EUROPEAN COMMISSION

Brussels, 27.11.2008
C(2008) 7734 final

Subject: **State aid N 569/2008 – State Aid to Aegon N.V., The Netherlands**

Sir,

I. Procedure

(1) On 12 November the Netherlands notified to the Commission its intention to provide a loan of EUR 3 000 000 000 to Vereniging Aegon (Aegon Association). Vereniging Aegon will transfer this amount to Aegon N.V in exchange for Non-Voting Convertible Capital Securities. By e-mail of 13 November 2008 and 24 November 2008 the Commission requested additional information on the measure, which the Netherlands submitted on 20 November 2008 and 26 November 2008 respectively. The Netherlands plan to implement the measure on 1 December 2008.

II Description of the measures

1. The Beneficiary

(2) Aegon N.V. (hereafter "Aegon") is the holding company of the Aegon Group and is a public limited company under Dutch law. Aegon Group is a global life insurance and pension group and provider of investment products. It is internationally listed and one of the leading financial institutions in the Netherlands. Aegon Group has three main, established markets: the United States, the Netherlands and the United Kingdom, which have traditionally generated most of the group's earnings. In recent years, Aegon Group has expanded its international presences pushing into markets such as China, Mexico, Japan, India and the countries of Central and Eastern Europe. Today, Aegon Group is present in more than twenty markets in Europe, the Americas and Asia. Aegon Group employs approximately 30,000 people worldwide.

(3) Vereniging Aegon is an association under Dutch law. It is a shareholder of Aegon. Vereniging Aegon has evolved out of AGO, a mutual insurer, and holds approximately 23% of the voting rights in Aegon. The object of the Vereniging Aegon as laid down in its Articles of Association is the balanced representation of the interests of Aegon. Vereniging Aegon has 19 members, which are associated in a General Meeting of

Zijne Excellentie de Heer Maxime VERHAGEN
Minister van Buitenlandse Zaken
Bezuidenhoutseweg 67
NL - 2500 EB Den Haag

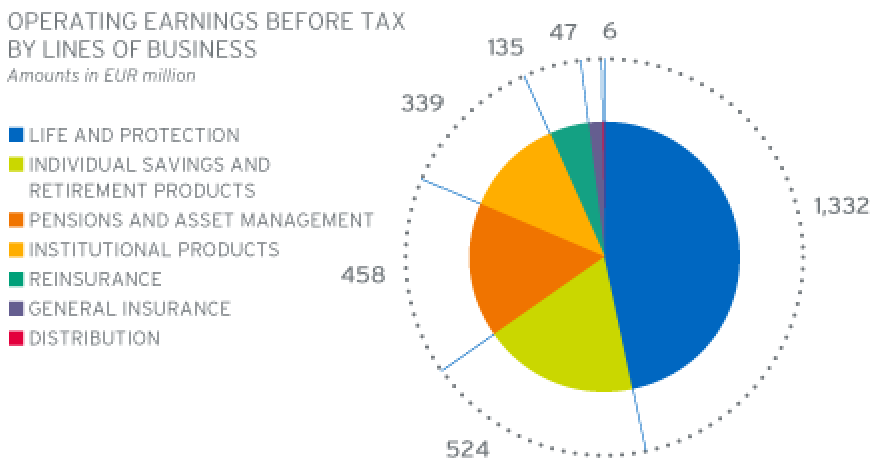
Members. The members are individuals with diverse social backgrounds. 17 of the Members are not related to Aegon while two members of the executive board of Aegon are also members of the Vereniging. The Executive Committee of Vereniging Aegon is comprised of seven members, two of whom serve on the Executive Board of Aegon[1].

(4) In 2007 the Aegon Group had revenues amounting to EUR 39.27 bln and its balance sheet totalled EUR 314.12 bln. It realised a net income of EUR 2.55 bln.

(5) Aegon Group is active in the following main business lines[2]:

1. Life & protection
2. Individual savings & retirement products
3. Pensions & asset management
4. Institutional products
5. Reinsurance
6. General insurance
7. Distribution

(6) In 2007 the contribution of the different business lines to the earnings of Aegon Group was as follows[3]:



(7) Aegon is the Netherlands' second largest supplier of pensions, with almost a quarter of the Dutch market. It ranks third with a 10.6% market share of the Dutch life insurance market in terms of gross premium income in 2005 and 2006. In 2006, the market for life insurance premiums accounted for just over 5% of the Dutch GDP.

The difficulties of Aegon

(8) According to the Netherlands, after the demise of Lehman Brothers in the US, numerous international financial institutions were faced with financial distress. Aegon became subject to a dramatic increase in its credit default swap (CDS) spreads

1 See also http://www.verenigingaegon.nl/leden-en-bestuur.html.
2 Source: www.aegon.com
3 See footnote 2.

although – according to the Netherlands – there was no direct cause for this based on Aegon's liquidity and solvability ratio. However, Aegon did incur EUR 350 million losses from its exposure to Lehman Brothers and Washington Mutual and was forced to revalue its corporate bond portfolio by EUR 2.5 bln. While Aegon had built down its financial market sensitivity in the previous year, it remained relatively sensitive to stock market dynamics and had sold insurance contracts that protected the policy holders against stock market losses.

(9) Amongst others due to these factors, Aegon's CDS spread has exceeded that of some of its competitors in the past, but this gap has widened dramatically after the Lehman collapse. As a result, it was necessary for Aegon to reinforce its capital position to prevent a downgrade by the rating agencies, as an AA rating for operating companies is deemed vital for some of its business lines. Aegon's CDS spreads have increased substantially in the last months from 140 bps at the beginning of September 2008 to more than 500 bps in mid-October. At the end of October following the announcement of recapitalisation by the Netherlands, CDS spreads decreased but in the last week CDS spreads are increasing sharply again, reflecting sector-wide strains and the approach of the liquidity constrained year-end.

(10) Aegon's share price mirrors to a large extent the CDS spread dynamics, as its stock price has fallen from above EUR 8 in the beginning of September to around EUR 3 in mid-October. Since then it is hovering in between EUR 3 and 4.

3. The Measure

Description of the securities issued

(11) The measure takes the form of a loan of EUR 3 000 000 000 which the Netherlands will provide to Vereniging Aegon. Vereniging Aegon will acquire 750 million newly issued Non-Voting Convertible Capital Securities from Aegon for this amount. The issue price is EUR 4 per security.

(12) The Dutch authorities have a (first) right of pledge on the securities. This means that Vereniging Aegon needs the permission of the Dutch authorities for any action they undertake concerning the securities. In this construction Vereniging Aegon is the holder of the securities, while economic ownership of the securities rests with the Dutch authorities.

(13) The perpetual securities will produce a yearly coupon equal to the higher of:

- EUR 0.34 (i.e. 8.5%) per security, non cumulative, payable annually in arrear;
  If the securities are issued on 1 December 2008 as planned, an amount of EUR 124 million will be paid to the Dutch authorities in spring 2009 since Aegon has paid an interim-dividend in 2008 and the participation has a short first coupon of 8.5% p.a. calculated over the period from the issue date of the securities until the coupon date, i.e. the date on which the dividend on the ordinary shares is paid, in 2009.

- 110% of the dividend paid on an ordinary share in 2009
  120% of the dividend paid on an ordinary share in 2010
  125% of the dividend paid on ordinary shares from 2011 onwards.

The coupon will only be paid if a dividend is paid on the ordinary shares[4] and will be paid in scrip securities in case a scrip dividend is distributed on the ordinary shares.

(14) The amount of interest and the type of interest (in cash or in scrip securities) on the loan will be equal to the amount of interest and the type of interest (in cash or in scrip securities) payable on the securities. Payments of interest on the loan amount shall be made on the date on which interest is paid on the securities.

(15) No voting rights are attached to the securities. The securities are deeply subordinated, ranking *pari passu* with the ordinary shares (meaning that it is fully loss-absorbing)

(16) The State has no right to dissolve or annul the measure. The State may only transfer (its rights) under the loan with prior written consent of Aegon. The securities itself are only transferrable with written consent of the Dutch authorities and Aegon.

(17) On the initiative of Aegon, the securities can either be repurchased at 150% of the issue price, i.e. EUR 6 per security, or, after a minimum period of three years, be converted into ordinary shares on a one for one basis. If Aegon triggers the conversion option, the Netherlands have the choice to opt for the alternative redemption of the securities at the issue rate, i.e. EUR 4 per security plus accrued interest that, if the repayment would not have occurred, would have been due over the relevant period (see paragraph (13) above). All of these options are subject to the prior consultation of the Dutch National Bank (DNB).

(18) In addition, during the first year of the deal, Aegon is allowed to repay EUR 1 bln under special conditions. If Aegon exercises this option, it is required to repay the EUR 1 bln in cash together with at least the coupon (8.5%) even if the dividend in that year is lower. On top of that, depending of the circumstances, Aegon is required to pay additional compensation, the amount of which depends on the share price[5].

[4] Past dividend policy of Aegon

	interim	final	Total
1999	0.25	0.35	0.60
2000	0.30	0.44	0.74
2001	0.37	0.46	0.83
2002	0.37	0.37	0.74
2003	0.20	0.20	0.40
2004	0.21	0.21	0.42
2005	0.22	0.23	0.45
2006	0.24	0.31	0.55
2007	0.30	0.32	0.62
2008	0.30	0	0.30

[5] Aegon is not required to pay additional compensation in case the share price is EUR 4 or lower. If the share price is above EUR 4 additional compensation is required. The maximum additional compensation, if the EUR 1 bln is paid back at a share price of EUR 5 of more at the end of the year, is EUR 130 million. In case the share price is in between EUR 4 and 5, Aegon will have to pay back a pro rata compensation between EUR 0 and EUR 130 million, a calculation based pro rata on the days of issue of the securities.

(19) Although the capital securities are bonds from a civil law point of view, they qualify as "capital" under applicable solvency regulations which has been confirmed by the Dutch Central Bank.

Objective of the measure

(20) The objective of the measure is to strengthen Aegon's capital base. The securities will represent 15% of the capital base of Aegon. The measure will improve Aegon's solvency ratio calculated in line with the Insurance Group Directive[6] from 159% to 195%. The minimum statutory requirement for this ratio is 100%. According to the Netherlands, under normal conditions investors generally require insurers to hold capital above the level of 200%. The capital injection therefore contributes to restoring Aegon's solvency ratio to a more acceptable level in current market conditions.

(21) Secondly, Aegon needs the capital in order to maintain the targeted AA-ratings for its operating companies, which are vital for its businesses.

Corporate Governance and remuneration

(22) Subject to applicable law and to corporate governance practices, generally accepted under applicable stock listing regimes, the Netherlands will have the right to nominate two Supervisory Board members at the next Annual General Meeting to be held in 2009. The Supervisory Board approval items listed below require approval by those two investor's nominees:

a) the issue or acquisition of shares of Aegon and debenture chargeable to Aegon and of debenture chargeable to a limited partnership of general partnership in which Aegon is a fully liable partner;

b) cooperation in the issue of depositary receipts for shares;

c) application for quotation or cancellation of quotation of the securities under a) and b) above on the official list of any stock exchange;

d) entering into or termination of a long-term cooperation between Aegon or a subsidiary and another legal entity or company or as fully liable partner in a limited partnership or general partnership, if such cooperation or termination is of fundamental importance for Aegon;

e) participation by Aegon or a subsidiary in the capital of another company if the value of such participation is at least one-quarter of the amount of the issued capital plus reserves of Aegon according to its balance sheet and explanatory notes, as well as significantly increasing or reducing such participation on Aegon's balance sheet;

f) investments in an amount equal to at least one quarter of the issued capital plus reserves of Aegon according to its balance sheet and explanatory notes;

g) a proposal for an amendment of the Article of Incorporation of Aegon;

---

6 Directive 98/78/EC of the European Parliament and of the Council of 27 October 1998 on the supplementary supervision of insurance undertakings in an insurance group; OJ L 330, 5.12.1998, p. 1.

h) a proposal for the dissolution of Aegon;

i) a petition in bankruptcy and a petition for a moratorium on the payment of indebtedness;

j) a proposal for a legal merger or demerger;

k) a proposal for change of the remuneration policy of Aegon.

(23) As part of the transaction, Aegon has committed itself to develop a sustainable remuneration policy for the Executive Board and Senior Management that is aligned to new international standards. These incentive schemes will be linked to long-term value creation, taking account of risk and restricting the potential for "rewards for failure". In addition, Aegon's Executive Board members commit to forego all bonuses for 2008 (cash as well as options and share rewards). Moreover, the exit schemes or statutory compensation for dismissal of Aegon's Executive Board will be limited to one year's fixed salary.

4. Position of the Netherlands

(24) The Netherlands consider Aegon to be a fundamentally sound institution. The Netherlands accept that the measure constitutes State aid and consider that the aid is compatible with the common market because it is necessary to remedy a serious disturbance in the Dutch economy pursuant to Article 87(3)(b) of the EC Treaty.

(25) The design of the measure, using securities rather than ordinary shares, is chosen to avoid dilution of existing shareholders, which would have required prior approval by the General Shareholders Meeting. In the present circumstances this would have taken too much time.

(26) In the Netherlands' opinion, it is important that the securities, although they are bonds from a civil law point of view, should be compared to ordinary shares because in an economic sense, their behaviour is similar to shares. Hence, in the view of the Netherlands, an evaluation of the instrument should also be based on that comparison.

(27) According to DNB, requirements associated with capital under the applicable solvency regulations are that all the rights remain with the company (similar to shares) including, but not exclusively, the right to determine dividends and the right to initiate an exit.

(28) The securities will be issued at a price of EUR 4. The price of the securities has been determined on the basis of the market price of the shares of Aegon. On Friday 24 October, the Aegon stock closed at EUR 3.95 in the US and the Volume Weighted Average Price for the week was EUR 4.04.

5. Commitments by the Netherlands and Aegon

(29) The Netherlands, along with Aegon, have provided the following commitments.

(30) In order to restrict competitive distortion, i.e. to prevent significant growth in Aegon's market shares as a result of the capital injection, the Netherlands and Aegon commit

that the balance sheet growth of all banking and insurance activities of Aegon in the EU will not be above:

- the annual rate of growth of Dutch nominal GDP in the preceding year, or
- the average historical growth of the balance sheets in the Dutch insurance sector during the period 1987-2007, or
- the average growth rate of the balance sheet volumes in the insurance sector in the EU in the preceding six months,

whichever is the higher. If the thresholds are exceeded, the Dutch authorities will take as a matter of urgency the necessary measures to re-establish the discipline, unless there is evidence, notified to and accepted by the Commission, that the thresholds are exceeded for reasons unrelated to the capital injection.

(31) The Netherlands have committed to use their best endeavours to achieve an overall return on the securities of at least 10%. The Netherlands consider that there is a high likelihood that such remuneration will materialise through a combination of coupons at 8.5% (possibly more depending on the level of dividends paid out), and the repurchase option. Aegon has also declared that it shall endeavour to maintain its existing dividend policy, market circumstances permitting.

(32) The securities are to be treated as capital under the applicable solvency regulations, i.e. permanence of the instrument must be ensured and the ability to absorb potential losses in going and gone concern (i.e. in liquidation) situations. The Netherlands explained that this implies that no certainty exists or can exist with regard to the returns mentioned above, which are dependent on decisions of Aegon and the agreement by DNB that after paying coupon and dividend Aegon remains adequately capitalised.

(33) Given that the Commission has assessed the measure on the basis of an overall return of at least 10% p.a., the Netherlands have undertaken to renotify the measure under Art 88(3) EC if either of the following situations arise which make it less likely that the overall return of at least 10% p.a. is achieved:

- If no dividend is paid out for a period of two consecutive years or for three years in the next five years; or
- If after a transition period of one year following the date of the present decision, the share price over a period of two consecutive years remains on average below EUR 5.20 (130% of the issue price).

Although in the light of its findings below about the compatibility of the measure under Article 87(3)(b) EC, the Commission finds that the above scenarios would not call into question the capital injection per se, such a development might call into question the conditions of compatibility of the measure and the Commission might, in particular, require additional behavioral constraints as a condition of the continued compatibility of the measure.

(34) The Netherlands and Aegon commit to jointly submit a plan within six months showing how Aegon will secure long term viability and how distortions of competition are limited to the strict minimum.

(35) Aegon has committed to refrain from expansion of its business activities that it would not have pursued if it had not received the capital injection.

III. Assessment

1. The beneficiary

(36) The measure takes the form of a loan by the Netherlands that will be provided to Vereniging Aegon. Vereniging Aegon may use the proceeds of the loan only to subscribe for EUR 3 billion non-voting convertible capital securities from Aegon.

(37) The Netherlands have a (first) right of pledge on the securities, which means that Vereniging Aegon needs the permission of the Netherlands for any action they undertake concerning the securities. The interest on the loan and the repayment of it by Vereniging Aegon are directly linked to the dividends that Aegon pays out on the securities. Any payment Aegon makes with regard to the securities, it will make directly to the Netherlands. While Vereniging Aegon is thus the legal holder of the securities, economic ownership of the securities rest with the Netherlands.

(38) The construction was chosen at the request of Aegon. Aegon proposed this construction because Vereniging Aegon, which is the biggest shareholder of Aegon, had supported Aegon at various occasions in the past, related to acquisitions in 1997 and 1999 and a recapitalisation in 2002. As the capital injection is intended to restore confidence in Aegon, Aegon considered that, because of the support by Vereniging Aegon in the past, this construction would be the most appropriate. As economically the construction makes no material difference to a direct capital injection by the Netherlands and the expected interest payments and the associated risk are the same in both scenarios, the Netherlands agreed to the proposed construction.

(39) Although the loan will be provided to Vereniging Aegon, Vereniging Aegon will derive no economic benefit from the loan as it has to use the amount to acquire the securities from Aegon but will not acquire economic ownership of the securities nor benefit from any interest payments. The Commission therefore comes to the conclusion that the sole beneficiary of the measure is Aegon.

2. Existence of State Aid

(40) The Commission first has to assess whether the measures constitute State aid within the meaning of Article 87 (1) EC. According to this provision State aid is 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, in so far as it affects trade between Member States.

(41) The Commission considers that the measure described above constitutes State aid to Aegon pursuant to Article 87 (1) EC Treaty.

(42) Given that Aegon is active in the financial sector, which is open to intense international competition any advantage from State resources to Aegon would have the

potential to affect intra-Community trade and to distort competition. Since the Netherlands invest EUR 3 billion to acquire the securities, it is also clear that if any advantage is granted through the Measure, State resources are involved.

(43) Finally, it has to be examined whether the measure leads to a selective advantage to Aegon for it to constitute State aid.

(44) The Netherlands explained that it was necessary for Aegon to reinforce its capital position through a measure that would qualify as capital under the applicable solvency regulations.

(45) Normally, if capital under the applicable solvency regulations needed to be reinforced, an ordinary share issuance would have been the typical way forward. Indeed, the Netherlands are of the view that the securities should be compared to ordinary shares. Instead however, a unique, novel, hybrid capital instrument with mixed equity/debt characteristics was used.

(46) Comparing the instrument to equity, the Commission notes that the security, unlike shares, has an upside explicitly limited to a maximum of 50%, which is only achieved if Aegon exercises its option to repurchase. It also has more limited voting rights than an equity shareholder would demand if he had a 15% stake in the company. On the other hand, it has an enhanced coupon stream relative to that of ordinary shares, and has a somewhat limited downside (the repurchase at 100% of issue price), which is not available for ordinary shares, but which again is at the initiative of Aegon. The Netherlands only have the possibility for a repurchase at 100% in the case that Aegon triggers the conversion option as explained in paragraph (17) above.

(47) Comparing the instrument to other capital instruments (for example typical preference shares), the more deeply subordinated status of the security must be considered. Unlike typical hybrid securities, the coupon is only paid if Aegon decides to pay a dividend to ordinary shareholders, and the 50% repurchase premium is again dependent on Aegon exercising it. On the other hand, if the coupon is paid on a regular basis, and the security is repurchased within a short timeframe, the return could be market conform.

(48) Combining the preceding points, in the view of the Commission, Aegon has received an advantage. Its capital under the applicable solvency regulations has being strengthened under conditions that it would not have obtained on the market. Its shareholders' stakes or operational control are not diluted, although certain decisions will require approval by the state's nominees, as outlined in point (22). It would not be considered in default if it does not pay the annual coupon since it only has to pay interest in the event that it decides to pay dividends and it can repurchase the securities at a time of its choosing.

(49) This view is reinforced by the fact that public policy considerations, taken together with the needs of Aegon, have determined the State intervention, rather than the possible return for the State as an investor.

(50) Taking the preceding analysis into consideration, there is an advantage to Aegon. Without the State intervention, Aegon could not have raised such financing in such time frame at comparable conditions, especially taking into account the very volatile market circumstances.

(51) The Commission therefore comes to the conclusion that the measure provides a selective advantage to Aegon and that it consequently constitutes State aid in the sense of Article 87(1) EC.

3. Compatibility of the aid with the common market

Compatibility under 87(3)(b)

(52) The Netherlands invoke Article 87(3)(b) as a basis for compatibility of the State aid.

(53) Article 87(3)(b) of the EC Treaty enables the Commission to declare aid compatible with the Common Market if it is "to remedy a serious disturbance in the economy of a Member State. The Commission recalls that the Court of First Instance has stressed that Article 87(3)(b) of the EC Treaty needs to be applied restrictively and must tackle a disturbance in the entire economy of a Member State[7].

Conditions for compatibility under Article 87(3)(b) of the EC Treaty

(54) In line with the Commission Communication on "The application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis", in order for an aid or aid scheme to be compatible under Article 87(3)(b) of the EC Treaty, it must comply with general criteria for compatibility under Article 87(3) of the EC Treaty, viewed in the light of the general objectives of the Treaty and in particular Articles 3(1)(g) and 4(2), which imply compliance with the following conditions[8]:

a. *Appropriateness*: The aid has to be well targeted in order to be able to effectively achieve the objective of remedying a serious disturbance in the economy. This would not be the case if the measure is not appropriate to remedy the disturbance.

b. *Necessity*: The aid measure must, in its amount and form, be necessary to achieve the objective. That implies that it must be of the minimum amount necessary to reach the objective, and take the form most appropriate to remedy the disturbance. In other words, if a lesser amount of aid or a measure in a less distortive form (e.g. a temporary and limited guarantee instead of a capital injection) were sufficient to remedy a serious disturbance in the entire economy, the measures in question would not be necessary. This is confirmed by settled case law of the Court of Justice.[9]

---

7 Cf. in principle case Joined Cases T-132/96 and T-143/96 Freistaat Sachsen and Volkswagen AG Commission [1999] ECR II-3663, para. 167. Confirmed in Commission Decision in case C 47/1996, Crédit Lyonnais, OJ 1998 L 221/28, point 10.1, Commission Decision in Case C28/2002 Bankgesellschaft Berlin, OJ 2005 L 116, page 1, points 153 et seq and Commission Decision in Case C50/2006 BAWAG, not yet published, points 166. See Commission Decision of 5 December 2007 in case NN 70/2007, Northern Rock, OJ C 43 of 16.2.2008, p. 1, Commission Decision of 30 April 2008 in case NN 25/2008, Rescue aid to WestLB, OJ C 189 of 26.7.2008, p. 3, Commission Decision of 4 June 2008 in Case C9/2008 SachsenLB, not yet published.

8 Cf. Commission decision of 10 October 2008 in case NN 51/2008 *Guarantee scheme for banks in Denmark*, not yet published, at point 41.

9 Cf. Case 730/79, *Philip Morris* [1980] ECR 2671. This line of authority has recently been reaffirmed by the Court of Justice in. Case C-390/06, *Nuova Agricast v Ministero delle Attività Produttive* of 15 April 2008, where the Court held that, "As is clear from Case 730/79 […], aid which improves the financial

c. *Proportionality*: The positive effects of the measures must be properly balanced against the distortions of competition, in order for the distortions to be limited to the minimum necessary to reach the measures' objectives. This follows from Article 3 (1) g EC and Article 4 (1) and (2) EC, which provide that the Community shall ensure the proper functioning of an internal market with free competition. Therefore, Article 87 (1) EC prohibits all selective public measures that are capable of distorting trade between Member States. Any derogation under Article 87(3)(b) of the EC Treaty which authorises State aid must ensure that such aid must be limited to that necessary to achieve its stated objective.

(55) The fourth chapter of the Communication on the financial crisis then translates these general principles into conditions specific for recapitalisation schemes. The principles contained therein apply *mutatis mutandis* also to individual cases. In the next paragraphs, the Commission will therefore assess the compatibility of the notified measure with these criteria.

Importance of Aegon for the Dutch economy

(56) In view of the specific position of Aegon in the Netherlands and worldwide, as described above in paragraphs (2) to (7) above, the Commission recognizes the importance of Aegon for the Dutch economy. This is also confirmed in a letter from the DNB which states that Aegon has a pivotal role within the Dutch financial system and that a loss of confidence in such a core institution would have led to a further disturbance in the financial systems. Therefore, the Commission considers that a public sector capital intervention in Aegon is an appropriate means to strengthen and thus restore market confidence in the Dutch financial sector.

(57) The recapitalisation is an emergency measure to support the financial institution through the crisis, which must be followed up by a plan as provided in paragraph (34) of the Communication on the financial crisis, whereby a distinction must be made between fundamentally sound financial institutions[10] and institutions that are additionally suffering from more structural solvency problems.

(58) The Commission notes positively that the Netherlands and Aegon have committed to submit a plan within six months showing how Aegon will secure long term viability and how distortions of competition are limited to the strict minimum.

Limitation of the aid to the strict necessary

(59) Capital interventions must be done on terms that minimise the amount of aid. This relates to the amount of the measure as well as to the conditions at which it is provided.

(60) As regards the total amount of the recapitalisation, the Netherlands explained that Aegon encountered book losses and was forced to partly revalue its investment portfolio. As a result, it was necessary for Aegon to reinforce its capital position to prevent a problematic downgrading by the rating agencies, a downgrading that in the current exceptional circumstances would have lead to a downward spiral: professional

situation of the recipient undertaking without being necessary for the attainment of the objectives specified in Article 87(3) EC cannot be considered compatible with the common market […]."

10 As the Netherlands maintain to be the case for Aegon; see paragraph (24) above.

clients would leave Aegon, financing problems that would be difficult to resolve on the financial markets, operational losses, deterioration of the capital base, a further downgrading etc.

(61) The measure will help Aegon to improve its solvency ratio calculated according to the Insurance Group Directive from 159% to 195% bringing it to a more acceptable level[11]. In addition, it will help Aegon to fulfil the capital requirements of rating agencies and to maintain the AA-Rating level of its operational companies.

(62) As regards the remuneration of the measure, the Commission, contrary to the Netherlands, is of the opinion that the return on this security can best be compared to a hybrid form of capital, given that the securities also have features similar to hybrid capital, like remuneration through a coupon and the fact that they are non-dilutive, which has a positive effect on the shareholders stake in the company. However, given the additional equity-alike elements of the security and its therefore more uncertain return, its expected return should normally be higher than that expected from other forms of capital under the applicable solvency regulations.

(63) Recent data show that, reflecting current distressed market conditions, the current yield for hybrid tier 1 capital is in the vicinity of 15% or more[12]. The Commission considers that these data are also broadly applicable to insurance companies. The Commission acknowledges that setting the remuneration as high as the current clearing level would restrain the financial institutions from using such measures. Moreover, it is the Commission's intention to adjust to long term market conditions and not to impose the current unfavourable conditions on the financial institutions today. In addition, in recent decisions on the recapitalisation schemes in the UK and Germany, the Commission accepted, in the context of strict behavioural conditions, remuneration levels of 12% and 10% respectively[13]. Also in the recent decision on the recapitalisation of the Dutch banking and insurance company ING the Commission accepted an expected overall return of 10% via mechanisms that are very similar to those used in the case of Aegon as sufficient[14].

(64) Therefore, in view of the specificities and in particular the risk profile of the securities, the Commission considers that an expected overall return of in excess of 10% would be required in the present case.

(65) The Netherlands consider that there is a high likelihood that such return will materialise through a combination of coupons at 8.5% (possibly more depending on the level of dividends paid out), the conversion possibility in ordinary shares or the repurchase option by Aegon at a level at EUR 6 per security. The latter level is considered the appropriate minimum level by the Commission in the present

---

11 This solvency ratio represents the ratio between the available regulatory capital and the required regulatory capital. In September 2008 the available capital of Aegon was EUR 13.4 bln and the required capital was EUR 8.4 bln.

12 For example JP Morgan, Europe Credit Research, 27.10.2008; Merrill Lynch data on euro denominated tier 1 debt from at least investment grade rated financial institutions, publicly issued in the Eurobond market or in the domestic market of Member States' having adopted the euro. Data are provided by ECOWIN (ml: et10yld)

13 See Commission decision of 13.10.2008 in case N507/2008 *Financial Support Measures to the banking Industry in the UK*, and Commission decision of 27.10.2008 in case N512/2008 *Support measures for financial institutions in Germany*

14 See Commission decision of 12.11.2008 in the case N 528/2008 *Aid to ING Groep N.V.*

circumstances. Indeed, the Netherlands have submitted various scenarios showing that the possible return can be considerable, depending largely on the performance of the Dutch and global economy and hence Aegon's future stock performance.

(66) As regards the payment of coupons, assuming that the company's financial performance recovers and its share price goes over EUR 6 within the next years, Aegon will likely pay out some dividend within the next three years. As regards the repurchase option, the higher the company's share price above the EUR 6 threshold, the stronger the incentive for the shareholders to redeem the instrument. This incentive is based on the fact that 1) under this scenario, the instrument is always more expensive than common equity and 2) if the share price sits materially above EUR 6, there will be an added incentive for Aegon, on behalf of its shareholders, to remove any perceived dilution overhang linked to the fact that the instrument is convertible into common equity.

(67) Under the upside scenario that the company redeems the instrument after 3 years at 150% of the issuance price and assuming dividends are paid every year (whereby the State only receives the 8,5% coupon), the total returns generated by the State would amount to 22% per annum. If redemption was to occur only after 5 years, returns would drop down to 16% per annum, in the event that no dividend were to be paid during the relevant period, the returns would drop respectively to 15% and 8%. In case the stock price does not exceed 150% of the issuance price, expected returns may be substantially lower.

(68) Taking the above scenario analyses into account, the Commission considers that the expected return on the State's investment is likely to be in excess of 10%. It recalls that it is the nature of deeply subordinated capital that some uncertainty to the return remains and it is exactly for this reason as well as in view of the type of instrument that the expected return should be above 10 %. It also notes positively the commitments of Aegon and the Netherlands set out in paragraph (31) regarding the payment of dividends. As an additional safeguard, the Commission also notes the Netherlands have committed to renotify, as set out in paragraph (33), in the event that the expected return does not occur, although the Commission accepts that the return cannot be certain.

(69) As provided for by the Communication on the financial crisis, the aid must be limited to the minimum necessary so as not to allow the beneficiary to engage in aggressive commercial strategies or expansion of its activities or other purposes that would imply undue distortions of competition. Limitations to the total size of balance sheet will thus be evaluated positively.

(70) To that effect, Aegon has committed to refrain from expansion of its business activities that it would not have pursued if it had not received the capital injection. In addition the Commission notes the joint commitments set out in paragraphs (30), (34) and (35) from the Netherlands and Aegon. These limit the expansion of the activities of Aegon and commit it to provide a restructuring plan within 6 months.

4. Conclusion

(71) Therefore, the Commission can conclude that the measure conforms to the conditions laid down in the Communication on the financial crisis.

IV. Decision

(72) The Commission comes to the conclusion that the provision by the Netherlands of a loan in the conditions described above constitutes State aid pursuant to Article 87 (1) EC Treaty.

(73) The Commission considers that this measure fulfils the conditions to be considered compatible with the Common Market pursuant to Article 87 (3) (b) EC Treaty. Consequently, the Commission raises no objection against the notified aid and authorizes it as emergency intervention in the face of the current financial crisis for a period of 6 months.

(74) After the 6 months period, the measure must be re-evaluated as to how the long-term viability of Aegon will be ensured. Provided the Netherlands have submitted a credible plan[15] to this effect within 6 months, the validity of the present decision will automatically be prolonged until the Commission reaches its decision on the plan.

(75) Hence, the Commission expects the Netherlands to respect their commitment mentioned in paragraph (34) to notify to the Commission, within six months a credible and substantiated plan for the long-term viability of Aegon.

(76) The Commission will then analyze the compatibility of the aid with the above general principles. As laid down in the Communication on the financial crisis, a distinction must be made in this context between institutions which are fundamentally sound and institutions which are additionally suffering from more structural solvency problems. In that context, the Dutch authorities will also have to commit to regular reporting.

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 text of this letter to agree 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/index.htm.

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

---

15 In line with the requirements under the Community guidelines on State aid for rescuing and restructuring firms in difficulty, OJ C 244, 1.10.2004, pages 2-17

- European Commission
  Directorate-General for Competition
  State aid Greffe
  Rue de la Loi/Wetstraat, 200
  B-1049 Brussels
  Fax No: (+32)-2-296.12.42

Yours faithfully,

For the Commission

Neelie KROES
Member of the Commission