II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 29 November 2000

on the aid scheme 'Subsidieregeling weegapparatuur en geautomatiseerde bemonsteringsapparatuur' which the Netherlands is planning to implement for small and medium-sized manure transport companies

(notified under document number C(2000) 3935)

(Only the Dutch text is authentic)

(Text with EEA relevance)

(2001/806/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to the provisions cited above [1] and having regard to their comments,

Whereas:

I. PROCEDURE

(1) By letter dated 27 July 1999, registered as received on 31 August 1999 (A/36575), the Netherlands notified the Commission of the aid scheme 'Subsidieregeling weegapparatuur en geautomatiseerde bemonsteringsapparatuur' (hereinafter SWB).

(2) By letter dated 17 April 2000 (SG (2000)/D 103197), the Commission informed the Netherlands that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the aid scheme.

(3) The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities* [2]. The Commission invited interested parties to submit their comments.

(4) The Commission received comments from interested parties. It forwarded them to the Netherlands, which was given the opportunity to react; its comments were received by letter dated 27 September 2000, registered as received on 2 October 2000 (A/38015).

(5) By letters dated 10 August 2000, registered as received on 14 August 2000 (A/36761), and 16 August 2000, registered as received on 21 August 2000 (A/36855), the Dutch Government submitted a modified aid scheme on which the Commission asked for further information by letters of 22 August (D/54357) and 31 August 2000 (D/54472). The Dutch Government replied on 27 September 2000, registered as received on 2 October 2000 (A/38015).

II. DETAILED DESCRIPTION OF THE AID

(6) The SWB scheme was introduced to encourage the purchase of weighing facilities and automated test equipment for controlling exactly the weight and composition of manure to ensure compliance with Council Directive 91/676/EEC of 12 December 1991 (Nitrate Directive) concerning the protection of waters against pollution caused by nitrates from agricultural sources. The Dutch legal basis for conforming with this Directive is the 'Meststoffenwet' (Manure Law) of 4 December 1997, as amended on 16 March 1999. It stipulates that, from 1 January 2000 onwards, manure transport companies will be obliged to use automated test and weighing machinery; previously, they were allowed to estimate the weight and composition of manure.

[1] OJ C 175, 24.6.2000, p. 6.
[2] See footnote 1.

(7) By the proposed aid measure, the Dutch Government intends to provide manure transport companies with an incentive to install the equipment in question before it becomes mandatory under the 'Meststoffenwet'. The original scheme, announced on 27 July 1999, provided for subsidies with an aid intensity equivalent to 35 % of the acquisition cost. The aid was available to any company, regardless of size, which applied for it. Under the modified scheme, aid recipients will be small or medium-sized enterprises which meet the conditions set out in point 3.2 of the Community guidelines on state aid for small and medium-sized enterprises [3] (SME guidelines).

(8) To qualify for a subsidy under the SWB scheme, the machinery must have been installed before 15 September 1999. The application was to be submitted between 6 April and 29 April 1999. The subsidy would be paid out not later than 1 March 2000. Under the terms of the SWB-scheme, the payment of the aid would be effected only after approval by the Commission.

(9) The Dutch Government set aside a budget of NLG 2 800 000 (EUR 1 270 585), which would provide subsidies for about 200 facilities. Under the modified SWB scheme, the aid intensity is 7,5 % in the case of medium-sized enterprises and 15 % in the case of small enterprises. The eligible costs are defined as the costs for the purchase of the weighing and automated test equipment. The cost of installing the equipment is borne by the transport companies.

(10) Following notification of the initial aid scheme, the Commission initiated the procedure under Article 88(2) of the EC Treaty as it had serious doubts as to whether the SWB scheme qualified for the derogations set out in Article 87(2) and (3) of the EC Treaty since none of them seemed to apply. In the case of the first derogation, set out in Article 87(3)(c), the Commission deemed that none of the conditions of the Community guidelines on state aid for environmental protection [4] (hereinafter the environmental guidelines) applied. No evidence was provided that the investment aid allowed a significantly higher level of environmental protection than the mandatory environmental standards as the 'Meststoffenwet' was adopted specifically to transpose the Nitrate Directive into national law. In addition, the proposed intensities of aid exceeded the thresholds laid down in the environmental guidelines. The SME guidelines seemed not to be applicable either, since the incentive effect of the aid seemed to be an artificial one, the aid was not limited to small and medium-sized enterprises and the maximum intensities exceeded the ceilings stipulated in the guidelines.

[3] OJ C 213, 23.7.1996, p. 4.
[4] OJ C 72, 10.3.1994, p. 3.

III. COMMENTS FROM INTERESTED PARTIES

(11) The German Government stressed that it agreed with the Commission as regards the distortive effect of the SWB scheme. The obligation laid down in the Dutch Manure Law corresponded to the terms of the Nitrate Directive, which all Member States had to transpose into national law. The German Government pointed out that North Rhine-Westphalia and Lower Saxony, which border on the Netherlands, are two Lander carrying on intensive animal husbandry. As Dutch companies in Germany transported manure, they competed with German companies. By relieving them of some of the investment costs imposed on them under the Nitrate Directive, the Dutch measure distorted competition between Germany and the Netherlands. Furthermore, the German Government observed that the administrative practice of the Dutch authorities was such that aid was granted only to companies registered in the Netherlands. Moreover, given the very limited application period, companies from outside the Netherlands were automatically excluded from the possibility of receiving subsidies, and this constituted discrimination against competitors from other Member States.

IV. COMMENTS FROM THE NETHERLANDS

(12) The Dutch Government gave notification of a modified scheme whereby the intensity of aid was limited to 7,5 % in the case of medium-sized companies and to 15 % in the case of small companies. It stressed that the incentive effect lay in the fact that the subsidy was designed to encourage manure transport companies to buy automated test and weighing equipment some months prior to the entry into force of the mandatory standards in order to provide for proper transposal and implementation of the Nitrate Directive in the Netherlands. Otherwise, these companies would be reluctant to install the equipment or would do so too late, resulting in a shortage of properly adapted manure transport vehicles. The Dutch authorities also pointed out that the subsidy cannot exceed 15 %, that the distance over which manure is transported tends to be rather limited and that the adverse effect on trade between Germany and the Netherlands would be negligible. Moreover, the scheme in question is not limited to companies registered in the Netherlands. It is open to any company offering manure transport services in the Netherlands. Lastly, they stressed that one German enterprise and three Belgian companies operate in the Netherlands and none of them had applied for subsidies under the scheme.

V. **ASSESSMENT OF THE MEASURE**

(13) The investment aid planned by the Dutch Government subsidises the purchase of weighing and testing equipment in order to comply with the provisions of the Nitrate Directive. It thus favours the companies involved. By strengthening their financial position, this financial incentive threatens to distort competition on the EU internal market as the manure transport service provided by Dutch companies competes with the service offered by companies registered in other Member States which are not eligible for subsidies designed to promote compliance with mandatory standards imposed by Community or national legislation as no such aid scheme exists in other Member States. Consequently, the aid is likely to have an adverse effect on trade between Member States in this sector and constitutes state aid within the meaning of Article 87(1) of the EC Treaty.

(14) Following the publication of the Commission decision to initiate proceedings, the Dutch authorities submitted a modified SWB scheme in which it is stipulated that state aid may be granted only to small and medium-sized enterprises as defined in the SME guidelines.

(15) Accordingly, the Commission based its assessment on the fact that the SWB scheme is designed primarily to encourage the purchase of weighing facilities and automated test equipment by small and medium-sized enterprises for controlling exactly the weight and composition of manure in order to comply with the Nitrate Directive. Manure, a by-product of livestock farming, is not included in the list of agricultural products in Annex I to the EC Treaty, and the Community guidelines for state aid in the agriculture sector ([5]) do not therefore apply.

(16) The planned aid can be regarded as being compatible with the common market only if one of the derogations in Article 87(2) and (3)(a), (b), (c) and (d) of the Treaty applies to it.

(17) The aid does not have a social character, it is not granted to individual consumers, it does not serve to make good the damage caused by natural disasters or exceptional occurrences, and it is not granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany. The derogation in Article 87(3)(a) of the EC Treaty does not apply to the present case either because the aid was not designed to promote the economic development of an area where the standard of living is abnormally low or where there is serious underemployment. As far as the derogation in Article 87(3)(b) of the EC Treaty is concerned, the Commission holds that the aid was clearly not intended to promote an important project of common European interest nor to remedy a serious disturbance in the economy of a Member State. The regional aspect of the derogation in Article 87(3)(c) of the EC Treaty does not apply since the companies are not located in assisted areas, and the scheme does not promote culture and heritage conservation as mentioned in Article 87(3)(d) of the EC Treaty. The Dutch authorities did not attempt to justify the aid on any of these grounds.

(18) As regards the first part of the derogation in Article 87(3)(c) of the EC Treaty, namely aid to facilitate the development of certain economic activities, the Commission based its assessment on the fact that, according to the Dutch Government, the SWB scheme was designed primarily to encourage the purchase of weighing facilities and automated test equipment by small and medium-sized enterprises for controlling exactly the weight and composition of manure in order to comply with the Nitrate Directive.

In this connection, it must be recalled that, by its decision of 11 March 1992 ([6]) concerning the establishment of a national manure bank, being a public foundation for the environmentally acceptable disposal of surplus manure, the Commission expressly prohibited operating aid for variable costs, such as transport, storage and delivery, for manure-processing projects. Moreover, in its decision on manure-processing projects ([7]), it confirmed it's a priori negative attitude to further manure-related aid in the Netherlands.

(19) The Commission first assessed the measure in the light of the SME guidelines. Applying the derogations in Article 87(3)(c) of the EC Treaty and in line with the requirements of the SME guidelines, the present project is deemed to be incompatible with the common market for the following reasons.

(20) According to the general principles laid down in point 4.1 of the SME guidelines, for a state aid measure to qualify for exemption, it must in the first place be in the nature of an incentive; it must not therefore be operating aid and it must be necessary in order to achieve objectives which market forces alone would not secure. The Dutch Government pointed out that the aid scheme was designed to give an incentive to manure transport companies to buy automated test and weighing equipment some months prior to the entry into force of mandatory standards and thus to ensure proper transposal and implementation of the Nitrate Directive in the Netherlands. This has to be classified as an artificial

([5]) OJ C 28, 1.2.2000, p. 2.

([6]) OJ L 170, 25.6.1992, p. 34.
([7]) Aid measure C 17/90 (OJ C 82, 27.3.1991, p. 3).

incentive since any company wishing to offer manure transport services in this market sector would have to install new equipment according to the Dutch mandatory standards over virtually the same period as that laid down in the SWB scheme. Consequently, the measure cannot be considered to be necessary or to have an incentive effect within the meaning of the SME guidelines.

(21) Moreover, the measure must be proportionate, with the positive effect outweighing the damaging effect which state aid has on competition and trade. The Dutch Government considers that the positive effect of the measure derives from the fact that it encourages manure transport companies to install the equipment necessary to comply with the 'Meststoffenwet'. Otherwise, these companies would be reluctant to install the equipment or would do so much too late, resulting in a shortage of properly adapted manure transport vehicles. The Commission also holds that the aid is not intended to alleviate the handicaps typically faced by small and medium-sized enterprises, such as difficulty of access to capital and credit stemming from a lack of information, the risk-averse nature of the financial markets and the limited guarantees that SMEs can offer. The measure has the sole effect of reducing the costs which Dutch enterprises would normally have to bear in order to comply with the mandatory standards based on harmonised Community law. The measure therefore favours manure transport companies in the Netherlands by relieving them of some of the investment costs of the new equipment, whereas their competitors that transport manure in other Member States must meet the entire cost of this equipment themselves. The Commission therefore takes the view that the aid cannot be regarded as proportionate since the damaging effects on competition and trade outweigh the positive effects, which are considered to be artificial because the aid scheme introduces standards with which manure transport companies would in any case have had to comply from 1 January 2000.

(22) This means that the aid scheme cannot be approved on the basis of the SME guidelines.

(23) The Commission then considered whether the measure complied with the environmental guidelines. As regards the doubts as to the applicability of the environmental guidelines expressed by it in its decision to initiate the procedure, it considers the incentive effect to be artificial (see point 20). Since the entry into force of the 'Meststoffenwet', manure transport companies are required to ensure that the weight and composition of the manure are accurately measured. The aim of the aid scheme is to encourage the purchase of the correct equipment to ensure the precise recording of manure data. This investment is thus intended for the purchase of new equipment and not the replacement of existing equipment. On the basis of section A in point 3.2.3 of the environmental guidelines, the Commission cannot therefore approve the aid relating to those investment costs that do not exceed the cost of adapting old equipment.

(24) Finally, section B of point 3.2.3 of the environmental guidelines does not apply either because the aid for investment in new plant is not intended to encourage firms to improve on mandatory environmental standards but to subsidise investment costs in order to comply with mandatory standards.

(25) Consequently, the aid scheme cannot be approved on the basis of the environmental guidelines.

VI. **CONCLUSIONS**

(26) In the light of the foregoing considerations, the Commission concludes that none of the general principles set out in point 4.1 of the SME guidelines, namely the incentive effect, the necessity and the proportionality of the measure, is fulfilled. The measure does not constitute aid to investment as defined in the SME guidelines and is not aimed at encouraging firms to improve on mandatory standards as required by the environmental guidelines. As the measure in question does not comply with the SME guidelines on the environmental guidelines, it cannot be considered to contribute to the development of economic activities without affecting trade between Member States to an extent contrary to the common interest. Inasmuch as the derogation under Article 87(3)(c) of the EC Treaty is not relevant, the principle of prohibition stipulated in Article 87(1) of the EC Treaty is fully applicable,

HAS ADOPTED THIS DECISION:

Article 1

The state aid which the Kingdom of the Netherlands is planning to implement for small and medium-sized enterprises, amounting to EUR 1 270 585, is incompatible with the common market.

The aid may accordingly not be implemented.

Article 2

The Kingdom of the Netherlands shall inform the Commission, within two months of notification of this Decision, of the measures taken to comply with it.

Article 3

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels, 29 November 2000.

For the Commission

Mario MONTI

Member of the Commission