

## **HT.5788: Dutch response to the revision of the Guidelines for state aid in agriculture, forestry and in rural areas and for the Agricultural Block Exemption Regulation**

*This response reflects the views of the Dutch 'Interdepartementaal Staatssteun Overleg (hereafter: ISO)'. The ISO is a central State aid coordination body composed of all Dutch ministries and representation of the regional and local authorities. The ISO is chaired by the Ministry of Economic Affairs and Climate Policy. The Minister of Economic Affairs and Climate Policy is responsible for competition policy in the Netherlands.*

### **Introduction**

This is the response to the revision of the State aid instruments applicable in the agricultural and forestry sectors and in rural areas. With this revision the European Commission is proposing revised rules: draft Guidelines for State aid in the agricultural and forestry sectors and in rural areas ('draft guidelines') and the draft Commission Regulation 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 and repealing Commission Regulation (EU) No. 702/2014 ('draft ABER').

The Netherlands welcomes the revision and proposes some further improvements.

Robust State aid control is essential for a level playing field to ensure a well-functioning competitive internal market. At the same time, intervention with State aid may be needed to address certain market failures and / or to accomplish the goals of European Union interests. In general, the Netherlands are satisfied with the possibilities that the State aid rules offer to public entities. There is a proper balance between, on the one hand, the assessment framework in guidelines, which serves more market-distorting forms of State aid and the block exemption regulation, which allows certain State aid to be granted relatively easy and quickly- this balance between the instruments should be maintained.

The Netherlands welcomes that the revision seeks to establish more ambitious rules, capable of creating the State aid framework which will adequately contribute to achieving the objectives of the European Green Deal, as expressed in the 'farm to Fork' Strategy, the 2030 Biodiversity Strategy and the 2030 Forestry Strategy, as well as the targets set out by the European Climate Law. In that regard, it is a prerequisite that the revised rules are in close accordance with the Common Agricultural Policy. The State aid rules should not create an unnecessary barrier to implementing this policy. Furthermore, the State aid rules should be aligned with Regulation (EU) 2021/1755 of the European Parliament and of the Council of 6 October 2021 establishing the Brexit Adjustment Reserve to enable Member States to design measures in line with State aid rules for a financial contribution of the Reserve

For the Netherlands it is particularly important that these State aid rules in the agricultural and forestry sectors are revised in order to meet the challenges we face, especially with regard to the need to reduce nitrogen emissions and deposition on Nature 2000 areas and greenhouse gas emission in relation to climate change. When implementing the various necessary measures it is also important to be able to offer undertakings in the agricultural sector a good future perspective. An integrated approach to nitrogen, water, climate change, sustainability and biodiversity is essential. For example, the revised State aid rules should provide clear conditions for the restructuring of agricultural activities (including supporting the closure and buy-out) and the transition to a sustainable and biodiversity-friendly agriculture. Specific attention should be paid to this in the revision of the ABER. The Netherlands are in favor of extending the possibilities to grant aid under the ABER with regard to the aforementioned topics in order to be able to respond adequately and more quickly to urging matters.

### **Agricultural Block Exemption Regulation**

The Netherlands considers the ABER to be a useful instrument for granting State aid relatively easy and quickly. Given the challenges we face, the Netherlands considers the expansion of the scope of the ABER with certain categories of aid and increasing aid intensities as a good development. This

applies, among other things, to projects for which national co-financing is necessary. The State aid rules should not create an unnecessary barrier to such projects.

A specific aid category to compensate farmers for disadvantages related to Natura 2000 areas is also welcomed. With regards to nitrogen deposition, specific attention is requested for the possibility of the restructuring of agricultural activities (including supporting the closure and buy-out) and the transition to a type of agriculture that is suitable for the future. To this end, the Netherlands requests a dedicated category in the ABER that corresponds to the rules of paragraph 1.2. of the draft Guidelines on aid for the closing on production capacity. Please see the comments of the Netherlands concerning the draft Guidelines with regard to aid for closing production capacity. These comments also apply to the requested ABER category.

Furthermore the Dutch authorities would like to stress the importance of the reduction of the use of antibiotic in the animal sector, also with a view of ensuring public health for consumers. Public support to private entities to stimulate the reduction of use of antibiotic in the animal sector does not have to qualify as state aid. However, if and when qualifying as state aid, a dedicated aid category would be welcomed to be able to financially support private entities that focus on reducing antibiotic use and the risk of antibiotic resistance development in the animal sector, also in the case these private entities would be co-financed by market operators. General public information and wide disseminating of (non-confidential) data on the use of antibiotics in several animal sectors and facilitating the use of benchmarks that are scientifically justified and whose use is indicated by independent scientific experts should be promoted and be supported with operating aid.

The transition to a sustainable and biodiversity-friendly agriculture requires targeted investments. For that reason it is important for the Netherlands that, on the basis of the ABER, there are sufficient possibilities to provide support for public and ecosystem services (landscape and nature management, water storage, care, capturing CO<sub>2</sub> in soils by farmers etc.) and for projects in which farmers are engaging and cooperating with other entities (e.g. land owners, NGO's, other parties in the production and supply chain) in order to achieve agro- environmental, climate and/or animal health/welfare goals in a common approach. In this respect, the Netherlands would welcome dedicated categories in the ABER corresponding to the rules of paragraph 1.1.4 of the draft Guidelines on aid for agro-environment-climate commitments and to paragraph 1.1.11 of the draft Guidelines on aid for cooperation in the agricultural sector.

With regard the various sections of the draft ABER the Netherlands has the following specific comments.

#### *Common provisions (Chapter 1 draft ABER)*

The ABER focuses mainly on State aid to SMEs (e.g. as explicitly mentioned in section 1 of the draft ABER). This makes it difficult to grant State aid (directly/indirectly) to large undertakings which are active in the primary agricultural production, the processing of agricultural products and the marketing of agricultural products when they help and/or work together with SMEs, for example in projects aimed at sustainable developments. Since these developments do not only require State aid for SMEs, there should also be possibilities to grant State aid on the basis of the ABER to large undertakings, under proper conditions and to a limited extent, for example when working together in partnerships.

#### *Definitions (Article 2 draft ABER)*

Since digitalization in the agricultural sector is an important aspect to achieve the climate objectives, the Netherlands would like to see digitalization reflected more in the definitions and accordingly in the exempted measures (e.g. in articles 13, 20 and 32). The Netherlands suggest to align as much as possible with the propositions that have been with regard to the digital transition in the GBER. It would be helpful if the Commission clarifies to what extent digital technologies and solutions fall within the scope of the exempted categories under the ABER.

With regards to the definition of undertakings in difficulty (Article 2, paragraph 58 of the draft ABER), the Netherlands proposes the following alteration. SME's that have been in existence for less than five years should be excluded from the definition. In our experience a period of 5 years (instead of the current 3 years) is sufficient for a start-up to grow and overcome the first few years in which the investments are high and the return low. They are past the valley of dead and their product/service is established in the appropriate market. They become financially viable and can

demonstrate their credit-worthiness. Therefore the Netherlands proposes the following adjustment to Article 2, paragraph 58 of the draft ABER:

*'undertaking in difficulty' means an undertaking in respect of which at least one of the following circumstances occurs:*

*(a) In the case of a limited liability company (other than an SME that has been in existence for less than ~~three~~ five years) where more than half of its subscribed share capital has disappeared as a result of accumulated losses. This is the case when deduction of accumulated losses from reserves (and all other elements generally considered as part of the own funds of the company) leads to a negative cumulative amount that exceeds half of the subscribed share capital. For the purposes of this provision, 'limited liability company' refers in particular to the types of company mentioned in Annex I of Directive 2013/34/EU of the European Parliament and of the Council\* and 'share capital' includes, where relevant, any share premium.*

*(b) In the case of a company where at least some members have unlimited liability for the debt of the company (other than an SME that has been in existence for less than ~~three~~ five years), where more than half of its capital as shown in the company accounts has disappeared as a result of accumulated losses. For the purposes of this provision, 'a company where at least some of its members have unlimited liability for the debt of the company' refers in particular to the types of company mentioned in Annex II of Directive 2013/34/EU.*

*[...]*

Comments on the definitions used for the various Aid categories are included below in the comments on the specific Articles of the draft ABER.

#### *Notification thresholds (Article 4 draft ABER)*

In general, the Netherlands are satisfied with the possibilities that the State aid rules offer to public entities. There is a proper balance between, on the one hand, the assessment framework in guidelines, which serves more market-distorting forms of State aid and the block exemption regulation, which allows certain State aid to be granted relatively easy and quickly- this balance between the instruments should be maintained. However, an increase of the notification threshold for aid for investments in agricultural holdings linked to primary agricultural production would be welcomed (Article 4, paragraph 1, point (a) of the draft ABER jo. Article 13 draft ABER). And given the challenges we face, a high notification threshold a dedicated aid category in the ABER that corresponds to the rules of paragraph 1.2. of the draft Guidelines on aid for the closing on production capacity is considered desirable.

#### *Publication and information (Article 9 draft ABER)*

The threshold for publication of State aid on a State aid website is lowered to EUR 10,000 and EUR 100,000. The Netherlands considers that these new thresholds would lead to a disproportionate administrative burden for Member States and considers this highly undesirable. Therefore, the Netherlands requests the European Commission to maintain the current thresholds as these thresholds will ensure adequate transparency.

#### *Procedural requirements (Chapter 2 draft ABER)*

With regards to the notification procedure, it is proposed to use the procedure as in the GBER (within 20 working days after the entry into force of an aid measure.), instead of a notification 10 working days in advance. The proposed procedure benefits speed, but also creates more legal uncertainty. This entails the need for the ABER conditions to be as clear and simple as possible to use.

#### *Categories of aid (Chapter 3 draft ABER)*

### **Section 1: Aid in favour of SMEs active in primary agricultural production, the processing of agricultural products and the marketing of agricultural products (Articles 13 – 29 draft ABER)**

The Netherlands considers that this section includes important and useful aid categories. With regard to some specific articles from this section of the draft ABER the Netherlands has the following comments.

Aid for investments in agricultural holdings linked to primary agricultural production (Article 13 draft ABER)

The Netherlands welcomes the new Article 13, paragraph 3, point (h) of the draft ABER. To further improve this article the following amendments are suggested:

*Contributing to halting and reversing biodiversity loss, developing, enhancing or preserving ecosystem services and developing, enhancing or preserving habitats and landscapes.*

Could the European Commission indicate whether change of function (decrease in value of land when setting up nature or landscape elements on agricultural land) also falls within the scope of this Article? That would be a welcome addition for the Netherlands.

With regards to Article 13, paragraph 4 and paragraph 5 of the draft ABER, could the European Commission reconsider the condition that the production of biofuels, energy from renewable sources and thermal energy shall serve only the beneficiary's own energy needs. The Netherlands considers it important that a business model is possible and that therefore energy from renewable sources can be produced for other undertakings and households outside the farms / agricultural holdings. Moreover, it is socially desirable to allow energy production options on farms (electricity on large roofs, biogas (possibly converted into electricity)) from mono-manure fermentation, which can replace fossil energy as an agricultural product. Could the European Commission clarify that biogas production falls under the production of biofuels?

The aforementioned business model is also important to include in Article 13, paragraph 8 of the draft ABER. The proposed wording seems to exclude aid for mono-manure digesters whose biogas is used to generate electricity for livestock farms themselves and for sales outside the livestock farms. The Netherlands considers this undesirable and proposes to include the possibility to either allow aid for investments in installations for electricity production or further define the meaning of 'primary purpose'.

According to Article 13, paragraph 10 of the draft ABER investment aid for which an environmental impact assessment is required shall be subject to the condition that the development consent has been granted for the investment project concerned before the date of granting the individual aid. The Netherlands proposes to change this requirement in such a way that alternatively an application for a permit must have been submitted at the time of aid application and that the permit must have been obtained when the subsidy is determined. This would prevent certain projects from being unnecessarily delayed.

The Netherlands welcomes the clarification in Article 13, paragraph 11, more specifically to point (a) with regard to purchased land. However, an increase of the 10% eligible costs for the acquisition of land would be welcomed. In this context it is also important that it is clear how the eligible costs should be calculated.

According to paragraph 15 investment under Article 13 aid shall not be limited to specific agricultural products and shall therefore be available either to all sectors of the primary agricultural production or to the whole plant production sector or the whole animal sector. Could the Commission further clarify the scope and meaning of this Paragraph? Is it correct to conclude that according to this paragraph aid is limited to certain subdivisions within the sectors mentioned? This would imply that an envisaged investment in measures for animal welfare or the reduction of ammonia emissions, must be made available to the whole sector, although it is in principle aimed at a more specific target in order to achieve its goal. For example, in the case that only the poultry sector needs an impulse in animal welfare or only pig farming for emission-free livestock sheds. The Netherlands believes this would lead to undesirable effects. Therefore, the Netherlands is of the opinion that it should be possible to grant aid to all undertakings in a specific livestock sector, because in our opinion this does not lead to an undesirable distortion of the internal market. At least not in such a way as to justify the proposed wording of Article 13, paragraph 15 by only allowing aid for the entire sector.

In general, the Netherlands welcomes the aid intensities as proposed in Article 13, paragraph 17 to 21, with the exception of the following:

With regard to the aid intensity for investments linked to one or more of the specific environmental- and climate- related objectives (Article 13, paragraph 18 point (a)) and investments by young farmers (Article 13, paragraph 18 point (b)), the Netherlands would like to

see an increase to 85% for small farms, comparable to Article 13, paragraphs 17 and 18 point (c) of the draft ABER. Therefore the Netherlands proposes the following adjustment to Article 13, paragraph 19 of the draft ABER:

*The aid intensity ~~referred to in paragraphs 17 and 18, point (c)~~ may be increased to a maximum of 85% for investments of small farms.*

Next to this, according to Article 13, paragraph 20 point (a) of the draft ABER the aid intensity may be increased to a maximum of 100% for certain non-productive investments linked to one or more of the specific environmental- biodiversity and climate- related objectives. Could the European Commission provide further clarification of what is to be understood by the term 'significant increase' as included in the definition of non-productive investment (Article 2, paragraph 37 of the draft ABER).

Finally, the Netherlands proposes the following amendment to Article 13, paragraph 20 point (a) to avoid ambiguity:

*non-productive investments linked to ~~one or more of the specific environmental and climate-related~~ objectives referred to in paragraph 3 (f), (g) and (h);*

Aid for agricultural land consolidation (Article 14) and Aid for investments concerning the relocation of farm buildings (Article 15 draft ABER)

In addition to Articles 14 and 15 of the draft ABER the Netherlands wishes to have a dedicated category in the ABER that corresponds to the rules of paragraph 1.2. of the draft Guidelines on aid for the closing on production capacity. Please see the comments of the Netherlands concerning the draft Guidelines with regard to aid for closing production capacity. These comments also apply to the requested ABER category.

The Netherlands also considers it important to include an aid category for the depreciation of agricultural land owned by farmers who wish to extend (landscape land). In this context, it is necessary that public entities have sufficient and adequate options to purchase agricultural land re-sell it on favorable terms if this benefits the environment.

Aid for investments in connection with the processing of agricultural products and marketing of agricultural products (Article 16 draft ABER)

For now, the Netherlands has no comments with regard to Article 16 of the draft ABER.

Start-up aid for young farmers and the development of small farms (Article 17 draft ABER)

For now, the Netherlands has no comments with regard to Article 17 of the draft ABER.

Start-up aid for producer groups and organisations in the agricultural sector (Article 18 draft ABER)

For now, the Netherlands has no comments with regard to Article 18 of the draft ABER.

Aid for participation of producers of agricultural products in quality schemes (Article 19 draft ABER)

For now, the Netherlands has no comments with regard to Article 19 of the draft ABER.

Aid for knowledge exchange and information actions in the agricultural sector (Article 20 draft ABER)

According to Article 20, paragraph 2 aid may also cover farm visits. According to the Netherlands, it would be good if this could be extended to visits to other type of organizations and undertakings in the green domain.

On the basis of Article 20, paragraph 2 of the draft ABER the aid can cover demonstration activities. Because the maximum aid amounts for such type of projects is limited to EUR 100,000 over 3 fiscal years (Article 20, paragraph 8) it would be welcome if the European Commission specifies more in detail what is meant by demonstration activities.

Aid for advisory services in the agricultural sector (Article 21 draft ABER)

Article 21 of the draft ABER (advisory services in the agricultural sector) is a useful and essential category. The Netherlands request the European Commission explicitly to confirm that on the basis of this Article aid can also be granted for advisory services to undertakings who are considering (partially) stopping, phasing out their agricultural activities or making their agricultural activities more sustainable. This is an essential element in the transition to a sustainable and biodiversity-friendly agriculture.

According to Article 21 paragraph 2 of the draft ABER the aid shall be designed to help undertakings active in the agricultural sector and young farmers. In this context a broad concept of young farmers is considered desirable so that young people who are orienting themselves on starting/ taking over a farm/ agricultural activities can also qualify for aid. Therefore, the Netherlands proposes to expand the scope of this article to 'new and/or beginning farmers', including employees who are not appointed as head of that holding. Activities aimed at getting employees interested in becoming active in this sector should also be added to this ABER category.

With regards to paragraphs 8 and 9 the Netherlands would like clarification on whether the amount of aid is limited per beneficiary or per advisory service. The Dutch translation of this provision is not clear on this point. Accordingly, whether it would be possible for beneficiaries to receive multiple advisory services for different objectives.

Furthermore, in these paragraphs an exception is made for advice linked to economic and environmental performance of the agricultural holding including competitiveness aspects as referred to in Article 21, paragraph 4. The Netherlands asks for clarification on whether this exception is related to the maximum aid amount and/ or the period of 3 years.

Can the European Commission further clarify whether advisory services to individual farmers, as part of a state-led program for animal disease surveillance (as required in Article 26 of Regulation (EU) 2016/429), are eligible for State aid under Article 21 of the draft ABER? The Netherlands has a surveillance program in place in which farmers provide animal health data, in order to detect animal diseases on a national level. The program also contains a feedback-advisory tool on the shared data. This tool is the implementation of the Member States responsibility to encourage farmers to maintain and develop knowledge on animal health (Articles 11 and 13 of Regulation (EU) 2016/429).

#### Aid for farm replacement services (Article 22 draft ABER)

The Netherlands consider it essential for the recovery of persons who are suffering from illness (a farmer, a natural person who is a member of the farm household, or a farm worker) to be able to receive psychological support. Therefore, it is proposed to expand the scope of this article with an aid category for psycho(social) support (e.g. counseling or therapy).

Furthermore, the Netherlands proposes to include an aid category for retraining and guidance to other job opportunities to provide perspective for farmers.

#### Aid for the promotion measures in favour of agricultural products (Article 23 draft ABER)

The Netherlands proposes to expand paragraph 2, point a. with the organization of and participation in conferences.

The Netherlands proposes to either expand paragraph 2, point b. with other promotional activities or the possibility to define 'publications' in a broad sense.

#### Aid to compensate for damage caused by adverse climatic events which can be assimilated to a natural disaster (Article 24 draft ABER)

Please see the comments of the Netherlands with regard to Article 31 of the draft ABER. These comments also apply to Article 24 of the draft ABER.

#### Aid for the costs of the prevention, control and eradication of animal diseases and plant pests and aid to compensate for the damage caused by animal diseases and plant pests (Article 25 draft ABER)

As regards aid in favour of restoration of the damage caused by adverse climatic events and plant pests, if such events can be linked to climate change, it is proposed to introduce in the new rules the condition for the beneficiaries to include in the restoration, where possible, adaptation measures to climate change, in order to minimise damage and losses produced by similar events in the future. This condition aims to reflect the link between the recurrent occurrence of such events and climate change and to incentivise the agricultural and forestry sectors to implement farming practices adapted to climate change. The Netherlands welcomes this adjustment.

Can the European Commission clarify whether Article 25, paragraph 3 of the draft ABER applies to any animal disease, as defined in Article 4, paragraph 16 of Regulation (EU) 2016/429?

#### Aid to the livestock sector and Aid for fallen stock (Article 26 draft ABER)

For now, the Netherlands has not comments with regard to Article 26 of the draft ABER.

#### Aid for the payment of insurance premiums (Article 27 draft ABER)

For now, the Netherlands has not comments with regard to Article 27 of the draft ABER.

#### Aid to compensate for the damage caused by protected animals (Article 28 draft ABER)

The Netherlands welcomes this new Article in the draft ABER. A clarification would be welcomed how this new aid category related to Article 13, paragraph 3 point (d) of the draft ABER, in which an addition has been made which allows aid for restoration of production potential damaged by protected animals.

#### Aid for disadvantages related to Natura 2000 (Article 29 draft ABER)

The Netherlands welcomes this new Article in the draft ABER. The Netherlands would like to see a further clarification as to which agricultural areas fall within the scope of this draft Article. For the Natura 2000 areas it is important that there is a buffer zone. Consequently, there are restrictions for agricultural activities. Therefore, it is important that areas immediately adjacent to N2000 areas also fall under the scope of this article. Also, the Netherlands would like clarification on how to deal with areas where there is a demonstrable effect?

### **Section 2: Aid for investments in favour of conservation of cultural and natural heritage located on agricultural holdings (Article 30 draft ABER)**

The Netherlands welcomes Article 30 of the draft ABER for aid for investment in favour of the conservation of cultural and natural heritage located on agricultural holdings. It is considered important that compensation is possible for the reimbursement of costs incurred.

### **Section 3: Aid to make good the damage caused by natural disasters in the agricultural sector (Articles 31 draft ABER)**

Both Article 24 and Article 31 of the draft ABER are useful to compensate for the damage caused by natural disaster in the agricultural sector and to make good the damage caused by adverse climatic events which can be assimilated to a natural disaster. According to the Netherlands running water can cause similar effects as floods. Also the condition with regard to the use of indexes can be further clarified. Therefore, the Netherlands suggests the following amendments in this regard:

Article 2, paragraph 36 draft ABER

*'natural disasters' means earthquakes, avalanches, landslides and floods, running water tornadoes, hurricanes, volcanic eruptions and wild fires of natural origin;*

Article 24, paragraph 7 draft ABER

*(...) Indexes may be used in order to calculate the agricultural production of the beneficiary provided that the calculation method used permits the determination of the real loss of the beneficiary in the given year. The index must be based on representative (physical) yield and yield price data from at least three previous years.*

Article 31, paragraph 7 draft ABER

*(...) Indexes may be used in order to calculate the agricultural production of the beneficiary provided that the calculation method used permits the determination of the real loss of the beneficiary in the given year. The index must be based on representative (physical) yield and yield price data from at least three previous years.*

#### **Section 4: Aid for research and development in the agricultural and forestry sectors (Articles 32 draft ABER)**

The Netherlands is of the opinion that research, development and innovation (hereinafter referred to as: 'RD&I') are of great importance to the agriculture and forestry sectors. Since this article is specifically aimed at research and knowledge-dissemination organization, the Commission is requested to provide for more clarity and guidance in which cases aid for RD&I constitutes State aid. The Netherlands considers it important that – under proper conditions- aid measures could also be granted to entities that do not qualify as a research and knowledge-dissemination organization. This is especially relevant when it comes to partnerships.

Moreover, it would be helpful if the Commission could give guidance on the applicability of the RD&I sections in the GBER in the agricultural and forestry sectors.

More in particular, it would be welcomed to have a dedicated category of aid in the ABER for the research on, the development of and the investment in new, innovative, emission-reducing stable systems, in which all different stages (fundamental research, research and development including measurement of emissions and testing-out of new systems at farm level, including the actual investments and implementation phase) are integrated and in which costs for investments are eligible also in case of a failure of the innovation project (if a new stable system does not work properly or as expected). Currently, for innovation of stable systems different aid categories apply in different stages (Article 25 GBER and Article 31 ABER, Article 14 ABER) whereas in reality all stages are connected, show overlap and are part of one and the same innovation project. Considering this, it is important to provide aid of 100% for emission measurements in all stages of research on and the development of new, innovative, emission-reducing stable systems. Moreover, at this moment it is not possible to finance the costs of investments which did not result in a productive investment (an investment which did effectively improve the economic or environmental performance of an agricultural holding), whereas it is inevitable that complex innovation projects can only be successfully accomplished after initial failures. If it is not possible to finance the costs of innovation projects that eventually fail, this may very well have that effect that potential beneficiaries will be reluctant to initiate any project at all, since they have to bear the risk of failure.

#### **Section 5: Aid in favour of Forestry (Articles 33 – 45 draft ABER)**

The Netherlands welcomes the extension of aid for projects that are exclusively financed from national funds. This applies in particular to the categories of aid that are important for achieving the Green Deal objectives.

##### Aid for afforestation and creation of woodland (Article 33 draft ABER)

Similar to Article 13, paragraph 11 point (a) of the draft ABER the Netherlands proposes to add 'purchased land' to Article 33, paragraph 3 point (a) of the draft ABER.

##### Aid for agroforestry systems (Article 34 draft ABER)

Similar to Article 13, paragraph 11 point (a) of the draft ABER the Netherlands proposes to add 'purchased land' Article 34, paragraph 4 point (a) of the draft ABER.

It is unclear whether in paragraph 4 of the draft ABER it is intended to exclude financial instruments such as loans or guarantees from its scope? If so, the Netherlands requests that this be reconsidered.

##### Aid for investments improving the resilience and environmental value of forest ecosystems (Article 36 draft ABER)

For now, the Netherlands has no comments with regard to Article 36 of the draft ABER.

##### Aid for area-specific disadvantages resulting from certain mandatory requirements (Article 37 draft ABER)

For now, the Netherlands has no comments with regard to Article 37 of the draft ABER.

Aid for forest- environmental and climate services and forest conservation (Article 38 draft ABER)

For now, the Netherlands has no comments with regard to Article 38 of the draft ABER.

Aid for knowledge transfer and information actions in the forestry sector (Article 39 draft ABER)

For now, the Netherlands has no comments with regard to Article 39 of the draft ABER.

Aid for advisory services in the forestry sector (Article 40 draft ABER)

For now, the Netherlands has no comments with regard to Article 40 of the draft ABER.

Aid for investments in infrastructure related to development, modernisation or adaptation of forestry sector (Article 41 draft ABER)

For now, the Netherlands has no comments with regard to Article 41 of the draft ABER.

Aid for investments in forestry technologies and in processing, mobilising and marketing of forestry products (Article 42 draft ABER)

For now, the Netherlands has no comments with regard to Article 42 of the draft ABER.

Aid for conservation of genetic resources in forestry (Article 43 draft ABER)

For now, the Netherlands has no comments with regard to Article 43 of the draft ABER.

Start-up aid for producer groups and organisations in the forestry sector (Article 44 draft ABER)

For now, the Netherlands has no comments with regard to Article 44 of the draft ABER.

Aid for forestry land consolidation (Article 45 draft ABER)

For now, the Netherlands has no comments with regard to Article 45 of the draft ABER.

**Section 6: Aid in Favour of SMEs in Rural Areas (Articles 46 – 51 draft ABER)**

The Netherlands has no comments with regard to section 6 of the draft ABER.

Chapter IV Transitional and final provisions (Articles 52 -54 draft ABER)

As laid down in Article 53, paragraph 4 of the draft ABER (and current Article 51 ABER), any aid schemes exempted under the ABER shall remain exempted during an adjustment period of six months. This is a very short period. The Netherlands would propose an adjustment period of at least one year.

**State aid Guidelines in the agricultural and forestry sectors and in rural areas**

**Common Provisions**

Scope and definitions

The proposal to remove from the scope of the Guidelines some aid measures that are already covered by other State aid instruments, in particular the GBER, is welcomed. Sector specific rules are only necessary when this is necessary due to specific characteristics. If that is not the case, it has added value to apply the same rules.

Common assessment principles

The Netherlands welcomes the introduction of the possibility to use standard assumptions for costs under certain types of aid. It is important that the simplified costs could also apply to aid measures financed exclusively from national funds.

Transparency

The threshold for publication of State aid on a State aid website is lowered to EUR 10,000 and EUR 100,000. The Netherlands considers that this new thresholds would lead to a disproportionate administrative burden for Member States and considers this highly undesirable. Therefore, the Netherlands requests the European Commission to maintain the current thresholds as these thresholds will ensure adequate transparency.

## Categories of aid

The Netherlands welcomes that the revision seeks to establish more ambitious rules, capable of creating the State aid framework which will adequately contribute to achieving the objectives of the European Green Deal, as expressed in the 'farm to Fork' Strategy, the 2030 Biodiversity Strategy and the 2030 Forestry Strategy, as well as the targets set out by the European Climate Law. In that regard, it is also a prerequisite that the revised rules are in close accordance with the Common Agricultural Policy.

It is important for the Netherlands that these State aid rules are revised in order to meet the challenges we face. For the Netherlands it is particularly important to be able to offer undertakings in the agricultural sector a good future perspective with an integrated approach to nitrogen, water, climate change, sustainability and biodiversity. For example, it is important that the revised State aid rules provide clear conditions for the restructuring of agricultural activities (including buy-out) and the transition to a type of agriculture that is suitable for the future.

Furthermore, specific rules would be welcomed to deal with entities that focus on reducing antibiotic use and the risk of antibiotic resistance development in the animal sector. This by means of general public information and facilitating the use of benchmarks that are scientifically justified and whose use is indicated by independent scientific experts. It is important here that it must be possible to finance this via both public financing and financing from the sector itself, without too much government intervention.

### Aid in favour of undertakings active in the primary production, processing and marketing of agricultural products

#### Aid for closing production capacity

Given the challenges we face, this is an important aid category for cases where State aid is involved. To improve this aid category, the Netherlands has the following comments.

The first comment refers to paragraph 428 of the draft Guidelines. On a livestock farm there are often several stables present, which capacity is not always fully used. This is related to a number of factors, such as operational management, the market situation, the importance or the need to have residual capacity and the development of new techniques. If the five-year requirement is applied too strictly, part of the livestock location will not be remediated because this requirement cannot be (fully) met. This is undesirable, among other reasons, because this may result in a situation where the location has not been fully closed. Furthermore, the application of this requirement is problematic because at the time of granting the aid it is not yet certain when the capacity will actually be closed. This gives legal uncertainty. This can be avoided when the five year requirement would be linked to the final date on which the closure has to take place according to the aid measure (instead of the actual closure) It is also important that the closure of production capacity could take place in phases. A livestock farmer must take the necessary steps to achieve a definitive and irreversible closure. The State aid rules should not stand on the way of this. Therefore the Netherlands requests the following amendment to paragraph 428 of the draft Guidelines:

*Only undertakings that have actually been producing, and only production capacities that have actually mainly been in constant commercial use over the past five years before the final closing of capacity or before the required moment of final closure are eligible for aid. In cases where the production capacity has already closed definitively, or where such closure appears inevitable due to other factors than the urgency to close production capacity to reach environmental goals, no minimal (sufficient) contribution effort is present from the beneficiary, and aid may not be granted.*

The second comment refers to paragraph 427 of the draft Guidelines which requires that legally binding commitments must be obtained from the beneficiary that the closure of the production capacity concerned is definitive and irreversible and that the beneficiary will not start the same activity elsewhere. The admissibility of granting State aid for the closure of production capacity is based on animal, plant or human health, sanitary, ethical, environmental or climate reasons. Sometimes these relate to a particular geographical situation. In that case, the objective of the measure is achieved by closing production capacity at a specific location because maintaining the production has adverse consequences for the environment of that location, e.g. for a nearby nature

reserve. The purpose of the aid measure is not negated if the aid beneficiary continues the activities on another (existing or new) location. However, if the reasons do not concern a specific location related to regional issues and the aim of the measure is to reduce the livestock in general, the ban on a restart is considered a necessary precondition.

Therefore the Netherlands requests the following amendment to paragraph 427 of the draft Guidelines:

*The beneficiary must provide a minimum (sufficient) contribution in the form of a definitive and irrevocable decision to scrap or irrevocably close the production capacity concerned. This decision will involve either the complete closure of capacity by the undertaking concerned or where duly justified, the partial closure of capacity, unless it is ensured in another way that the purpose of the measure is not compromised as a result. Legally binding commitments must be obtained from the beneficiary that the closure of the production capacity concerned is definitive and irreversible and that the beneficiary will not start the same activity elsewhere, unless the closure is primarily aimed at the realization of regional objectives. Those commitments must also be binding on any future purchaser of the land or facility concerned.*

In the Dutch situation, the measures aiming at reducing nitrogen deposition have several objectives, which are sometimes combined in a measure: it primarily concerns the specific situation (i.e. nitrogen deposition on Natura 2000 area), secondly it concerns reducing national nitrogen emissions as much as possible in combination with reducing livestock. The latter is achieved for animal species with production rights because livestock farmers who participate in an aid scheme are obliged to hand in their production rights. For other animal species, the ban on a restart can be an effective way of achieving the secondary objective. However, sometimes this could be at the expense of the primary objective, in cases where closure of the location is essential for the primary objective and in which conditions can be imposed on a restart. It is good to clarify that the (present) framework of the Guidelines for granting aid for the relocation of a production site is not helpful to solve this problem. This framework concerns an actual relocation of production facilities, whereby the aid relates to the costs of relocation. However, when a livestock farmer decides to close a production location near to a Natura 2000 area in order to continue the activities on another (existing or new) location, he has to deal with a significant loss of value and the costs of investments at the new location.

Thirdly, the Dutch policy on reducing nitrogen deposition on Natura 2000 area will only be successful if farmers are able to know and understand the possibilities to develop to a sustainable and biodiversity-friendly agriculture or to relocate or to stop. In that context it is important that they can use the necessary consultancy services in a broader context so that an advice can also relate to ending or relocating their business. For that reason above remarks have been placed regarding article 21 ABER to make explicit that this is possible. Alternatively the eligibility of consultancy services related to the process of closing business at a certain location could be arranged in the framework on closure, for instance by including such expenditure under social costs.

#### *Aid for prevention, control and eradication of animal diseases and aid to make good the damage caused by animal disease*

With regard to aid for prevention, control and eradication of animal diseases and aid to make good the damage caused by animal disease the Netherlands welcomes the enlargement of the scope for measures in favour of emerging animal diseases, under the same conditions as those applicable to the animal diseases that are included in the list established by the World Organisation for Animal Health or in the list set out in Annex II to Regulation (EU) 2016/429.

#### *Aid to make good damages caused by invasive alien species and for prevention, control and eradication of invasive alien species*

The Netherlands welcomes the aid category to make good damages caused by invasive alien species and for the prevention, control and eradication of invasive alien species.

#### *Carbon farming*

The Netherlands supports the continuation of the rules for the various carbon farming measures. The proposed new rules to make support also possible to collective schemes and result based

payment schemes do not seem illogical to the Netherlands. With regard to carbon farming it is important that various types of measures can already be supported and that this will be maintained. It is welcomed that the proposed new rules are envisaged to make support also possible to collective schemes and result-based payment schemes for carbon farming.

#### Aid for the forestry sector

#### *Aid in rural areas which is co-financed by the EAFRD or granted as additional national financing to such co-financed interventions*

The Netherlands currently has no comments on this part of the draft Guidelines.

#### **Procedural Matters**

With regards to the proposed appropriate measures (paragraph 636 of the draft Guidelines), the Netherlands wishes a longer period of at least one year to amend existing aid schemes to comply with the new Guidelines.