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**PUBLIC VERSION**

**WORKING LANGUAGE**

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**Subject: State Aid C11/2009 – Netherlands -  
Prolongation of the temporary approval of additional State support to Fortis  
Bank Nederland and ABN Amro.**

Sir,

## **I. Procedure**

- (1) On 8 April 2009<sup>1</sup>, the Commission initiated the procedure laid down in Article 108(2) TFEU with respect to alleged aid to FBN and the ABN Amro assets owned by the Dutch State (procedure registered under number C11/ 2009)
- (2) On 17 July 2009, the Netherlands formally notified an additional recapitalisation of EUR 2.5 billion (registered under number N429/2009) which consisted of two measures (a capital relief instrument and a mandatory convertible security (MCS)). The two measures were implemented by the Dutch State in July and August 2009 before they were approved by the Commission. Therefore, the aid was moved to the register of non-notified aid under number NN2/2010.

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<sup>1</sup> See OJ 2009/ C 124/08 (4 June 2009) : State aid C11/2009 (ex NN53/B/08) - Alleged aid to Fortis Bank Nederland and the FBN assets ABN Amro

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- (3) On 15 January 2010, the Dutch government formally notified a restructuring plan including additional State aid measures worth EUR 4.39 billion (in addition to those notified on 17 July 2009). This notification was registered under number N19/2010.
- (4) On 5 February 2010, the Commission adopted a decision<sup>2</sup> by which it extended the investigation procedure C 11/2009 to the additional measures (i.e. the measures registered under case NN2/2010 and N 19/2010). By the same decision, the Commission temporarily approved these additional measures as compatible rescue aid under Article 107(3)(b) TFEU until 31 July 2010.
- (5) No final decision has been adopted yet in the procedure C 11/2009.
- (6) The Netherlands formally requested on 20 July 2010 a prolongation of the temporary approval granted for six months in Decision C(2010)726.

## **II. Description**

- (7) The State support measures covered by the present decision are the measures registered under case N19/2010 & NN2 /2010 (ex-N429/2009). They were described in section 2.2 of the decision of 5 February 2010 and temporarily approved as compatible rescue aid under Article 107(3)(b) TFEU until 31 July 2010 by that decision.
- (8) The compatibility of those measures was assessed in section 4.3 of the decision of 5 February 2010. In particular, point 144 of that decision indicated that that rescue aid did not create undue distortions of competition because FBN and ABN have given commitments to comply with a price leadership ban and to make best effort to achieve the projections (including net interest revenues) presented to the Commission in the restructuring plan. The monitoring of the implementation of the price leadership provision has been entrusted to a trustee who was formally appointed on 18 May 2010 and started to operate in June.

## **III. Position of the Netherlands**

- (9) As indicated in section 3 of the decision of 5 February 2010, the Netherlands claims that the State measures do not constitute State aid.
- (10) The Netherlands contend that some of the measures (measures A, B1, B2, B3, D and E) do not constitute State aid since they result from contractual obligations laid down in the consortium shareholders' agreement to which the Dutch State is party and do not benefit ABN.

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<sup>2</sup> See OJ 2010/ C95/07 (15 April 2010): State Aid C11/09 (related to NN2/10 (ex N429/09) and N19/10) – Recapitalisation measures in favour of FBN and ABN Amro Group.

- (11) The Netherlands further contend that the measures linked to the merger remedy and the integration costs (measures B4 and B5) do not constitute State aid since a market economy private investor would have taken the same measures in the same situation to safeguard and enhance the value of its investment.
- (12) Finally, the Netherlands contend that the measure related to conversion of Tier 2 into Tier 1 instruments (Measure C) is also line with with the market economy investor principle since the increase of Tier 1 was a supervisory requirement for FBN to further operate.

#### **IV. Assessment**

- (13) In section 4.1 of the decision of 5 February 2010, the Commission left open the qualification as aid of the State support measures.
- (14) In section 4.3 of the decision of 5 February 2010, the Commission found these measures, if they were aid, to constitute compatible rescue aid under Article 107(3)(b) until 31 July 2010.
- (15) The Commission has not yet adopted a final decision on the measures. Although the Dutch authorities have provided the Commission with information in a timely and cooperative manner, the Commission has not been able to adopt a final decision to date due to the large number of complex State measures which the Commission must assess. The Dutch State therefore formally requested a prolongation of the temporary approval. The Commission observes that the conclusion of section 4.3 of the decision of 5 February 2010 that the measures constitute compatible rescue aid is still valid. In particular, the Dutch authorities and the bank have prolonged the commitment to comply with a price leadership ban and to make its best effort to achieve the projections (including net interest revenues) presented to the Commission in the restructuring plan until the Commission has reached a final decision<sup>3</sup> (the commitments granted in the beginning of 2010 would have expired at the end of December 2010).The Commission therefore considers that the temporary approval of the measures as compatible rescue aid under Article 107(3)(b) TFEU should be prolonged until it has closed the investigation procedure by a final decision.

#### **V. DECISION**

The temporary approval of the measures granted for six months in decision C(2010)726 of 5 February 2010 is thus prolonged until the Commission has completed its investigation and adopted a final decision on the notified and non-notified measures.

The Netherlands is requested to forward a copy of this letter to the potential recipient of the aid immediately.

If this letter contains confidential information, which should not be published, 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 publication of the full

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<sup>3</sup> Or until 30 June 2011, whichever comes first.

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[http://ec.europa.eu/community\\_law/state\\_aids/state\\_aids\\_texts\\_en.htm](http://ec.europa.eu/community_law/state_aids/state_aids_texts_en.htm). Your request specifying the relevant information should be sent by registered letter or fax to:

European Commission  
Directorate-General for Competition  
Directorate State Aid  
Rue Joseph II, 70  
B-1000 Brussels  
Fax No: +32-2-296.1242

Yours faithfully,

For the Commission

Joaquín ALMUNIA  
Vice President of the Commission