



EUROPEAN COMMISSION

Brussels, 01.04.2009
C(2009)2573

Subject: State aid N 156/2009 – The Netherlands
Framework "Limited amounts of compatible aid"

Sir,

1. PROCEDURE

- (1) By electronic notification of 17 March 2009, The Netherlands notified the measure "Nederlands nationaal kader voor het tijdelijk verlenen van beperkte steunbedragen". By electronic communications of 24 and 25 March 2008 the Dutch authorities submitted further information as requested by the Commission services on 19 March 2009.

2. DESCRIPTION

2.1. Objective of the aid scheme

- (2) The Netherlands consider that the financial crisis starts affecting the real economy. The Dutch authorities have delivered data by the Dutch Office of Economic Analysis showing that the economy will suffer a decline of 3.5% in 2009. The most important factor contributing to this decline is the drop in external trade by an unprecedented 9.75%. Exports are declining sharply, and the unemployment rate is expected to rise to 5.5% in 2009 and to 8.75% in 2010. The investment activity is expected to contract by 11% in 2009, and a further 12% in 2010.

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- (3) The notified measure aims at remedying a serious disturbance in the economy of The Netherlands by granting limited amounts of aid to SMEs and large companies.
- (4) The scheme is explicitly based on Article 87(3)(b) EC Treaty, and relies on point 4.2.2 of the Commission communication "Temporary framework for State aid measures to support access to finance in the current financial and economic crisis"¹ (hereinafter referred to as "Temporary Framework").

2.2. The nature and form of the aid

- (5) The aid will be provided in the form of transparent forms of aid, as defined by the General Block Exemption Regulation², and in particular in form of grants, interest rate subsidies, loans where the gross grant equivalent has been calculated on the basis of the communication on the revision of the method for setting the reference and discount rates³, and public guarantees. To calculate the aid element of these guarantees, and in line with the possibility foreseen by the last sentence of the asterisk to point 4.3.2 (a) of the amended Temporary Framework, the Dutch authorities will use as a benchmark the safe-harbour premiums laid down in Annex A of the amended Temporary Framework. Irrespective of whether the guarantees are issued for the benefit of SMEs or large companies, the annual aid element resulting from the guarantee will be calculated as the difference between the safe-harbour premium rates laid down in Annex A of the amended Temporary Framework and the annual premiums applied by the Dutch authorities.

2.3. Legal basis

- (6) The legal basis for the scheme is the framework "Nederlands nationaal kader voor het tijdelijk verlenen van beperkte steunbedragen" which will be applied by national, regional and local authorities via existing legislation.
- (7) This framework scheme will enter into force upon its approval by the Commission.

2.4. Administration of the scheme

- (8) The notified scheme is a national framework scheme, allowing aid to be granted at national, regional and local level, and is applied in a decentralised way by all relevant aid awarding authorities.

2.5. Budget and duration of the measure

- (9) As the notified framework will be applied by several public authorities to cope with the financial and economic crisis in the Netherlands, the Dutch authorities

¹ OJ C16, 22.01.2009, as amended by Commission Communication of 25 February 2009 (not yet published but available under: http://ec.europa.eu/competition/state_aid/legislation/horizontal.html).

² OJ L 214, 9 August 2008, pg. 3-47, Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General block exemption Regulation).

³ OJ C14/6, 19.01.2008

indicate that at this stage it is not possible to provide an annual budget for the notified measure.

- (10) Aid under this scheme can be granted until 31 December 2010.

2.6. Beneficiaries

- (11) The scheme applies to SMEs and large companies.
- (12) The Dutch authorities confirmed that no aid under this scheme will be granted to large firms which were, on 1 July 2008, firms in difficulties in the meaning of point 2.1 of the Community guidelines on State aid for rescuing and restructuring for firms in difficulty⁴, nor to SMEs which were on that date firms in difficulties in the meaning of Art. 1 (7) of the General Block Exemption Regulation. SMEs are defined in line with annex I to the General Block Exemption Regulation.
- (13) The Netherlands estimate the number of beneficiaries to be between 51 and 100 firms.

2.7. Sectoral scope, exclusion of export aid and aid favouring domestic over imported products

- (14) The notified measure is applicable on the whole territory of the Netherlands.
- (15) The scheme applies in all sectors, with the sectoral exclusions laid down in points 4.2.2 (d) ("fisheries") and (h) ("primary production of agricultural products"); it shall apply to undertakings active in the processing and marketing of agricultural products unless the amount of the aid is fixed on the basis of the price or quantity of such products purchased from primary producers or put on the market by the undertakings concerned, or the aid is conditional on being partly or entirely passed on to primary producers.
- (16) Export aid and aid favouring domestic over imported goods and services are excluded (point 4.2.2 (e) of the Temporary framework).

2.8. Basic elements of the scheme

- (17) The Dutch authorities confirm that the conditions laid down in point 4.2.2 for granting limited amounts of compatible aid will be fully met. In particular, the national framework provides that
- the aid shall not exceed EUR 500 000 per undertaking, as laid down in point 4.2.2(a) of the Temporary framework. All figures used shall be gross, that is, before any deduction of tax or other charge. Where aid is awarded in a form other than a grant, the aid amount shall be the gross grant equivalent of the aid (calculated as mentioned in paragraph (5) of this decision).
 - before granting the aid, the aid granting authorities shall obtain from the undertakings concerned a declaration about any de minimis aid (as defined in the

⁴ OJ C 244, 1 October 2004, pg. 2-17.

Commission de minimis-Regulation⁵) or aid granted under this measure received during the current fiscal year (point 4.2.2 (g), first sentence).

- the Dutch authorities confirm that aid may not be cumulated with de minimis support in respect of the same eligible costs. The total amount of de minimis aid and aid granted under this measure per undertaking in the period 1.1.2008 to 31.12.2010 may not exceed EUR 500 000 (point 4.2.2 (g), second sentence)
- where the aid granted under this measure is to be combined with other compatible aid or with other forms of Community financing, the maximum aid intensities indicated in the relevant Guidelines or Block exemption regulations will be respected (point 4.7, last paragraph).

2.9. Monitoring and reporting, language of decision, business secrets

- (18) The Dutch authorities confirm that the monitoring and reporting obligations laid down in point 6 of the Temporary Framework will be respected (e.g., by 31 July 2009, a list of schemes put in place on the basis of the Temporary Framework must be provided to the Commission; detailed records regarding the granting of aid must be maintained for 10 years; by 31 October 2009 a report on the measures put in place should be provided). In particular, information will be obtained demonstrating that the beneficiary was not a company in difficulty on 1 July 2008.
- (19) The Dutch authorities confirm that the notification does not contain business secrets.
- (20) The Dutch authorities confirm that, in view of the urgency of the measure, they exceptionally accept that the Commission decision is adopted in the English language.

3. ASSESSMENT

3.1. Legality of the measure

- (21) By notifying the aid measure before putting it into effect, the Dutch authorities respected their obligations under Article 88 (3) of the EC Treaty.

3.2. Existence of state aid

- (22) State resources are involved in the notified scheme since the aid is granted from national, regional and local resources, via the respective aid granting authorities at national, regional or local level.
- (23) The measure is selective since it will be granted only to certain firms.
- (24) The measure conveys an advantage by making available limited amounts of aid which would not be available to the beneficiaries without the measure.

⁵ OJ L 379, 28.12.2006, p. 5

- (25) The measure affects trade between Member States since the scheme is not limited to beneficiaries which are active in sectors where no intra-community trade exists.
- (26) The measure distorts or threatens to distort competition.
- (27) In view of the above, the Commission considers that the notified measure constitutes state aid within the meaning of Article 87 (1) of the EC Treaty. The Dutch authorities do not contest that conclusion.

3.3. Compatibility of the measure

- (28) Having established that the measure involves state aid within the meaning of Article 87 (1) of the EC Treaty, it is necessary to consider whether the above mentioned measure can be found compatible with the common market.
- (29) The measure aims at remedying a severe disturbance in the economy of the Netherlands⁶. By adopting the Temporary Framework, the Commission indeed acknowledged (point 4.1) the "seriousness of the current financial crisis and its impact on the overall economy of the Member States". The Commission concluded "that certain categories of State aid are justified, for a limited period, to remedy these difficulties and that they may be declared compatible with the common market on the basis of Article 87(3)(b)."
- (30) By granting limited compatible amounts of aid (EUR 500 000/undertaking during 2009/2010) the Dutch authorities anticipate to produce effects across the entire Dutch economy. Furthermore, the measure has been designed to meet the requirements of the additional category of aid ("Aid in the form of limited amounts") described in point 4.2.2 of the Temporary Framework.
- (31) The Commission accordingly considers that the notified measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State and meets all the conditions of the Temporary Framework. In particular,
- The maximum aid amount will not exceed the cash equivalent of EUR 500 000 per undertaking (in line with point 4.2.2 (a) of the Temporary Framework);
 - The measure is granted through an aid scheme (in line with point 4.2.2 (b) of the Temporary Framework);
 - Firms in difficulty (situation of 1.7.2008) are excluded from eligibility under the scheme (in line with point 4.2.2 (c) of the Temporary Framework);
 - Firms active in the fisheries sector are excluded from the scope of this measure (in line with point 4.2.2 (d) of the Temporary Framework);
 - Export aid and aid favouring domestic over imported goods and services are excluded (in line with point 4.2.2 (e) of the Temporary Framework);

⁶ See paragraph (2).

- Aid may be granted until 31.12.2010 (in line with point 4.2.2 (f) of the Temporary Framework)
 - The cumulation rules with de minimis aid and aid for other purposes are respected (in line with points 4.2.2 (g) and 4.7 of the Temporary Framework);
 - Undertakings active in the primary production of agricultural products are excluded from the scope of this measure. Aid to the processing and marketing of agricultural products is subject to the relevant conditions (in line with point 4.2.2 (h) of the Temporary Framework).
- (32) The monitoring and reporting rules laid down in point 6 of the Temporary Framework will be respected.

3.4. Conclusion

- (33) For these reasons, the Commission considers that the notified measure is in conformity with the Temporary Framework and considers it to be compatible with the EC Treaty on the basis of Article 87(3)(b).
- (34) The Commission notes that the Dutch authorities have confirmed that the notification does not contain business secrets, and that The Netherlands have agreed that the decision be adopted in English as its authentic language.

4. DECISION

- (35) The Commission has accordingly decided
- To consider the notified aid scheme as compatible with the EC Treaty under Article 87(3)(b).
- (36) The Commission reminds the Dutch authorities to transmit the concrete implementing rules as soon as possible after the approval of the notified aid.

Yours faithfully,
For the Commission

Neelie KROES
Member of the Commission