



EUROPEAN COMMISSION

Brussels, 30.08.2010
C(2010)5841 final

PUBLIC VERSION

WORKING LANGUAGE

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**Subject: State aid E 2/2005 – The Netherlands
Existing aid to housing corporations: Decision amending paragraphs 22-24 of
the Commission Decision of 15 December 2009 (C (2009) 9963 final)**

Sir,

I INTRODUCTION

1. On 15 December 2009, the Commission adopted a Decision declaring the Dutch Social Housing system compatible with EU State aid rules on SGEIs, based on certain commitments offered by your Government (hereinafter "the original Decision")¹.
2. As explained in point 9 of the original Decision, Dutch social housing corporations ("wocos") have the right to borrow from the Dutch Municipality Bank (Bank Nederlandse Gemeenten hereinafter "BNG"). This right is referred to in the original Decision and hereinafter as measure d).
3. The qualification of the BNG's loans as aid has been questioned by the Dutch authorities throughout the procedure. Their arguments were shortly summarised in paragraph 21 of the original Decision.

¹ As corrected by decision of 14.1.2010.

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4. The original Decision is the subject of five actions for annulment with the General Court. In three of those actions,² the qualification of measure d) as State Aid is contested. In particular, in T-151/10, the BNG claims the untenability of the Commission's view that BNG loans constitute state aid, on the following grounds. It states that this measure does not qualify as aid because its policy to lend only to housing corporations but not to competitors is not imputable to the State and because the loans to housing corporations are given on market terms. More in particular, BNG invokes that its triple-A rating is partly due to its excellent risk management and that on the liabilities side it has no guarantee from any public authority. Furthermore, it argues that the State cannot give instructions to BNG on whether or not to provide loans to particular institutions.
5. Following these actions for annulment, the Commission has looked again into the matter. It has also, in light of certain new arguments put forward in particular by BNG, asked the Dutch authorities to clarify the factual basis. (A letter was sent to that effect on 1 June 2010 and replied to by the Dutch authorities on 16 June 2010). On the basis of all those elements, the Commission has reassessed measure d).

II ASSESSMENT

6. It should first of all be emphasised that the aid element which is present in any BNG-loans to wocos due to a guarantee by the Social Housing Guarantee Fund is already covered by the commitments offered by the Dutch state and, therefore, by the original Decision.
7. Secondly, upon further examination in the light of the arguments put forward by, in particular, BNG, it must be concluded that BNG is correct when it states in its Application that none of the Dutch commitments were meant to relate to BNG loans as such. In fact, the Dutch authorities, throughout the discussions with the Commission, consistently contested that BNG loans as such constitute state aid. Although the letter of 3 December 2009 by which the Dutch authorities offered their commitments does not explicitly repeat this point, it does not renounce that position either. Under those circumstances, it should be accepted that measure d) was not meant to be covered by the Dutch commitments. Therefore, the qualification by the Commission of measure d) as state aid in paragraphs 22-24 of the original decision was not necessary for accepting the commitments which had been offered by The Netherlands in the context of the existing aid procedure.
8. Thirdly, the Dutch authorities in their replies to the questions of the Commission restate their position that the possibility for housing corporations to borrow money from BNG does not constitute State aid, and there is neither any imputability on the part of the Dutch state nor any question of not market based loans. To support this position, they claim inter alia that BNG does not enjoy any privileges or other advantages that differentiate it from other regular commercial banks, and that the fact that the State may not get involved with parties to which BNG provides loans or with the conditions on which they are provided excludes State imputability.

² T-151/10, T-201/10 and T-202/10.

9. On the basis of the statements of the Dutch authorities and the arguments put forward in the appeals, the Commission has come to the following conclusions: The object of the existing aid investigation E2/2005 was the direct aid to the wocos. The analysis of BNG lending was only ancillary to that main object. Moreover, BNG-lending as such was not meant to be covered by the Dutch commitments. Finally, even if loans by BNG as such had been covered by the Dutch commitments, the reassessment of the available information shows that the Commission does not possess enough evidence to firmly establish that the right of housing corporations to borrow from BNG fulfills all the criteria to be considered as State aid.
10. Consequently, the Commission considers it necessary to replace paragraphs 22-24 with a formal statement to that effect.
11. This Amending Decision is without prejudice to the question whether the Applicants in the three aforementioned court cases have a legal interest in the removal of paragraphs 22-24 – since those paragraphs do not change the content of the commitments which have been offered and accepted - the Commission considers it appropriate, in the interest of legal certainty, especially for wocos wishing to borrow from the BNG without a WSW-guarantee, to formally withdraw those paragraphs.
12. Finally, the Commission emphasises that this Amending Decision only concerns the part of the original Decision relating to measure d). In other words, as already indicated above in paragraph 6, the qualification of, in particular, measure a) as state aid - also if the bank from which the woco borrows with a guarantee from the WSW is the BNG - is unaffected by this Decision.

III DECISION

13. Paragraphs 22 to 24 of the original Decision are replaced by the following:

"22. The Commission considers that on the basis of the available evidence it cannot conclude that measure d) meets all State aid criteria.

23. *[deleted]*

24. *[deleted]*"

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

European Commission
Directorate-General for Competition

State Aid Greffe
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BE - 1049 Brussels
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Yours faithfully,
For the Commission