The Hague, 27 April 2020

HT 5833

Response of the Dutch authorities on the draft subdebt addendum to the second amendment to the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak:

COMMUNICATION FROM THE COMMISSION

Amendment to the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak Recapitalisation of non-financial undertakings

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This response reflects the views of the Dutch 'Interdepartementaal Steun Overleg (ISO)'. The ISO is a national State aid committee composed of all Dutch ministries and representatives of the regional and local authorities.

1. General remarks

The Dutch authorities would like to thank the European Commission for its work to the extension of the Temporary Framework with a subdebt addendum. In general the Netherlands supports the extension of the Temporary Framework with the possibility to grant public subordinated loans with reduced interest rates under title 3.3. of the Temporary Framework. We welcome the clarification that for public subordinated loans a credit risk mark- up of 200 bps should be taken into account, we find this reasonable. Furthermore we welcome the possibility to choose between options in point 27 (a) and point 27 (b) to determine the amount of the annual reduced interest rate on the public loan. We find this useful.

However we do like to raise the following issues.

2. Specific remarks

1. Point 27Bis limits the amount of the subordinated debt to two possibilities.
   Do we understand correctly that there is a restriction in the amount of subordinated debt and the way you can use it under the TF to:

   i. 40% of the annual wage bill of the beneficiary as defined in point 27 (d)(i), or
   ii. 5% of the beneficiary's total turnover in 2019 ?

   In the proposal we didn't find the reasoning of the Commission to choose for this restriction. Do we understand correctly that the allowed amount of subordinated debt in the overall amount of loans per beneficiary is quite limited? Why is an option along the lines of point 27 (d) under iii, not possible?
   We don't fully understand the proposed restriction. The proposed restriction seems to make it more difficult to cover liquidity needs of the undertaking. We think a public subordinated debt can increase the stability of the undertaking because the senior debts will not be limited

in collateral or priorities. However we don't think – taking into account the current circumstances of the markets - that there is a risk of taking on to much senior debts as the proposal (rightly) introduces a credit risk mark- up. Could the Commission consider more flexibility   for Member States to determine – within proportionate limits – the amount of the public subordinated debt in the overall amount of loans per beneficiary?

2. We observe that point 27Bis does not explicitly refer to point 27 e.

'For loans with a maturity until 31 December 2020, the amount of the loan principal per beneficiary may be higher than under point 27(d) with appropriate justification and provided that the proportionality of the aid remains assured'

Does the proposal indeed excludes the possibility as referred to in point 27 e of title 3.3. of the Temporary Framework? Could the Commission clarify this? Why is this excluded?

3. In the recital the Commission states that the subordinated debt would be subordinated to ordinary senior unsecured creditors in case of insolvency proceedings.
   Could the Commission clarify whether the subordinated debt could also be subordinated to the payment of the principal of the loan or be subordinated to the payment of the interest or be subordinated to the collateral?

   So in short: could the subordinated debt be subordinated to all forms of subordination or only be subordinated to ordinary senior unsecured creditors in case of insolvency? Could the Commission clarify this in point 27bis itself and not only in the recital?