



EUROPEAN COMMISSION

Brussels, 17.12.2009

C (2009) 10362 final....

In the published version of this decision, some information has been omitted, pursuant to articles 24 and 25 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus [...].

PUBLIC VERSION

WORKING LANGUAGE

**This document is made available for
information purposes only.**

**Subject: State Aid N 669/2009 – Netherlands
Prolongation of the Dutch Guarantee Scheme**

Sir,

I. PROCEDURE

1. On 21 October 2008, the Netherlands notified the credit guarantee scheme (hereinafter referred to as "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 2009¹.
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) TFEU², the Commission registered the case as NN.

¹ Commission Decision C(2008) 6616 of 30 October 2008 – State aid N524/2008, OJ C 328, 23.12.2008.

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.

Zijne Excellentie de Heer Maxime VERHAGEN
Minister van Buitenlandse Zaken
Bezuidenhoutseweg 67
NL - 2500 EB Den Haag

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 379/2009³.
4. On 1 December 2009, the Netherlands notified the Commission a request to prolong and amend the Guarantee Scheme for an additional period of six months, i.e. until 30 June 2010, following a number of pre-notification exchanges. This notification was registered by the Commission under case number N 669/2009. Further information was received on 3 December 2009.

II. DESCRIPTION

1. The objective of the Guarantee Scheme

5. Following the exceptional turbulence in world financial markets, the wholesale market of unsecured lending has dried up. As a consequence, financial institutions have experienced severe difficulties in obtaining financing. The Guarantee Scheme aims to tackle the liquidity shortage and ensure sufficient access to financing in order to support credit supply to the real economy.

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

6. Eligible institutions (hereinafter referred to as "the Beneficiaries") are all banks with a seat and substantial operations in the Netherlands.
7. The guarantees are granted to Beneficiaries according to the requirements of the *Wet op het financieel toezicht* (Financial Markets Supervision Act). The Dutch Central Bank assesses the applications of the individual Beneficiaries.
8. The Guarantee Scheme covers newly issued debt instruments which are not subordinated and are not secured by collateral. The principal and the interests are guaranteed.
9. 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 are denominated in euro, dollars and sterling.
10. The total budget of the Guarantee Scheme is EUR 200 billion.
11. The Beneficiaries have to pay a fee on the guarantee based on the recommendations of the European Central Bank⁴.
12. The Dutch authorities committed to submit a 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.
13. The Beneficiaries are prohibited from advertising or marketing activities using the State guarantee as a commercial advantage. Moreover, the Beneficiaries have to comply with certain conditions regarding corporate governance.
14. The main amendments introduced by the July 2009 prolongation were the following:

³ Commission Decision C(2009) 5461 final of 7 July 2009 – State aid N379/2009, OJ C 186, 08.08.2009.

⁴ Recommendations on Government Guarantees on Bank Debt of the European Central Bank of 20 October 2008.

- a) The maximum maturity of the guaranteed debt instruments was extended from three to five years.⁵ The Dutch authorities have 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)⁶.

4. Operation of the Guarantee Scheme up to 1 December 2009

15. The Dutch authorities submitted reports on the operation of the Guarantee Scheme on 23 June 2009 and 1 December 2009.
16. Since the Guarantee Scheme was approved on 30 October 2008, six Beneficiaries had issued debt instruments that used the Guarantee Scheme: Leaseplan Corp, NIBC, ING, SNS, Fortis Bank Nederland and Achmea Hypotheekbank (Table 1). The total assigned guarantee is EUR 54 billion and the total issued amount is EUR 51,9 billion. The guaranteed debt instruments were denominated in euro, dollars and sterling.

Table 1 – Operation of the Guarantee Scheme up to 1 December 2009

	Total assigned (€bn)	Total issued (€bn)	Total assigned (%)	Total issued (%)
Achmea Hypotheekbank	2,2	2,2	4,1	4,2
SNS	5,7	5,7	10,6	11,0
NIBC	6,8	6,4	12,6	12,3
LeasePlan	7,6	7,2	14,1	13,9
ING	12,8	12,4	23,7	23,9
Fortis	18,9	18	35,0	34,7
Total	54	51,9	100,0	100,0

Source: Dutch ministry of Finance

17. Since the prolongation of the Guarantee Scheme was approved on 7 July 2009, only three Beneficiaries have used the Guarantee Scheme: Fortis Bank Nederland, NIBC and Achmea Hypotheekbank. The total assigned guarantee is EUR 7,2 billion which is equal to the total issued amount.
18. The Dutch authorities have published on the internet the details of all the granted guarantees⁷.

⁵ The length of time the guarantee may be available is commonly known as “maturity.”

⁶ 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 2009; 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.

⁷ The address is: <http://www.dsta.nl/index.cfm?menu2=24&defaultcontent=74&introtxt=0&template=http://www.dsta.nl/index.cfm?lang=ENG&menu2=24&defaultcontent=74&introtxt=0&template=&>

5. Description of the proposed prolongation and the amendments to the Guarantee Scheme

19. The Dutch authorities request an approval of the Guarantee Scheme until 30 June 2010.
20. Moreover, the Dutch authorities intend to increase the guarantee fee:
 - a) For debt instruments with a maturity up to 12 months, the fee will increase from 50 basis points (bps) to 70 bps on an annual basis (fixed fee). This means an increase of 20 bps.
 - b) For debt instruments with a maturity over 1 year, the fee is the sum of the fixed fee and the variable fee. The fixed fee will also increase from 50 bps to 70 bps on an annual basis. The variable fee will change as a consequence of the modification of the reference period used for the CDS spreads from 1 January 2007 - 31 August 2008 (European Central Bank Recommendations) to 1 March 2008 - 1 November 2009. Any possible increase of the variable fee is maximised to 30 basis points (see Table 2). Consequently, the total increase of the guarantee fee could be maximum 50 bps.

Table 2 – New guarantee fee

Rating	Fixed fee	Variable fee (CDS spreads)	Total fee
AAA	70	53	123
AA	70	68	138
A	70	73	143
Other	70	93	163

Source: Dutch ministry of Finance

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 note and the letter submitted by the Dutch Central Bank confirms that it is necessary to prolong the Guarantee Scheme for a further six-month period as from 1 January 2010 in order to avoid potential negative impact for specific banks. The prolongation of the Guarantee Scheme is even more important given the announced phasing-out of the European Central Bank's non-conventional measures currently in place in order to address the financial crisis. In this case, the Guarantee Scheme could function as a safety measure, even when the Guarantee Scheme is not used.
24. In order to encourage banks to look for alternative ways of funding, the Dutch authorities request an increase of the guarantee fee. Due to improvement in market conditions, albeit limited, the banks made less use of the Guarantee Scheme in the second half of 2009.
25. The Dutch authorities indicate that most banks now consider the Guarantee Scheme to be a last resort facility. Furthermore, the Dutch Central Bank urges weaker banks that may be dependent on the Guarantee Scheme to find ways of alternative funding.
26. The Dutch authorities commit to reporting on a six-monthly basis to the Commission about the functioning of the Guarantee Scheme.

27. The Dutch authorities also commit [...]⁸].

IV. ASSESSMENT

1. State aid character of the prolonged and amended Guarantee Scheme

28. As set out in Article 107(1) TFEU, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.
29. As indicated in the previous Decisions on the Guarantee Scheme, the Commission agrees with the position of the Netherlands that the Guarantee Scheme constitutes State aid.
30. The prolongation and amendment of the Guarantee Scheme do not modify the nature of the State guarantees and therefore they still constitute aid within the meaning of Article 107(1) TFEU.

2. Compatibility of the prolonged and amended Guarantee Scheme

31. In the previous Decisions on the Guarantee Scheme, the Commission considered the notified measures compatible with the internal market under Article 107(3)(b) TFEU.
32. The prolongation of the Guarantee Scheme is a response to the continuing difficulties in raising funds on the Dutch wholesale unsecured lending market. The information provided by the Dutch authorities confirms that the prolongation of the Guarantee Scheme is necessary in order to avoid potential negative impact for specific banks. The Commission therefore recognises the need for the prolongation of the Guarantee Scheme until 30 June 2010, as it has done for similar schemes in other Member States⁹.
33. Notwithstanding this, the Commission notes that the take-up rate of the Guarantee Scheme has been limited in the last five months. That low take-up rate is an indicator of the progressive restoration of financial stability in the European markets and a sign that the conditions for raising funds on the Dutch wholesale unsecured lending market have improved.
34. In assessing the request for the prolongation of this guarantee scheme, 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 prolongation 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.
35. The evolution of the market situation and the reduction of the risk premia for unguaranteed debt have brought about a first step towards an alignment with market conditions, whilst providing an exit incentive for the sounder institutions. The *de facto* increase of the guarantee fee above the level recommended by the European Central Bank in autumn 2008 which the Dutch authorities intend to implement represents a useful measure to further contribute to convergence towards market conditions, thereby

⁸ [...]

⁹ Commission Decision C(2009) 9592 final of 1 December 2009 – State aid N588/2009 "Prolongation of the Guarantee Scheme for credit institutions in Spain", not yet published.

reducing distortions across banks in the internal market and avoiding the risk of state aid dependence. The still fragile recovery suggests that banks should retain for the time being the possibility of accessing the Guarantee Scheme under the amended conditions.

36. On balance, the Commission considers that the prolongation until mid 2010 of the Guarantee Scheme under the amended conditions is compatible with the internal market.
37. 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.
38. Furthermore, the Commission recalls that, based on paragraph 16 of the Restructuring Communication, if aid not initially foreseen in a notified restructuring plan be 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 and any such further aid will be taken into account in the Commission's final decision on that bank. In this respect, the Commission notes positively [...].
39. In addition to the above, the Netherlands agrees to complement its future reports with updated available data on the cost of comparable (nature, volume, rating, currency, etc.) non-guaranteed and guaranteed debt instruments. This will allow the Commission to assess the appropriateness, necessity and proportionality of potential prolongations of the Guarantee Scheme and its conditions after 30 June 2010. 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 Guarantee Scheme's effectiveness.
40. The Commission therefore does not object to the amendments and the prolongation of the scheme until 30 June 2010.

V. DECISION

The Commission has decided not to raise objections against the amendments and prolongation of the Guarantee Scheme until 30 June 2010, since it fulfils the conditions to be considered compatible with the Treaty on the Functioning of the European Union.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site:

http://ec.europa.eu/community_law/state_aids/state_aids_texts_en.htm

Your request should be sent by registered letter or fax to:

European Commission
Directorate-General for Competition
State Aid Greffe
Rue Joseph II, 70
B-1049 Brussels
Fax No: +32-2-296 12 42

Yours faithfully,

For the Commission

Neelie Kroes
Member of the Commission