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# The Netherlands Extension of the Dutch Guarantee Scheme

European Union: European Commission

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EUROPEAN COMMISSION

Brussels, 29.6.2010
C(2010) 4437 final

**Subject: State Aid N 238/2010 – The Netherlands
Extension of the Dutch Guarantee Scheme**

Sir,

## I. PROCEDURE

1. On 21 October 2008, the Netherlands notified the credit guarantee scheme (hereafter "the Guarantee Scheme") to the Commission. It was registered by the Commission under case number N 524/2008 and approved on 30 October 2008 until 30 June 2009[1].
2. On 6 March 2009, the Netherlands notified several amendments to the Guarantee Scheme under case number NN 16/2009. Given that the Dutch authorities had already put some of the amendments into effect in breach of Article 108(3) TFEU[2], the Commission registered the case as NN.
3. On 23 June 2009, the Netherlands notified the Commission a request to prolong until 31 December 2009 and to amend the Guarantee Scheme. This was approved on 7 July 2009 under case number N 379/2009[3] ("1st extension decision"). In the same decision, the Commission also approved the amendments of NN 16/2009.
4. On 1 December 2009, the Netherlands notified the Commission a request to prolong and amend the Guarantee Scheme until 30 June 2010, which was approved by the Commission on 17 December under case number N 669/2009[4] ("2nd extension decision").
5. Following a number of pre-notification contacts, the Dutch State notified on 9 June 2010 a new request to prolong and amend the Guarantee Scheme until 31 December 2010. This notification also included a letter of the DNB to the Dutch Minister of Finance dated 27 May 2010. Further information was provided on 18 June 2010.

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[1] OJ C 328, 23.12.2008, p. 9-10.

[2] With effect from 1 December 2009, Articles 87 and 88 of the EC Treaty have become Articles 107 and 108, respectively, of the TFEU. The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 107 and 108 of the TFEU should be understood as references to Articles 87 and 88, respectively, of the EC Treaty where appropriate.

[3] OJ C 186, 08.08.2009, p. 4-5

[4] OJ C 25, 02.02.2010, p. 15

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## II. DESCRIPTION

### 1. The objective of the Guarantee Scheme

6. Following the exceptional turbulence in world financial markets and the consequent problems in the wholesale market of unsecured lending, the Dutch State put in place a Guarantee Scheme. This Scheme intends to ensure banks have sufficient access to financing, thereby also supporting credit supply to the real economy.

### 2. Description of the Guarantee Scheme approved by Commission decisions N 524/2008, NN 16/2009, N 379/2009 and N669/2009

7. Eligible institutions (hereafter "the Beneficiaries") are all banks with a seat and substantial operations in the Netherlands.
8. The Guarantee Scheme covers newly issued debt instruments which are not subordinated and are not secured by collateral. Both the principal and the interests are guaranteed.
9. The total budget of the Guarantee Scheme is EUR 200 billion.
10. The Dutch authorities committed to submit a restructuring plan for a Beneficiary, if the State guarantee covering its debt were called upon and no solution was found within six months as regards the repayments by the Beneficiary to the State.
11. Originally, the State guaranteed the following debt instruments: commercial paper, certificates of deposits and medium-term notes. The maturities of the debt instruments were between three months and three years. The guaranteed debt instruments had to be denominated in euro, dollars and sterling.
12. In the original Scheme, the fee that beneficiaries had to pay was based on the recommendations of the European Central Bank[5].
13. The main amendments authorised by the 1st extension decision were the following:
    a) The maximum maturity of the guaranteed debt instruments was extended from three to five years.[6] The Dutch authorities committed to allocate at most one-third of the Guarantee Scheme's total budget in favour of debt instruments with a maturity of more than three years. In addition, a single Beneficiary can use at most one-third of this amount.
    b) The scope of debt instruments eligible for a State guarantee was extended to all the senior unsecured debt instruments or borrowing of a Beneficiary which meets the other eligibility criteria established in the Guarantee Scheme (i.e. it is no longer limited to commercial paper, certificates of deposits and medium-term notes )[7].
14. In the 2nd extension decision, the Commission authorised an increase in the guarantee fee charged by the State from 1 January 2010 for new guarantees:
    a) for debt instruments with a maturity of up to 12 months, the Dutch State applied a fixed fee of 70 basis points (as opposed to 50 basis points previously) p.a. ("the fixed fee")

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5 Recommendations on Government Guarantees on Bank Debt of the European Central Bank of 20 October 2008. http://www.ecb.int/pub/pdf/other/recommendations_on_guaranteesen.pdf

6 The length of time the guarantee may be available is commonly known as "maturity."

7 The debt instruments have to comply with the following conditions in order to be eligible for the Guarantee Scheme: a) have an issue date falling on or after 23 October 2008 and before 31 December 2010; b) have a tenor of no less than three months and no more than five years; c) be denominated in euro, Sterling or US Dollar.

b) for debt instruments with a maturity of more than 12 months, the fee is the sum of the fixed fee (which, as described under a), was increased by 20 basis points) and the variable fee. The variable fee is based on the historical CDS spread of the bank or of banks having the same rating. This variable part increased as a consequence of the modification of the reference period used for calculating the historical CDS spreads from 1 January 2007 – 31 August 2008 (ECB Recommendations) to 1 March 2008 – 1 November 2009[8]. The increase of the variable fee was capped at 30 basis points. As a consequence of the increase in the fixed fee and the variable fee, the increase of the fee for guarantees longer than 12 months was up to 50 basis points.

## 3. Operation of the Guarantee Scheme up to 9 June 2010

15. The Dutch authorities submitted reports on the operation of the Guarantee Scheme on 23 June 2009, 1 December 2009 and 9 June 2010.

16. The last report showed that banks have found alternatives to the Guarantee Scheme to finance themselves. No guarantees have been granted during the last six months (the last guarantee was granted on 24 November 2009). This means that the amount of guarantees actually granted still stands at the December 2009 level i.e. EUR 51.9 billion[9].

17. A detailed overview of the guarantees granted so far is published by the Dutch authorities on the website of the Dutch State Treasury Agency, which is part of the Dutch Ministry of Finance[10].

## 4. Description of the proposed prolongation and the amendments to the Guarantee Scheme

18. The Dutch authorities request an approval of the Guarantee Scheme until 31 December 2010.

19. Moreover, the Dutch authorities intend to increase the guarantee fee again for all rating categories:

a) The fixed fee will be increased to 75 basis points (as opposed to 70 basis points previously) for banks with a AAA rating

b) The fixed fee will be increased to 80 basis points (as opposed to 70 basis points previously) for banks with a AA rating

c) The fixed fee will be increased to 85 basis points (as opposed to 70 basis points previously) for banks with a rating A or A+

d) The fixed fee will be increased to 90 basis points (as opposed to 70 basis points previously) for banks with a rating A-

e) The fixed fee will be increased to 110 basis points (as opposed to 70 basis points previously) for banks with a rating lower than A-

8 The CDS element in the original pricing model was based upon data predating the most acute phase of the crisis which followed the bankruptcy of Lehman Brothers in September 2008. CDS spread differentials across banks are currently significantly higher than pre-Lehman and the Dutch CDS reference period captures this increase.

9 The total amount can be broken down as follows: Achmea Hypotheekbank (EUR 2.2 billion), SNS (EUR 5.7 billon), NIBC (EUR 6.4 billion), Leaseplan (EUR 7.2 billion), ING (EUR 12.4 billion) and Fortis (EUR 18 billion).

10 The address is: http://www.dsta.nl/dsresource?type=org&objectid=minfinbeheer:73618&versionid=&subobjectname=

| Guarantee fees until 30 June 2010 | | | | | New guarantees as of 1 July 2010 | | | |
|---|---|---|---|---|---|---|---|---|
| | Fixed fee | Variable fee (CDS-spread) | Total fee | | | Fixed fee | Variable fee (CDS spread) | Total fee |
| AAA | 70 | 53 | 123 | | AAA | 75 | 53 | 128 |
| AA | 70 | 68 | 138 | | AA | 80 | 68 | 148 |
| A | 70 | 73 | 143 | | A or A+ | 85 | 73 | 158 |
| | | | | | A- | 90 | 73 | 163 |
| Other | 70 | 93 | 163 | | Other | 110 | 93 | 203 |

20. The Dutch authorities undertake to present a viability review for every bank that is granted guarantees on new or renewed liabilities as from 1 July 2010 and for which at the time of the granting of new guarantees the total outstanding guaranteed liabilities (including guarantees accorded before 1 July 2010) exceed both a ratio of 5% of total liabilities and the total amount of EUR 500 million. The viability review will be communicated to the Commission within three months of the granting of guarantees and will comply with the principles set out in the Restructuring Communication.[11] In particular, it will cover the solidity of the funding capacity of the bank concerned; where necessary and in any event where requested by the Commission in case of doubt, a liquidity stress test will be carried out. No separate viability review has to be presented for banks that are already in restructuring or obliged to present a restructuring plan or subject to a pending viability review at the time new guarantees are granted.

21. All other conditions of the Guarantee Scheme remain unchanged.

## III. POSITION OF THE NETHERLANDS

22. In line with the previous Decisions on the Guarantee Scheme, the Dutch authorities accept that the amended scheme contains State aid elements.

23. The Dutch authorities observe with satisfaction that in the past 6 months banks have not used the Scheme as they have found alternative ways of funding. The Dutch State considers the Scheme as a last resort facility and it believes that the Scheme should remain in place as a safety net for banks.

24. By letter of 27 May 2010, the Dutch Central Bank (DNB) declares that it is of the opinion that the Scheme should be prolonged. The DNB argues that the recovery of funding markets is still fragile and it points for instance to the nervousness related to recent sovereign debt problems.

25. In order to encourage banks to look for alternative ways of funding, the Dutch authorities intend to implement a further increase of the guarantee fee. The Dutch authorities observe that the current pricing is aligned with the new minimum conditions recently set by the European Commission[12].

26. The Dutch authorities commit to reporting on a six-monthly basis to the Commission about the functioning of the Guarantee Scheme. In addition to the existing commitments concerning reporting obligations, the Dutch authorities undertake to continue to provide

[11] OJ C 195, 19.08.2009
[12] http://ec.europa.eu/competition/state_aid/studies_reports/phase_out_bank_guarantees.pdf

information on the Guarantee Scheme via its website[13] or alternatively to submit to the Commission a concise mid-term review on the operation of the guarantee scheme until 15 October 2010 at the latest.

27. The Dutch authorities also commit that they will not grant any new guarantees under the Guarantee Scheme without prior notification to the Commission to companies whose restructuring or viability plan was already approved by the Commission.

28. Finally the Dutch authorities undertake to maintain the commitments made in the context of the prior extension of its guarantee scheme and reflected in the Commission decision authorizing that extension[14].

## IV. ASSESSMENT

29. In its decision of 30 October 2008, the Commission concluded that the guarantee scheme constitutes State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union ("TFEU"). However it found that the measures were compatible with the internal market under Article 107(3)(b) TFEU, because they were apt to remedy a serious distortion of the Dutch economy. To this end, the Commission had assessed the appropriateness, necessity and proportionality of the measure.

30. The Commission observes that the extension of the scheme is a response to the continuing fragility of the funding sources that the banks in the Netherlands, as in most Member States, continue to experience. Since the objective of the measure is to provide short- and medium-term financing to financial institutions which are unable to obtain funds on the financial markets, it is important to ensure the availability of the guarantee scheme as long as the global financial crisis continues.

31. Although access to funding for banks has gradually improved in most funding markets over the past year and is no longer a systematic and generalized problem, markets have not yet fully returned to entirely normal functioning. Against this background and taking into account the residual fragility of the recovery process and the possibility of setbacks in that process, the continuation of a guarantee scheme can be deemed necessary to ensure financial stability as confirmed by the DNB. The Commission therefore considers that the extension of the scheme for a further six months is appropriate and necessary to remedy a serious disturbance of the Dutch economy.

32. As regards the specific features of the guarantee scheme, in assessing the request for the extension the Commission has to balance its positive effects for financial stability with the distortions of competition and the delay in the return to a normal functioning of the financial markets that the extension entails. Guarantee schemes should contain minimum exit incentives, and a gradual alignment to market conditions should take place in order to minimise negative spill-over effects on competitors and other Member States.

33. The gradual stabilisation of the market situation and the resulting reduction of the risk premium for unguaranteed debt have brought about a first step towards an alignment with market conditions, whilst providing an exit incentive for the sounder institutions.

34. It is necessary to minimise distortions across banks in the internal market and avoid the risk of State aid dependence. There should therefore be an adjustment of the terms on which banks may retain for the time being the possibility of accessing government guarantees schemes. On the basis of these considerations, the prerequisites for the compatibility of guarantee schemes with Article 107 (3) (b) TFEU that have been

13 http://www.dsta.nl/dsresource?type=org&objectid=minfinbeheer:73618&versionid=&subobjectname=

14 OJ C 25, 02.02.2010, p. 15

established by the Banking Communication[15] and the Commission's subsequent decisional practice continue to apply but need to be complemented by requirements aimed at achieving two objectives.

35. First, banks should be incentivised to scale down or terminate their recourse to government guarantees by means of pricing rules that bring the funding costs of beneficiary banks closer to market conditions and thereby reduce distortions of competition. This should be achieved by an increase in the guarantee fee[16] in comparison with the ECB recommendations of October 2008 that amounts at least to 20 basis points for banks with a rating of A+ or A[17] , 30 basis points for banks rated A-[18] , and 40 basis points for banks rated below A-[19].

36. The Commission observes that the guarantee fees which the Dutch authorities intend to apply from the 1 July 2010 are higher than the minimum requirements mentioned in (35). Indeed, the fixed fee is higher for all rating categories[20]. As regards the variable fee, it is higher since in the Dutch scheme the calculation of the CDS spread is based on the period 1 March 2008 – 1 November 2009.

37. Second, the Commission observes that the use of guarantee schemes will not enable banks with structural weaknesses in their business models to postpone or avoid the necessary adjustments. Indeed, the Dutch State committed to present a viability review for any bank that requests new guarantees under a scheme which take or keep the total amount of the bank's outstanding guaranteed liabilities above 5% of the bank's total liabilities and above the absolute amount of EUR 500 million. The viability review should be presented on the basis of the parameters established in the Restructuring Communication within three months of the granting of the guarantees[21]. The viability review will either confirm the bank's long-term viability without State support or show that farther-reaching restructuring is required.

38. The Commission considers that the notified extension until 31 December 2010 of the State guarantee scheme complies with the requirements set out above and is compatible with the internal market.

39. As regards the combination of this guarantee scheme with other aid measures, as indicated in the Annex to the Restructuring Communication, any restructuring plan should contain all State aid received as individual aid or under a scheme during the restructuring period and all such aid needs to be justified as satisfying all criteria prescribed by the Restructuring Communication (i.e. return to viability, own contribution by the beneficiary and limitation of competition distortion). Accordingly, once a Member State is under an obligation to submit a restructuring plan for a certain aid beneficiary, the Commission needs to take a view in its final decision as to whether any aid granted during the restructuring period satisfies the criteria required for the authorisation of restructuring aid. To this end an individual ex ante notification is necessary.

15 Communication from the Commission – The application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis, OJ C 270, 25.10.2008, p.8

16 For liabilities of all eligible maturities

17 Or A1 and A2, depending on the rating system employed

18 Or A3, depending on the rating system employed

19 Banks without a rating will be considered as having a BBB rating

20 Under the Dutch Scheme, banks with a rating of AAA, AA, A or A+, A- and Other (below A-) have a fixed fee of 75 bp (50 bp), 80 bp (50 bp), 85 bp (70 bp), 90 bp (80 bp) and 110 bp (90 bp) (with the corresponding minimum figure as described in (35) between brackets).

21 In particular, it will cover the solidity of the funding capacity of the bank concerned; where necessary and in any event where requested by the Commission in case of doubt, a liquidity stress test will be carried out.Except where the bank concerned is already in restructuring or subject a pending viability review on the basis of a restructuring or viability plan; in those circumstances the award of additional State aid will be assessed within the framework of the ongoing restructuring/viability review process.

40. In this context, the Commission recalls that based on point 16 of the Restructuring Communication, if aid not initially foreseen in a notified restructuring plan is necessary for the restoration of viability, this additional aid cannot be granted under an approved scheme but needs to be subject to individual ex ante notification. The Commission observes that this condition will be fulfilled since the Dutch authorities committed to notify individually any guarantee which would be granted to a bank on which the Commission would have already taken a final decision concerning its viability plan or its restructuring plan.

41. In addition to the above, the Netherlands commit to provide the Commission with detailed information of the operation of the Scheme via its website[22], in addition to the pre-existing reporting requirements and to complement its future reports on the operation of the scheme with updated available data on the cost of comparable (nature, volume, rating, currency, etc.) non-guaranteed and guaranteed debt issuances. The Commission observes that the information on the website of the Dutch government is easily accessible and functionally equivalent to a concise mid-term review report of the operation of the Scheme. This will allow the Commission to assess the appropriateness, necessity and proportionality of possible further prolongations of the scheme beyond 31 December 2010 and the conditions for such prolongations. Any further prolongation will require the Commission's approval and will have to be based on a review of the developments in financial markets and the scheme's effectiveness.

## V. DECISION

The Commission has decided not to raise objections against the amendments and prolongation of the Guarantee Scheme until 31 December 2010, since it fulfils the conditions to be considered compatible with the Treaty on the Functioning of the European Union.

The Commission notes that the Netherlands exceptionally accept that the decision be adopted in English.

22 Information on the issuers, the guaranteed amounted, the maturity , the issued amount, the ISIN code and the date of the guarantee or provided for each debt instrument which is covered by the guarantee on the following website http://www.dsta.nl/dsresource?type=org&objectid=minfinbeheer:73618&versionid=&subobjectname=

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Yours faithfully,
For the Commission

Joaquín ALMUNIA
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