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**Subject: State aid N 726b/2007 - the Netherlands -
Risk Capital Scheme 'Omnibus Decentralised – Module 9: Risk Capital for
SMEs' ('Omnibus Decentraal - Module 9: Risikokapitaal voor het MKB')**

Dear Sir,

1. INTRODUCTION

- (1) By letter dated 7 December 2007, registered on the same day, the Netherlands notified the aid measure 'Omnibus Decentralised. Omnibus scheme for provinces and municipalities concerning State aid aspects of aid measures for research, development and innovation (R&D&I)' ('*Omnibus decentraal. Omnibusregeling voor provincies en gemeenten inzake de staatssteunaspecten van subsidiemaatregelen ten behoeve van onderzoek, ontwikkeling en innovatie (O&O&I)*'). That aid measure consists of 9 Modules. The Commission split the notification in N 726a/2007, which encompasses the research and development and innovation (R&D&I) Modules 1 - 8 of the measure, and N 726b/2007, which encompasses the measure's risk-capital investment Module Nr. 9. The present decision therefore exclusively pertains to aid for risk capital investments, as set out in Module 9 of the notified aid measure.

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- (2) By letter of 4 February 2008, the Commission asked for additional information on the measure's subject matter. The Netherlands responded by letter dated 14 February 2008, registered on the same day. By letter dated

2. DESCRIPTION OF THE MEASURE:

2.1. Object

- (3) 'Omnibus Decentralised' is designed as a broad legal framework; thereafter referred to as "the framework scheme". It aims at providing a coherent and comprehensive base for State aid measures of Dutch Provinces and Municipalities, with an overall R&D&I-objective. The framework scheme consists of 9 Modules. Modules 1-8 are pertaining directly to State aid for R&D&I. Module 9, which is subject to this decision only, will govern State aid for risk capital investments.
- (4) With reference to the new Structural Funds period 2007-2013, the Dutch authorities asserted that Ministries as well as decentralised authorities have great interest in an unambiguous national legal framework. By virtue of the Provinces Act (*Provinciewet*) and of the Municipalities Act (*Gemeentewet*), decentralised authorities are entitled to grant subsidies on their own authority. Such subsidies must comply with the Dutch General Administrative Act (*Algemene wet bestuursrecht*). According to the Dutch authorities, the notified framework scheme 'Omnibus Decentralised' does not constitute an aid measure in the sense of the General Administrative Act. Rather, it provides for a structure, within which aforesaid authorities may adopt aid measures. The Dutch authorities expect that such framework, once it has been approved by the Commission and is in place, will spare many individual notifications, as aforesaid authorities could adopt and implement aid measures within that approved framework's scope.
- (5) Within the wider 'Omnibus Decentralised'-framework, Module 9 sets out the scope of aid to promote risk capital investments in small and medium-sized enterprises. This Commission decision exclusively pertains to that module, thereafter referred to as "the scheme". The scheme will only cover aid schemes that are fully in line with its requirements. The scheme's funding provisions stipulate that in cases where one or several of these requirements are not met, the aid measure concerned shall be notified to the Commission.

2.2. Legal basis

- (6) The scheme's legal base is:
- Section (*Titel*) 4.2 of the Dutch General Administrative Act;
 - the Provinces Act;
 - the Municipalities Act.

2.3. Duration

- (7) The scheme was scheduled to start on 1 October 2007. However, the Dutch authorities committed to comply with the standstill obligation as stipulated by Art. 3 of Council

Regulation EC No. 659/1999¹ and thus not put the scheme into effect before the Commission has taken, or is deemed to have taken, a decision authorising it. The scheme will expire on 31 December 2015. According to the Dutch authorities, that duration matches the Structural Fund period 2007-2013 and allows for the Structural Fund's "n+2-rule".

2.4. Resources

- (8) The overall budget for the entire framework scheme, i.e. for R&D&I as well as risk capital aid measures, is estimated to be €3,745 billion. The estimated annual budget will be €468 million. Funding will stem from Province-, Central Government- (*Rijk*), and EU- and municipality resources. Since the entire framework scheme has one common objective, the Dutch authorities were not in a position to break down the budget according to the framework scheme's modules.

2.5. Cumulation with other aid

- (9) Where capital provided to an enterprise under the scheme is used to finance initial investment or other costs eligible for aid under other block exemption regulations, guidelines, frameworks, or other State aid documents, the relevant aid ceilings or maximum eligible amounts will be reduced by 50 % in general and by 20 % for target enterprises located in assisted areas during the first three years of the first risk capital investment and up to the total amount received. This reduction does not apply to aid intensities provided for in the Community Framework for State aid for Research and Development² or any successor framework or block exemption regulation in this field.

2.6. Enterprises invested in

- (10) Eligible for investments are SMEs falling within the Community SME-definition³. Risk capital measures falling within the scheme's scope will be restricted to provide financing up to the expansion stage for small enterprises, or for medium-sized enterprises located in assisted areas. It must be restricted to provide financing up to the start-up stage for medium-sized enterprises located in non-assisted areas.
- (11) According to information provided by the Dutch authorities, the definition of 'seed-' 'start-up'- and 'expansion stage' capital for the purposes of the measure will be in accordance with the Commission's definition, as set out in Point 2.2 (f), (g) and (h) of the Community Guidelines on State aid to promote risk capital investments in small and medium-sized enterprises (thereinafter "the Guidelines")⁴.
- (12) Capital will not be provided to firms in difficulty, as defined in the Community Guidelines on State aid for rescuing and restructuring firms in difficulty⁵. Further,

¹ OJ 83 of 27.3.1999, p.1.

² OJ C 323, 30.12.2006, p. 1.

³ OJ L 124, 20.05.2003, p.36.

⁴ OJ C 194, 18.8.2006, p. 2.

⁵ OJ C 288, 9.10.1999, p.2.

financing of firms in the shipbuilding, coal and steel sectors, as well of export-related activities will also be excluded from the scheme's scope.

- (13) In general, the framework scheme is not sector-specific. Nevertheless, with regard to many private sector funds that focus on specific innovative technologies or even sectors (such as health, information technology, biotechnology), the scheme allows for a sectoral focus for risk capital measures falling within its scope.

2.7. Forms of risk-capital measures under the scheme

- (14) The scheme allows for several forms of aid:
- constitution of investment funds ("venture capital funds") in which the State is a partner, investor or participant, even if on less advantageous terms than other investors;
 - guarantees to risk capital investors or to venture capital funds against a proportion of investment losses, or guarantees given in respect of loans to investors/funds for investment in risk capital, provided the public cover for the potential underlying losses does not exceed 50 % of the nominal amount of the investment guaranteed;
 - other financial instruments in favour of risk capital investors or venture capital funds to provide extra capital for investment;
 - fiscal incentives to investment funds and/or their managers, or to investors to undertake risk capital investment.

2.8. Maximum investment and investment instruments

- (15) Funding will be provided in tranches of not more than € 1.5 million per target-SME over each period of 12 months.
- (16) Risk capital investments under the scheme will be provided in the form of equity, quasi-equity, or other instruments.
- (17) Pursuant to the scheme's funding provisions, risk capital measures covered by the scheme must provide at least 70 % of their total budget in the form of equity and quasi-equity investment instruments into target SMEs. Pursuant to the scheme's funding provisions, investment instruments must be in accordance with the following definitions:
- "private equity" means private (as opposed to public) equity investment in companies not listed on a stock-market, including venture capital, replacement capital and buy-outs;
 - "quasi-equity investment instruments" means instruments where the return for the holder (investor/lender) is predominantly based on the profits or losses of the underlying target company, and which are unsecured in the event of default. According to the scheme's pertinent provision, such definition must be based on a substance over form approach.

- (18) According to information provided by the Dutch authorities, quasi-equity investment instruments falling within the scheme's scope will correspond to the criteria hereunder.
- they are unsecured;
 - they will be fully subordinated in the event of default for the entire duration of the scheme;
 - return upon exit will be completely dependent on the success of the target enterprise's activities which are fraught with risk;
 - subordinated loans will have an interest warrant (*een coupon*). In principle, the remuneration for such loans will consist of a fixed component, based on current market interest rates. That component, however, will only be paid if the target enterprise shows satisfactory profits. Fixed minimum remunerations will not be permitted under the scheme;
 - quasi-equity investment instruments will come together with agreements setting out transactions that require the investor's prior agreement.
- (19) For the purpose of assessing the nature of such instruments, the Dutch authorities will have regard to the economic substance of the instrument rather than its name and the qualification attributed to it by the investors. In particular, the Dutch authorities will take into account the degree of risk in the target company's venture borne by the investor, the potential losses borne by the investor, the predominance of profit-dependent remuneration versus fixed remuneration, and the level of subordination of the investor in the event of the company's bankruptcy. The scheme's provisions also provide that the treatment applicable to the investment instrument under the prevalent national legal, regulatory, financial, and accounting rules may also be taken into account, if these are consistent and relevant for the qualification.

2.9. Private participation

- (20) The Dutch authorities guarantee that at least 50 % of the funding of the investments made under risk capital measures that fall within the scheme's scope will be provided by private investors. The threshold will be 30 % in the case of measures targeting SMEs located in assisted areas.
- (21) According to the Dutch authorities, private investors will be independent of the enterprises invested in. Independence will be verified prior to each investment, upon the appraisal of business plans. The managers of risk capital measures under the scheme will be obliged to verify and report on the independence of the private investors involved.
- (22) According to the Dutch authorities, risk capital investments under the scheme will have to be made on the basis of contractual agreements with the target enterprises setting out the general financing terms and conditions, including private co-financing. The Dutch authorities informed the Commission that the managers of risk capital measures under the scheme will be obliged to verify the presence of sufficient private-investor participation. In cases where sufficient private participation can not be evidenced, the managers will not be authorised to make the transaction.

2.10. Investment decisions; exit strategy

- (23) According to the scheme's rules, risk capital measures must fulfil the conditions enumerated hereunder:
- the measures have significant involvement of private investors as described further above, 2.9, providing investments on a commercial basis (that is, only for profit) directly or indirectly in the equity of the target enterprises;
 - a business plan exists for each investment containing details of product, sales and profitability development and establishing the ex ante viability of the project;
 - a clear and realistic exit strategy exists for each investment.
- (24) According to the Dutch authorities, a business plan (*ondernemingsplan*) for the purposes of the scheme must at least contain information on the issues enumerated hereunder:
- personal data of the start-up entrepreneur concerned, including working experience, education and professional training, income, debts and insurances;
 - personal abilities and competencies;
 - the entrepreneur's objective and his ideas to achieve them; ideas on the type of business he wants to develop;
 - a strengths/weaknesses analysis of the enterprise and its product or service;
 - planned legal form of the enterprise;
 - permits necessary to start business;
 - information on the product or service, in particular on its "unique selling position", i.e. what makes it different from comparable products or services;
 - comparable prices: information on the prices charged by comparable enterprises;
 - information on who the entrepreneur's competitors are and what they offer in the market;
 - marketing plans: containing information on the strategy to acquire customers, with regard to product characteristics, price, location of the enterprise, and marketing personnel;
 - promotion plans: planned activities to promote the enterprise, e.g. by advertisements, registration in search engines, folders, mailings, or TV-commercials;
 - organisation of the enterprise: location, attribution of tasks, monthly salaries. In case the enterprise is incorporated (*een rechtspersoon*), the entrepreneur must explain who will be involved in management;
 - financial issues: information on sales prognosis. According to the Dutch authorities, this is the actual question about the product;
 - budget for investments: this category will comprise, among others, start-up costs, e.g. solicitors fees for the deed of association (*oprichtingsakte*), registration with the Chamber of Commerce;

- financing of investments: e.g. by loans or from savings. According to the Dutch authorities, solvency is the most important criterion under this item;
 - Operating budget (*exploitatiebegroting*): Based on sales prognosis, the entrepreneur will have to provide information on the expected net-profit after deducting investments from sales;
 - liquidity (*liquiditeitsbegroting*): overview of financial flows in the enterprise.
- (25) According to information provided by the Netherlands, there will be a clear and realistic exit strategy for each investment made. Exit mechanisms will be determined on a case-by-case basis and will play a crucial role in each investment decision under a risk capital measure within the scheme.

2.11. Risk capital investment funds under the scheme

- (26) Pursuant to the scheme's provisions, the management of a risk capital measure or fund must be effected on a commercial basis. Management teams must behave as managers in the private sector, seeking to optimise the return for their investors. For the purpose of the notified scheme, this criterion is only considered to be present where all the following conditions are fulfilled:
- there is an agreement between a professional fund manager or a management company and participants in the fund, providing that the manager's remuneration is linked to performance and setting out the objectives of the fund and proposed timing of investments; and
 - private market investors are represented in decision-making, such as through an investors' or advisory committee; and
 - best practices and regulatory supervision apply to the management of funds.
- (27) The Dutch authorities declared that funds operating within the scope of the scheme will have been established exclusively for the purposes of the scheme. Such funds will be prohibited to diversify into any activities other than those permitted by the scheme.
- (28) According to the Dutch authorities, there are no legal regulations that could apply to the selection of fund managers. The Dutch authorities assert that all fund managers with a good reputation (*gerenommeerde fondsbeheerders*) in the domain of risk capital financing for the target enterprises concerned could qualify. The Dutch authorities further assert that the remuneration of fund managers will in principle correspond to market rates and be in the 5%-range.

2.12. Monitoring and reporting

- (29) The Netherlands committed to provide an annual report on the measure's implementation, containing:
- (a) A summary table with a breakdown of the investments effected under the risk capital measure including a list of all the enterprise beneficiaries of risk capital measures;
 - (b) Details of potential deals scrutinised and of the transactions actually undertaken;

- (c) Performance of the investment vehicles, with aggregate information about the amount of raised capital.

2.13. De minimis support

- (30) With reference to Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to *de minimis* aid⁶, the framework scheme also allows for *de minimis* support.

3. ASSESSMENT

3.1. Compliance with the obligation to notify in Article 88(3) of the EC Treaty

- (31) The Netherlands notified the measure in accordance with Article 88(3) of the EC Treaty.
- (32) The Commission notes that the measure will encompass *de minimis*-support, which, according to information provided by the Netherlands, will be granted in accordance with Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to *de minimis* aid. Consequently, the Commission finds that *de minimis*-support under the notified scheme does not meet the criteria of Art. 87 (1) EC.

3.2. Relevant Community rules

- (33) The assessment of this measure could fall within the scope of the Community Guidelines on State aid to promote risk capital investments in small and medium-sized enterprises (thereinafter “the Guidelines”)⁷. For the Guidelines to be applicable the following conditions, as laid down in Section 2.1 of the Guidelines, must be met: Firstly, the measure must be a scheme, targeting SMEs. Secondly, the measure must not be intended to provide capital to an individual enterprise (*ad hoc*-measure). Thirdly, the measure must exclude aid to enterprises in difficulty as defined in the Community Guidelines on State aid for rescuing and restructuring firms in difficulty and/or in the shipbuilding, coal and steel industry. Lastly, the Guidelines do not apply to aid for export-related activities, namely aid directly linked to the quantities exported, to the establishment and operation of a distribution network or to other current expenditure linked to the export activity, as well as aid contingent upon the use of domestic in preference to imported goods.
- (34) The measure in question consists of a framework scheme, under which the Dutch authorities may adopt aid measures. Such measures will provide financing, in the form of equity and quasi-equity, as well as with other instruments, to SMEs. Target enterprises must be in their early stage, i.e. either seed- or start-up or expansion stages. The scheme is not intended to provide aid to an individual enterprise (*ad hoc* measure). Furthermore, funding under the scheme will not be provided to enterprises in difficulty and enterprises in the shipbuilding, coal and steel industry. Neither will

⁶ OJ L 379, 28.12.2006, p. 5.

⁷ OJ C 194, 18.8.2006, p. 2.

any funding be directly linked to export-related activities. Beyond that, the Commission notes that the measure is not targeted at any specific sector.

- (35) Hence, all exclusionary conditions set out in Section 2.1 of the Guidelines are met. Consequently, the Guidelines apply to the risk capital measure in question. For this reason, the Commission based its assessment of the existence of aid on said Guidelines.

3.3. Presence of “State aid” within the meaning of Article 87(1) of the EC and compatibility with the common market

- (36) Pursuant to Section 3.2 of the Guidelines, risk capital schemes could constitute State aid at three levels, namely those of investors, of the fund or other investment vehicle and its management, and of target SMEs.

3.3.1. State aid at the level of investors

- (37) In accordance with Section 3.2 of the Guidelines, the Commission will consider the investment to be effected *pari passu* between public and private investors, and thus not to constitute State aid, where its terms would be acceptable to a normal economic operator in a market economy in the absence of any State intervention. This is assumed to be the case only if public and private investors share exactly the same upside and downside risks and rewards and hold the same level of subordination, and normally where at least 50 percent of the funding of the measure is provided by private investors, which are independent from the companies in which they invest.
- (38) The notified scheme does not rule out investments that do not fulfil above-described *pari-passu* conditions. The scheme is financed through State resources. As the scheme's scope and budget are limited, only a limited number of investors will have the opportunity to co-invest under the scheme. Therefore, the scheme is selective. In addition, the financing under the scheme makes it possible for the beneficiaries to improve their overall financial condition and to enhance their market position. Said investment activity is subject to competition and trade among Member States. Hence, competition and trade could be affected. Therefore, the Commission can not exclude the presence of State aid in the sense of Article 87(1) of the EC Treaty at the level of the investors involved in the scheme.

3.3.2. State aid at the level of the Fund and its management

- (39) Among other forms of aid, the scheme provides for risk capital measures through investment funds. According to Section 3.2 of the Guidelines, the Commission generally considers an investment fund to be an intermediary vehicle for the transfer of aid, rather than a beneficiary of aid itself, unless there are indications to the contrary.
- (40) The Dutch authorities declared that eligible funds will exclusively be set up in order to make investments that fall within the scheme's scope and will be prevented from carrying out any other activity.
- (41) Hence, funds operating under the scheme are purely intermediary vehicles for the transfer of aid. Risk capital funds under the scheme can therefore not be considered as beneficiaries of State aid in the sense of Article 87(1) EC.

- (42) Section 3.2 of the Guidelines also provides for criteria as to whether an aid measure constitutes State aid at the level of a fund's management. Accordingly, aid to the fund's managers or the management company will be considered to be present if their remuneration does not fully reflect the current market remuneration in comparable situations. On the other hand, there is a presumption of no aid if the managers or management company are chosen through an open and transparent public tender procedure or if they do not receive any other advantages granted by the State.
- (43) It is true that the Dutch authorities asserted that the remuneration of fund managers or management companies will reflect market rates. However, the Dutch authorities did not provide any information that substantiates that assertion. The Commission also took into account the very broad character of the framework scheme in question. Further, the notified scheme does not provide for any obligation to select the fund management by an open and transparent public tender procedure.
- (44) The scheme is financed through State resources. Only a limited number of fund managers or management companies will be selected for managing the limited resources available under the scheme. Therefore, the measure is selective. In addition, the financing under the scheme makes it possible for the beneficiaries to improve their overall financial condition and to enhance their market position. Said fund management activity is subject to competition and trade among Member States.
- (45) Hence, competition and trade could be affected. Consequently, the Commission considers that the scheme constitutes State aid at the level of the investment funds' management, in the sense of Article 87(1) EC.

3.3.3. State aid at the level of the SMEs invested in

- (46) Section 3.2, last paragraph of the Guidelines provides for a legal assumption, according to which State aid is also considered to be present at the level of the target enterprises, where aid is present at the level of the investors, the investment vehicle or the investment fund.
- (47) As was demonstrated above, the scheme constitutes State aid at the level of both the private investors involved as well as fund managers. Hence, an advantage for the SMEs invested in can not be excluded, either. Only a limited number of SMEs will benefit from financing with the scheme's limited resources. Therefore, the measure is selective. Said SMEs are not prevented from engaging in competition and trade among Member States. Hence, competition and trade could be affected. In conclusion, the Commission can not exclude the presence of State aid in the sense of Article 87(1) of the EC Treaty at the level of the enterprises invested in.

3.4. Assessment of the aid-measure's compatibility

- (48) As the measure in question constitutes State aid at the levels of the investors involved, of the fund managers and of the SMEs invested in, its compatibility has to be assessed pursuant to the conditions laid down in the Guidelines. Section 4.3 of the Guidelines provides for specific compatibility conditions. If these conditions are fulfilled, the incentive effect, the necessity and the proportionality of the aid can be considered as present, and the overall balance of the potential negative and positive effects of the aid can be considered positive.

3.4.1. Maximum level of investment tranches

- (49) Section 4.3.1 of the Guidelines stipulates that tranches of finance, whether wholly or partially financed through State aid, must not exceed €1.5 million per target-SME over each period of 12 months.
- (50) As was described further above, (15), the Dutch authorities will act in accordance with this limit. Hence, Section 4.3.1 of the Guidelines is met.

3.4.2. Restriction to seed-, start-up and expansion financing

- (51) According to Section 4.3.2 of the Guidelines, the risk capital measure must be restricted to provide financing up to the expansion stage for small enterprises, or for medium-sized enterprises located in assisted areas. It must be restricted to provide financing up to the start-up stage for medium-sized enterprises located in non-assisted areas.
- (52) The definitions of said phases for the purposes of the measure, as described further above are in line with the definitions laid down in Section 2.2 (e), (f), and (h) of the Guidelines. The Dutch authorities committed to adapt the measure to possible changes in the Netherlands' regional aid map as from 1.1.2014. Hence, the measure complies with Section 4.3.2 of the Guidelines.

3.4.3. Prevalence of equity and quasi-equity investment instruments

- (53) Section 4.3.3 of the Guidelines requires that at least 70% of the measure's budget must be provided in the form of equity and quasi-equity investment instruments.
- (54) As was described further above, (16) *et seq.*, the scheme is in line with that rule. The scheme's definition of equity and quasi-equity investments is in strict accordance with the definitions laid down in Section 2.2 a) and c) of the Guidelines. In particular, the Commission notes that quasi-equity investments will be unsecured, fully subordinated in the event of default, that return upon exit will be completely dependent on the target enterprise's success and that fixed minimum remunerations will not be permitted under the scheme. Lastly, the contractual framework for quasi-equity stakes will reserve the holder of such participations a say in certain commercial transactions, thus making such participations even more akin to equity.
- (55) The scheme is therefore in line with Section 4.3.3 of the Guidelines.

3.4.4. Participation by private investors

- (56) As stipulated by Section 4.3.4 of the Guidelines, at least 50 % of the funding of the investments made under the risk capital measure must be provided by private investors, or for at least 30 % in the case of measures targeting SMEs located in assisted areas.
- (57) As described above, 2.9, private participation for the purposes of Section 4.3.4 of the Guidelines is guaranteed.

3.4.5. Profit-driven character of investment decisions

- (58) Section 4.3.5 of the Guidelines provides for cumulative criteria to assess the measure's profit-making nature.

- (59) Firstly, a significant involvement of private investors as described in Section 4.3.4 of the Guidelines, providing investments on a commercial basis, directly or indirectly, into the equity of the target enterprises, must be present. (Section 4.3.5 (a) of the Guidelines).
- (60) The Commission notes that the scheme will involve private investors who provide investments in the scheme's target SMEs, at the level of each individual investment. Also, the private investors' involvement will be 'significant' in the meaning of Section 4.3.5 of the Guidelines. Consequently, Section 4.3.5 (a) is met.
- (61) Secondly, and pursuant to Section 4.3.5 (b), a detailed business plan for each investment, establishing a project's *ex-ante* viability, must exist.
- (62) Under the scheme in hand, and as described above, 2.10, each investment decision will be based on an *ex-ante* scrutiny, based on a number of relevant criteria. In particular, each investment will be based on the existence of a detailed business plan that establishes the *ex ante* viability of each project. Therefore, Section 4.3.5 (b) is met, too.
- (63) Lastly, as set out in Section 4.3.5 (c), a clear and realistic exit strategy must exist for each investment.
- (64) As exposed further above, (25), exit mechanisms will be determined on a case-by-case basis for each investment. Hence, Section 4.3.5(c) is met, too.
- (65) As all the conditions of Section 4.3.5 of the Guidelines are fulfilled, the investment-decisions to be taken under the measure have to be deemed as profit-driven.

3.4.6. *Commercial management*

- (66) Section 4.3.6 of the Guidelines contains three conditions a) – c), the fulfilment of all of which allows deeming the measure's management to be effected on a commercial basis, namely
- there is an agreement between a professional fund manager or a management company and participants in the fund, providing that the manager's remuneration is linked to performance and setting out the objectives of the fund and proposed timing of investments; and
 - private market investors are represented in decision-making, such as through an investors' or advisory committee; and
 - best practices and regulatory supervision apply to the management of funds.
- (67) As explained further above, (26), risk-capital measures falling under the scheme's scope must exactly fulfil all of the aforesaid conditions. Hence, risk capital measures under the notified scheme will be managed on a commercial basis pursuant to Section 4.3.6 a) – c) of the Guidelines.

3.4.7. *Sectoral focus*

- (68) Pursuant to Section 4.3.7 of the Guidelines, the Commission may accept a sectoral focus for risk capital measures, to the extent that many private sector funds focus on

specific innovative technologies or even sectors (such as health, information technology, biotechnology), provided the measure falls within the scope of the Guidelines as set out in Section 2.1 *ibid*.

- (69) In fact, the scheme in question will allow for a sectoral focus of risk capital measures falling within its scope, and to the aforesaid extent (above, (13)). As was demonstrated further above, (32), the scheme in turn falls within the scope of section 2.1 of the Guidelines. Hence, the possible sectoral focus permitted under the scheme is in accordance with Section 4.3.7 of the Guidelines.

3.4.8. Cumulation with other aid

- (70) Chapter 6 of the Guidelines stipulates that, where capital provided to a target enterprise under a risk capital measure covered by the Guidelines is used to finance initial investment or other costs eligible for aid under other block exemption regulations, guidelines, frameworks, or other State aid documents, the relevant aid ceilings or maximum eligible amounts will be reduced by 50 % in general and by 20 % for target enterprises located in assisted areas during the first three years of the first risk capital investment and up to the total amount received. Chapter 6 further stipulates that this reduction does not apply to aid intensities provided for in the Community Framework for State aid for Research and Development⁸ or any successor framework or block exemption regulation in this field.
- (71) Based on information provided by the Dutch authorities (above, 2.5) aid under the notified scheme will be granted in compliance with the cumulation rule set out in Chapter 6 of the Guidelines.

3.5. Conclusion

- (72) The Commission concludes that the aid granted under the risk capital scheme '*Omnibus Decentralised – Module 9: Risk Capital for SMEs*' is in line with the Community Guidelines on State aid to promote risk capital investments in small and medium-sized enterprises.

4. DECISION

- (73) On the basis of the foregoing assessment, the Commission concludes that the risk capital scheme '*Omnibus Decentralised – Module 9: Risk Capital for SMEs*' is compatible with the common market pursuant to Article 87(3)(c) of the EC Treaty.
- (74) The Commission reminds the Netherlands that all plans to modify this aid scheme have to be notified to the Commission.
- (75) The Commission further reminds the Netherlands to provide an annual report on the measure's implementation. This report will contain:

⁸ OJ C 323, 30.12.2006, p.1.

- (a) A summary table with a breakdown of the investments effected under the risk capital measure including a list of all the enterprise beneficiaries of risk capital measures;
- (b) Details of potential deals scrutinised and of the transactions actually undertaken;
- (c) Performance of the investment vehicles, with aggregate information about the amount of raised capital

(76) Said report will be published on the internet site of the Commission.

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/index.htm

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

European Commission
Directorate-General for Competition
Directorate for State Aid
State Aid Registry
B-1049 Brussels
Fax No: +32 2 296 12 42

Yours faithfully,

For the Commission

Neelie KROES

Member of the Commission