital (11)). It therefore meets the conditions in those Guidelines which require that the aid scheme must be established within three years from the date of the occurrence of the event and that the aid must be paid out within four years of that date. Damage that will be open to compensation must be directly linked to the exceptional occurrence and compensation cannot exceed the damage suffered by the company individually. The methodology for setting the amount of the compensation ensures that it is directly linked to the damage suffered by each company as a result of the exceptional occurrence (recital (49)); it is calculated on the basis of the costs directly attributed to the cancelled event due to an event ban after deduction of amounts obtained from insurance or other public compensation schemes and revenues related to the event (recital (50)) ensuring that the aid remains proportionate and that no company could benefit from overcompensation (recitals (52) to (57)). The Commission therefore considers that the scheme, to the extent it applies to the agricultural, fishery and aquaculture sectors, fulfils the conditions of those guidelines and is compatible with Article 107(2)(b) TFEU.

- (60) In view of the above, the Commission considers that the notified aid scheme is compatible with the internal market in accordance with Article 107(2)(b) TFEU.

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

²⁸ See Part II, Chapter I, Section 1.2.1.1. of the [European Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:02014XC0701(01)-20181109&from=EN) (OJ C 204, 1.7.2014, p. 1) ([https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:02014XC0701\(01\)-20181109&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:02014XC0701(01)-20181109&from=EN));

Section 4 of the Guidelines for the examination of State aid to the fishery and aquaculture sector (https://ec.europa.eu/competition/state_aid/legislation/marc/2018-11-consolidated-version-guidelines-for-the-examination-of-state-aid-to-fishery-and-aquaculture-sector_en.pdf)

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Executive Vice-President