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Inlichtingen

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Uw brief (kenmerk)

Bijlagen

Datum: 23 May, 2013
Subject: Intended sale of shares in URENCO

Dear President,

This letter is to inform you, also on behalf of the Ministers of Economic Affairs and of Foreign Affairs, that I intend to sell off the shares the Dutch State holds indirectly in URENCO Ltd. Of course no such sale of Dutch shares in URENCO can take place unless the public interest in terms of non-proliferation, security and security of supply is safeguarded. The Netherlands is currently holding talks on the matter with the United Kingdom and Germany. It goes without saying that at the talks we will make things subject to parliamentary approval wherever applicable and that prior to that we will not be taking any irreversible steps.

On January 27th 2005 my predecessor in office assured the Second House of the States General that no irreversible steps would be taken as concerns Ultra Centrifuge Nederland ("UCN") prior to first sending a letter to your House together with the Ministers of Economic Affairs and Foreign Affairs.¹ This letter forms the substance of that assurance whereby the assurance concerning the sale of shares in UCN is to be extended to the sale of shares in URENCO Ltd. We will also be sending this letter to the First House in accordance with assurances given in the Cabinet's response to the Report of the Parliamentary Investigating Committee on Privatisation/Making Government Services Autonomous of the First House of the States General.

In this letter I will successively deal with the occasion for the intended sale, safeguarding the public interest, the sales process and the budgetary effects.

The occasion

¹ *Kamerstukken* [=Parliamentary Papers] II, 2004/05, 28 165, No 21, p.6.

Our intention to sell the shares in URENCO arises from changes relating to the control and the share ownership of the company. Since it was set up, the Netherlands, the United Kingdom and the German private shareholders E.on and RWE have held URENCO's shares indirectly and in equal proportions. Although there have been changes to the parties who actually exercised share ownership over the course of time² – thus in the United Kingdom British Nuclear Fuels Limited (“BNFL”) was replaced by Enrichment Investments Limited (“EIL”) – the proportion of Government shareholders to private shareholders has always remained the same so that in practice the *status quo* surrounding the exercise of control over the undertaking has been maintained.

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In response to Germany's decision to be completely free of generating nuclear power over the course of time, the German private shareholders RWE and E.on – who through their joint venture Uranit together hold one third of all of the shares in URENCO Ltd – have revised their portfolio and decided to investigate the sale of their interests in URENCO.

On April 22nd last the British government made known its desire to sell its shares in URENCO because it no longer felt the need to be a shareholder. The British government attached a precondition to the sale namely that the public interest in terms of non-proliferation and safety must be safeguarded and that any such sale would realise sufficient value.

These developments have forced the Netherlands to think about the consequences of a possible sale of shares by the other shareholders. Such a sale could put the Netherlands in a position of minority shareholder between new private shareholders, as seems highly likely. The Netherlands would then no longer be able through its joint public share ownership with the British government – together forming a majority holding with two-thirds of the shares – to exercise sufficient control to effectively safeguard the public interest. The Cabinet feels such a position would be very undesirable and has therefore investigated whether the public interest could be safeguarded in some other way other than by share ownership. In this case we are talking about the public interest as it relates to non-proliferation, nuclear safety and security of supply. The Cabinet is of the opinion that acquiring shares in URENCO is not a realistic alternative, in terms of the accompanying budgetary effect alone.

If safeguarding the public interest could be achieved in some other way other than by share ownership, it would give the Netherlands in a joint process with the other shareholders the space to proceed to sell its shares in URENCO. In this way the Netherlands would also be able to get maximum advantage from any possible sale because when selling a controlling interest in a company you can usually obtain a higher price than if you sell a minority interest.

This letter has been arranged in such a way as to be based as much as possible on the first step in the decision framework of the Parliamentary Investigating Committee on Privatisation/Making Government Services Autonomous of the First House of the States General.

² See also *Kamerstukken II*, 2009/10, 28 165, No 103

Securing the public interest

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URENCO is not an everyday enterprise. The history of how it was set up and its uranium enrichment activities make URENCO stand out from other undertakings. URENCO's special position is further emphasised by the measures operating at various different levels to safeguard the interests of nuclear safety and non-proliferation of nuclear technology. We must at all times prevent sensitive know-how coming through URENCO into the hands of people and authorities who are developing activities that contribute to the proliferation of nuclear weapons. Naturally these and other risks to national security will be assessed and addressed when detailing the range of instruments safeguarding the public interest in dialogue with the government bodies responsible for national security (the Ministry of the Interior and Kingdom via the AIVD, the Ministry of Defence via MIVD, the Ministry of Security and Justice via the NCTV, and the Ministry of Foreign Affairs).

In the Treaty of Almelo the Netherlands, the United Kingdom and Germany have undertaken jointly to safeguard the public interest as it relates to uranium enrichment. The Joint Committee plays an important role within this treaty structure as contracting states operate within the confines of the powers the Treaty of Almelo confers to take decisions by consensus that URENCO then has to implement. The Treaty of Almelo settles what types of decisions are affected. First and foremost such safeguards are in place at URENCO's installations within the individual contracting states.

Within the Netherlands, Germany and the United Kingdom, besides the Treaty of Almelo, statutory legislation and regulations are in force to regulate specific installations on their soil and the activities that take place there and the products emanating from there. Dutch nuclear installations are subject to permits under the 1963 Nuclear Energy Act and the equivalent legislation is in existence in the United Kingdom and Germany. These installations are also subject to a number of special safety instructions and positions held by members of staff are designated as positions involving confidentiality. Besides this, technology, know-how and products are subjected to specific permit obligations arising from the Strategic Goods Decree, the 2012 Strategic Services Act and Council Regulation (EC) No 428/2009 of May 5th 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items.

Besides this an important security instrument is that of the majority of shares in URENCO currently indirectly in the hands of the governments of the Netherlands and the United Kingdom that through their respective holding companies UCN and EIL each hold one third of the shares in URENCO Ltd. Currently they still have effective control over URENCO with this two-thirds majority. This joint shareholding ensures 'positive control' by EU governments. Positive control means that government shareholders will appoint most of the board of management, that every proposal for a motion to be voted on at the AGM can be blocked and that undesirable shareholders can never gain actual control of the undertaking. Through positive control it is also possible to safeguard URENCO implements the decisions the contracting states take together on the Joint Committee. The Treaty of Almelo imposes no direct obligations on the undertaking and its shareholders.

Any sale of all of the shares or of a majority of the shares now in the hands of the governments of the United Kingdom and the Netherlands will alter nothing under treaty law or regulations currently in place in the various contracting states that apply to the agencies there. Selling a majority shareholding in current government shares will however mean loss of control over URENCO that government shareholding now implies. Instead therefore a range of instruments will have to be designed to safeguard the public interest now safeguarded through a majority of shares in government hands, can be safeguarded in some other way.

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Such a range of instruments to safeguard the public interest is being developed in close consultation between the Netherlands and the United Kingdom as shareholders and contracting states to the Treaty of Almelo and Germany as a treaty party together with the German private shareholders.

The range of instruments envisaged accords a series of powers to the governments of the Netherlands, the United Kingdom and Germany to enable them to safeguard the public interest adequately in terms of non-proliferation and nuclear safety.

The series of powers is as follows:

- Ensuring that URENCO observes treaty obligations and that this can be enforced as well as implementing the Joint Committee's decisions;
- Checking certain activities at URENCO including entering into sales contracts for enriched uranium and the disposal of radioactive waste;
- Having the right to approve the appointment of URENCO's directors and the option of sacking them if non-proliferation, security of supply and safety are at risk;
- Getting the necessary information for proper inspection at URENCO;
- Having the right to approve the shareholder quality and the extent of their shareholdings in URENCO together with the option of depriving them of their voting rights;
- Having the right to approve any purchase/(forward) sale of URENCO;
- Assuring security of supply of enriched uranium;
- Having the ability to counter and/or to oblige to carry out particular activities at URENCO or to carry out safety inspections;
- Having the ability to demand sound financial management at URENCO;
- Having the right to approve any changes to the company structure at URENCO (such as a (forward) sale of enterprise divisions).

The Netherlands, the British government and Germany are busy designing a structure that will enable mutual wishes to be met when exercising these powers.

Contracting states to the Treaty of Almelo will conclude implementation agreements to ensure coordination when exercising these powers.

Armed with the abovementioned powers and a structure yet to be implemented to safeguard the effective exercise of these powers, it will be possible for all contracting parties to the Treaty of Almelo to approve the sale of shares in URENCO without losing any of the influence they now exert through their majority shareholding.

Design of the sales process

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In sending this letter, I am for the first time giving public expression to our intention to sell our shares in URENCO Ltd. This sends an important signal to potential buyers, namely that the shareholders at URENCO intend to offer the market 100% of the shares in URENCO.

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Before this sale of shares can reach completion however, we will have to hold joint talks with the governments concerned and the German private shareholders to work on the details of the range of instruments safeguarding the public interest. I will inform you as soon as possible about the results of these talks. In principle for the Dutch government no sale can take place unless some new structure adequately safeguards the public interest currently safeguarded in the majority shareholding of governments. Finally, any package of measures must be in proportion to the goals we pursue and in accordance with European law.

Moreover we will be talking to our co-shareholders about the design of the sales process. In principle the sale must realise sufficient value to shareholders selling their shares on the proviso that public interest is safeguarded. We cannot say in advance what would be an appropriate sum. Moreover making any further statements about that now would severely undermine the negotiating position of the shareholders who wish to sell their shares.

We expect the principle of wishing to realise value to be best served by working in parallel on a private sale and an initial public offering (IPO). This approach is intended to maximise value under pressure from competition.

Budgetary effects

The sale is EMU- balance neutral because under the budgetary rules sale of URENCO is designated a financial transaction in which the State 'exchanges' assets for cash. The total sale amount is of no relevance to the budget framework and will be used to pay off the national debt. Besides this missing out on future dividend will have a structurally negative impact on the EMU balance. The Netherlands forecasts a dividend of €70m for the current financial year 2013. On the other hand however this will have an indirect positive effect on the EMU balance through the interest charges saved on the amount of the sale. Its size will depend on the sale amount realised and the interest rates then in place.

Next steps

Intense talks are currently underway between the contracting states to the Treaty of Almelo and URENCO's shareholders to lend greater substance to our intention to sell and the safeguarding of the public interest that plays a role in that. UCN is closely involved in these talks. I will inform you as soon as the talks yield positive results. Fleshing out the range of instruments safeguarding the public interest will also form part of the information we pass on to the States General. I expect you will receive more detailed information about this in the summer.

So it speaks for itself that we will not be taking any irreversible decisions and during the talks we will make the matter subject to parliamentary approval wherever applicable.

Signing also on behalf of the Minister for Economic Affairs and the Minister of Foreign Affairs,

The Minister of Finance,

J.R.V.A. Dijsselbloem

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