

## **Form for the submission of complaints concerning alleged unlawful State aid**

**Please note that it is very important that the complainant fills in the form carefully and provides as much information as possible. Please make sure to complete all the compulsory fields marked with a star (\*).**

### **1. Information regarding the complainant.**

Stibbe (Hendrik Viaene with right of substitution) representing the below complainant (see (2)).

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                      Central Plaza  
                      Rue de Loxum/Loksumstraat 25  
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### **2. I am submitting the complaint on behalf of somebody (a person or a firm)**

Yes

Name of the person/firm you represent\*:

VZW Vlaamse Vereniging Gelijkberechtiging Natuurbeheer ('VVGN')  
(*Flemish Association for Equal Rights in relation to Nature Management*)

Address:            Zwaluwenlaan 18  
                      1780 Wemmel  
                      Belgium

Contact person:    Mr. Pierre Bouckaert, Director  
                      Zwaluwenlaan 18  
                      1780 Wemmel  
                      Belgium  
                      [Pierre.bouckaert.wemmel@skynet.Be](mailto:Pierre.bouckaert.wemmel@skynet.Be)  
                      Tel.: + 32 2 460 06 89

For the VVGN Statutes and Power of Attorney, see Annexes 1 and 2.

### **3. Please select one of the following options, describing your identity: \***

c) Non-governmental organisation

The VVGN is a non-profit organization, representing Flemish private land-owners that are engaged in forest and nature management. It has been established on 19 December 2012 with a view to engaging in legal and political action aimed at securing the equal treatment of all land owners engaged in nature management activities.

Please explain why and to what extent the alleged State aid affects your commercial interests / the commercial interests of the person/firm you represent. Provide as much concrete evidence as possible.

The VVGN draws the attention of the Commission to the fact that a limited group of recognized land managing nature organizations (*erkende terreinbeherende* natuurverenigingen – hereafter ‘LMNOs’) – viz. vzw Natuurpunt, vzw Durme and vzw Stichting Limburgs Landschap – have for numerous years received substantial amounts of funding from the Flemish regional authorities as well as from municipal authorities.

In particular, the three LMNOs have received large amounts of nature land acquisition subsidies pursuant to the 2003 Flemish Subsidy Order (see *infra* – Annex 3) as well as a variety of municipal regulations. Thus, for the period 2003-2010 alone, the three LMNOs have together received per annum between € 7 and 9 million in terms of nature land acquisition subsidies from the Flemish Region (not counting municipal subsidies).

Thus, while the members of the VVGN must bear the full cost of the land they acquire, the LMNOs receive subsidies covering up to 100% of this cost. The VVGN is of the opinion that the subsidies in favour of the LMNOs are detrimental to its interests since they:

- consistently enable the LMNOs to outbid other private land owners that are interested in purchasing land;
- artificially drive up the purchase price for nature land at the expense of the Belgian/Flemish tax payer;
- impede the quest for a level-playing field between the LMNOs and other land-owners that are able and willing to engage in nature management activities.

The VVGN notes that nature protection necessarily implies the possession and management of large areas of land. The protected areas should constitute a coherent and sufficiently large ecological system so as to allow species to develop in an undisturbed or traditional manner. In order to achieve an optimal scale, private entities engaged in nature management, such as the LMNOs and the members of the complainant, generally seek to acquire additional land. This competition is distorted, especially where the subsidies are used to buy land above market prices. Often the complainants only find out about the transfer *post factum*.

Furthermore, the costs of land acquisition represent a significant part of the budget of the complainant’s members. Money spent for these purposes cannot be used for other investments. This implies *inter alia* that the complainant’s members are compelled to request higher rental or entry fees or higher prices for their products than the LMNOs, thus further distorting competition.

#### 4. Please select one of the following two options\*

Yes, you may reveal my identity

Confidentiality: If you do not wish your identity or certain documents or information to be disclosed, please indicate this clearly, identify the confidential parts of any documents and give your reasons. In the absence of any indication about confidentiality of your identity or certain documents or information, those elements will be treated as non confidential and may be shared with the Member

State allegedly granting the State aid. The information contained in points 5 and 6 cannot be designated as confidential.

#### **5. Information regarding the Member State granting the aid\***

*Please be aware: the information provided under this point is regarded as non-confidential.*

a) Country:

Belgium

b) If known, specify which institution granted the alleged unlawful State aid:

The aid is granted both at the Flemish regional level and at the municipal level.

At the Flemish regional level, State aid has been granted in the form of an aid scheme (currently enshrined in the 2003 Subsidy Order) which is managed by the Flemish Minister for the Environment (*Vlaams Minister van Leefmilieu, Natuur en Cultuur*), in particular through its Service on Nature and Forests (*Agentschap voor Natuur en Bos* - <http://www.natuurenbos.be/>).

In addition, dozens of Flemish municipalities have adopted supplementary aid schemes which enable the three recognized land managing nature organization to obtain additional land acquisition subsidies.

#### **6. Information regarding the alleged aid measure.\***

*Please be aware: the information provided under this point is regarded as non-confidential.*

*Please note that, for a measure to qualify as State aid under Article 107(1) TFEU, it has to be granted by a Member State or through State resources, it has to distort or threaten to distort competition by favouring certain undertakings or the production of certain goods, and affect trade between Member States.*

a) Please provide a description of the alleged aid, and indicate in what form it was granted (loans, grants, guarantees, tax incentives or exemptions etc).

#### **General**

The aid concerned is granted to the recognized land managing nature organizations in the form of **direct grants**. Three types of direct grants – reserved exclusively to the LMNOs – can be identified:

- nature land acquisition subsidies based on Articles 5-9 of the 2003 Flemish Subsidy Order;
- subsidies for visitors centres based on Article 21 of the 2003 Flemish Subsidy Order;
- nature land acquisition subsidies granted by various Flemish municipalities

#### **Nature land acquisition subsidies based on Articles 5-9 of the 2003 Flemish Subsidy Order**

According to Article 44, §1 of the Decree of 21 October 1997 concerning nature conservation and the natural environment [*“Decreet betreffende het natuurbehoud en het natuurlijke milieu”*] (hereafter the *“Nature Conservation Decree”* – Annex 4), the Flemish Region may, within budget limits, subsidise the acquisition of land for the creation of nature reserves by a recognised land managing nature organisation.

According to the preparatory works of Article 44 of the Nature Conservation Decree, the acquisition subsidies for recognised land managing nature organisations must be granted for areas that qualify for recognition as a nature reserve, i.e. areas within the Flemish Ecological Network (hereafter “FEN”) and in green areas and areas for afforestation, given the presence of specific nature values and the characteristics of these areas.<sup>1</sup> According to Article 44, § 2, second para. of the Nature Conservation Decree subsidies for the acquisition of land located in agricultural areas outside the FEN are allowed only if these areas meet certain criteria and must be substantially less than the amount granted for areas located in the FEN, green areas and areas for afforestation.<sup>2</sup>

The subsidy scheme envisaged in Article 44 of the Nature Conservation Decree is implemented in Articles 5-9 of the Order of the Flemish Government of 27 June 2003 on the definition of the conditions for the recognition of nature reserves and of the land managing organisations [“*Besluit van de Vlaamse Regering van 27 June 2003 tot vaststelling van de voorwaarden voor de erkenning van natuurrezervaten en van terreinbeherende natuurverenigingen en houdende toekenning van subsidies*”] (hereafter the “Subsidy Order”).<sup>3</sup>

According to Article 5 of the Subsidy Order, the Minister may, within the annual budget limits, grant subsidies to recognised land managing nature organisations for the acquisition of land with a view to recognizing these areas as nature reserve. Only acquisitions of land located in the Flemish Region are eligible for subsidisation.<sup>4</sup>

Article 8 of the Subsidy Order stipulates the amount of direct grants which the land managing nature organisations may receive. Eligible costs (purchase price + related costs such as notarial fees<sup>5</sup>) are capped at a maximum of 18,000 EUR per hectare.

Article 8 distinguishes between two hypotheses:<sup>6</sup>

<sup>1</sup> *Parl. St. VI. Parl. sess. 1996 – 1997, no. 690/1, p. 19.* The Flemish Ecological Network aims to merge the fragmented nature and forest reserves into larger and interconnected units of nature. Only areas specifically assigned through spatial planning can be included. This network will be supported by nature areas with mixed functions (e.g. parks and agri-environmental schemes) and nature corridor areas (e.g. hedges). The objective is to create a coherent and functional network of ecosystems that are (inter)nationally important and should be preserved in a sustainable way. The network supports and - to a very important extent - fulfils the international obligations of the Birds and Habitats Directives and the Ramsar Convention. The target of developing 125,000 ha of Flemish Ecological Network and 150,000 ha (reduced to 80,000ha in 2011) of nature areas with mixed functions by 2003 was first postponed to 2007 and now to 2015. The first stage in the creation of the Flemish Ecological Network, the so-called consensus stage, took place in 2003 with the selection and approval of 84,965 ha. The second stage is now underway and is being implemented through changes in the spatial planning. Until 31/12/2011 the Flemish Ecological Network increased to cover an area of 89,317 ha, equivalent to 71% of the target. However, the process of adapting the spatial planning is slow and the second stage is now behind schedule. The designation of the nature areas with mixed functions is even more behind schedule, with only 4,000 ha (5% of the reduced target) designated so far (2012).

<sup>2</sup> Land located in agrarian areas and in scenic valuable agrarian areas located outside a special protection zone must in general have (i) a high actual nature value, are less suitable for normal agricultural use in the given agricultural area, and may not harm the agrarian structure or (ii) must have a high actual or potential nature value, low agricultural value, and may not harm the agrarian structure. Land located in valleys, sources areas and agrarian areas with ecological important or with particular value outside the FEN and special protection zones, must meet the criteria laid down by the Flemish government.

<sup>3</sup> Regulation of the Flemish Government of 27 June 2003 on the definition of the conditions for the recognition of nature reserves and of the land managing organisations [“*Besluit van de Vlaamse Regering van 27 Juni 2003 tot vaststelling van de voorwaarden voor de erkenning van natuurrezervaten en van terreinbeherende natuurverenigingen en houdende toekenning van subsidies*”], *Official Gazette* 12 September 2003.

<sup>4</sup> Article 7, § 1.

<sup>5</sup> The sums mentioned in the Subsidy Order include the cost of registration, notarial fees, stamp duty and any resignation compensation. The latter does however not apply for areas referred to in Articles 8, § 2, 3° and 8, § 3, 3° of the Subsidy Order. Art. 8, § 8, second para., of the Subsidy Order.

<sup>6</sup> Art. 8.

- a subsidy scheme which takes effect after the determination of all demarcation plans [*afbakeningsplannen*] for the FEN and the Nature Zones with Mixed Function [*natuurverweavingsgebieden*]; and
- a subsidy scheme which applies until the determination of all demarcation plans for the FEN and the Nature Zones with Mixed Function.

As to the first hypothesis the amounts of subsidies are calculated as follows:

1° for acquisitions outside Major Areas of Natural Interest [*Grote Eenheden Natuur*] and Major Areas of Natural Interest to be Developed [*Grote Eenheden Natuur in Ontwikkeling*] and within:

- a) green areas, park areas, buffer areas, woodlands and other areas for community facilities and public utilities with an overprint for flood areas, water-basins, military domains, nature development areas, expansion areas for afforestation, recreational areas and all areas with similar destinations in the spatial destination plans;
- b) reclamation areas and similar destination zones with a subsidiary destination comparable to the destinations mentioned under a)
- c) areas designated pursuant to the Decree of 14 July 1993 on measures to protect coastal dunes;
- d) Special protection areas;
- e) areas designated in an approved land consolidation plan [*ruilverkavelingsplan*] or an approved master plan for a land arrangement project [*landinrichtingsproject*] and project areas for a specific nature arrangement project [*natuurinrichtingsproject*];
- f) the valley areas, source areas, agricultural areas of ecological importance or ecological value, the agricultural areas of special value, and all areas with similar destinations in the spatial destinations plan located outside the areas referred to in a) – e):
  - 90% of the purchase price, including all costs, for the portion under or equal to 10, 000 EUR/ha for the areas mentioned under a) till f) and 70% of the purchase price for areas mentioned under f) if it concerns cultivated land and if the parcels have been in use by a professional agriculturist for the last 5 years;
  - 70% of the purchase price and all costs, for the portion between 10,000 EUR and 12,500 EUR per hectare and 80% of the purchase price for the areas mentioned under d);

- 50% of the purchase price and all costs, for the portion between 12,500 EUR and 18,000 EUR per hectare and 60% of the purchase price for the areas under d);

2° for purchases of land located within a demarcated Major Area of Natural Interest and a Major Area of Natural Interest to be Developed:

- a) 90% of the purchase price and all costs for the portion under 10,000 EUR per hectare;
- b) 70% of the purchase price and all costs for the portion between 10,000 EUR and 12,500 EUR per hectare and 80% of the purchase price for the areas mentioned under 1°, d);
- c) 50% of the purchase price and all costs for the portion between 12,500 EUR and 18,000 EUR per hectare and 60% of the purchase price for the areas under 1°, d).

In addition to the foregoing grants, at the reasoned request of the acquiring nature organisation, the Minister may exceptionally, in the event of a major acquisition in which at least 100 ha of the land is located within areas referred to in 1°, d), increase the grant for this acquisition to 80% for the portion between 12,500 EUR and 18,000 EUR per hectare;

3° for the purchases of land located in agricultural areas, scenic valuable agricultural areas that meet some specified criteria and areas with a different destination zones, not mentioned under 1° and 2°:

- a) 60% of the purchase price including all costs for the portion under 7.500,00 EUR per hectare;
- b) 50% of the purchase price including all costs for the portion between 7.500 EUR and 12.500 EUR per hectare;
- c) 40% of the purchase price, including all costs for the portion between 12,500 EUR and 18,000 EUR per hectare.

As to the second hypothesis the amounts of subsidies are calculated as follows:

1° for purchases within:

- a) A FEN
- b) the green areas, park areas, buffer areas, afforestation areas and the areas with similar destinations in the spatial destination plans that are part of the Integral

Interweaving and Supporting Network [*Integraal Verwevings- en Ondersteunend Netwerk*]<sup>7</sup>;

- c) the Special Protection Areas;
- d) areas designated in an approved land consolidation plan or an approved master plan for a land arrangement project;
- e) the project areas of a specific nature arrangement project;
- f) the areas designated in an approved Integrated Nature Plan [*Natuurrichtsplan*] pursuant to Article 50 of the Nature Conservation Decree:
  - 90% of the purchase price, including all costs for the portion under 10,000 EUR per hectare;
  - 70% of the purchase price, including all costs for the portion between 10,000 EUR and 12.500 EUR per hectare and 80% of the purchase price for the areas mentioned under c) and f);
  - 50% of the purchase price, including all costs for the portion between 12,500 EUR and 18,000 EUR per hectare and 60% of the purchase price for the areas mentioned under c) and f);

2° for the purchases outside the areas mentioned in 1 ° and within:

- d) green areas, park areas, buffer areas, woodlands and other areas for community facilities and public utilities with an overprint for flood areas, or water-basins, military domains, nature development areas, afforestation expansion zones, recreational areas, and all areas with similar destinations in the spatial destination plans;
- e) reclamation areas and similar destination zones with a subsidiary destination similar to the destinations mentioned under a);
- f) areas designated pursuant to the Decree of 14 July 1993 on measures to protect coastal dunes;
  - 80% of the purchase price, including all costs, for the portion under 10,000 EUR per hectare;
  - 70% of the purchase price, including all costs, for the portion between EUR 10,000 and 12.500 EUR per hectare;
  - 50% of the purchase price, including all costs, for the portion

<sup>7</sup> The Integral Interweaving and Supporting Network consists of all Nature Zones with Mixed Function and Corridor Zones.

between EUR 12,500 and 18,000 EUR per hectare;

3° for the purchase of land located in agricultural areas and scenic valuable agricultural areas insofar as they are not located in the 1 ° and 2 ° areas, and for purchases of land located in other destination areas designated in the spatial zoning plans that not located in the areas mentioned under 1° and 2°:

- 60% of the purchase price, including all costs, for the portion under 7.500 EUR per hectare;

- 50% of the purchase price, including all costs, for the portion between 7.500 EUR and 12.500 EUR per hectare;

- 40% of the purchase price, including all costs, for the portion between 12.500 EUR and 18.000 EUR.

Some additional conditions apply to agricultural areas and scenic valuable agricultural areas.<sup>8</sup>

The maximum amount of the acquisition subsidy allocated to every recognised land managing nature organisation independently is determined using the following formula:

$$z_i = \frac{\sum_{1 \rightarrow 5} (a_i)}{\sum_{1 \rightarrow 5} (a)}$$

with  $z_i$  being the percentage of the available budget for the subsidization of the acquisition of land for a recognised land managing nature organisation for the relevant year;  $(a_i)$  being the annual total of the surface of the subsidized acquisitions by a recognised land managing nature organisation;  $(a)$  being the year total of the surface of the subsidized acquisitions by all recognised land managing nature organisations;  $\text{Sum}(1 \rightarrow 5)$  being the sum of the annual totals for the five years preceding the year in which the indicative acquisition program is launched, the annual budget of the Mina-Fund being the maximum.<sup>9</sup>

A schematic overview of the different subsidy intensities can be found in Table II.8 in the Report of the Flemish Environment and Nature Council (the 'Mina-Council') October 2012, attached to the complaint as Annex 5.

#### **Subsidies for visitors centres based on Article 21 of the 2003 Flemish Subsidy Order**

Apart from the aforementioned nature land acquisition subsidies, which are exclusively reserved to the three recognized LMNOs, Article 36, §6 of the Nature Conservation Decree moreover provides that the Flemish Government may annually, within the limits of the budget, grant subsidies for the rent, the

<sup>8</sup> Art. 8, § 4 of the Subsidy Order.

<sup>9</sup> Art. 8, § 5 of the Subsidy Order.



costs of management and supervision in a recognised nature reserve. Pursuant to this provision, Articles 14-25 of the 2003 Subsidy Order provide a variety of subsidies related to nature management, e.g., subsidies for the lease, management and supervision of recognized nature reserves, subsidies for the first arrangement, the monitoring, exceptional one-off establishments, and subsidies for the opening for and reception of the public in a recognised nature reserve.

In principle, the various nature management subsidies are open to all natural or legal persons that manage an area that constitutes a 'recognized nature reserve'.<sup>10</sup> The procedure for recognition of a protected area as a nature reserve is laid down in Articles 10 – 12 of the Subsidy Decree. The decision is taken by the Flemish Minister of Nature Conservation upon advice of the Nature and Forest Agency [*Agentschap Natuur en Bos*] and several other authorities. The decision on the recognition must take into account several aspects, including the actual and potential ecological value of the area concerned, the protection status of the site, the prospects for improving and continued existence of the ecological values of the area in question, the actual and future management of the site etc.<sup>11</sup> According to the Flemish Institute for Nature and Forest Research (*Instituut voor Natuur- en Bosonderzoek*), as of 2008, the total surface of the recognised nature reserves amounted to 13,434 ha.<sup>12</sup>

Amidst the various nature management subsidies, there is, however, again one subsidy that is reserved exclusively to recognized land managing nature organizations. In particular, Article 21 of the 2003 Subsidy Order states that recognised LMNOs are entitled to a supplementary basic grant of 25,000 EUR per province and per year with a view to receiving visitors in recognized nature reserves and with a view to managing one or more visitors centers.<sup>13</sup> Article 21 §1 of the Order requires that for each province for which the subsidy is requested, the LMNO should have recognized nature reserves covering at least 200 hectares and should have a visitors center meeting certain well-defined criteria. 85% of the subsidy received must be accounted for on the basis of personal costs related to the receiving of visitors in the nature reserves concerned.

Recognized land managing organisations may in addition receive a grant of 1 EUR for every euro received from the provincial or municipal authorities for the organization and management of a nature reserve. The maximum of this grant is set at 25,000 EUR a year for each bracket of 1,000 ha recognised reserve area. 85% of this grant must again be accounted for by reference to personal costs related to the management of the visitors center.

The maximum grant for each visitors center is set at 50,000 EUR per year.<sup>14</sup>

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<sup>10</sup> Art. 14 of the Subsidy Order.

<sup>11</sup> Art. 10, § 5 of the Subsidy Order.

<sup>12</sup> See Instituut voor Natuur- en Bosonderzoek, 'Indicator: oppervlakte natuurreserveaat', available at [http://www.natuurindicatoren.be/indicatorenportal.cgi?lang=nl&detail=276&id\\_structuur=36](http://www.natuurindicatoren.be/indicatorenportal.cgi?lang=nl&detail=276&id_structuur=36). Note: the analysis refers to a surface of 13,434 hectares in terms of recognized nature reserves as well as 6,579 hectares of Flemish nature reserves (managed by the Flemish Service on Nature and Forests (*Agentschap voor Natuur en Bos*)).

<sup>13</sup> Art. 21, § 1 of the Subsidy Order. Where this provision speaks of "recognised land managing organisations", recognised land managing nature organisations are meant. See <http://www.landelijkvlaanderen.be/node/173>.

<sup>14</sup> Art. 21, §3 of the Subsidy Order.

### **Nature land acquisition subsidies granted to the LMNOs by municipal authorities**

In addition to the nature land acquisition subsidies granted by the Flemish Region to recognized land managing nature organizations on the basis of the 2003 Subsidy Order, numerous municipalities within the Flemish Region have established similar subsidy schemes for the acquisition of nature land located within their municipal jurisdiction and that enable the recognized LMNOs to obtain additional subsidies for the part of the purchase price (+ costs) that is not covered by the subsidies from the Flemish Region.

While the VVGN does not have an exhaustive overview of all existing subsidy schemes at the municipal level, a number of examples can be listed by way of illustration:

- the municipality of Wevelgem has set up a subsidy scheme that enables LMNOs to obtain a subsidy covering 90% of the difference between the actual purchase price (including costs) and the subsidy granted by the Flemish Region. The municipal subsidy is capped at 4,050 EUR per hectare. (<http://www.wevelgem.be/producten/subsidie-aankoop-gronden-voor-het-beheer-als-natuurgebied>)
- the municipality of Merelbeke has set up a subsidy scheme that enables LMNOs to obtain a subsidy capped at 5,000 EUR per hectare. This subsidy cannot be more than 10% of the purchase price, and, if combined with a subsidy from the Flemish Region, cannot exceed the actual purchase price. ([http://www.merelbeke.be/file\\_uploads/1097.doc](http://www.merelbeke.be/file_uploads/1097.doc))
- the municipality of Beersel has adopted a similar subsidy scheme, enabling LMNOs to obtain a subsidy that can amount to up to 10% of the purchase price (including costs). Upon receiving a motivated request hereto, the municipality can grant an acquisition subsidy that exceeds the cited threshold. ([http://www.beersel.be/file\\_uploads/4414.pdf](http://www.beersel.be/file_uploads/4414.pdf))

Similar arrangements exist in dozens of other municipalities. Thus, according to a 2012 report published by Natuurpunt, the largest of the three LMNOs, in the period 2006-2011, it received acquisition subsidies from no less than 85 municipalities (Annex 6).

b) For what purpose was the alleged aid given (if known)?

The purpose of the (regional and municipal) nature acquisition subsidies is to enable the recognized land managing nature organizations to purchase areas that qualify for recognition as a nature reserve.

The purpose of the subsidy enshrined in Article 21 of the 2003 Subsidy Order is to provide funding to recognized land managing nature organizations with a view to receiving visitors in recognized nature reserves and to manage visitors centers in these reserves.

c) What is the amount of the alleged aid (if known)? If you do not have the exact figure, please provide an estimate and as much justifying evidence as possible.

The contested aid is granted under different aid schemes. The schemes are triggered by individual and private real estate transactions and by individual applications with the competent authorities. As a result, the complainants do not know the specific amounts which are concerned by the aid schemes.

#### Acquisition subsidies granted to the LMNOs by the Flemish Region

As far as the subsidies granted by the Flemish Region are concerned, some information for the period 2003-2010 can be found in the reply of the Flemish Minister for the Environment dated 9 November 2011 in reaction to a parliamentary question (<http://www.vlaamsparlement.be/Proteus5/showSchriftelijkeVraag.action?id=650860> – Annex 7).

According to Annex 1 to the Minister's reply, the following nature land acquisition subsidies (in EUR) were granted to the LMNOs on the basis of the 2003 Subsidy Order:

- to Limburgs Landschap vzw:

2003	2004	2005	2006	2007	2008	2009	2010
905,424.81	945,114.50	945,114.50	881,781.96	852,145.88	955,655.56	915,633.96	662,543.37

- to Durme vzw:

2003	2004	2005	2006	2007	2008	2009	2010
99,542.01	131,065.33	113,591.72	114,660.74	96,318.43	97,075.02	92,235.52	63,614.12

- to Natuurpunt Beheer vzw

2003	2004	2005	2006	2007	2008	2009	2010
7,959,033.18	7,887,820.17	6,952,006.88	6,967,557.30	7,015,535.69	7,911,269.42	7,198,130.52	6,116,842.51

Total acquisition subsidies granted to the LMNOs by the Flemish Region in 2003-2010 thus amounted to:

2003	2004	2005	2006	2007	2008	2009	2010
8,964,000.00	8,964,000.00	8,010,713.10	7,964,000.00	7,964,000.00	8,964,000.00	8,206,000.00	6,843,000.00

A quantification of the surfaces acquired by means of these acquisition subsidies per LMNO can be found in Annex 2 to the Minister's reply.

Slightly different figures can moreover be found in the October 2012 Report of the Flemish Environment and Nature Council (Annex 5). According to Table II.27, total acquisition subsidies granted to the LMNOs in 2000-2010 by the Flemish Region amounted to:

- € 8,195,360 in 2000;

- € 10,203,297 in 2001;
- € 10,377,000 in 2002;
- € 9,167,063 in 2003;
- € 9,464,292 in 2004;
- € 8,232,397 in 2005;
- € 8,219,743 in 2006;
- € 7,856,779 in 2007;
- € 8,072,858 in 2008;
- € 9,850,980 in 2009;
- € 6,697,785 in 2010.

The report concludes that total acquisition subsidies granted to the 3 LMNOs in 2000-2010 amounted on average to € 8,800,000 per year.

### **Nature management subsidies granted to the LMNOs by the Flemish Region**

Annex 3 to the aforementioned reply by the Minister of the Environment dated 9 November 2011 moreover provides an overview of the nature management subsidies granted to the LMNOs on the basis of Articles 14-25 of the 2003 Subsidy Order. The document reveals that in the period 2003-2011, nature management subsidies granted to the LMNOs amounted to:

- € 3,228,301.46 for Limburgs Landschap vzw;
- € 885,640.98 for Durme vzw;
- € 34,664,122.79 for Natuurpunt Beheer vzw.

The VVGN is unaware of the precise proportion of the aforementioned amounts that was granted on the basis of Article 21 of the 2003 Flemish Subsidy Order (subsidies for visitors centres and reserved exclusively to the LMNOs).

### **Acquisition subsidies granted to the LMNOs at the municipal level**

The VVGN does not dispose of quantitative information as to the acquisition subsidies granted to the LMNOs by the various municipalities within the Flemish Region.

Attention is, however, drawn to a report published by Natuurpunt Beheer, the largest of the three LMNOs, in 2012 (Annex 6). According to this report, in the period 2006-2011, Natuurpunt purchased nature land in a total of 228 municipalities. In 85 of these municipalities (i.e., 37%), Natuurpunt effectively received an acquisition subsidy from the municipal authorities. The report contains a number of examples, such as an acquisition subsidy of € 125,000 granted by the municipality of Vorselaar or a subsidy of € 25,000 granted by the municipality of Laakdal. The presentation brochure available on the website of Natuurpunt moreover suggests that 120 municipalities have supported Natuurpunt in relation to the purchase of new nature land (see: [http://www.natuurpunt.be/uploads/Vereniging/organisatie/documenten/voorstellingsbrochure\\_2012.pdf](http://www.natuurpunt.be/uploads/Vereniging/organisatie/documenten/voorstellingsbrochure_2012.pdf), Annex 8, at 27).

d) Who is the beneficiary? Please give as much information as possible, including a description of the main activities of the beneficiary/firm (s) concerned.

The scope of application of the aforementioned aid schemes is limited to the recognized land managing nature organizations (LMNOs).

### **Recognition of land managing nature organizations**

The general and specific requirements for associations to be recognized as a 'regional', 'provincial' or 'local' land management nature organization are spelled out in Articles 2-4 of the 2003 Subsidy Order.

The most important general requirements are the following:

- the association is established on private initiative as a non-profit organisation. The statutes are validly published and meet the legal requirements;
- the statutes identify nature conservation and/or nature protection and the management of nature reserves on Flemish territory as the association's main and unmistakable purpose;
- the seat of the association is located in the Flemish Region or in the bilingual Region of Brussels-Capital;
- the organisation has a permanent secretariat which is manned at least 20 hours per week;
- the organisation must have been engaged for at least nine years in the management of recognized nature reserves in the Flemish Region and must be able to demonstrate its skills in nature management, the monitoring of flora and fauna and the sustainable conservation of recognised nature reserves;

In addition, associations must comply with the following specific conditions for recognition:

- for a *regional* land management nature organisation:
  - o having managed recognised nature reserves for a minimum period of 9 years:
  - o managing at least 35 recognised nature reserves in a minimum of 4 Flemish provinces with a net recognised surface of minimum 1,000 ha;
  - o having a staff in charge of the management of the recognised nature reserves and of the monitoring of its flora and fauna.
- for a *provincial* land management organisation:
  - o having managed recognised nature reserves for a minimum period of 9 years;
  - o managing at least 10 recognised nature reserves across different districts of one Flemish province with a total surface of at least 500 ha;

- having a staff in charge of the management of the recognised nature reserves and of the monitoring of its fauna and flora;
- for a *local* land management nature organisation:
  - having managed at least one recognised nature reserve for a minimum period of at least 9 years;
  - managing at least 10 recognised nature reserves in a minimum of five Flemish municipalities with a total recognised surface of at least 175 ha.

Pursuant to Article 3 of the Subsidy Order, applications for recognition as LMNO must be submitted to the Flemish Service on Nature and Forests (*Agentschap voor Natuur en Bos*). The Minister of the Environment decides on the application, upon advice of the Mina-Council of Flanders.

Only three organisations are actually recognised as land management nature organisations, i.e. vzw Natuurpunt, vzw Durme and vzw Stichting Limburgs Landschap.

#### **The LMNOs constitute ‘undertakings’ in the sense of the State aid rules**

It is settled Commission practice that nature conservation organizations and nature management organizations, even if established on a ‘non-profit’ basis, may qualify as undertakings in the sense of the State aid rules since the activities they conduct are not purely non-economic in nature and since the environmental objective on their part will always coexist with an economic objective.

Thus, in a case concerning German nature conservation organizations (NN 8/2009, 2 May 2009, §§ 36 et seq.), the Commission held as follows:

*“The Commission notes that nature conservation entities may carry out a variety of tasks, which are not defined exhaustively ex ante (...). While it cannot be excluded that some of the conservation tasks (...) will be purely non-economic in nature, in other cases the conservation objective will be achieved through the imposition of environmental constraints on activities such as forest and pasture management, leases of land and tourism. Even though these activities may be limited in scope and not particularly profitable due to the environmental constraints, profitability is not a relevant criterion for the classification of an activity as economic in nature.*

*Such classification cannot be based, either, on the teleological argument put forward by the German authorities according to which the "focus" of the activities would be environmental protection rather than the generation of revenue. The Commission notes that, regardless of the environmental objectives pursued, the conservation organizations have an interest in generating sufficient revenue to cover the costs related to land ownership and/or those related to project implementation (10% of project costs must be borne by the organizations themselves). Therefore, the environmental objective will always coexist with the economic objective.*

*According to settled case-law, any activity consisting in supplying goods or services on a given market is an economic activity. The Commission considers that, in the case at hand, activities like sales of wood, leases of land and tourism must be classified as economic in nature. The German nature conservation entities concerned by the notified measures should therefore be considered as undertakings within the meaning*

*of Article 87(1) of the EC Treaty insofar as they exercise these activities (and as such, they should be subject to State aid control)."*

And in a case concerning the Dutch 'terreinbeherende verenigingen' (the equivalent of the Flemish LMNOs), the Commission stated as follows (N 376/2010, 20 April 2011, §§ 24 et seq.):

*"The Commission notes that nature managers, including nature conservation entities, may carry out a variety of tasks, which are not defined exhaustively ex ante. While it cannot be excluded that some of the conservation tasks will be purely noneconomic in nature, in other cases the conservation objective will be, at least partially, achieved through tasks involving economic activities, such as e.g. the sale of crops, leases of land and activities attracting tourism. In this respect, the Commission notes that the standard cost calculations take into account revenues when determining the net standard costs, by deducting the expected revenues from the calculated costs before arriving at the net standard costs. For example, the standard cost calculations for reed land and moors include revenues from the sale of reed and wood chips. According to settled case-law, any activity consisting in supplying goods or services on a given market is an economic activity. The Commission considers that, in the case at hand, activities like the sale of wood chips and reed, leases of land and attracting tourism must be classified as economic in nature.*

*(...)*

*Even though the above described activities may be limited in scope and not particularly profitable due to the environmental constraints imposed on activities in the nature conservation areas, profitability is not a relevant criterion for the classification of an activity as economic in nature. Such classification cannot be based only on the main objective or focus of the measure (i.e. environmental protection rather than the generation of revenue). The Commission notes that, regardless of the environmental objectives pursued, the nature managers, including conservation organisations, have an interest in generating sufficient revenue to cover the costs related to land ownership and/or those related to project implementation (...). Therefore, the environmental objective will always coexist with the economic objective*

*Finally, the Commission notes that it appears that in certain cases the nature managers, including nature conservation organisations, might at the same time administer forestry land which is eligible for subsidies for forestry nature management under a State aid scheme approved by the Commission decisions SA.29568 and SA.3262222. In such a case, these entities are also involved in economic activities in the forestry sector.*

*The Commission therefore considers that the Dutch nature managers, including the nature conservation organisations concerned by the notified measures should be considered as undertakings within the meaning of Article 107(1) TFEU insofar as they exercise these activities (and as such, they should be subject to State aid control)."*

A similar approach was adopted in various other cases (e.g., Case N 308-2010 (on Dutch subsidies for the acquisition of nature land), 13 July 2011, at § 17; NN 47/2004 (*Nederland Programma Beheer*), 26 November 2008, at § 53; NN 277/2003 (*Deutschland – Übertragung von Naturschutzflächen*), 26 April 2006)).

The VVGN insists that in the present case the three recognized land management nature organizations are effectively engaged in economic activities and must accordingly be regarded as ‘undertakings’ for purposes of the state aid analysis. In particular, the VVGN wishes to make the following observations:

- Natuurpunt Beheer vzw:

According to its presentation brochure, Natuurpunt Beheer manages some 500 nature reserves, amounting to a total of ca. 19,000 hectares (note: this figure includes both recognized nature reserves as well as terrains for which recognition as a nature reserve has been requested, but has not (yet) been granted)<sup>15</sup> that welcome some 150,000 visitors per year (see: <http://www.natuurpunt.be/uploads/Vereniging/organisatie/documenten/voorstellingsbrochure2012.pdf>, Annex 8). It has 11 visitors centers; employs 400 professionals, including 224 employees in the ‘social economy’, and; ‘cooperates’ with 770 farmers on 6,820 hectares of land. It organizes a wide variety of paid activities, including excursions in nature reserves, courses and workshops (for a total of 13,000 hours of classes). It *inter alia* welcomes the organization of team-building activities for companies within its nature reserves. The sale of wood is identified as an important source of residuary funding ([http://www.natuurpunt.be/nl/bronnen-voor-natuur--en-bosbeheer\\_2391.aspx](http://www.natuurpunt.be/nl/bronnen-voor-natuur--en-bosbeheer_2391.aspx)). Natuurpunt manages a web-store (<http://winkel.natuurpunt.be/>) that sells a wide variety of products, including books, maps, clothing, binoculars, etc. In 2010, Natuurpunt Beheer received € 61,881.78 in terms of subsidies from the European Agricultural Guarantee Fund (EAGF) and the European Agricultural Fund for Rural Development (EAFRD). In 2011, Natuurpunt Beheer received EAFRD subsidies amounting to € 69,332.14.<sup>16</sup> The annual accounts of Natuurpunt Beheer refer to revenues amounting to €13,752,759 for 2011, which consist primarily of membership fees, gifts and subsidies, but which also comprise € 1,486,334 in terms of ‘other company revenues’. Leaving aside funding from membership fees, sponsoring and subsidies, the summary financial annual report 2010 ([http://www.natuurpunt.be/uploads/Vereniging/organisatie/documenten/beknopt\\_financieel\\_verslag\\_natuurpunt\\_2010\\_april2011.pdf](http://www.natuurpunt.be/uploads/Vereniging/organisatie/documenten/beknopt_financieel_verslag_natuurpunt_2010_april2011.pdf)) refers to a ‘turnover’ of € 3,495,000 plus € 557,000 in terms of ‘diverse revenues’.

- Limburgs Landschap vzw:

Limburgs Landschap vzw manages ca. 2,300 hectares of nature land. According to the information on its website (<http://www.limburgs-landschap.be>), it organizes a variety of paid activities, including excursions in its nature reserves, quizzes, etc. Limburgs Landschap vzw recognizes that it receives revenues from the sale of various products, including meat, hay and wood (<http://www.limburgs-landschap.be/waarKomtHetGeld.htm>). Limburgs Landschap vzw received € 1,231.72 of subsidies from the EAFRD in 2011. The annual accounts of Limburgs Landschap vzw refer to a gross turnover of € 1,215,568 in 2011.

<sup>15</sup> One of the conditions for receiving an acquisition subsidy is that the LMNO should submit a request for recognition of the terrain purchased as a recognized nature reserves. While, in principle, such request should be submitted within a period of two years, in practice this deadline is often not respected. LMNOs may nonetheless retain the terrain acquired by means of an acquisition subsidy even if it is not recognized as an actual nature reserve.

<sup>16</sup> Remark: it is also noted that, according to various press reports, in 2011 agricultural subsidies for Natuurpunt were withheld by the authorities by reason of the fact that Natuurpunt failed to comply with the relevant regulation (cf. too many thistles present in grasslands managed by Natuurpunt). See e.g.: Vlaams infocentrum voor land- en tuinbouw, ‘Landbouwsubsidies van Natuurpunt volledig ingehouden’, 4 January 2012, available at [http://www.vilt.be/Landbouwsubsidies\\_van\\_Natuurpunt\\_volledig\\_ingehouden](http://www.vilt.be/Landbouwsubsidies_van_Natuurpunt_volledig_ingehouden) Again, this confirms that Natuurpunt is engaged in agricultural (read: economic) activities.



- Durme vzw:

Durme vzw manages ca. 380 hectares of nature land, divided over 12 nature reserves. According to the information on its website (<http://www.vzwdurme.be>), Durme vzw organizes a variety of activities, including numerous paid activities, such as excursions in nature reserves managed by Durme vzw, luncheons, workshops, lectures, etc. There are various (paid) formulas for guided visits to, or customized activities (e.g., birthday parties) in, Durme vzw's nature reserves. Durme vzw also manages a brick-and-mortar shop which sells books, DVDs, clothing, gadgets, etc. (<http://www.vzwdurme.be/Content.aspx?me=5>). The annual accounts of Durme vzw refer to a gross turnover of € 469,626 in 2011.

e) To your knowledge, when was the alleged aid granted?

The 2003 Subsidy Order replaced a similar Decision of the Flemish Region dated 29 June 1999 (*Besluit van de Vlaamse Regering van 29 juni 1999 houdende de vaststelling van de voorwaarden voor de erkenning van natuurreservaten en van terreinbeherende natuurverenigingen en houdende toekenning van subsidies*), which already provided for a scheme for granting nature land acquisition subsidies to LMNOs. The 1999 Subsidy Order in turn replaced similar pre-existing legislation, viz. the Royal Decree of 3 February 1981 on the regulation, for the Flemish Region, of the recognition and funding of nature reserves, modified by Decision of the Flemish government of 20 July 1994, and; the Decision of the Flemish government of 16 May 1995 fixing the conditions for recognition and the criteria governing the granting of subsidies to recognized associations that acquire terrains to be organized as nature reserve, modified by Decision of 6 September 1995. The 2003 Subsidy Order does not provide for a date at which the subsidy schemes are to be lifted. Accordingly, the VVGN concludes that the alleged aid has been granted by the Flemish Region at least since the mid-1990s and continues to be granted up-to-day.

As for the subsidies to the LMNOs by municipal authorities, the VVGN does not dispose of concrete information as to their duration. It is noted, however, that according to the website of the Limburgs Landschap vzw, municipal acquisition subsidies were introduced 'after 1985' (<http://www.limburgs-landschap.be/waarKomtHetGeld.htm>).

f) Please select one of the following options:

- According to my knowledge, the State aid was not notified to the Commission.

## 7. Grounds of complaint.\*

a) Please detail the State resources involved.

The State resources involved comprise direct grants from public authorities, notably from the Flemish Region, as well as from a variety of municipal authorities. Such direct grants undeniably entail a transfer of State resources in the sense of Article 107(1) of the Treaty on the Functioning of the European Union (TFEU) (see e.g., Cases T-228 and 233/99, *Westdeutsche Landesbank v. Commission*, [2003] ECR II-435).

b) Please explain why, in your opinion, the alleged State aid is selective (i.e. favours certain commercial undertakings or the production of certain goods).

The contested aid schemes procure an advantage to a limited group of selected undertakings. Accordingly, the measures are selective in scope.

The scope of the contested aid schemes is limited exclusively to recognized land managing nature organizations. It does not extend to other private entities that are similarly engaged in nature conservation and nature management activities.

As indicated above (see Question 6(d)), recognition as a land managing nature organizations is moreover subject to stringent criteria, which require inter alia that the entity concerned is a non-profit organisation; that the seat of the association is located in the Flemish Region or in the bilingual Region of Brussels-Capital; that the association has at least nine years of experience in managing recognized nature reserves in the Flemish Region, and that; the association manages at least 10 recognized nature reserves comprising a total of at least 175 hectares.

Only three organisations have been recognized as land managing nature organisations, notably vzw Natuurpunt, vzw Durme and vzw Stichting Limburgs Landschap.

c) Please explain why, in your opinion, the alleged State aid provides an economic advantage for the beneficiary(ies).

**The aid schemes confer an economic advantage which the LMNOs would not have obtained under normal market conditions**

The contested aid schemes enable the LMNOs to obtain an economic advantage which they would not have received under normal market conditions.

In particular, the LMNOs receive an economic advantage consisting of up to 90% of the purchase price, including all costs (e.g., notarial fees etc.), from the Flemish Region. Depending on the municipality in which the purchased land is located, they may moreover receive an additional acquisition subsidy from the municipal authorities, enabling them to cover (partially or entirely) the remaining part of the purchase price including costs. Thus, the (regional and municipal) acquisition subsidies enable the LMNOs to acquire land at substantially lower cost than in the scenario where they would have to bear the entire purchase price on their own. Furthermore, next to the advantage consisting in the actual value of the land, the aid schemes enable the LMNOs to acquire land, which they may subsequently exploit commercially to obtain revenue (even though such revenue may to a certain extent be limited by environmental constraints).

In addition, the subsidies for the operation of visitors centers provided for in Article 21 of the Flemish Subsidy Order similarly confer an advantage which the LMNOs would not have obtained under normal market conditions. LMNOs may indeed receive up to € 50,000 per year per visitors center.

In accordance with established Commission practice, the cited aid schemes confer an advantage on the LMNOs in the sense of Article 107(1) TFEU (see e.g., NN 8/2009, *Germany – nature conservation*

*areas*, 2 May 2009, § 47; N 308/2010, *Nederland – subsidieregeling grondverwerving ten behoeve van natuurbehoud*, 13 July 2011, § 19; N 376/2010, *Nederland – subsidies voor natuurbeheer*, 20 April 2011, § 34; NN 47/2004, *Nederland – Programma Beheer*, 26 November 2008, § 53).

**The *Altmark* criteria are not fulfilled**

The VVGN moreover asserts that it cannot plausibly be maintained that the aid schemes do not confer an ‘advantage’ in the sense of Article 107(1) TFEU by reason of the *Altmark* jurisprudence (see Case C-280/00, *Altmark*, 24 July 2003, [2003] ECR I-7747). Indeed, even if one were to assume that nature conservation/nature management tasks constitute a service of general economic interest (SGEI), and even if one were to assume that this SGEI encompasses the reception of visitors in visitors centers, the fact remains that the four cumulative *Altmark* criteria are not fulfilled in the present case. Even leaving aside the first three criteria (see, however, *infra*, Question 8), it is undeniable that at least the fourth cumulative condition is not met.

According to the fourth *Altmark* condition, 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*, or the public authorities have to define the amount of compensation on the basis of an analysis of the costs of a typical undertaking, well run and adequately equipped (the ‘*benchmarking method*’). *In casu*, however, the contested aid schemes do not in any way require the (regional or municipal) authorities to select the beneficiary who has demonstrated to be able to provide nature conservation management services *at the least cost to the community*. Instead, eligibility for the contested aid is simply based on the applicant’s prior recognition as a land managing nature organization. The selection procedure does not 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.

In conclusion, by analogy to the Commission Decision in case N 308/2010 (*Nederland – subsidieregeling grondverwerving ten behoeve van natuurbehoud*, 13 July 2011, §§ 24-29), the VVGN is of the view that the *Altmark* case law cannot be relied upon to classify the measure as not constituting aid – without there being a need to separately assess the first three *Altmark* criteria (see, however, *infra* Question 8 ).

d) Please explain why, in your view, the alleged State aid distorts or threatens to distort competition. If possible, please also specify the relevant market/sector on which the alleged competition distortion takes place.

The contested aid schemes distort competition between the LMNOs and other private land owners, such as those represented by the VVGN, and which are likewise engaged in nature management activities, but are deprived from subsidies. In particular, the land acquisition subsidies – which may cover up to 100% of the total purchase prices including costs – consistently enable the LMNOs to outbid other private land owners that wish to acquire additional nature land. A particularly perverse effect of the acquisition subsidies is that they may artificially drive up the purchase price in excess of the normal market value which a private land owner – not eligible for acquisition subsidies – would be

willing to pay.

Furthermore, the nature land acquired by the LMNOs can, and is, subsequently used for a variety of activities that are also exercised by other private land owners and that are fully open to competition. Such activities may include: various tourism-related activities, including the receipt of visitors within the domains managed by the LMNOs (against payment of visitor fees), the organization of excursions, etc.; hunting and fishing; forestry and agricultural activities. The fact that the LMNOs are non-profit organizations does not change this picture (see e.g., C-49/07, *MOTOE*, 1 July 2008, §§ 27-28).

It is moreover noted that, even leaving aside whether or not the LMNOs actually fall within the scope of application of Article 1 of the *de minimis Regulation*<sup>17</sup> (considering that they also appear to be engaged in fishery and agriculture-related activities), there is no guarantee within the contested aid schemes that the subsidies will remain below an amount of € 200,000 over any period of three fiscal years. It is in fact clear (see Question 6(c)) that the acquisition subsidies granted by the Flemish Region to each of the LMNOs exceed by far the *de minimis* threshold.

By reference to established Commission practice, the VVGN concludes that the contested aid schemes improve the competitive position of the LMNOs as compared to the position of private land owners that are not eligible under the aid schemes concerned and therefore distort competition in the sense of Article 107(1) TFEU (see e.g., NN 8/2009, *Germany – nature conservation areas*, 2 May 2009, §§ 49-52; N 308/2010, *Nederland – subsidieregeling grondverwerving ten behoeve van natuurbehoud*, 13 July 2011, §§ 31-33; N 376/2010, *Nederland – subsidies voor natuurbeheer*, 20 April 2011, §§ 35-37; NN 47/2004, *Nederland – Programma Beheer*, 26 November 2008, § 53).

e) Please explain why, in your view, the alleged aid affects trade between Member States.

The beneficiaries of the contested aid are engaged in a variety of activities that are not only open to competition but for which there also exists an intra-community trade. Thus, the land acquired by means of the acquisition subsidies may be suitable for international tourism and/or hunting leases may attract interest internationally. In addition, the LMNOs also engage in the sale of various goods, including forestry and agricultural products, that are clearly capable of being exported within the EU. In light hereof, and light of the fact that the aid schemes do not respect the *de minimis* threshold (cf. *supra*), it is concluded that, even if the activities concerned may be limited in scope, both geographically and in terms of value, they nonetheless have the potential of affecting trade between Member States (in similar vein: e.g., NN 8/2009, *Germany – nature conservation areas*, 2 May 2009, §§ 49-52; N 308/2010, *Nederland – subsidieregeling grondverwerving ten behoeve van natuurbehoud*, 13 July 2011, §§ 31-33; N 376/2010, *Nederland – subsidies voor natuurbeheer*, 20 April 2011, §§ 35-37; NN 47/2004, *Nederland – Programma Beheer*, 26 November 2008, § 53). In addition, the contested aid schemes curb the acquisition of land by investors from other Member States (see also *infra*, Question 9).

<sup>17</sup> Commission Regulation (EC) No. 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 EC to *de minimis* aid, O.J. 28 December 2006, L-379/5.

## 8. Compatibility of the aid.

Please indicate the reasons why in your view the alleged aid is not compatible with the internal market.

**The contested aid schemes cannot be justified by reference to any EU instrument that would remove the need for prior notification and accordingly give rise to unlawful aid**

The VVGN asserts that the contested aid schemes cannot be justified by reference to any EU instrument that would remove the need for prior notification.

Thus, the contested aid schemes cannot be justified by reference to any of the provisions of the General Block Exemption Regulation (Commission Regulation (EC) No 800/2008, O.J. 9 August 2008, L-214/3). Even if the GBER were applicable, it cannot be invoked to cover state aid awarded prior to the GBER's entry into force.

Nor can the contested aid schemes be justified by reference to the Commission's SGEI Decision of 20 December 2011 (O.J. 11 January 2012, L-7/3). This is also true when having regard to the old Commission SGEI package. As to the Commission's 2011 SGEI Decision, even assuming that nature management/nature conservation activities may qualify as services of general economic interest, the contested aid schemes contain no guarantees that the compensation granted to the LMNOs do not exceed the annual amount of € 15 million spelled out in Article 2(1) of the SGEI Decision, or that the period of entrustment does not exceed the 10-year limit identified in Article 2(2) of the SGEI Decision. In addition, the VVGN observes among other things that there exists no guarantee against, nor control over, possible over-compensation. The following (non-exhaustive) observations can be made in this context:

- there is no requirement that the acquisition subsidies must be repaid when the land acquired by means of these subsidies is resold by the LMNOs (the 2003 Subsidy Order simply states that the land can only be resold pursuant to an authorization from the Minister for the Environment (Article 7§4));
- the contested aid schemes do not in any way bring into the equation the revenues obtained by the LMNOs through a variety of economic activities (tourism, forestry, web shop,...) for purposes of calculating the compensation granted. Nor is there any requirement that these revenues must be re-invested in nature conservation activities;
- insofar as the subsidy for visitor centers (Article 21 of the 2003 Subsidy Order) may be combined with a variety of different nature management subsidies and must only be accounted for by reference to personnel costs for up to 85%, there is again no guarantee that it corresponds to actual costs and does not entail over-compensation;
- the contested aid schemes do not impose a requirement that the LMNOs maintain separate accounts for costs and receipts associated with the SGEI and those of other services (Article 5(9) SGEI Decision);
- the contested aid schemes do not provide for any mechanisms for controlling overcompensation as required by Article 6 of the SGEI decision.

By way of illustration, the VVGN notes that it actually occurs that recognized LMNOs receive subsidies to acquire forests composed of 'exotic' tree types (e.g., poplars or American oaks). Thus, an LMNO purchasing a forest for an amount of EU 20,000 may, for instance, receive a subsidy

amounting to EUR 15,000. It is perfectly possible that such LMNO subsequently sells the trees for an amount of EUR 10,000, thus making a EUR 5,000 profit. On top of this, the LMNO may, next to the acquisition subsidy, additionally receive a management subsidy to manage a 'natural forest' (which implies that the LMNO must simply leave the terrain be without intervening in any way). In a situation such as the foregoing, there are no guarantees whatsoever that the revenues on the part of the LMNO are detracted from the acquisition subsidy.

The contested aid must accordingly be regarded as unlawful.

### **The contested aid schemes cannot be regarded as compatible with the internal market**

The VVGN moreover contests that there would be any other grounds for regarding the contested aid schemes as being otherwise compatible with the internal market. Thus, the contested aid schemes do not fit in the Community Guidelines on State Aid for Environmental Protection (O.J., 1 April 2008, C-82/1) or the Community Guidelines for State aid in the Agriculture and Forestry Sector 2007-2013 (O.J. 27 December 2006, C-319/1). They equally are not covered by the preceding Community instruments.<sup>18</sup>

Nor can the contested aid schemes be justified on the basis of the SGEI Framework (O.J. 11 January 2011, C-8/15), primarily because, as mentioned above, there are no guarantees against overcompensation on the part of the LMNOs.<sup>19</sup>

In relation to the idea that the contested aid schemes could somehow be regarded as being compatible with the internal market by direct reference to Article 107(3)(c) TFEU (see e.g., Case N 376/2010, *Nederland – subsidies voor natuurbeheer*, 20 April 2011), the VVGN insists that the contested aid distorts competition and affects inter-State trade to an extent that goes beyond what is necessary for, and proportionate to, the objective pursued (viz. nature conservation). In particular, the VVGN stresses among other things that:

- (1) in the absence of an independent and objective estimation of the value of the land that is purchased by the LMNOs, the acquisition subsidies may artificially drive up the purchase price in excess of the normal market value a private land owner would be willing to pay for the land concerned;
- (2) the artificial limitation of the scope of application of the contested schemes to the three recognized LMNOs, excluding other private landowners engaged in nature management, cannot be objectively justified.

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<sup>18</sup> See: [Community guidelines on State aid for environmental protection](#); O.J. 3 February 2001, C-37/3; Community Guidelines for State aid in the agricultural sector, O.J. 1 February 2000, C-28/1.

<sup>19</sup> In the same vein, they are not covered by the earlier SGEI package.

**9. Information on alleged infringement of other rules of European Union law and on other procedures.**

a) If known, please indicate what other rules of European Union law you think have been infringed by the granting of the alleged aid. Please be aware that this does not imply necessarily that those potential infringements will be dealt with within the State aid investigation.

The VVGN asserts that the contested subsidy schemes also violates Articles 49 and 63 TFEU, since they impede the freedom of establishment and the free circulation of capital. Indeed, private land owners established in other EU Member States cannot acquire or manage land on similar conditions as the beneficiaries of the aid schemes concerned (Cf. C-302/97, *Konle*, 1 July 1999). It is noted in this respect that the aid schemes are discriminatory in nature since they not only limit recognition as a 'land managing nature organization' to entities that are non-profit organisations and that have a minimum of nine years of experience in the management of recognized nature reserves in the Flemish Region, but moreover require that LMNOs should have as their main purpose the management of nature reserves *on Flemish territory* and should have their seat in the Flemish Region or in the Region Brussels-Capital. These discriminatory requirements cannot be objectively justified.

b) Have you already approached the Commission's services or any other European institution concerning the same issue? \*

No

c) Have you already approached national authorities or national courts concerning the same issue? \*

No

**10. I understand that for a faster treatment of the complaint the information provided above in points 5 and 6 are non-confidential and can be sent to the Member State in question.\***

Yes

**11. I hereby declare that all the information in this form and annexes is provided in good faith.\***

Yes

**12. Supporting documents**

Please list any documents and evidence which is submitted in support of the complaint and add annexes if necessary

- Whenever possible, a copy of the national law or other measure which provides the legal basis for the payment of the alleged aid should be provided.
- Whenever possible, please attach any available evidence that the State aid was granted (e.g. press release, published accounts).
- If the complaint is submitted on behalf of someone else (a natural person or a firm) please attach proof that you as a representative are authorized to act.
- Copies of previous correspondence with the European Commission or any other European or national institution concerning the same issue.

- If the issue has already been dealt with by a national court, a copy of a judgement if available.

- Annex 1: VVGN Statutes;
- Annex 2: Power of Attorney;
- Annex 3: the 2003 Subsidy Order;
- Annex 4: the Nature Conservation Decree;
- Annex 5: excerpts from the Study of the Mina Council of October 2012;
- Annex 6: Natuurpunt, 'Het natuurrapport – Vlaamse Steden en Gemeenten 2006-2012', 37 pages;
- Annex 7: reply of the Flemish Minister of the Environment to a parliamentary question, 9 November 2011 (including annexes);
- Annex 8: Natuurpunt, 'Een pluspunt voor de natuur', presentation brochure, 28 pages;

Place, date and signature of complainant

Brussels, 1 March 2013

