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Betreft: Steunmaatregel E 2/2005 & N 642/2009 – Nederland

Het Secretariaat-generaal doet U hierbij, voor doorzending aan Zijne Excellentie de Minister van Buitenlandse Zaken, een besluit toekomen van de Commissie waarvan het onderwerp hierboven is aangegeven.

Voor de Secretaris-generaal,

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Bij.: C(2009)9963 final

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EUROPEAN COMMISSION

Brussels, 15.12.2009
C(2009)9963 final

Subject: **State aid No E 2/2005 and N 642/2009 – The Netherlands**
Existing and special project aid to housing corporations

Sir,

I. PROCEDURE

I.1. Existing measures and new notification

1. The present decision concerns two closely related cases concerning State aid to housing corporations ("woningcorporaties", hereinafter: "wocos") in the Netherlands. These are as follows:

   - Case E 2/2005 Following a notification by the Dutch authorities of the general system of State aid to the wocos, on 14 July 2005 the Commission services sent a letter pursuant to article 17 of the Procedural Regulation[1] to the Netherlands qualifying the aid as existing and expressing doubts as regards the compatibility of the system with State aid rules ('Article 17 letter'). Since the Article 17 letter there have been ongoing consultations between the Commission and the Dutch authorities on the possible ways of reforming the system for it to comply with State aid rules. Equally, as the case is strongly linked to social policy it was subject to a national debate within the Netherlands. Following this, the Dutch authorities have by letter dated 3 December 2009 presented to the Commission the commitments for amending the existing aid scheme to bring it into line with EC law.

   - Case N 642/2009 By e-mail dated 18 November 2009, registered on the same day, the Dutch authorities notified a new aid scheme for the revival of declining urban regions. Named 'special project aid', the scheme consists of direct grants to wocos.

2. The Netherlands accepts the decision to be adopted in the English language.

[1] Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty

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I.2. Complaints

3. The Commission has received complaints from the Netherlands concerning the aid granted to the wocos. The complaint that most comprehensively addresses the distortions in the Dutch housing market was submitted on 16 April 2007 by the Association of Institutional Investors in the Netherlands ('Vereniging van Institutionele Beleggers in Vastgoed, Nederland, hereinafter "IVBN"'(CP 126/2007). IVBN has complemented its submission in 2007, 2008 and 2009. Vesteda, a private housing investor, has joined the complaint in June 2009.

   - According to IVBN, the wocos are expanding their activities beyond the sector of social housing and are increasingly active in the market of expensive dwellings. Lack of clear definition of their scope of activities has allowed them to compete for high-income customers and expensive rented housing. Due to State aid they receive, private competitors suffer from unfair competition from the wocos. They are also constructing owner-occupied houses thereby competing beyond rental markers.

   - According to the complainant, a refocusing of the activities of the wocos is necessary to establish fair competition in the Dutch rental market. Any activities of the wocos targeted to higher income groups or higher-rent dwellings should be operated on the same conditions as those of the private competitors. State aid should be restricted only to the provision of social housing to disadvantaged citizens and should be strictly separated from commercial activities.

   - According the complainant, the target population of the wocos should be defined strictly so that it does not include categories of population that cannot be considered disadvantaged citizens.

   - According to the complainant, wocos artificially classify dwellings as social housing by setting their rent below the rent ceiling defined in the Dutch legislation as the maximum rent allowed in social housing, while in fact their market conform rent would be higher.

   - In the field of provision of social housing, only the wocos are allowed to receive aid. According to the complainant, all operators should be allowed to participate in the provision of social housing with same level of State support.

4. Other complaints concern the behaviour of specific local wocos in providing services of painting of buildings (CP 203/07); advantages in the form of lower leasehold prices and longer leasehold periods for wocos provided by the city of Amsterdam (CP 117/08); sale of land to a housing corporation by the municipality of Nordwijk (CP 220/08). According to the complainants, the advantages received by individual wocos distort competition in the housing market to the detriment of private competitors, while the original purpose of the aid should be to provide affordable housing for disadvantaged citizens, not to compete in commercial markets with private companies.

II. HOUSING CORPORATIONS

5. Wocos are not-for-profit organisations. Their basic mission is to acquire, build and let out dwellings mainly for disadvantaged citizens and socially less advantaged groups. They are engaged in other activities such as construction and renting out apartments of higher value, construction of apartments for sale, construct and let out of public purpose buildings such as cultural and health centres, construct and let out commercial premises, construct and maintain parks and other local infrastructure. They are also involved in supporting social services such as family coaching, financial advice to households and integration of immigrants.

6. There are 7.1 million dwellings in the Netherlands, of which 2.4 million (33%) are owned by wocos. In the rental market wocos are the biggest player with a 77% share of all rental dwellings. Of this stock 98% are under regulated rent regime. Wocos virtually alone rent out public purpose buildings such as community centres, youth centres, sports facilities etc. In addition, wocos are also active in the market of construction of owner-occupied homes where they had a 14 % share of new constructions in 2007.

7. Wocos usually act as developers i.e. they are responsible for the whole project from inception until the conclusion. Depending on the project this might involve then market research, feasibility study, due diligence, property acquisition, arranging for financing, construction, maintenance and subsequent lease. For the construction part they usually employ subcontractors, they do little in-house construction work themselves (mainly minor maintenance works). Their role in that regard is the supervision, coordination and management of the construction.

8. Most wocos operate in the legal form of a foundation, i.e. the State (including municipalities) does not control them. Their own supervisory board appoints the members of the governing board, while the vacancies in the former are filled by the decision of the existing members. The other possible legal form for a woco is that of a civil law society ("vereniging"). The State (including municipalities) does not control them. The governing board is appointed by the members of the civil law society. Their own supervisory board is co-opted by the existing members of the supervisory board. To ensure that they operate in the interest of public policy they are subjected to regulations instead of direct State ownership. The Minister for housing is exercising supervisory powers over wocos. These powers provide for gradual sanctions in the case of non-compliance with the applicable rules ranging from notice through fines until the revocation of the licence as a woco.

III. ASSESSMENT OF EXISTING SUPPORT MEASURES (E 2/2005)

III.1. Measures benefiting wocos

9. For their general activities, wocos benefit from the following measures:

   a) *State guarantees for their borrowings from the Social Housing Guarantee Fund (Waarborgfonds Sociale Woningbouw*, hereinafter "WSW"). The wocos' borrowings are guaranteed by the WSW which pools the resources and power of all wocos, while ultimately the WSW's obligations are guaranteed by the State. Wocos are estimated to benefit from EUR 300 million on a yearly basis in the form of lower financing costs.

b) *Support from the Central Housing Fund (Centraal Fonds Volkshuisvesting,* hereinafter "CFV"). This form of support is on the one hand 'regular project aid' and on the other hand so-called 'rationalisation aid'. Regular project aid is available to those wocos who experience difficulties in financing a particular project and takes the form of a direct grant. 'Rationalisation aid' is effect support to wocos experiencing financial difficulties in general and can be either a soft loan or a direct grant. The aid from the CFV is financed from a general levy on all the wocos and not from general taxation. In other words, the CFV basically redistributes funds from financially healthier wocos towards weaker ones if and to the extent the need arises on the side of the latter.

c) *Sale of public land by the municipalities at price below market value.* This form of support is available to wocos for certain specific projects.

d) *Right to borrow from the Dutch Municipality Bank* (Bank Nederlandse Gemeenten hereinafter "BNG"), a special purpose public bank with an exceptionally good credit rating. Only public bodies, mainly municipalities, and the wocos can borrow from the BNG.

III.2. Existence of aid within the meaning of Article 107 TFEU[2]

10. Article 107 TFEU provides that "*Save as otherwise provided in this Treaty, 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, insofar as it affects trade between Member States, be incompatible with the common market.*"

11. Thus for a measure to constitute State aid it has to:

- provide the undertakings with an advantage
- be adopted by the State or be imputable to the State
- be selective in nature
- involve a transfer of State resources
- distort or threaten to distort competition
- affect intra-Community trade

12. As Article 107 TFEU applies only to undertakings, it should be first assessed whether the wocos can be considered as such for the purposes of competition law. It is settled case-law that any entity engaged in an economic activity is to be considered as an undertaking regardless of its legal form or the way it is financed[3]. It follows that the fact that an entity operates on a not-for-profit basis or has such legal form does not exclude the possibility that it qualifies as an undertaking. In case-law, the concept of economic activity is defined as offering goods and services on a given market[4]. In that respect one important element is whether some kind of competition exists, i.e. if there

[2] With effect from 1 December 2009, Articles 86 and 87 of the EC Treaty have become Articles 106 and 107, respectively, of the TFUE; the two sets of provisions are in substance identical. For the purposes of this Decision references to Articles 106 and 107 of the TFEU should be understood as references to Articles 86 and 87 of the EC Treaty when appropriate.

[3] Case C-41/90 Klaus Höfner and Fritz Elser v Macrotron GmbH. ECR 1991 I-01979, par. 21

[4] Case C-35/96 Commission of the European Communities v. Italian Republic ECR 1998 I-0385, par. 36 Joined Cases C-180/98 to C-184/98 Pavlov and Others ECR 2000 I-6451, par.75

are other entities offering the same or substitutable goods and services[5]. The wocos' activities – renting out dwellings to individuals, renting out public purpose buildings, renting out commercial premises, construction and maintenance of local infrastructure – can all be characterised as offering services and goods on the market. They are in competition with private landlords and property developers in respect of their rental activity regardless whether that concerns apartments, social or commercial real estate. They equally compete with private developers in respect of the sale of owner-occupied dwellings and with private contractors in respect of local infrastructure. Consequently wocos have to be regarded as undertakings engaged in an economic activity.

13. Given that the woco have to be considered as undertakings, it should be assessed for each of the measures whether the other criteria listed in paragraph 11 are fulfilled.

14. As far as the compensation for public service costs is concerned, the Judgement of the Court of Justice on *Altmark* defines the criteria to be fulfilled for public measures to be regarded as compensations for public service obligations and for them to escape being regarded as State aid under Article 107(1) TFEU. In the present case the 4th criterion does not seem to be fulfilled: wocos have not been chosen in a public procurement procedure. Moreover, the Dutch authorities have neither claimed nor proven that the compensation has been determined on the basis of an analysis of the costs which a typical undertaking, well-run and adequately provided with appropriate means would have incurred in discharging the public service obligations nor is there any indication available to the Commission that would suggest that the 4th criterion is met.

15. Measure a) definitely provides the wocos with an advantage as the guarantees reduce borrowing costs. Given that the whole scheme was set up by the State and more importantly that the State acts as the ultimate guarantor of the wocos' borrowings, the measure is imputable to the State. It is obviously selective as only wocos benefit from such guarantees while private landlords and real estate developers do not. The ultimate guarantee by the State is provided free of charge, which means that in the form of revenue foregone the measure involves a transfer of State resources. As the measure selectively enhances the wocos' competitive position vis-à-vis their competitors such as private landlords and real estate developers the Commission considers that the measure distorts competition. As regards the affect on intra-community trade the Commission considers that given the high level of cross-border investment in real estate and the significant role of the wocos in the Netherlands mentioned in paragraph 6 the measure is liable to affect intra-community trade. In the very least such support acts as a deterrent for foreign investors who may consider real estate investments in the Netherlands. Accordingly the Commission considers that measure a) constitutes aid within the meaning of Article 107 TFEU.

16. As regards measure b) both the direct grants and the soft loans (i.e. loans provided under more favourable conditions than those available on the market) provide the wocos with an advantage and are selective as only the wocos benefit from them. Since the fund and the support system were set up by legislation, an act of the State, it is imputable to the latter. As regards State resources the question arises whether the fund's resources can be considered as such given that it redistributes the wocos' resources, which, in the absence of State ownership control (see paragraph 8), are private and not

[5] AG Opinion Case C-205/03 Federación Española de Empresas de Tecnología Sanitaria (FENIN) v Commission of the European Communities, par. 31

public resources. The conditions whether this type of resources can be considered State resources were laid down by the Court of Justice in the *Pearle* judgment[6].

17. In *Pearle* the Court held that obligatory contributions collected by an intermediary body from all the enterprises of a certain business sector can only be regarded as not being state resources if the following four conditions have all been met: 1) The measure in question is established by the professional body that represents the enterprises and the employees of a business sector and does not serve as an instrument for the implementation of policies established by the state 2) The goals of the measure in question are fully financed by the contributions of the enterprises of the sector 3) The way of financing and the percentage/amount of the contributions are established in the professional body of the business sector by representatives of employers and employees, without any state interference 4) The contributions are obligatorily used for the financing of the measure, without the possibility for the state to intervene.

18. The support from the CFV does not meet these conditions as the fund was set up and run by the State and definitely serves as an instrument of State policy. Therefore the measure involves a transfer of State resources.

19. Concerning the conditions of distortion of competition and affectation of intra-community trade the same considerations as those used with respect to measure a) apply. Accordingly, the Commission considers that measure b) constitutes aid within the meaning of Article 107 TFEU.

20. As regards measure c), the sale of land at undervalue obviously confers an advantage on wocos as it relieves them from the usual market costs of land acquisition. It is obviously an act of the State (sold by municipalities), selective (only targeted at wocos) and in the form of revenue foregone there is a transfer of State resources. It distorts competition and affects intra-community trade for the same reasons given in relation to the guarantees in paragraph 15. Accordingly measure c) also qualifies as aid within the meaning of Article 107 TFEU.

21. As regards measure d), the Dutch authorities claim that the BNG's loans are not aid because they are market-based and therefore do not involve an advantage to the recipient wocos. Furthermore even if they did involve an advantage, the loans would not be imputable to the State.

22. As regards the first argument, namely the market conformity of the loans and hence the absence of an advantage, it is to be noted that the BNG is a public purpose bank that serves wocos and public institutions. The wocos' loans are often formally guaranteed (measure a)). Loans to public institutions enjoy a high creditworthiness due to the ultimate backing of the State in case of default. This restriction of the scope of the BNG's activities imposed by the State and the State's involvement as a guarantor result in a higher credit rating and lower funding costs for BNG. Commercial banks, by contrast, incur higher refinancing costs because their assets do not consist predominantly of guaranteed loans. As a consequence, the special State-backed status of BNG allows it to offer lower interest rates for the wocos than a normal bank would be able to offer. . In conclusion, the Commission considers that the BNG's loans to the wocos are indeed provided on better terms than what would be available under market conditions and hence there exists an advantage to the wocos.

[6] Case C-345/02 judgment of the Court of 15 July 2004 Pearle BV, Hans PrijsOptiek Franchise BV and Rinck Opticiëns BV v Hoofdbedrijfschap Ambachten.

23. As regards whether the loans are imputable to the State the Dutch authorities argue that the BNG enjoys total operational freedom and therefore the decisions on the loans to wocos are made without State interference. While the Commission accepts this, it nevertheless takes the view that this fact alone does not exclude imputability. While the individual loans are probably made without State interference, the BNG's scope of activity is restricted by the State to lending to the public sector and the wocos. That restriction is an act of the State and its precise purpose is to channel the above mentioned lower interest rates to certain institutions only, chief among them the wocos. Therefore the advantages pertaining to wocos as a result of the BNG's loans are imputable to the State.

24. The rest of the conditions of Article 107 TFEU are present. The BNG is owned by the public authorities (mainly municipalities), which makes its resources qualify as those of the State. The cheap financing to which only wocos have access distort competition between them and private developers. For the same reasons as those mentioned in relation to measure a) in paragraph 15, measure d) also distorts competition and affects intra-community trade. Consequently the Commission considers that measure d) also constitutes aid within the meaning of Article 107 TFEU.

III.3 Qualification as existing aid

25. The Housing Law of 1901 ("Woningwet 1901") already laid down the task of Housing Corporations' to "improve the housing situation of the population". At that time municipalities granted direct subsidies to wocos for the construction of houses. In the course of the 20th century, the task of the wocos has been further defined.

26. However, the public task as described in the Housing Law has not changed basically in the course of time. Admittedly, the task has been described differently and in an increasingly explicit manner in the various general administrative measures, in particular because subsidies are no longer available for these social activities. That definition has always contained a reference to the public task of housing companies.

27. In the period 1950-1974 the system of direct subsidies to wocos's was transformed into a system of State loans to wocos's. In addition, the wocos's enjoyed a business tax exemption. Moreover, it was still possible to get subsidies for certain specific activities, such as restructuring, the improvement of houses dating from the pre-war period, and the development of building locations.

28. In 1984 the direct government loans were replaced by a guarantee system operated by the Guarantee Fund with a default guarantee from municipalities and the State. The Guarantee Fund was introduced, which meant that wocos had to borrow money from the capital market at a higher rate (some 0.5% higher) than previously, but they enjoyed a State guarantee on the attracted loans. Before 1984 the loans were not, therefore, guaranteed since they were granted by the State itself. In fact, the State support decreased and borrowing became more expensive for wocos.

29. The objective of every change in the measures at stake over time has been to reduce progressively the distortion of competition, compared with the previous situation (the initial direct subsidies were transformed into loans and later on these loans were replaced by guarantees).

30. In the present case it is not disputed that the fundamental law providing for the financing of the Dutch Social Housing System is the Housing Law of 1901. Likewise it is not disputed that the law has been modified several times. As it has been said above, the Housing Law of 1901 provides for the financing of the Dutch Social Housing System.

31. Advocate General Trabucchi in its opinion in Case C51/74 HULST of 23 January 1975 explained that in order to have a new aid the alteration of the system must be substantial i.e. the basic features of the system must be altered: *"as would be the case if, for example, there had been changes in the aim pursued, the basis on which the levy was made, the persons and bodies affected or, generally, the source of its finances"*.

32. It follows from this opinion, as well as from the jurisprudence[7] that not all modifications to the provisions providing for the aid transform an existing aid into a new aid. *Adjustments not affecting the substance* of the aid do not change the classification of the measure.

33. Therefore, under this heading the question is whether or not the provision providing for the financing of the Dutch Social Housing System has undergone substantial alterations capable of affecting the classification of the measures.

34. Although the nature of the measures has changed over time, every successive modification was intended to reach a lower distortion of competition, compared with the previous situation (the initial direct subsidies were transformed into loans and later on these loans were replaced by guarantees). Furthermore, the modifications did not amend the legislation granting the aid either as regards the aim pursued, the persons and bodies affected or, generally, the source (state resources) of its finances, or in regard to the subject matter of the activities to which the advantage was attached.

35. Thus, even if it is not disputed that the financing of the Dutch Social Housing System has been modified, the only substantial modifications which have been introduced after the Treaty refer to the nature of the advantage, which has evolved over time towards a decreasing distortion of competition.

36. Accordingly, it appears that the aid must be classified as existing. Indeed, the financing system was already established before the entry into force of the Treaty in The Netherlands, and subsequent changes did not substantially amend the existing aid character of the system.

37. In summary, the Commission's view is that the Dutch financing system for social housing constitutes an existing aid measure.

III.4. The Article 17 letter

38. In the Article 17 letter of 14 July 2005, the Commission services took the preliminary view that the Netherlands should amend the public service definition of wocos so that the social housing would be provided to a clearly defined target group of disadvantaged citizens or socially less advantaged groups. Any commercial activities by the wocos should be carried out on market terms and should not benefit from State

[7] See Case C-44/93 Namur-Les assurances [ECR] 1994 I-3829.

aid. Finally, the offer of social housing should be adapted to the demand from disadvantaged citizens or socially less advantaged groups.

39. The preliminary views expressed by the Commission services were taken into account by the Dutch authorities. In the course of a long process of consultations both with the Commission and within the Netherlands, the Dutch authorities have agreed to modify several aspects of the provision of social housing.

III.5. Appropriate measures

40. In view of the above and having discussed the Commission's concerns with the Dutch authorities, the Commission would consider the following measures appropriate to ensure compliance with the EC State aid rules:

- Limitation of social housing to a clearly defined target group of disadvantaged citizens or socially less advantaged groups, in line with the *Commission Decision 2005/842/EC of 28 November 2005 on the application of Article 86(2) of the EC Treaty to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest*[8] ("SGEI Decision").
- Commercial activities should be carried out on market terms. Public services activities and commercial activities should follow the rules of separation of accounts and adequate controls
- The offer of social housing by the wocos should be adapted to the demand from disadvantaged citizens or socially less advantaged groups.

III.6. Commitments made by the Dutch authorities

41. Dutch authorities have by letter dated 3 December 2009 made commitments to amend the functioning of wocos and the measures favouring them. For several of the planned changes the Dutch authorities have submitted draft rules to the Commission. The new rules will be implemented with a new ministerial decree from 1 January 2010 and a new Housing Act from 1 January 2011. Aid will be made available to the wocos for the following activities and under the following conditions:

i. Construction and renting out of dwellings to individuals

a) The target group of socially disadvantaged households will be defined as individuals with an income not exceeding EUR 33,000. This definition covers approximately 43 % of the Dutch population. The ceiling will be indexed every year.

b) The maximum rent in social housing will amount to EUR 647.53. This ceiling is subject to annual indexation.

c) It will be ensured that 90 % of the dwellings in each woco are allocated to individuals belonging to the target group at the moment of allocation. The remaining 10 % will be allocated on the basis of objective criteria with element of social prioritisation. Persons who are above the income threshold but are nevertheless considered to be persons in need of social

[8] Official Journal L 312, 29.11.2005, p. 67–73

assistance, such as big families and other such categories specified in the relevant rules, will have priority.

d) A credible mechanism should be established to monitor compliance with the allocation ratio of the 90% to the defined target group. This mechanism is to apply on the level of each individual woco. The monitoring mechanism should include appropriate financial sanctions in the form of recovery of excess aid from wocos that would not respect the allocation ratio. Recovered State aid will be placed in a Fund from which it can only be disbursed to finance public service tasks. The Dutch authorities will inform the Commission about the results of the monitoring.

e) The independent audit of wocos will include verification of compliance with the 90-10 allocation ratio and the auditors will state their opinion in this regard.

f) To enhance the transparency and to avoid abuses, a procedure will be introduced to ensure that the allocation of the dwellings is conducted on a transparent and objective basis. The procedure will also involve local authorities and include an effective complaint/judicial review system. The procedure could involve a committee, in which independent persons would participate.

g) In case an individual woco would not meet the allocation ration of 90 % due to an unanticipated decrease of demand from the target group, it can exceptionally allocate more than 10% of existing dwellings to people outside the target group (taxable income EUR 33,000). In this case the woco is not entitled to benefit from support (in this case Social Housing Construction Guarantee (WSW) or aid from the Central Housing Fund (CFV)) for the construction or purchase of new dwellings until it can show that there is again a sufficient demand from the target group.

h) In exceptional situations, a percentage lower than 90% but no less than 80% may be set by a government decree (*"AMvB"*) for a regional housing market for the wocos active in a given regional housing market for a period of up to four years. At the same time a higher allocation percentage will be set for wocos in one or more other regions for the same period, so that the aggregate ratio for all wocos remains 90%. A woco active in a housing region benefiting from the exception will have to change the way it allocates dwellings in order to again reach the 90% allocation to the target group as soon as possible and at the latest once the four years have passed.

i) The possibility to set a lower percentage in a given regional housing market is not available in the year 2010 in order to first gain insight into the regional differences in the actual allocation ratios before any exceptions are granted. The regional differentiation as meant above will be made possible after the new Housing Act has entered into force (foreseen on 1 January 2011).

j) An individual woco will repay any excess compensation it has received. However, where the excess compensation does not exceed 10%, such

excess compensation may be carried forward to the next annual period and deducted from the amount of compensation payable in respect of this new period. In case a lower percentage than 90% has been set by a government decree (AMvB) (see above) in a particular regional housing market, this will be taken into account when verifying whether excess compensation has occurred.

k) The division of the territory into regional housing markets will be defined in an annex of a government decree (AMvB) with the aim of establishing coherent regional housing markets. There will be several regional housing markets in each province.

l) The monitoring authority (Centraal Fonds Volkhuisvesting CFV, from 2011 onwards the Nederlandse Autoriteit Toegelaten Instellingen Volkshuisvesting, the Dutch Authority for Authorised Housing Institutions) will supervise the implementation of the provisions.

ii. Infrastructure

m) Aid will only be available for infrastructure that is strictly ancillary to social housing, e.g. public utilities and roads that connect the dwellings to the main network. Other, regular infrastructure projects will not benefit from the support measures and shall be subject to normal tendering procedures.

iii. Construction and renting out of public purpose buildings (maatschappelijk vastgoed)

Public purpose buildings comprise community centres, health centres, women shelters, care homes for the elderly, cultural centres, sport centres etc. These establishments are owned and maintained by wocos and let out to non-governmental organisations or a public body. The following conditions will apply:

n) Only establishments that truly serve a public purpose and contribute to the liveability of neighbourhoods, for example neighbourhood centres, community centres, youth centres etc, qualify for aid. A quasi-exhaustive list establishments that qualify as public purpose buildings will be defined in an administrative act and is reproduced as an Annex to this decision.

o) Wocos will be obliged to rent out these buildings to the tenants at a rent that is lower than the market rent, thereby passing the advantage received by the wocos to the social organisations operating in the buildings.

p) The aid is restricted to the minimum necessary.

q) The construction works will be tendered out by the wocos.

r) The Dutch authorities will set up an effective monitoring mechanism. The non-compliance with these principles will result in the reimbursement of the aid.

s) The independent audit of the wocos will include verification of compliance with the principles above.

t) The above provisions will be transposed into a ministerial decree that will be communicated to the Commission.

42. All activities other than those mentioned in paragraph 41 will not benefit from aid. Independent stand-alone infrastructure works not directly connected with the dwellings will be carried subject to normal procurement rules and will not benefit from aid. Construction and sale of owner-occupied dwellings, as well as construction and renting out of commercial real estate will likewise be excluded from the scope of aid.

43. The receipts and costs between social (with state aid) activities on one hand, and commercial (without state aid) activities on the other hand will be separated in accordance with the Transparency directive[9]. The auditor will have to give its opinion whether the separation has been properly carried out.

III.7. Compatibility of the aid measures

44. The compatibility of the measures will have to be examined in light of Article 106 (2) TFEU, i.e. as potentially compatible aid for the financing of a service of general economic interest (SGEI).

45. Article 106 (2) provides that "*Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in this Treaty, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Community.*"

46. This article provides a derogation from the prohibition of State aid contained in article 107 TFEU provided that the aid is necessary in that the lack of aid would hinder the performance of the SGEI (*...obstruct the performance, in law or in fact, of the particular tasks assigned to them.*), and proportionate in its effects on trade (*...trade must not be affected to such an extent as would be contrary to the interests of the Community*). Under Article 106 (3) TFEU it is for the Commission to ensure the application of this article, including inter alia specifying under which conditions it considers the criteria of necessity and proportionality to be fulfilled.

47. Following the Altmark ruling the Commission specified those conditions in the *Community framework for State aid in the form of public service compensation*[10] ("SGEI Framework") of 2005, and the *Commission Decision 2005/842/EC of 28 November 2005 on the application of Article 86(2) of the EC Treaty to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest*[11] ("SGEI Decision"), which therefore represent the Commission's policy of applying the derogation of Article 106 (2) of the TFEU. In particular paragraph 8 of the SGEI Framework makes it clear that the Commission considers the aid measure to be proportional and necessary under Article 106 (2) of the Treaty if the Framework's conditions are complied with.

[9] Commission Directive 2006/111/EC of 16 November 2006
[10] Official Journal C 297 , 29/11/2005 P. 0004 – 0007
[11] Official Journal L 312, 29.11.2005, p. 67–73

48. Aid to social housing undertakings specifically falls within the scope of application of the SGEI Decision (Article 2 par (1) b thereof), which declares compatible with the common market and exempted from notification the public service compensation for social housing that fulfils the conditions set out therein; accordingly the compatibility of the aid to the wocos for the activity in question will have to be examined in light of the SGEI Decision's criteria.

49. The compatibility criteria of the SGEI Decision are that the public service must be properly entrusted (Article 4) and that the service provider must not be overcompensated for the discharge of the public service (Article 5). However, a fundamental criterion that precedes the other two is whether the activity in question is a genuine SGEI i.e. a public service. This is obvious from the fact that the SGEI Decision authorizes as compatible aid compensation for the provision of public services, i.e. not any activity. Furthermore it is explicitly provided for in recital (7) as well: "*Such aid may be declared compatible only if it is granted in order to ensure the provision of services that are services of general economic interest as referred to in Article 106(2) of the TFEU.*"

III.7.1. Genuine public service mission

A. Construction and renting out of dwellings to individuals

50. As regards the admissibility of the activity construction and renting out of dwellings to individuals as a public service, the Commission notes that Member States enjoy a wide margin of appreciation in this respect. Indeed as the above mentioned recital (7) provides that, with the exception of the sectors in which there are Community rules governing the matter, Member States have a wide margin of discretion in the definition of services that could be classified as being services of general economic interest. Thus, with the exception of the sectors in which there are Community rules governing the matter, the Commission's task is to ensure that there is no manifest error as regards the definition of services of general economic interest.

51. The Commission notes that the Dutch authorities have considered it necessary to provide affordable housing through wocos in order to cover the housing needs of citizens who would not be able to obtain housing without assistance. In the densely populated Netherlands, the competition for the use of scarce land resources is intense between economically important functions, such as agriculture, enterprise, nature conservation and housing. Housing prices, especially in urban areas, are affected as a result of these competing pressures. Thus, the obligation of wocos to rent dwellings at prices below the market value (with a maximum rent of EUR 647.53) is essential to provide housing to groups of citizens that in the absence of public service obligation of wocos would not be able to afford paying market rents.

52. The Commission notes that wocos have certain obligations that distinguish them from other organisations that offer accommodation. This mainly concerns the requirement that wocos must primarily act in the interest of social consequences rather than commercial returns. As a result, in order to respond to local housing needs it is sometimes not possible for wocos to postpone investments or alter them (e.g. build owner-occupied dwellings instead of rented dwellings). Wocos charge relatively lower rents than commercial landlords. Rent increases are limited by legislation. Wocos cannot apply risk selection and are obliged to allocate housing to low-income households and citizens who would not easily obtain commercial rental housing, such as former convicts, former psychiatric patients, addicts, etc. Wocos are not free to shift

their activities to more profitable activities or activities with a different risk profile. Sale of their property is under strict regulation.

53. The public service mission of wocos is unlimited in time. The Commission considers that the lack of a determined duration is acceptable taking into account the very nature of the public service in the field of housing. The lifetime of the social housing investments extends over several decades. The Dutch housing policy dates from the 19th century and is not foreseen to change in the future. However, the obligations derive from the Housing Act and ministerial decrees which could be revoked or amended by the Dutch authorities in the future.

54. On the other hand the term 'social housing' itself suggests that the public service consists in not housing in general but rather housing provided on the basis of social criteria. Furthermore recital (16) of the SGEI Decision provides that "*undertakings in charge of social housing providing housing for disadvantaged citizens or socially less advantaged groups, which due to solvability constraints are unable to obtain housing at market conditions, should benefit from the exemption from notification provided for in this Decision*". This recital confirms that the public service to which the exemption under Article 106 (2) applies is linked to providing accommodation to disadvantaged citizens or socially less advantaged groups.

55. Overall the Commission considers that provision of social housing may qualify as service of general economic interest if it is restricted to a target group of disadvantaged citizens or socially less advantaged groups, while Member States have a wide margin as regards the size of the target group and the exact modalities of applying the system based on a target group.

56. In its 'Article 17 letter' of 14 July 2005 the Commission has previously expressed a preliminary view doubting whether the definition of public service has been sufficiently clear and whether there could have been manifest error in defining as social housing the renting out of dwellings to all income groups. The new commitments offered by the Dutch authorities provide a clear and objective basis that allows the Commission to assess whether the definition of public service is subject to a manifest error.

57. Dutch authorities have defined the target group of social housing through an income ceiling of EUR 33,000 per year. This definition will include the lowest-earning 43% of the population. The average income in the Netherlands being approximately EUR 38,000 per year, this income ceiling corresponds with a clearly defined target group. The Commission considers that this definition is acceptable, since it clearly delimits the scope of the activities to socially less advantaged households that are disadvantaged compared with those that are outside the target group.

58. In the interest of social mixity and social cohesion, the Dutch authorities envisage that no more than 10% of the dwellings can be rented out to higher income groups, while the remaining 90 % of the dwellings in each woco are reserved exclusively to the defined target group. The Commission considers social mix and social cohesion to be valid public policy objectives. The Commission notes that the proportion of tenants from higher income groups will be strictly limited to a small number. Furthermore, also the 10% will allocated on the basis of objective criteria with element of social prioritisation. Temporary exceptions that may be granted from the 90% rule contain sufficient safeguards to ensure that the allocation of housing remains focused on the target group: any temporary adjustment cannot go further than an 80% ratio; it will be

compensated by a corresponding change upwards in other wocos; and the exception is always limited in time. In view of these limitations and the legitimate public policy objective the existence of this social mix mechanism can therefore be accepted as valid within the public service definition.

59. The Commission considers that the new precise definition of the scope of activities of wocos as provided by the commitments of the Dutch authorities, in particular the exclusion of commercial activities from the scope of aid, will satisfactorily address the concerns expressed both by the Commission (paragraph 41-43) and by a number of complainants (paragraphs 3 and 4 above) as regards the negative effects on competition that were caused by the wocos activities in the commercial markets. Indeed, without State aid the wocos will be competing on equal terms with other commercial operators in the fields that are not specifically defined as public service (see paragraph 42 above).

B. Construction and renting out of public purpose buildings

60. The construction and renting out of public purpose buildings is of public interest. The beneficiaries are in the first places the wocos that receive support for their investment costs. Secondarily, the beneficiaries are the operators that carry out activities in the buildings, and ultimately the citizens using the services provided. The wocos rent out the buildings to non-governmental organisations or public bodies, not to individual citizens. The operators then perform public services or non-economic activities, but not commercial activities.

61. The activities supported by the aid are obvious from the list of establishments that qualify as public purpose buildings. This list includes neighbourhood centres, community centres, youth centres (without catering facilities), neighbourhood sports facilities , accommodation for social work, accommodation for welfare work, reception centres (shelters for abuse victims, day and night centres for the roofless, homeless) etc. The exact list is reproduced as an Annex to this decision. Accordingly the activities ultimately supported by the aid are to be regarded as social work. It is evident from the list that all the activities conducted in these establishments are of genuine public interest.

62. Wocos are obliged to apply low rents vis-à-vis their tenants. Compliance with this principle will be audited and non-compliance will result in the repayment of the aid. It thus can be concluded that the advantage received by the wocos in the form of aid is passed on to their tenants, which are either public service providers or non-economic actors.

63. The Commission notes that the aid is targeted at narrowly and well-defined objectives, as the precise list of social real estate demonstrates. All commercial projects are excluded from the scheme.

64. The Commission equally notes that the construction work will be tendered out, which limits the distortion on the market upstream to the wocos.

65. Having regard to the particularities of the Dutch social housing market and the commitments made by the Dutch authorities, the Commission considers that the public service definition proposed by the Dutch authorities does not contain manifest error and can be accepted as a service of general economic interest in the meaning of Article 106(2) TFEU.

III.7.2. Entrustment

66. As regards the second condition, entrustment, the wocos are required to operate, due to their special public service mission, within the confines of the Housing Act and more detailed ministerial decrees, in particular the Social Rented Housing Management Decree that will be amended by the Dutch authorities in accordance with the commitments described in section III.6 above.

67. As to the elements of entrustment required by the SGEI Decision (nature and duration of public service obligations; the undertakings and territory concerned; the parameters for calculating, controlling and reviewing the compensation; as well as the arrangement for avoiding and repaying any overcompensation), the Commission notes that the nature of the public service obligations is established in the Housing Act which specifies that the purpose of wocos is to provide both social housing and public purpose buildings. The definition of the public service is assessed in section III.7.1.1. above. As explained in paragraph 53 above, the duration is undetermined. The decree and the Housing Act are addressed to the wocos thus specifying the undertakings concerned as being the wocos. The territory where the SGEI is to be provided is the whole of the Netherlands. Regarding control of overcompensation, as explained in the commitments in paragraphs 42-43 above and in paragraphs 70-72 below, the wocos are to keep separate accounts between aided and non-aided activities and to address this issue in their annual report. The separation is to be subject to an independent audit.

68. For the above reasons the Commission considers that the public service mission is properly entrusted to the wocos.

69. Such an entrustment by way of a general rules is sufficient as it follows from case-law that it is not inherent in the nature of SGEIs that there can be only one provider or that the operators must be entrusted separately[12].

III.7.3. Absence of overcompensation

70. Concerning the third criterion, namely the absence of overcompensation (Article 5 of the SGEI Decision) the Commission notes that the wocos are to be obliged to keep separate accounts between aided and non-aided activities and to address this issue in their annual report. The at-arms-length principle is to be applied. The separation is to be subject to an independent audit. Account separation will make it possible to identify the receipts and the revenues of the public service mission. As aid may be received from more than one source, the effective mechanisms of control as committed to by the Dutch authorities are necessary to guarantee that no overcompensation occurs and that any excess aid is repaid.

71. Furthermore the wocos have a legal obligation to not have profits as primary objective. Average profit of wocos is below 1% of their own capital. Policy rules of the Central Housing Fund (CFV) will provide that the amount of aid in the form of direct grant will be no more than the shortfall between the expected rent revenues from the project and the costs thereof. The monitoring of the respect of this condition is entrusted to CFV. The CFV ensures this by only taking into account for the direct grant the unprofitable part of the real estate investment, with the usual parameters in the sector as a starting point. The advantage derived from the guarantees in the form of cheaper funding and cost savings due to preferential prices of land are to be taken into account in the

[12] Case T-289/03 BUPA and Others v Commission Par 183

calculation of the grant amounts. This mechanism eliminates the possibility of double compensation of the same eligible costs from different sources of aid. The Commission is satisfied that the wocos will not be overcompensated for the supply of the public service.

72. Accordingly, the Commission considers that the aid for the provision of social housing, i.e. the activity of construction and renting out dwellings to individuals including the building and maintenance of ancillary infrastructure, provided under the conditions specified in paragraph 41 subparagraph i), is compatible under Article 106 (2) TFEU.

III.8. Commission's acceptance of Dutch commitments

73. The Commission is satisfied that the preliminary views expressed in the Commission's 'Article 17 letter' of 14 July 2005 and the appropriate measures proposed by the Commission in section III.5 above have been adequately addressed by the Dutch authorities.

- Definition of social housing will be linked to a specified target group of disadvantaged citizens or socially less advantaged groups, including a margin that will ensure social mix, as described in point 38 above.

- Any commercial activities performed by the wocos will be separated from the public service activities and will no longer benefit from aid. Control mechanisms and transparency will be enforced, as described in point 43 above.

- Tendering procedures will be applied for construction of infrastructure and for the construction of public purpose buildings, as described in point 41 above. This will allow private competitors to bid for these projects.

- Wocos will need to anticipate the volume of their offer of social housing to the actual size of the target group in their area. Lack of eligible tenants would imply financial penalties for the wocos, thus providing an incentive for them to adapt their offer to correspond with actual demand from disadvantaged citizens or socially less advantaged groups, as described in point 41 above. This will result in reduction of excess offer of social housing in areas where such housing is no longer needed to the same extent as before.

74. Therefore the Commission accepts the commitments made by the Dutch authorities. In accordance with Article 19 of the Procedural Regulation, the Commission records the commitment by means of the present decision and thereby renders the implementation of the appropriate measures binding.

III.9. Concerns raised by the complainants

75. The Commission notes that the complaints (see paragraphs 3 and 4 above) it has received concern both the general characteristics of support to wocos as well as the practical application on the national level of the rules pertaining to wocos.

76. As regards the compatibility of the support to wocos as a whole, the Commission has addressed the concerns expressed by the complainants by means of the appropriate measures and the commitments made by Dutch authorities (see paragraphs 41 and 43 above).

77. The Commission notes that the complaints it has received (see paragraphs 3 and 4 above) concern the practical implementation of the national legislation. The Commission approves the conditions of the functioning of the system. A particular infringement of these conditions by a particular woco would be a matter national law.

IV. ASSESSMENT OF THE NEW AID (N 642/2009)

IV.1. Description of the special project aid for certain districts

78. The purpose of the new aid measure 'special project aid for certain districts' is to improve the liveability of the most deprived urban communities which were selected on the basis of socio-economic indicators such as the level of income, unemployment, literacy and crime rate etc. The selected urban communities are listed in an annex to the Central Public Housing Fund Decree. Due to their disadvantaged nature, the Dutch authorities consider that additional resources have to be employed to regenerate these communities and to prevent the worsening of social problems already existing in them.

79. The beneficiary of the new aid measure will be the wocos operating in the selected urban communities.

80. The budget of the measure will be EUR 250 million and the duration 10 years. The new measure will take the form of direct grants provided by the Central Housing Fund *(Centraal Fonds Volkshuisvesting*, hereinafter "CFV"). The aid will be available to wocos in selected districts who experience difficulties in financing a particular project themselves.

81. The activities to be carried out with the support consist of

    a) Projects of construction and renting out of dwellings with a maximum monthly rent of EUR 647,53 to individuals with a yearly income not exceeding EUR 33 000

    b) Projects of construction and renting out of public purpose buildings (*maatschappelijk vastgoed*)

82. The aid is given in the form of a direct grant for specific projects. The measure will be financed from a new special levy on the wocos operating outside the problematic urban zones. This new source of financing will create new mechanism of solidarity between wocos. The measure will provide for a targeted intervention in the geographically restricted area of most needy urban communities.

83. The new measure is different from the existing forms of support in that it targets only selected communities and is financed through a different mechanism.

84. The Dutch authorities have notified to the Commission that the aid will be made available under the same conditions as the existing aid measures (see paragraph 41 above).

IV.2. Assessment

IV.2.1. Existence of aid within the meaning of Article 107 TFEU

85. Article 107 TFUE provides that "*Save as otherwise provided in this Treaty, 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, insofar as it affects trade between Member States, be incompatible with the common market."

86. Thus for a measure to constitute State aid it has to:

- provide the undertakings with an advantage
- be adopted by the State or be imputable to the State
- be selective in nature
- involve a transfer of State resources
- distort or threaten to distort competition
- affect intra-Community trade

87. As Article 107 TFUE applies only to undertakings, for the reasons explained in paragraph 12 above, the Commission considers that wocos have to be regarded as undertakings engaged in an economic activity.

88. Given that the woco have to be considered as an undertaking, it should be assessed for each of the measures whether the other criteria listed in paragraph 11 are fulfilled.

89. As far as the compensation for public service costs is concerned, the Judgement of the Court of Justice on *Altmark* defines the criteria to be fulfilled for public measures to be regarded as compensations for public service obligations and for them to escape being regarded as State aid under Article 107(1) TFEU. In the present case the 4th criterion does not seem to be fulfilled: wocos have not been chosen in a public procurement procedure. Moreover, the Dutch authorities have neither claimed nor proven that the compensation has been determined on the basis of an analysis of the costs which a typical undertaking, well-run and adequately provided with appropriate means would have incurred in discharging the public service obligations nor is there any indication available to the Commission that would suggest that the 4th criterion is met.

90. The direct grants provide the wocos with an advantage and are selective as only the wocos benefit from them. For the reasons described in paragraphs 16 and 17 above, and in light of the Pearle jurisprudence[13], the Commission considers that the measure involves a transfer of State resources.

91. Concerning the conditions of distortion of competition and affectation of intra-community trade, the Commission considers that as the measure selectively enhances the wocos' competitive position vis-à-vis their competitors such as private landlords and real estate developers, the measure distorts competition. As regards the effect on intra-community trade the Commission considers that given the high level of cross-border investment in real estate and the significant role of the wocos in the Netherlands mentioned in paragraph 6 the measure is liable to affect intra-community trade. In the very least such support acts as a deterrent for foreign investors who may consider real estate investments in the Netherlands. The Commission therefore considers that measure b) constitutes aid within the meaning of Article 107 TFUE.

[13] Case C-345/02 judgment of the Court of 15 July 2004 Pearle BV, Hans PrijsOptiek Franchise BV and Rinck Opticiëns BV v Hoofdbedrijfschap Ambachten.

IV.2.2. Compatibility of aid

92. The compatibility of the measures will have to be examined in light of Article 106 (2) TFEU, i.e. as potentially compatible aid for the financing of a service of general economic interest (SGEI).

93. Article 106 (2) provides that "*Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in this Treaty, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Community.*"

94. This article provides a derogation from the prohibition of State aid contained in article 107 TFEU provided that the aid is necessary in that the lack of aid would hinder the performance of the SGEI (*...obstruct the performance, in law or in fact, of the particular tasks assigned to them.*), and proportionate in its effects on trade (*...trade must not be affected to such an extent as would be contrary to the interests of the Community*). Under Article 106 (3) it is for the Commission to ensure the application of this article, including inter alia specifying under which conditions it considers the criteria of necessity and proportionality to be fulfilled.

95. Following the Altmark ruling the Commission specified those conditions in the *Community framework for State aid in the form of public service compensation*[14] ("SGEI Framework") of 2005, and the *Commission Decision 2005/842/EC of 28 November 2005 on the application of Article 86(2) of the EC Treaty to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest*[15] ("SGEI Decision"), which therefore represent the Commission's policy of applying the derogation of Article 106 (2) of the TFEU. In particular paragraph 8 of the SGEI Framework makes it clear that the Commission considers the aid measure to be proportional and necessary under Article 106 (2) TFEU if the Framework's conditions are complied with.

96. Aid to social housing undertakings specifically falls within the scope of application of the SGEI Decision (Article 2 par (1) b thereof), which declares compatible with the common market and exempted from notification the public service compensation for social housing that fulfils the conditions set out therein; accordingly the compatibility of the aid to the wocos for the activity in question will have to be examined in light of the SGEI Decision's criteria.

97. The compatibility criteria of the SGEI Decision are that the public service must be properly entrusted (Article 4) and that the service provider must not be overcompensated for the discharge of the public service (Article 5). However, a fundamental criterion that precedes the other two is whether the activity in question is a genuine SGEI i.e. a public service. This is obvious from the fact that the SGEI Decision authorizes as compatible aid compensation for the provision of public services, i.e. not any activity. Furthermore it is explicitly provided for in recital (7) as well: "*Such aid may be declared compatible only if it is granted in order to ensure the*

[14] Official Journal C 297 , 29/11/2005 P. 0004 – 0007
[15] Official Journal L 312, 29.11.2005, p. 67–73

provision of services that are services of general economic interest as referred to in Article 106(2) of the TFEU."

IV.2.2.1 Genuine public service mission

98. As regards the admissibility of the activity construction and renting out of dwellings to individuals as a public service, for the reasons described in paragraphs 50-65 above, and having regard to the particularities of the Dutch social housing market and the commitments made by the Dutch authorities, the Commission considers that the definition proposed by the Dutch authorities does not contain manifest error and can be accepted as a service of general economic interest in the meaning of Article 106(2) TFEU.

IV.2.2.2 Entrustment

99. As regards the second condition, entrustment, the wocos are required to operate, due to their special public service mission, within the confines of the Housing Act and more detailed ministerial decrees, in particular the "*Regeling besteding subsidies wijkenaanpak toegelaten instellingen volkshuisvesting*" that will be issued by the Dutch authorities in accordance with the commitments described in section II1.6 above. For the reasons explained in paragraphs 66-69 above, the Commission considers that the public service mission is properly entrusted to the wocos.

IV.2.2.3 Absence of overcompensation

100. Concerning the third criterion, namely the absence of overcompensation (Article 5 of the SGEI Decision) the Commission notes that the wocos will be obliged to keep separate accounts between aided and non-aided activities and to address this issue in their annual report. The separation will be subject to an independent audit. Account separation will make it possible to identify the receipts and the revenues of the public service mission.

101. Furthermore the wocos have a legal obligation to not have profits as primary objective. Policy rules of the Central Housing Fund (CFV) will provide that the amount of aid in the form of direct grant will be no more than the shortfall between the expected rent revenues from the project and the costs thereof. The monitoring of the respect of this condition is entrusted to CFV. The CFV ensures this by only taking into account for the direct grant the unprofitable part of the real estate investment, with the usual parameters in the sector as a starting point. The advantage derived from the guarantees in the form of cheaper funding and cost savings due to preferential prices of land are to be taken into account in the calculation of the grant amounts. This mechanism eliminates the possibility of double compensation of the same eligible costs from different sources of aid. The Commission is satisfied that the wocos will not be overcompensated for the supply of the public service.

102. Aid for construction projects in the declining urban regions will be granted by the CFV on a project basis. This will ensure that a single project can only benefit from the grant once.

103. Accordingly, the Commission considers that the aid for the provision of social housing, i.e. the activity of construction and renting out dwellings to individuals including the building and maintenance of ancillary infrastructure in the declining urban regions is compatible under Article 106 (2) TFEU.

V. CONCLUSION

V.1. Existing aid

1) Having informed by letter of 14 July 2005 the Dutch authorities according to Article 17 of the procedural regulation[16] on its preliminary views that Dutch social housing system is not in line with the EC State aid rules, and having assessed the Dutch authorities' response to its preliminary views, the Commission concludes according to Article 18 of the procedural regulation that the existing aid scheme is no longer compatible with the Common Market (see section III.5). In order to ensure compatibility the support for the future, the Commission discussed with the Dutch authorities a number of changes to the existing legal framework and thereupon recommended appropriate measures (see section III.5).

104. The Dutch authorities have by letter of 4 December 2009 committed to changing the system in line with the requests made by the Commission. The Commission accepts the commitments made by the Dutch authorities. The Commission services have requested and the Dutch authorities have accepted to keep the Commission informed of the drafting of the national legislative instruments, as mentioned in paragraph 41 point t). These legislative instruments are to develop in more detail the implementation of all the commitments mentioned in paragraphs 41-43, and in particular the criteria and control of allocation of dwellings (points c and d), the control mechanisms of overcompensation (points l and p) and the independent audit (points c and s).

105. In particular, the aid for the activity of construction and renting out dwellings to individuals including the construction and maintenance of ancillary infrastructure and construction and renting out of public purpose buildings is compatible under Article 106 (2) TFEU to the extent that it is provided under the conditions specified in paragraphs 41-43.

V.2. Special project aid for certain districts

106. Further to the assessment carried out in Part IV, the Commission considers that the special project aid referred to in paragraphs 78-84 is compatible with the common market.

107. The aid for the activity of construction and renting out dwellings to individuals including the construction and maintenance of ancillary infrastructure and construction and renting out of public purpose buildings is compatible under Article 106 (2) TFEU.

VI. DECISION

108. In accordance with Article 19 of the Procedural Regulation, the Commission records the commitment by means of the present decision and thereby renders the implementation of the appropriate measures binding.

109. The Commission decides not to raise any objections to the newly notified measure on the ground that they constitute compatible aid under Article 106 (2).

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[16] Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty , OJ L 083 , 27/03/1999 p. 1 – 9.

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 have agreed 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_nl.htm.

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

European Commission
Directorate-General for Competition
State Aid Greffe
J-70 3/232
BE - 1049 Brussels
Fax No: +32 2 296 12 42

Yours faithfully,
For the Commission

Neelie KROES
Member of the Commission

EUROPEAN COMMISSION

CERTIFIED COPY
For the Secretary - General

Jordi AYET PUIGARNAU
Director of the Registry

ANNEX – ESTABLISHMENTS THAT QUALIFY AS PUBLIC PURPOSE BUILDINGS

(as per annex of a ministerial order)

- neighbourhood centres
- community centres
- youth centres (without catering facilities)
- primary schools, pre-vocational secondary schools, pre-university schools, school buildings for special education
- community schools with rooms for preschool-age children and watching over children before school, during lunch breaks and after school, neighbourhood sports hall/sports complexes (so-called 'multifunctional accommodation')
- neighbourhood sports facilities
- accommodation for social work
- accommodation for welfare work
- reception centres (shelters for abuse victims. day and night centres for the roofless. homeless and addicts)
- care assistance centres
- advice centres for debt clearance and budget management for households in financial problems
- Youth and Family Centres
- accommodation for daytime facilities for the disabled/elderly, including some healthcare infrastructure
- hospices
- multifunctional centres for social service
- village or community libraries
- dedicated office space
- refuges
- centres for employment and/or promotion of economic activities in the community;
- small scale cultural facilities.