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**PUBLIC VERSION**  
**WORKING LANGUAGE**  
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**Subject: State aid SA.31243 (N 308/2010) – Subsidy scheme for acquisition  
of land for nature conservation (NL)**

Dear Sir,

The Commission wishes to inform the Netherlands that, having examined the information supplied by your authorities on the matter referred to above, it has decided not to raise objections to the proposed aid measure.

## **1. PROCEDURE**

- (1) Following pre-notification contacts, the measure was notified by letter dated 9 July 2010, in accordance with Article 108(3) of the Treaty on the Functioning of the European Union ("TFEU"). Further clarifications or information requested by the Commission were received on 12, 14 and 25 October 2010, 7 February 2011 and 20 May 2011.

## **2. DESCRIPTION**

### **2.1. Measure**

- (2) The proposed measure concerns a subsidy for the acquisition of land (in ownership or leasehold) for sustainable nature conservation<sup>1</sup>. The aim of the

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<sup>1</sup> The eligible costs for the acquisition are limited to the "real market value", defined as the value established by an independent valuer, article 1(j) of the draft grant scheme for land purchase for the National Ecological Network (*Ontwerp subsidieregeling voor grondverwerving ten behoeve van de ecologische hoofdstructuur*), hereinafter "draft grant scheme". The Dutch authorities have explained that this value is established on the basis of generally accepted market indicators and valuation criteria. The use of the land – often agricultural – is the starting point for the valuation. In the valuation, the development of the

measure<sup>2</sup> is to enhance the National Ecological Network ("EHS"), a coherent network of nature areas in the Netherlands<sup>3</sup>. Accordingly, the land in question is mainly located in the EHS. However, the scheme also provides for the option to acquire land in other areas that are considered by the Dutch provinces as being areas with important natural features or woodland and countryside elements that have been laid out as part of land development projects. In addition, it is possible to be eligible for a grant for land that, although not situated in the EHS, will be used within a time limit to be determined by the provinces as land that can be converted to become part of the EHS. The land concerned can be either agricultural land that is to be converted into nature sites or an existing nature site<sup>4</sup>.

## 2.2. Beneficiary

- (3) The draft grant scheme defines as the beneficiary to whom a grant may be awarded anyone who carries out sustainable nature management or makes a sufficiently reasonable case that he can and will carry out sustainable nature management<sup>5</sup> in accordance with the type of nature management stipulated in the nature management plan, which is adopted by each province under the Provincial Ordinance on Nature and Landscape Management (*Provinciale Verordening Natuur- en Landschapsbeheer*)<sup>6</sup>.
- (4) The beneficiary shall consult and cooperate with the managers of the surrounding nature conservation areas to achieve consistent management<sup>7</sup>. The grant recipient shall not sell the land or leasehold except with the consent of the Provincial

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price of the land in the area is central; this is determined on the basis of the land transactions which have taken place in the area concerned. The value established by the independent valuation expert is the minimum purchase price that is expected to be realised in the market and at the same time the maximum amount in relation to which a subsidy can be granted.

<sup>2</sup> The Dutch authorities also submitted the explanatory memorandum (*Toelichting*) to the draft grant scheme (dated 9 July 2010), page 9 and 10.

<sup>3</sup> The EHS comprises: (i) existing nature reserves, including 20 national parks, reserves and nature areas; (ii) more than 6 million acres of waters, including lakes, rivers, coastal North Sea and the Wadden Sea; (iii) agricultural land managed as nature areas. Further details can be found at: <http://www.rijksoverheid.nl/onderwerpen/natuur/ecologische-hoofdstructuur>.

<sup>4</sup> Draft grant scheme, article 2.

<sup>5</sup> Draft grant scheme, article 3 (*beneficiaries*). The Dutch authorities have explained in this context that this means that the grant applicant himself must possess the necessary expertise or that he will call in external expertise. This is, according to the authorities, in the interests not only of the public authority (ensuring that nature is developed as desired with public funds), but also of the applicant. If the latter does not succeed in achieving the prescribed type of nature management (article 18(1)(b) of the draft grant scheme), he will have to repay the grant.

<sup>6</sup> The nature management plan is adopted by each province under the Provincial Ordinance on Nature and Landscape Management (*Provinciale Verordening Natuur- en Landschapsbeheer*) and forms the basis for the award of provincial grants for nature management (see also State aid cases N545/2009 and N376/2010, Commission decisions of 31.01.2011 and 20.04.2011 respectively). Topographical maps in the nature management plan indicate the parcels of land and the types of nature management which are eligible for a grant for the *management* of existing nature sites. The nature management plan also describes the desirable situation for the future, together with the objectives of nature management in the longer term. To this end, the nature management plan stipulates which parcels are eligible for grants for the development of which nature management types. *This also includes the designation of parcels which can be purchased or converted to the prescribed nature management type with a grant under the present scheme.*

<sup>7</sup> Draft grant scheme, article 18(1)(c).

Executive<sup>8</sup>. On the basis of a qualitative obligation that the nature manager/owner must enter into and file in the public registers, the permanent use of the land as nature land will be guaranteed<sup>9</sup>. If land acquired with a subsidy under the notified scheme is sold, the grant must be paid back to the public authorities (Provincial Executive) within six months<sup>10</sup>. Eligibility for the grant entails the requirement that any revenues from the land to be acquired with a grant will be spent on sustainable nature management in relation to that land<sup>11</sup>.

### 2.3. Budget

- (5) The budget allocated to such nature conservation projects is EUR 55 million annually. The total budget foreseen is EUR 276 million. The amount of EUR 276 million relates at least to the period to 2015, according to the Dutch authorities.

### 2.4. Duration

- (6) The measure will run for as long as is needed to facilitate the development the EHS. The date envisaged for the entry into force of the grant scheme was 1 January 2011, subject to Commission approval of the aid. The measure is not subject to a precise time limit. The Dutch authorities have however given the commitment that the scheme will be re-notified after 10 years, should they wish to continue to grant aid after this period.

### 2.5. Legal basis

- (7) The national legal basis for the aid is the provincial grant scheme for land purchase for the National Ecological Network (*Provinciale Subsidieregeling Grondaankoop Ecologische Hoofd Structuur*) as well as the national grant scheme for land purchase for the National Ecological Network (*Rijkssubsidieregeling Grondaankoop EHS*).

### 2.6. Cumulation

- (8) Aid granted under the notified measure cannot be cumulated with aid received from other local, regional, national or Union sources to cover the same eligible costs.

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<sup>8</sup> Draft grant scheme, article 18(1)(d).

<sup>9</sup> In the case of the acquisition of leasehold, this qualitative obligation is part of an agreement between the State and the owner of the land, draft scheme, article 17(3).

<sup>10</sup> Draft grant scheme, article 18(4). In the *Toelichting* explaining the draft grant scheme, the Dutch authorities have clarified that this only arises in exceptional situations. For instance, where there is a question of change of classification for the general benefit (*bestemmingswijziging ten algemene nutte*). Furthermore, land may be sold if the amicable acquisition is to prevent expropriation. And, where the land is sold to a party which would be eligible for the grant under article 3 of the scheme, in general, this will not give rise to objections.

<sup>11</sup> Draft grant scheme, article 18(1)(g). The Dutch authorities expect that the following forms of revenue will arise: revenue from visitors' centres, excursions, parking charges, hunting fees, sales of game, but indicate however that such revenue is likely to be limited in extent.

### 3. VIEW OF THE DUTCH AUTHORITIES

- (9) The Dutch authorities are primarily of the view that nature management should be considered as a non-economic activity, reasoning that nature management serves a public aim and is important for maintaining biodiversity and quality of life in the Netherlands. The fact that in the implementation of nature management activities that can generate revenue may be carried on does not alter this fact. These activities cannot be separated from the non-economic core activity, namely nature management. Therefore the beneficiary of the proposed measure cannot be considered as an undertaking within the meaning of EU law, according to the authorities.
- (10) Subsidiarily, should the Commission be of the opinion that the measure constitutes State aid, the Dutch authorities are of the view that only the parts of nature management which can be considered as economic activities and which can be separated from the core activities need to be scrutinised for compatibility with the European competition provisions. In that context, the Dutch authorities state that the subsidisation of land purchased to complete the EHS does not affect or threaten to affect trade between Member States as regards these economic activities and that the nature manager does not receive an advantage from the grant for the purchase of land for nature conservation.
- (11) Also subsidiarily, the Dutch authorities consider that the Altmark criteria are fulfilled and that therefore the subsidies granted do not constitute State aid<sup>12</sup>.
- (12) Alternatively, should the Commission consider that the subsidies do constitute aid, the Dutch authorities argue that the aid would be compatible on the basis of the Framework for State aid in the form of public service compensation ("SGEI Framework")<sup>13</sup>, with reference to the decision in State aid case NN8/2009<sup>14</sup>.
- (13) The Dutch authorities submit that the measure serves the wider purpose of nature management which includes the completion of the EHS. According to the Dutch authorities the acquisition of land is needed in order to use (or maintain) the land as nature. Nature management within the Netherlands can be divided into three phases. The first phase is the creation of nature where nature managers acquire land not previously used for that purpose. The second phase is the development of nature where land is developed if the ecological features as desired by the central government/provinces do not exist on the land acquired. The third phase consists of the management of nature (the land acquired).
- (14) For each phase subsidies may be available. The measure at hand only compensates for costs incurred in the first phase for the acquisition of land for sustainable nature conservation. However, a beneficiary may, for instance, in the third phase apply for a nature management subsidy. The Dutch authorities submitted in this context that, to the extent that revenues occur from nature management (of the acquired land), such revenues will be deducted from any nature management subsidy.

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<sup>12</sup> Case C-280/00 *Altmark Trans and Regierungspräsidium Magdeburg* [2003] ECR I-7747.

<sup>13</sup> OJ C 297 of 29.11.2005, p. 4.

<sup>14</sup> Case NN8/2009, Commission decision of 19 June 2009.

## **4. ASSESSMENT**

### **4.1. Lawfulness of the aid**

- (15) By notifying the aid measure before its implementation and subjecting its entry into force to Commission approval, the Dutch authorities fulfilled their obligation according to Article 108(3) TFEU.

### **4.2. Presence of aid pursuant to Article 107(1) TFEU**

- (16) A measure constitutes State aid under Article 107(1) TFEU if it fulfils four conditions. Firstly, the funding stems from the State or from State resources. Secondly, the measure confers an advantage on certain undertakings or economic activities. Thirdly, the measure is selective. And fourthly, the measure affects trade between Member States and distorts or threatens to distort competition in the internal market. However, the prohibition on granting State aid contained in Article 107(1) TFEU applies only insofar as the beneficiaries are undertakings.

#### ***4.2.1. Undertaking***

- (17) The Dutch authorities contest the nature of the activities concerned as economic. However, with reference to the reasoning in paragraphs 24 to 31 of the Commission Decision of 20 April 2011 in case N376/2010 concerning the subsidies for nature management, the Commission considers that Dutch nature managers eligible for a grant under the notified scheme are undertakings within the meaning of Article 107(1) TFEU and as such are subject to State aid control.

#### ***4.2.2. State resources***

- (18) The aid stems from State resources since it is funded by the national budget and will, in part, be borne by the general budget of the provinces. The proposed measure is imputable to the State, as it follows directly from the proposed draft legislation.

#### ***4.2.3. Economic advantage***

- (19) The measure confers an economic advantage on the recipients, since at most 100% of the real market value of the land (either ownership or leasehold) is compensated (if the commercial price for the land, as agreed between the seller and the purchaser, remains below the "real market value" as determined by the independent valuer, then only the commercial price is taken into account for the purposes of the grant). In addition, a limited number of related costs are regarded as eligible for compensation under the proposed scheme, including among other things the costs of the land registry duty and registration fee, auction costs, notary fees, real estate transfer tax, costs of soil testing and valuation and mediation costs<sup>15</sup>.
- (20) However, the Dutch authorities have provided information aiming to demonstrate that the measure does not constitute an aid on the basis of the *Altmark* case law, by which the Court of Justice ruled that public service

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<sup>15</sup> Draft grant scheme, article 15.

compensation does not constitute State aid within the meaning of Article 107 of the Treaty provided that four conditions are cumulatively met.

*Conservation tasks as Services of General Economic Interest ("SGEI")*

- (21) As confirmed by the Union courts, Member States have wide discretion in defining an SGEI mission and the conditions of its implementation. The Commission can question a Member State's definition only in case of manifest error<sup>16</sup>. Member States must, however, indicate the reasons why they consider that the service in question, because of its specific nature, deserves to be characterised as a SGEI<sup>17</sup>.
- (22) SGEIs have typically concerned the big network industries such as transport, postal services, energy and communications. However, in its 2004 White Paper on Services of General Interest<sup>18</sup> the Commission recognised that "*services of general interest and the context in which they are provided, including the European Union itself, are constantly evolving and will continue to evolve*". While focusing on the more typical public service missions, the Paper also considered the environment to be an area where services of general interest might be established: section 3.4 states that, "*in line with the Union's policy on sustainable development, due consideration has to be taken also of the role of services of general interest for the protection of the environment and of the specific characteristics of services of general interest directly related to the environmental field, such as the water and waste sectors*".
- (23) Against this background, the Commission accepted, in case NN8/2009 regarding State aid for the conservation of nature areas in Germany, that *environmental protection tasks in the interest of society as a whole* may constitute a service of general interest, whereby it was considered appropriate to carry out a global analysis of the absence of overcompensation so as to include all possible revenues (including those stemming from economic activities). The Commission accepts that there may be a need to acquire land to be used as nature in line with a national policy of developing a coherent national ecological network and, in view of the required obligation for the permanent use of the land as nature, does not challenge the classification of the notified scheme as part of a wider SGEI. Given that the Dutch scheme at hand shows significant similarities with the German situation, the Commission considers it appropriate to follow the same global approach in respect of the notified measure in the case at hand.

*The Altmark criteria are not cumulatively fulfilled*

- (24) In particular, the fourth *Altmark* condition is that, in order not to constitute State aid, the amount of compensation must be defined either through an open, transparent and non discriminatory public tender procedure which would allow for the selection of the tenderer capable of providing those services *at the least cost to the community*<sup>19</sup>, or the public authorities have to define the amount of

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<sup>16</sup> See for instance Case T-289/03 *BUPA* [2008] ECR II-81, paragraphs 166-169.

<sup>17</sup> Case T-289/03 *BUPA*, cited above, paragraph 172.

<sup>18</sup> Communication of the Commission of 12.5.2004 COM(2004)374 final, available at [http://eurlex.europa.eu/LexUriServ/site/en/com/2004/com2004\\_0374en01.pdf](http://eurlex.europa.eu/LexUriServ/site/en/com/2004/com2004_0374en01.pdf).

<sup>19</sup> *Ibidem*, point 93.

compensation on the basis of an analysis of the costs of a typical undertaking, well run and adequately equipped (the "*benchmarking method*").

- (25) The Commission notes the following in relation to the application procedure and, more particularly, the selection of the beneficiary<sup>20</sup>. Under the proposed scheme, a grant can be awarded only when the Provincial Executive has opened up the possibility to submit applications for the award of a grant by setting a budget for the grant and a period for submitting applications<sup>21</sup>. The Provincial Executive shall rank grant applications submitted in one and the same application period per grant budget in the order in which they are received, with applications received on the same day being ranked by drawing lots if the grant budget is exceeded on that day. According to the ranking, the highest ranked application shall be the first to be eligible for a grant. It is not necessary for the applicant to provide specific information as standard with his application. Where appropriate, and notably depending on the type of nature management to be achieved, the provincial authorities can request this, for example in the form of an action plan.
- (26) The Commission concludes that, on the basis of the information provided by the Dutch authorities regarding the public tender procedure as described above, the fourth Altmark criterion cannot be regarded as being fulfilled.
- (27) The tender procedure under the notified scheme does not require the authorities to select the beneficiary who has demonstrated to be able to provide nature conservation management services *at the least cost to the community*. The eligibility is rather based on the qualifications of the applicant. Decisive is whether the grant applicant qualifies as someone who carries out sustainable nature management or makes a sufficiently reasonable case that he can and will carry out sustainable nature management in accordance with the type of nature management stipulated in the nature management plan.
- (28) Indeed, the selection procedure appears not to take any account of whether the potential beneficiary is a well run undertaking able to provide an efficient service. There is therefore no scope for applying the benchmarking method.
- (29) Hence, the Commission is of the view that the Altmark case law cannot be relied upon to classify the measure as no aid. Given that the fourth criterion is not fulfilled, the Commission considers that there is no need to separately assess the first three Altmark criteria, as set forth in point 95 of the *Altmark* judgment.

#### **4.2.4. Selectivity**

- (30) The measure is considered to be selective, as only certain parties will benefit from the measure, notably those undertakings that will be eligible for a grant under the proposed draft legislation.

#### **4.2.5. Impact on trade and Distortion of competition**

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<sup>20</sup> Draft regulation, article 4 (*Budget for grant and opening-up of period for submitting applications*) and article 5 (*ranking: order of receipt*).

<sup>21</sup> The decision of the Provincial Executive shall be advertised in the Provincial Bulletin at the latest six weeks before the start of the period for submitting applications (article 4(2) of the draft grant scheme).

- (31) The Dutch authorities have confirmed that beneficiaries may receive revenues for land management and expect that such revenues will arise from e.g. visitors' centres, excursions, parking charges, hunting fees and sales of game, revenues from the sale of wood. It is noted that activities in sectors such as tourism, hunting or forestry are open to competition and intra-community trade. Admittedly, these activities are likely to be limited in scope, both geographically and in terms of value.
- (32) As regards value, modest amounts of aid complying with the conditions set out in Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to *de minimis* aid<sup>22</sup> fall outside the scope of Article 107(1) TFEU. However, although the Dutch authorities estimate that in the majority of cases beneficiaries would not receive aid in excess of approximately EUR 100 000, the scheme does not set a limit on the amount of aid which may be granted to a recipient.
- (33) In the case at hand, at least one of the activities (wood sales) does not concern the provision of a service, but the sale of goods (forestry products), which are capable of being exported within the EU. As regards the other activities, it cannot be ruled out that the subsidised land would be suitable for international tourism. Therefore, despite the fact that the impact of the measure is likely to be limited only, the Commission considers that it cannot be excluded that intra-EU trade will be affected.

#### **4.2.6. Conclusion**

- (34) Since all criteria of Article 107(1) TFEU are met, the Commission concludes that the notified measure constitutes State aid.

### **4.3. Compatibility of the aid on the basis of the post-Altmark package**

#### **4.3.1 Applicability of the SGEI Decision**

- (35) Small amounts of compensation granted to undertakings providing services of general economic interest whose turnover is limited may be considered compatible aid (and are exempt from the notification requirement) pursuant to Commission Decision (EC) N° 842/2005 of 28 November 2005 on the application of Article 86(2) of the EC Treaty [now Article 106(2) TFEU] to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest (the "*SGEI Decision*")<sup>23</sup>. In particular, the SGEI Decision applies to compensation granted to undertakings with an average annual turnover before tax, all activities included, of less than EUR 100 million during the two financial years preceding that in which the service of general economic interest was assigned, which receive annual compensation for the service in question of less than EUR 30 million.
- (36) The Dutch authorities have clarified that a large proportion of the beneficiaries will fall within the scope of Decision 2005/842/EC, but indicated that some nature

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<sup>22</sup> OJ L 379 of 28.12.2006, p. 5.

<sup>23</sup> OJ L 312 of 29.11.2005, p. 67.



managers may fall outside it. It is not possible for the authorities to determine in advance which grant amounts will be allocated to which beneficiaries.

- (37) The Commission notes that, in the absence of an explicit limitation of the scheme to measures fulfilling the conditions of the SGEI Decision, there may be situations in which the thresholds are exceeded. The Commission finds it therefore appropriate to also check compliance of the scheme with the SGEI Framework. Since the rules of the SGEI Decision and Framework are, in substance, the same (the Decision being narrower in its scope of application) there is no need for a separate assessment.

#### **4.3.2 Compatibility on the basis of the SGEI Framework**

- (38) Public service compensation which cannot be qualified as no aid on the basis of the Altmark criteria may, however, be compatible if it complies with the conditions laid down in the SGEI Framework.

##### **4.3.2.1 *Genuine SGEI***

- (39) In its case practice<sup>24</sup> the Commission has accepted that it may be in the public interest to ensure that valuable natural heritage sites are protected and enhanced. In the case at hand, in the light of the analysis described in points (21) - (23), the Commission is satisfied that the acquisition of land for nature management for sustainable nature conservation forms part of that wider purpose and justifies the establishment of public service obligations.

##### **4.3.2.2 *Entrustment***

- (40) Public service obligations for which compensation is granted must be clearly defined. According to point 12 of the SGEI Framework this means that responsibility for operation of the SGEI must be entrusted to the undertaking concerned by way of one or more official acts, which must specify:
- a) the precise nature and duration of the public service obligations;
  - b) the undertakings and the territory concerned;
  - c) the nature of any exclusive or special rights assigned to the undertaking;
  - d) the parameters for calculating, controlling and reviewing the compensation;
  - e) the arrangements for avoiding and repaying any overcompensation.

- (41) The Commission considers that these conditions are fulfilled for the following reasons.

Regarding criterion a), the public service obligation for which compensation is granted concerns the acquisition of the unencumbered ownership or leasehold of land for the completion of the EHS and focuses on the sustainable preservation and sustainable management of the land acquired. The relevant acts for this public service obligation are the draft grant scheme and the grant decisions to be based on the grant scheme. As already indicated in point 3, under the draft subsidy

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<sup>24</sup>

State aid case NN8/2009

scheme a grant may be awarded to anyone who carries out sustainable nature management, or makes a sufficiently reasonable case that he can and will carry out sustainable nature management, in accordance with the type of nature management stipulated in the nature management plan governing the land acquired, and provided that any revenues are reinvested in sustainable nature conservation. More particularly, the nature and duration of the public service obligation are laid down in Articles 17 and 18 of the draft scheme. Namely, within two weeks of the awarding of the grant the grant recipient and the Provincial Executive shall conclude an agreement, including the obligation that the person to whom the land belongs shall manage the land in accordance with the type of nature management stipulated in the prevailing nature management plan. Furthermore, on the basis of a qualitative obligation that the nature manager must enter into and file in the public registers, the permanent use of the land as nature land will be guaranteed. It is therefore concluded that the environmental tasks have been duly entrusted by the Netherlands to the grant recipients, and as such criterion a) is considered to be fulfilled.

- (42) The draft scheme specifies (in Article 3) which general requirements are to be met by beneficiaries. The grant decision will determine which beneficiary will receive a grant for the purchase of which land. Hence, criterion b) must be regarded as fulfilled.
- (43) Criterion c) - the nature of any exclusive or special rights assigned to the undertaking - is also considered to be fulfilled as, with the grant, the beneficiary is obliged to acquire the full ownership/leasehold of the land for the purposes of sustainable nature management.
- (44) Regarding criterion d), the level of the grant is determined on the basis of Articles 15 and 19 of the draft grant scheme and the provisions included in the *Algemene wet bestuursrecht* (General Administrative Law Act) in relation to grants. Only costs actually incurred in acquiring the land are compensated, including any costs of buying leases and additional eligible costs connected with the acquisition, such as valuation costs, notary fees or real estate transfer tax<sup>25</sup>. The subsidy amount paid in order to purchase the land or acquire the leasehold is limited to the real market value. Moreover, if the grant results in the accretion of capital, the Provincial Executive may under certain circumstances (specified in the General Administrative Law Act) claim compensation from the beneficiary<sup>26</sup>. A grant application must be accompanied by a summary and estimate of eligible costs and a valuation report by an independent valuer concerning the land to be acquired<sup>27</sup>. In the case of a request to determine the definitive amount of the grant, the grant recipient must submit a statement of the costs incurred together with the substantiating documents.
- (45) Regarding criterion e), as indicated previously, the level of the grant for acquiring the land is linked to the real market value. For additional costs (as specified in point ((44), only costs actually incurred may be compensated.

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<sup>25</sup> Draft grant scheme, article 15.

<sup>26</sup> Draft grant scheme, article 16.

<sup>27</sup> Draft grant scheme, article 14.

#### 4.3.2.3 *Amount of compensation*

- (46) The amount of compensation cannot exceed what is necessary to cover all or part of the costs incurred in discharging the public service obligations, taking into account the relevant receipts and a reasonable margin of profit<sup>28</sup>. Compensation must actually be used for the operation of the SGEI, but the undertaking receiving public service compensation may enjoy a reasonable profit<sup>29</sup>. When a company carries out activities falling both inside and outside the scope of the service of general economic interest, the internal accounts must show separately the costs and receipts associated with the service of general economic interest and those associated with other services, as well as the parameters for allocating costs and revenues<sup>30</sup>.
- (47) The Commission has taken note of the submission of the Dutch authorities that nature management is a loss-making activity. A nature manager can however apply for a management grant for land acquired under the notified scheme on the basis of the Provincial Ordinance on Nature and Landscape Management<sup>31</sup>. The Dutch authorities confirmed that revenues from nature management are deducted from the nature management subsidy. Consequently, the Commission concluded in its decision of 20 April 2011 in case N376/2010 that no overcompensation is implied by that subsidy scheme for nature management.
- (48) The Commission notes that the grant under the notified scheme is limited to the costs incurred in acquiring the full ownership/leasehold of the land, including any costs of buying leases and additional costs connected with the acquisition, such as valuation costs, notary fees or real estate transfer tax<sup>32</sup>. The compensation for the costs of acquiring the land will not exceed 100% of the real market value (as defined) and certain additional costs, such as valuation costs and notary fees, upon production of supporting documents.
- (49) Furthermore, beneficiaries must use revenues from the acquired nature land for nature conservation purposes<sup>33</sup>. If land acquired by means of a grant under the subject scheme is sold, the beneficiary must, within a period of six months, repay the value of the land<sup>34</sup>. The Dutch authorities have confirmed that the value of the land corresponds to the proceeds of the sale of the nature land. In addition, a qualitative obligation is vested on the nature land, which means that a purchaser must carry out nature conservation activities on the land in accordance with the type of nature management stipulated in the nature management plan, adopted by each province under the Provincial Ordinance on Nature and Landscape Management. Neither the original nor the new owner shall gain any advantage in the case of a land transfer.

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<sup>28</sup> SGEI Framework, point 14.

<sup>29</sup> SGEI Framework, point 15.

<sup>30</sup> SGEI Framework, point 19.

<sup>31</sup> State aid cases N545/2009 and N376/2010, Commission decisions of 31.01.2011 and 20.04.2011 respectively.

<sup>32</sup> Draft grant scheme, article 15.

<sup>33</sup> Draft grant scheme, article 18 (1)(g).

<sup>34</sup> Draft grant scheme, article 18 (4).

- (50) Against this background, the Commission considers that the amount of compensation granted for the acquisition of the land does not exceed what is necessary to cover the costs incurred in discharging that part of the public service obligation in question.
- (51) The grant does not include any profit component.
- (52) A beneficiary may carry out other activities, unrelated to the measure at issue. In this case it is necessary to ensure that the costs arising from such activities cannot be imputed to the SGEI. The Dutch authorities have accepted that they will make the granting of a subsidy under the subject scheme conditional on the keeping of separate accounts by the aid recipient, in conformity with the condition laid down in point 19 of the SGEI Framework.
- (53) On the basis of the foregoing, the Commission concludes that the compensation provided under the notified measure does not exceed what is necessary to discharge the public service obligations entrusted to the beneficiaries. This decision in no way prejudices any possible further analysis by the Commission as far as the respect for the EU public procurement rules is concerned.

#### **4.4. Reporting**

- (54) The Dutch authorities have agreed to provide a report on the implementation of the scheme every three years. The report will take the form of a table showing, for each measure, the subsidy that was granted. The Netherlands will also indicate cases in which land was acquired (i) by transfer through change of classification for the general benefit (*bestemmingswijziging ten algemene nutte*) or (ii) by amicable acquisition to prevent expropriation.

#### **5. SUBMISSIONS FROM INTERESTED PARTY**

- (55) The Commission has received submissions from an interested party who has raised concerns about certain aspects of the proposed scheme.
- (56) The interested party expressed *inter alia* concerns that, because of its scope, the proposed scheme fails to address alleged discrimination between the provincial nature conservation societies which have so far been eligible for grants under the so-called PNB schemes and other (private) landowners<sup>35</sup>. In particular, the

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<sup>35</sup> This notified scheme amends the provincial grant schemes for private land management nature protection organisations (*provinciale subsidieregelingen voor particuliere terreinbeherende natuurbeschermingsorganisaties*), which provide for subsidisation of acquisition of land and compensation for the costs of terminating farming leases (the so-called PNB schemes). To avoid fragmentation and to promote unity of management, it was decided when setting up the PNB scheme in 1993 to consider a limited number of land management organisations as beneficiaries (PNBs). At that time, the *Vereniging Natuurmonumenten* (Society for the Preservation of Nature Reserves) and the 12 *Provinciale Landschappen* (Provincial Nature Conservation Societies) were chosen, as these organisations had included nature and landscape conservation in their statutes and their nature management was guaranteed to be sustainable. However, in view of the policy advances with regard to the completion of the EHS and nature management, drawing a distinction between these PNBs and the other nature conservation

interested party pointed in this context to the definition of eligible beneficiaries, i.e. anyone who carries out sustainable nature management or makes a sufficiently reasonable case that he can and will carry out sustainable nature management in accordance with the type of nature management stipulated in the nature management plan. The interested party alleged that this criterion leaves room for the Dutch authorities to implement the scheme in a discriminatory manner, to the disadvantage of private land owners.

- (57) The Commission notes the following. Based on article 3a of the draft grant scheme (*beneficiaries*) anyone who carries out sustainable nature management or makes a sufficiently reasonable case that he can and will carry out sustainable nature management is in principle eligible for a grant. The Dutch authorities have explained that this means that either the grant applicant himself must possess the necessary expertise or that the grant applicant will have the possibility to call in external expertise.
- (58) In addition, the Commission notes that the draft scheme, as originally proposed, was open only to foundations or associations with sustainable nature conservation as their objective. However, following submissions by the interested party voicing concerns as regards an alleged discriminatory implementation of the draft scheme, the Dutch authorities have addressed those concerns by broadening the scope of application of the measure, so as to allow *anyone* who carries out sustainable nature management or makes a sufficiently reasonable case that he can and will carry out sustainable nature management to benefit as potential beneficiary from the proposed scheme.
- (59) As regards the selection of beneficiaries, the Dutch authorities have furthermore explained that the eligibility check will depend very much on the type of nature management prescribed for the parcel in question: complex types of nature management, such as the management of marshland, will make different demands on the manager than a type of nature management which is relatively simple to carry out. The authorities consider it not necessary for the subsidy applicant to provide specific information as standard with his application. Where appropriate, and notably depending on the type of nature management to be achieved, however, the provincial authorities can request further details from the applicant, for example in the form of an action plan. The Dutch authorities have submitted that they are of the view that the current selection criterion, set forth in article 3a of the draft grant scheme, strikes a good balance between, on the one hand, the need for legal certainty and, on the other hand, the desirability not to exclude any applicants upfront. The Commission notes that any concerns on an alleged discriminatory implementation of the scheme based on the type of nature management required, are addressed by the assurance from the Dutch authorities that the grant applicant will have the possibility to call in external expertise in the event that the applicant himself does not possess the necessary expertise.
- (60) In light of the foregoing, the Commission is of the view that the proposed scheme has been designed in an objective and non-discriminatory manner. The

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organisations is considered to be outmoded. The Dutch authorities consider it desirable to place the PNBs and other similar organisations on the same footing (Explanatory Memorandum attached to the draft grant scheme), by way of the notified scheme.

Commission has not found any indication that the proposed scheme would not be implemented in an open and non-discriminatory manner. The Commission has taken note of the submission from the Netherlands in this context, that the provincial authorities are very aware of the need to make the subsidy scheme accessible to anyone who can and will carry out sustainable nature management in line with the nature management type as set out in the nature management plan, and of the importance of not excluding applicants beforehand. The Dutch authorities also stressed that the current government is strongly committed to the achievement of the (reformulated) EHS, including via private nature management. Ensuring free access to the subsidy scheme for land acquisition for both land management organisations and private landowners is regarded by the authorities as an important precondition for achieving this goal.

- (61) The interested party has also submitted that a separate subsidy arrangement already provides for indemnification to land owners for a decrease in the value of land as a result of the transformation of agricultural land into nature land, with reference to the '*model-Subsidieregeling Kwaliteitsimpuls Nature en Landschap*' (Provincial Ordinance on Quality Impulse Nature and Landscape), thereby implying that the proposed scheme could give rise to a cumulation of aid.
- (62) The Commission notes that the said legislation, the *model-Subsidieregeling Kwaliteitsimpuls Nature en Landschap*, explicitly excludes the possibility to apply for a subsidy under that scheme if an applicant has already received a grant for the purchase of agricultural land<sup>36</sup>. Moreover, that scheme and another scheme to which the complainant has referred, the '*model-Subsidieverordening Natuur- en Landschapsbeheer*' (the Provincial Ordinance on Nature and Landscape Management) do not relate to the purchase of land or leasehold for nature conservation purposes, but concern grants for investments into and management of natural areas respectively. On the basis of the foregoing cumulation of aid can be excluded.
- (63) The interested party has additionally emphasised that there is the risk of a price-increasing effect as a result of the subsidy scheme, to the benefit of private sellers (particularly farmers) and at the expense of the Dutch tax-payer. In particular, the interested party is concerned that different market participants would start bidding against one another for the same piece of land, thus leading to an inflated sales price.
- (64) As indicated previously, the proposed measure concerns an open scheme: anyone who carries out sustainable nature management or makes a sufficiently reasonable case that he can and will carry out sustainable nature management is in principle eligible for a grant. Moreover, the value of the land established by the independent valuation expert is the purchase price that is expected to be realised in the market and constitutes at the same time the maximum for which a subsidy can be granted. Considering that the aid will never be more than the purchase price as determined by the independent valuer, the Commission does not consider it likely that the scheme as such would give rise to a price-increasing effect.

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<sup>36</sup> *Model-Subsidieregeling Kwaliteitsimpuls Nature en Landschap*, article 16 sub b.

- (65) Finally, the interested party has raised concerns about the 'tailor-made' (*maatwerk*) application of the exemption option of Article 18(4) of the draft grant scheme. That provision states that upon the sale of the subsidised land, the grant recipient is required to repay the Provincial Executive the subsidy within 6 months, except in the case where the Provincial Executive has exempted the beneficiary from reimbursement.
- (66) The Commission accepts the reasoning of the Dutch authorities that, on transfer of title of land purchased with a grant, situations may arise in which it is not reasonable to reclaim the entire amount of the grant. As explained by the authorities, such a situation may be related to the change in function or the price trend of the land between the time of purchase and subsidisation and transfer of title. A case-by-case assessment is required by the authorities so as to establish the magnitude of the repayment obligation. However, as already noted in point 49 above, the beneficiary must, within a period of six months, repay at least the value of the land which corresponds to the proceeds of the sale of such nature land. The authorities have given the assurance that neither the original recipient nor the new recipient can draw any economic benefit from the transfer of land. In addition, the authorities have given the assurance that all parties – PNBs and private entities alike – shall be treated equally for the purpose of the implementation of this provision Article 18(4) of the draft grant scheme. In light of the foregoing, *prima facie* the Commission has no reason to believe that the exemption option laid down in Article 18(4) of the draft grant scheme would not be implemented in a non-discriminatory manner, nor that the the implementation of this provision would give rise to unlawful State aid in the sense of Article 107(1) TFEU.

## 6. DECISION

- (67) In the light of the above, the Commission considers that the measure is compatible with the internal market pursuant to Article 106(2) TFEU.

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Yours faithfully,  
For the Commission

*Joaquín ALMUNIA*  
Vice-President