EUROPEAN COMMISSION

Brussels, 16.11.2012
C(2012) 8238 final

In the published version of this decision, some information has been omitted, pursuant to articles 24 and 25 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus […].		PUBLIC VERSION This document is made available for information purposes only.

COMMISSION DECISION

of 16.11.2012

STATE AID

SA.33305 (2012/C) and SA.29832 (2012/C)

implemented by Netherlands

for ING

(Only the English version is authentic)

(Text with EEA relevance)

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(2) thereof,
Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on Member States and other interested parties to submit their comments pursuant to those provisions[1],

Whereas:

I. PROCEDURE

(1) On 22 October 2008, the Netherlands notified to the Commission a EUR 10 billion capital increase ("the recapitalisation measure") in ING Groep N.V. ("ING") in the form of Core Tier 1 securities ("CT1 securities").

(2) By Decision of 12 November 2008 ("the Rescue Decision")[2], the Commission temporarily approved the recapitalisation measure as rescue aid in light of a number of commitments that the Netherlands and ING provided. They included a commitment to re-notify the recapitalisation measure if either of the following situations were to arise which would make it considerably less likely that an overall return of at least 10% per annum would be achieved[3]:

– *If no dividend is paid out for a period of two consecutive years or for three years in the next five years ;or*

1 OJ C 262, 30.8.2012, p. 34.
2 Commission Decision in Case N528/2008, OJ C 328, 23.12.2008, p. 10.
3 See Recital (32) of the Rescue Decision.

– *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 13€.*

(3) In the Rescue Decision the Commission considered that, while the recapitalisation measure in itself would not be called into question if either of the re-notification scenarios were to arise, such a development might call into question the conditions of compatibility of the measure and that it might, in particular, require additional behavioural constraints if that measure was to continue to be compatible with the internal market.

(4) On 22 October 2009 the Netherlands submitted a restructuring plan which included a catalogue of commitments. By its Decision of 18 November 2009[4] ("the 2009 Restructuring Decision"), the Commission approved the restructuring aid granted or to be granted to ING and its restructuring plan. In Article 1 of that Decision, the Commission closed a formal investigation procedure that it had opened into an impaired asset back-up facility which had been granted by the Netherlands to ING, approving that measure in the light of commitments given by the Netherlands. In Article 2 of that Decision, the Commission states in the first paragraph that the restructuring aid provided by the Netherlands to ING constitutes State aid and, in the second paragraph that the aid is compatible with the common market, subject to the commitments set out in Annex II to that Decision.

(5) On 17 November 2011, the Netherlands notified to the Commission a request for amendment of the commitments on which the 2009 Restructuring Decision was based; the notification was registered as case SA.29832. Instead of ING divesting Westland Utrecht Bank ("WUB") as envisaged in the commitments on which the 2009 Restructuring Decision (hereafter "the WUB commitment") was based, the Netherlands proposed that ING would integrate parts of WUB with Nationale Nederlanden Bank ("NN Bank") and divest that integrated entity as part of ING Insurance Europe. The Netherlands also requested an extension of a divestiture period of WUB foreseen in the 2009 Restructuring Decision.

(6) On 21 November 2011, the Netherlands re-notified in case SA.33305 the recapitalisation measure to the Commission. That notification was triggered by ING not paying a coupon to the Netherlands for two consecutive years (in 2010 for 2009 and in 2011 for 2010).

(7) On 5 December 2011, the Commission received information from Mediobanca accusing ING Direct[5] Italia of infringing the price leadership ban to which ING was subject as a result of the commitments made by the Netherlands in the framework of the 2009 Restructuring Decision[6].

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4 Commission Decision C 10/09 (ex N 138/09), OJ L 274, 19.10.2010, p. 139.

5 ING Direct is a business segment of ING offering a range of non-complex financial products – savings, mortgages, retail investment products, payment accounts and consumer lending products – primarily through direct channels (through its website). It operates in the following countries: Canada, Spain, Australia, France, Italy, Germany, Austria and the United Kingdom.

6 See Recitals (53), (84), (128) and (150) of the 2009 Restructuring Decision.

(8) The Netherlands and ING sought partial annulment of the 2009 Restructuring Decision in Joined Cases T-29/10 and T-33/10. By its judgement of 2 March 2012[7], the General Court annulled the first and second paragraphs of Article 2 of the 2009 Restructuring Decision, and Annex II to that Decision[8].

(9) Because the General Court annulled those provisions, the Commission had to re-assess the restructuring aid, placing itself in the situation which existed on 18 November 2009. Therefore, on 11 May 2012, the Commission adopted a new decision ("the 2012 Restructuring Decision")[9], finding that the amendment[10] of the repayment conditions of the CT1 securities constitutes State aid and finding that measure and all other restructuring aid measures granted in the context of the restructuring plan in favour of ING compatible with the internal market. The Commission made its finding of compatibility on the basis of, inter alia, the commitments provided in the context of the restructuring plan of 22 October 2009 which are reproduced in the Annex to the 2012 Restructuring Decision.[11]

(10) By decision of 11 May 2012 ("the Opening Decision")[12], the Commission initiated the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union to investigate the three following issues :

- whether the remuneration of the recapitalisation measure was still appropriate, given that ING had not paid coupons to the State since 2009, which triggered a re-notification for the reasons described in Recital (2);

- whether the proposed amendments of commitments, and in particular the alternative proposed by the Netherlands as a substitute for the WUB commitment, ensure compatibility of the restructuring aid;

- whether ING Direct had been pricing aggressively, in particular in Italy.

(11) The Opening Decision was published in the *Official Journal of the European Union* on 30 August 2012. The Commission called on interested parties to submit their comments. The Commission has received comments from several third parties.

(12) By electronic mail of 13 June 2012, the Netherlands sent the Commission a reaction to the substance of the Opening Decision. In addition to information related to ING Direct

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7 Joined Cases T-29/10 and T-33/10 Kingdom of the Netherlands and others v Commission, judgment of 2 March 2012, not yet published in the ECR.

8 On 11 May 2012, the Commission brought appeal – under case number C-224/12 P against the judgment delivered by the General Court on 2 March 2012 in Joined Cases T-29/10 and T-33/10 Netherlands and ING Groep v Commission.

9 Commission Decision SA.28855 (ex N373/2009, ex C10/2009, ex N528/2008), OJ C 260, 29.8.2012, p. 1.

10 In the original agreement for the recapitalisation measure notified to the Commission on 22 October 2008, ING could only repay the CT1 securities in the first three years after their issuance at 150% of the issue price. Those conditions were amended in October 2009 and allowed ING to repay at more favourable terms i.e. at 100% + accrued interest + a repayment penalty depending on ING's share price but with a minimum internal rate of return ("IRR") for the State of 15% per annum. More details can be found in the Recitals (45) to (61) of the 2012 Restructuring Decision.

11 The Annex to the 2012 Restructuring Decision is identical to Annex II of the 2009 Restructuring Decision.

12 OJ C 262, 30.8.2012, p. 34.

and in particular to ING Direct Italia, that reaction included a document that aimed at answering the questions raised in the Opening Decision on the alternative to the WUB commitment and a request for suspension of the divestment deadline and appointment of a divestiture trustee.

(13) On 15 June 2012, the Netherlands also proposed further commitments, including a commitment to a firm repayment schedule for the remaining CT1 securities. Moreover, it indicated that it would need to amend the divestment schedule for ING Insurance[13] contained in the restructuring plan of 22 October 2009 and submitted to that end a proposal to prolong behavioural measures to which ING was subject. The Netherlands considered that those proposals would allow the Commission to conclude that the restructuring aid was compatible with the internal market.

(14) On 19 June 2012, the Commission had a meeting with representatives of ING, NN Bank and the Netherlands during which NN Bank presented to the Commission an addendum to the business plan described in the Opening Decision[14].

(15) Further meetings between the Commission, ING and the Netherlands took place, in particular on 25 July, 24 August, 6, 17, 18 and 26 September and 1 October 2012. In parallel with those discussions, the Netherlands provided information on the process of divesting ING Insurance, on the business model of NN Bank and on the pricing policy of ING Direct Europe, in particular on 23 August and 14, 24 and 25 September 2012.

(16) On 23 August 2012, the Netherlands submitted a study by RBB Economics which described possible ways to avoid negative effects on competition of the price leadership ban for ING Direct Europe, to which the latter was subject because of a commitment given by the Netherlands which was recorded in the Annex to the 2012 Restructuring Decision. By electronic mail of 5 September 2012 the Commission posed several questions about that study and sought quantitative data which would substantiate the claims of RBB Economics. On 13 September 2012, the Netherlands provided a note by RBB Economics dated 11 September 2012 which responded to the Commission's questions but did not contain further quantitative data. ING provided some additional data used by RBB Economics on 14 September 2012 and provided additional information during a technical meeting with the Commission on 17 September 2012.

(17) On 14 September 2012 the Netherlands submitted updated balance sheet projections for NN Bank (the "NN Bank business plan").

(18) On 31 October 2012, the Netherlands submitted to the Commission a formal request to amend the 2012 Restructuring Decision, in particular the divestment deadlines for ING Insurance, and presented a new catalogue of commitments, which contains the requested amendment as to the Insurance divestment deadlines, modifies the previously notified request to amend the divestment deadline of WUB and modifies the initial request for an amendment described in the Opening Decision. The new catalogue of commitments would amend certain elements of the restructuring plan of 22 October 2009 and replace

[13] ING Insurance is the insurance s division of ING, which is described more in detail in Recital (21).
[14] See Recitals (52) to (78) of the Opening Decision.

the commitments recorded in the Annex to the 2012 Restructuring Decision[15]. Those commitments would take effect as from the date of the Commission's decision to amend the 2012 Restructuring Decision. The catalogue of commitments is accompanied by two separate documents. One specifies the details of the price leadership ban for ING Direct Europe which would not be part of the amending decision but would be the basis for the Commission to monitor the amended 2012 Restructuring Decision. The other one includes principles to be applied to the internal wind-down of the US Variable Annuities (VA) and the US Financial Products businesses of ING and is considered as a separate Annex.

(19) The Commission notes that the Netherlands exceptionally accepts that the present decision be adopted in the English language.

II. FACTS

2.1 Description ING

(20) ING is composed of ING Groep N.V., a mother holding company that controls ING's banking activities via ING Bank N.V. ("ING Bank") and its insurance activities via ING Verzekeringen N.V. ("ING Insurance").

(21) In its segmental reporting, ING subdivides ING Bank along business lines into Retail Banking, Commercial Banking and ING Direct. By contrast, ING Insurance uses a geographical reporting structure: Insurance Benelux (which includes ING's Dutch insurance business "Nationale Nederlanden" (also known as "NN"), Insurance Central & rest of Europe, Insurance US and Insurance Asia/Pacific). A more detailed description of ING's business segments can be found in Recitals (20) to (37) of the 2012 Restructuring Decision.

(22) Table 1 summarises ING's key financial figures for the period 2007-2011. In spite of the fact that ING was profitable in 2010 and 2011, it did not pay out dividends to its shareholders. As a result, it also paid no coupons to the Netherlands.

Table 1 – ING Key financial metrics 2007-2011

Year	2007	2008	2009	2010	2011
Total income (EUR million)	73,672	64,248	46,928	54,105	55,794
Net result (in EUR million)	9,238	-868	-1,006	2,810	5,766
Total assets (in EUR billion)	1313	1332	1164	1247	1279
Total equity (in EUR billion)	37	17	34	41	47
Outstanding notional amount of CT1 securities (in EUR billion)		10	5	5	3

[15] It would also replace, if the need arises, the commitments in Annex II to the 2009 Restructuring Decision. To the extent that the second paragraph of Article 2 of the 2009 Restructuring Decision and Annex II to that Decision is considered by the Union Courts to be valid, the assessment and hence the approval based on the Commission's evaluation of the Annex of the 2012 Restructuring Decision would be rendered redundant.

2.2 Restructuring plan approved in the 2012 Restructuring Decision

(23) ING is currently implementing the restructuring plan of 22 October 2009 based on the commitments listed in the Annex to the 2012 Restructuring Decision. A monitoring trustee monitors the implementation by ING of, amongst others, the WUB commitment and of commitments for ING and ING Direct Europe to respect price leadership bans.

2.3 Difficulties in the implementation of the commitments on which the Rescue Decision and the 2012 Restructuring Decision are based

Re-notification of the recapitalisation measure

(24) ING is only required to make coupon payments on the CT1 securities to the Netherlands when a dividend on ordinary shares is paid. At the time of the Rescue Decision, ING stated that it would continue its then prevailing dividend policy, market circumstances permitting. However since ING did not pay dividends in 2010 and 2011, the Netherlands on 21 November 2011 re-notified the recapitalisation measure in line with its commitment on which the Rescue Decision is based. The re-notification commitment aimed at assuring a sufficient remuneration in view of the uncertainty of payment of coupons intrinsic to the CT1 securities.

Difficulties in the implementation of the WUB commitment and the insurance divestment commitments[16] – amendment of those commitments in order to ensure compatibility of the restructuring aid

(25) In the autumn of 2010, ING organized a market sounding to test whether market players were interested in purchasing WUB. ING contacted many market parties[17]. There was no real interest in WUB. The monitoring trustee reported on that market sounding in its reports of September 2010, November 2010 and January 2011[18.] Therefore, the Netherlands redesigned the WUB commitment and notified the amendment to the Commission. The new design envisaged the integration of parts of WUB into NN Bank, which is part of ING's European insurance business. That structure, whereby parts of WUB would be integrated into NN Bank and in which a large part of the historical mortgage portfolio (amounting to EUR 34 billion) would be retained by ING, is referred to by the Netherlands and ING as the Van Gogh scenario.

(26) In addition to its difficulties in executing the WUB commitment, ING faced difficulties in the implementation of the commitment to divest ING Insurance. ING initially intended to implement the commitment to divest ING Insurance through an initial public offer ("IPO") which would cover the entire Insurance business but later it decided to use two separate IPOs, one for EurAsia[19] and one for the United States, instead of a single IPO. However in view of the worsening economic and market environment in Europe, ING changed its base case of an IPO for the EurAsia Insurance business and intends to

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16 Recital (77) and the Annex of the 2012 Restructuring Decision describe the commitment taken by ING and the Dutch State to divest all the insurance activities of ING.

17 In a first round, ING worked with a shortlist of 24 parties. In a second round, it worked with a list of 16 parties, which was further increased by three additional names at the trustee's request.

18 A detailed description of the failure to implement the WUB commitment is given in Recitals (39) to (78) of the Opening Decision.

19 EurAsia Insurance refers to the European and Asian business of ING Insurance.

explore possibilities to divest separately some of the constituents of this EurAsia Insurance business.

(27) According to the Netherlands, macro-economic and regulatory developments, unfavourable valuations and ING's own exposure to industry-wide issues have delayed the divestment of ING Insurance. With respect to the macro-economic environment, long-term interest rates have continued to fall in both the Netherlands and the United States and the liabilities of insurance companies have risen as a result. In addition, the escalation of the European sovereign debt crisis has had an impact on the asset values of life insurers. There is uncertainty about the new Solvency II rules[20], which makes it difficult for public investors and industrial partners to value an insurance company accurately. According to the Netherlands, the valuation metrics have deteriorated, with European and United States life insurance indices trading at historical lows near 0.4 times the book-value of equity (down from 0.9 times its book-value in the second half of 2009).

(28) Moreover, […][*] Nationale Nederlanden has […] by the continuing uncertainty concerning a sector-wide mis-selling case in the Netherlands (the so-called *Woekerpolissen*). In respect of ING Insurance US, ING indicated that […] in respect of VA products, which constitute a large part of the balance sheet of ING Insurance US[21].

(29) Against that background ING will no longer be able to divest its insurance business by the end of 2013, which the Netherlands confirmed in response to Commission's Opening Decision.

Alleged aggressive pricing strategy by ING Direct Italia

(30) By letter of 5 December 2011, Mediobanca alleged that ING had acted as price leader on the Italian market in breach of the price leadership ban to which it was subject. More precisely, it claimed that in the fourth week of September 2011 (19-25 September), ING Direct Italia had raised its 12-month gross interest rate for new customers from 3.50% (the rate applicable in the previous week, which had been in place at least since the fourth week of June 2011) to 4.20%, positioning itself as the price leader. According to Mediobanca, as a result of ING Direct Italia's new offer, Banca Sistema raised its 12-month gross interest rate for all customers to 4.25% in the last week of September 2011 (26-30 September), making it – at least in theoretical terms – a more competitive product[22].

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20 Solvency II refers to the Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) – a recast of several directives – which is likely to be applicable from 1 January 2014. It would, in particular, redefine capital requirements for insurance companies.

* Confidential information.

21 VA represent 27% of the balance sheet of ING Insurance US as of the end of 2011. The VA activities have been discontinued and are currently operated by ING as a 'Closed Book'.

22 A detailed description of the complaint is given in Recitals (79) to (90) of the Opening Decision.

III. REASONS FOR THE OPENING DECISION

(31) In the Opening Decision the Commission indicated the following doubts with respect to the amendments proposed by the Netherlands and their capability to continue to ensure compatibility of the recapitalisation measure and the restructuring aid with the internal market :

Doubts on the appropriate remuneration of the recapitalisation measure

(32) ING seems to have followed an opportunistic remuneration strategy in respect of the CT1 securities, which appears to be at odds with its previously declared intentions in terms of dividend distribution policy. According to the Commission, ING seemed to have pursued a distribution policy which limited coupon payments to the State while ING was in a position to pay dividends from the realised profits. Therefore, without firm behavioural constraints regarding the remuneration conditions attached to the CT1 securities the Commission doubted that it could continue to regard the recapitalisation measure as compatible with the internal market without any modification, in line with the reservations which it had expressed in Recital (32) of the Rescue Decision.

(33) In particular, it appeared that behavioural constraints were required to address "State aid arbitrage", whereby the beneficiary takes strategic decisions which seek to minimize the return to the Member State which would have been obtained by the latter if the beneficiary had followed a normal course of business. Such constraints could in the view of the Commission either be an increase in the remuneration, a clarification of the repayment schedule, or some combination of such measures.

Doubts regarding the proposed amendment of commitments in order to ensure compatibility of the restructuring aid

(34) ING had proposed the integration of the core of WUB with NN Bank as described in Recital (4) above. The proposal to divest WUB after its integration into the newly created NN Bank was notified to the Commission. Based on a preliminary assessment of the financial information and projections described in Recitals (39) to (78) of the Opening Decision, the Commission raised doubts that NN Bank would be a stand-alone entity and doubted that its divestment would have the same competitive value as the original WUB commitment.

(35) In particular, the Commission expressed doubts that NN Bank was comparable in scope and product offering to the WUB commitment (since the former had lower market shares and financial metrics than the latter) and was not convinced that NN Bank would grow strong enough to become a sizeable player in the foreseeable future.

(36) Furthermore, the Commission expressed doubts that NN Bank would be in a position to function as an independent market actor. The information provided to the Commission did not allow it to sufficiently establish whether NN Bank has critical scale and have sufficient access to funding to sustain and grow its business. That information also did not establish the viability of the entity. Moreover, the Commission also wondered whether given market developments based on the latest information available, the schedule for the sale of ING Insurance by 2013, which was supposed to ensure the independence of the new bank, could be confirmed any longer and requested an updated divestment schedule for ING Insurance Europe. On that basis the Commission

expressed doubts that the proposed amendment would continue to ensure the compatibility of the aid.

Doubts as to the pricing behaviour of ING Direct Italia

(37) The Commission decided to investigate the pricing behaviour of ING Direct in Italia. The pricing behaviour of ING Direct as alleged by Mediobanca, if confirmed, would have raised doubts as to whether ING had respected the commitment on which the Rescue Decision was based, to refrain from expansion of its business activities that it would not have pursued if it had not received the recapitalisation measure. The investigation of the Commission also covers the question of whether the relevant market for the assessment of the pricing strategy of ING Direct is the overall market for savings and mortgage products or the more specialised market for internet savings and mortgages.

IV. THIRD PARTY OBSERVATIONS

(38) The Commission has obtained the following third party observations:

Observations from ING

(39) According to ING the re-notification commitment in the Rescue Decision merely allows the Commission to assess whether it is likely that ING will pay at least 10% per annum remuneration.

(40) ING redeemed 500 million CT1 securities (with a nominal value of EUR 5 billion) with a return of 15% for the Netherlands on 21 December 2009. In addition, ING redeemed another 200 million CT1 securities (with a nominal value of EUR 2 billion) with a return for the Netherlands of 19.5% on 13 May 2011, providing the Netherlands an overall return on the repaid EUR 7 billion of 17% per annum. Therefore according to ING there can be no serious doubts that the State will receive an overall return of at least 10% per annum.

(41) According to ING, the Rescue Decision did not (and could not) take into account the developments in the next few years (the sovereign debt crisis). In the 2012 Restructuring Decision, the Commission accepted ING's restructuring plan which indicated that ING expected to be able to make dividend payments on ordinary shares only as of 2013. There was therefore no reason to assume that ING would pay dividends in the period between 2008 and 2013. In response to the Opening Decision, ING submits that its dividend policy was not opportunistic. Although ING declared profits in 2010 and 2011, it had to retain them to build up capital levels to meet the new Basel III requirements[23].

(42) ING points out that the Van Gogh scenario constitutes an enhanced opportunity to achieve the objective of the Commission to create a viable and competitive business, which is stand alone and separate from the business retained by ING.

(43) Under the Van Gogh scenario NN Bank will have access to more customers and operate under a much stronger retail brand than was foreseen under the WUB commitment. The

[23] Basel III is a set of reform measures, developed by the Basel Committee on Banking Supervision, to strengthen the regulation, supervision and risk management of the banking sector.

Van Gogh scenario furthermore includes a longer term portfolio funding than provided for in the WUB commitment, resulting in a bank which has a competitive advantage in current markets given its lack of a back book and its diversified funding possibilities. Through its combination with WUB, NN Bank is well positioned to grow in the current challenging market place.

(44) Until the IPO of ING Insurance Europe, both ING Insurance Europe and WUB will remain operationally separated from the remainder of ING to ensure their independence. In addition, ING has proposed additional ring-fencing measures to further guarantee the independence of the integrated entity resulting from WUB and the newly created NN Bank. According to ING, the Van Gogh scenario therefore meets and even exceeds the objectives of the Commission.

(45) ING points out that there is no evidence that ING Direct Italia breached the price leadership ban. The complaint from Mediobanca in respect of ING Direct Italia's compliance with the price leadership ban is unsubstantiated. Mediobanca mentioned only one concrete instance (September 2011), which is however factually incorrect since Banca Sistema offered a better rate than ING. In particular, Banca Sistema was already offering a rate of 4.25% on 30 August 2011, which was evidenced in the information provided to the Commission on 13 June 2012.

(46) According to ING, the Commission's doubts as to whether ING could have achieved its market share without aid are unfounded. ING demonstrated that its market share in Italy has not increased since it received aid. In any event, none of the aid which ING received was related to ING Direct Europe (including ING Direct Italia).

(47) ING submits that it did not pursue a high-risk strategy. The losses which ING booked on its investments, as well as the loan loss provisions ("LLPs") it made, are the result of the crisis and specific de-risking measures which ING took to shield itself from the impact of that crisis.

(48) ING submits that it has been agreed between the Commission, the monitoring trustee and ING that the benchmark for the price leadership ban is the entire market: online and offline, and covering small and large competitors. ING is also of the opinion that there is no reason to make a distinction between the online and the offline market for financial products, since there are no longer pure on- and offline banks.

Observations from De Nederlandsche Bank NV

(49) De Nederlandsche Bank NV ("DNB") is the prudential supervisor of financial institutions in the Netherlands and in that capacity it wants to react to the following matters:

- the appropriateness of the remuneration of the recapitalisation measure and on ING's decision not to pay a dividend for three consecutive years ;

- the replacement of the WUB divestment by the Van Gogh scenario

(50) With respect to the remuneration issue, DNB argues that, - in its view -, ING was not in a position to pay dividends to its shareholders. In that regard, DNB explains that *ceteris*

paribus[24], a dividend payment reduces an institution's capital and therefore has to be analysed from a prudential perspective. Further, DNB explains that its prudential assessments are prospective and therefore take into account, for instance, changing regulatory requirements. Concretely, DNB refers to the introduction of Basel III, which will significantly raise the capital requirements for banks. In the view of DNB *"the single most important way to grow into these new requirements is by way of retaining earnings*". DNB describes that in both 2010 and 2011 ING and DNB were in a continuous dialogue in which ING attempted to maximise the repayment of State aid under the constraint that the capital position had to remain prudentially acceptable. As a result, there was no room in ING's capital position to pay out dividends or engage in any other activities reducing ING's core capital position further.

(51) DNB also commented on the viability of the Van Gogh scenario. DNB argues that when it looks at WUB in isolation, the vast majority of WUB's business is asset-driven (loans) rather than liability-driven (savings). It is therefore inherent to WUB's asset-driven business model that it will always have a certain retail funding gap. Taking into account the difficulty of obtaining sufficient wholesale funding in the current economic climate, it is essential for WUB to find a strong parent company that can make significant amounts of funding available in order to ensure WUB's viability. Given the funding gap of WUB, DNB finds it understandable that ING was not able to find a buyer for WUB that was willing and able to provide for the significant amounts of funding that WUB needs.

(52) From DNB's perspective, the major advantage of the Van Gogh scenario compared to the WUB commitment is that the asset base of WUB that will be transferred under the Van Gogh scenario is smaller than under the WUB commitment. Less funding is required to cover those assets which makes the Van Gogh scenario a more viable proposition. DNB concludes that it would not have accepted the acquisition by NN Bank of a larger asset-driven operation, but the company size implied in the Van Gogh scenario is a prudentially acceptable solution.

Observations of Nationale Nederlanden[25]

(53) Nationale Nederlanden comments on the viability and the competitive power of NN Bank under the Van Gogh scenario. Nationale Nederlanden argues that it has no doubts about the viability of NN Bank and it argues that NN Bank and WUB combined will obtain more competitive power than each business stand-alone. In that regard, Nationale Nederlanden points at NN Bank's more balanced and diverse business model, the stronger balance sheet which should provide stable access to funding (a key success factor for competing), access to 2.5 million customers, a broader distribution model and increased brand awareness.

(54) Nationale Nederlanden considers a bank without a physical branch network to be more attractive than a bank with the operational cost of a legacy branch network. With respect to current accounts, it believes that a current account offering would be more of a strategic burden to NN Bank than a competitive advantage.

[24] Not taking into account for example capital increases or the proceeds of divestments.

[25] For more information on the company, see Recital (21) of this Decision

(55) Nationale Nederlanden concludes that the Van Gogh scenario will increase capabilities and scale in the retail banking activities faster than could be achieved by NN Bank on a stand-alone basis.

Observations from the Workers' Council of WUB

(56) The Workers' Council of WUB comments on the Van Gogh scenario and indicates that it indeed needs to be ensured that the new bank will be viable in the long-term. The Workers' Council mentions a few examples of where the new bank will have to develop a dynamic policy for that purpose (product innovation to anticipate new government policy in terms of mortgages, new developments with respect to intermediaries, new distribution channels and information technology).

(57) The Workers' Council insists that a quick decision by the Commission would also be in the interest of the workers of WUB.

Observations from WUB

(58) The Executive Board of WUB comments on the viability and the competitive power of the new NN Bank after the integration of WUB. The Executive Board believes that the company is viable and competitive for a number of reasons.

(59) First, in the eyes of the Executive Board, a small bank like NN Bank needs a strong parent like Nationale Nederlanden, which improves for instance wholesale market access.

(60) Second, the Executive Board observes that the Dutch mortgage market is challenging and that the main distribution channel (independent intermediaries) is going through significant changes. The new NN Bank will be able to implement a multi-distribution strategy (with for example tied agents and direct distribution).

(61) Third, the Executive Board also sees added value in the fact that Nationale Nederlanden has a solid name and reputation in the market.

(62) Finally, the Executive Board also observes that the Van Gogh scenario will allow NN Bank to focus resources on one organisation and one brand. It therefore improves the efficiencies in the organisation and improves competitive impact.

(63) As a concluding remark, the Executive Board also mentions that the Van Gogh scenario currently is the only feasible divestment option available.

(64) In a separate letter, the independent supervisory directors of WUB express their support for the position taken by the Executive Board, saying explicitly that they endorse the latter's letter.

Observations from Vereniging Eigen Huis

(65) Vereniging Eigen Huis, a Dutch home-owners association representing 700 000 Dutch mortgage holders submitted a documentary film entitled "*Uw hypotheek als melkkoe*" ["Your mortgage as a milch cow"], which discusses the Dutch mortgage market (matters such as increasing mortgage prices in the Netherlands, changing competitive landscape in the Netherlands and price leadership bans). That association points to the information as relevant for the third assessment (i.e. the pricing behaviour of ING Direct Italia).

Reaction of the Netherlands on third party observations

(66) The Netherlands takes note of the fact that observations were made by third parties about the viability issues surrounding WUB and the Van Gogh scenario. All commentators support the Van Gogh scenario as an acceptable alternative for the original WUB commitment. In addition, the Netherlands takes note of DNB's remark that the Van Gogh scenario is a prudentially acceptable solution.

(67) After having read all the observations, the Netherlands remains confident that the Van Gogh scenario will lead to a viable and competitive new player in the Dutch retail market. The Netherlands also takes note of reflections on the negative impact of the period of uncertainty on, for instance, employees and other stakeholders. The Netherlands is hopeful that a decision on the amendments of the restructuring plan for ING will give the necessary reassurance to WUB and its employees. Finally, with respect to the comments of Vereniging Eigen Huis, the Netherlands points out that the documentary relates to the Dutch mortgage market and suggests that it contact the Dutch competition authority on that issue. The Netherlands notes that the third issue to be assessed by the Commission deals with the complaints of Mediobanca about the adherence by ING Direct to the price leadership ban in Italy.

V. POSITION OF THE NETHERLANDS

5.1 Economic developments affecting ING in the implementation of the restructuring plan of 22 October 2009

(68) According to the Netherlands, the current crisis in Europe was not foreseen when ING submitted its restructuring plan of 22 October 2009, and the impact was clearly not reflected in the financial projections submitted at that time.

(69) Despite that difficult environment, ING Bank continued to produce good financial results. In 2011 ING Bank participated in Union-wide stress tests (in July and October) conducted by the European Banking Authority ("EBA")[26]. The EBA proposed a new Core Tier 1 target of 9.0% as of June 2012 and ING was able to meet those new targets. On the insurance side, ING has also taken significant measures to improve performance, increase hedging, and prepare its insurance companies for a stand-alone future.

(70) In addition, ING's funding and liquidity position has remained healthy. For instance, ING did not make use of the Long-Term Refinancing Operations made available by the ECB in December 2011 or March 2012.

(71) As a result of the sovereign debt crisis, ING was for instance faced with significant losses on its Greek government bond portfolio that had to be written down by almost 80% as a result of the Greek Private Sector Involvement. That write-down resulted in a cumulative loss of approximately EUR 1 billion for ING.

[26] In cooperation with DNB, the European Central Bank (ECB), the Commission and the European Systemic Risk Board.

5.2 New proposal by the Netherlands

(72) The Netherlands presented the Commission on 31 October 2012 with a new proposal consisting of a series of amendments to the restructuring plan of 22 October 2009, aimed at addressing the concerns raised in the Opening Decision and committing to new deadlines for the divestment of ING Insurance accompanied by a prolongation of the restructuring period.

NN Bank commitment replacing the WUB commitment

(73) The new proposal of the Netherlands regarding the divestment of NN Bank builds on the proposal described in Recitals (39) to (78) of the Opening Decision. Under the new proposal the integrated NN Bank should keep around EUR 3 billion of mortgages[27] and associated funding on its books, while ING would keep EUR 34 billion of the mortgage portfolio which would be partially serviced by NN Bank.

Structure and product mix

(74) The Netherlands renews its commitment for ING to create a new company for divestment in that Member State (hereinafter "the Divestment Business"), which will be carved out from ING's current Dutch retail banking business. The result has to be that the new company is a viable and competitive business, which stands alone and is separate from the businesses retained by ING. That new company will comprise parts of the business of the already carved-out WUB and the current (limited) activities of the recently established banking division of Nationale Nederlanden (NN Bank).

(75) The Divestment Business will be placed under ING Insurance/Investment Management (IM) Europe which has a long-term strategic commitment to the Dutch retail market and will operate under the "Nationale Nederlanden" brand (as “NN Bank”), with its own funding capabilities and a broad distribution network. As a result, NN Bank will be divested as part of ING Insurance Europe no later than 31 December 2015. That divestment will probably take place through an IPO.

(76) NN Bank will offer a broad and coherent product line, with mortgages, savings, bank annuities, investments and consumer credit products, combined with core retail insurance products of Nationale Nederlanden (which includes but life insurance products and property and casualty insurance products). NN Bank will reach customers through an integrated multi-channel distribution model, employing independent financial advisors and tied agents with nationwide coverage for advice on complex financial situations and products, and increasingly internet and call centers for sales and service. Those distribution channels cumulatively provide access to over 2.5 million Nationale Nederlanden customers.

(77) The projected balance sheet of NN Bank according to the NN Bank business plan provided on 11 July 2012 is the following:

[27] The submission of 11 July 2012 indicated that the transferred portfolio would initially be EUR 2.6 billion.

Figure 1 – NN Bank business plan (in EUR million)

Assets	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**
Mortgages	[…]	[…]	[…]	[…]	[…]	[…]
Consumer Finance	[…]	[…]	[…]	[…]	[…]	[…]
Cash and cash equivalents	[…]	[…]	[…]	[…]	[…]	[…]
Equity	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**
Liabilities	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**
Customer deposits	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**
Saving deposits	[…]	[…]	[…]	[…]	[…]	[…]
Company savings/levensloop	[…]	[…]	[…]	[…]	[…]	[…]
Bank annuities - Mortgage	[…]	[…]	[…]	[…]	[…]	[…]
Bank annuities - Lijfrente	[…]	[…]	[…]	[…]	[…]	[…]
Wholesale Funding	[…]	[…]	[…]	[…]	[…]	[…]
ING Bank Funding	[…]	[…]	[…]	[…]	[…]	[…]
Capital Markets	[…]	[…]	[…]	[…]	[…]	[…]
RWA's	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**
Tier-1 Ratio	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**

Return on equity

(78) The new business case of the Van Gogh scenario, including the additional commitments, projects to have a return on equity ("RoE") after five years of around [7-12] %, while in the long-run the RoE grows to a range of [9-15]%.

Production target in key products

- Mortgages

(79) In mortgages, NN Bank will have an average annual new production (including renewals from the ING Bank-owned (NN branded) portfolio) of at least EUR [1.5-6] billion annually and [2-9]% of the total mortgage production on the Dutch market with a

maximum of EUR [2-8] billion annually over the years 2013[28] to 2015. If those criteria are not met, ING commits to do the following:

- transfer individual client relationships through a transfer of mortgages to NN Bank (based on individual offers to mortgage clients of ING Bank[29,30]; and

- transfer ownership of those mortgages at no additional charge for the client or charge for NN Bank; and

- allow NN Bank to use the ING Bank distribution channels to offer NN Bank mortgages to ING Bank clients to achieve the targets.

- Consumer lending

(80) In consumer lending, NN Bank will have an annual new production of at least EUR [10-100] million and at least [0.5-4] % of the total consumer lending production on the Dutch market by 31 December 2013[31]. NN Bank will have an annual new production of at least EUR [40-140] million annually and at least [0,5-6]% of the total consumer lending production on the Dutch market to be measured as of 31 December 2015 with a maximum of EUR [100-200] million. If those criteria are not met, ING commits to:

- transfer individual client relationships through a transfer of a consumer lending client portfolio of ING Bank Netherlands[32] to NN Bank[33]; and

- transfer ownership of those consumer loans at no additional charge for the client or charge for NN Bank.

- Payment facility

(81) ING commits to include a payment facility to NN Bank in the form of an NN-branded credit-card at a cost to the consumer not higher than that of a debit card. With regard to the NN-branded credit-card holders, ING will provide access free of charge to its automated teller machines ("ATMs") for three years after the launch of that credit-card and ultimately until 31 December 2015.

28 Measured from go-live date NN Bank , that is to say, from the moment when the described structure of NN Bank becomes operational.

29 Including ING Bank's subsidiaries.

30 The size will depend on the need to come to the market shares set out in Recital (79); the selection of ING's portfolio with probabilities of default (PDs) and losses given default (LGDs) which would be in line with the NN Bank business plan.

31 In the transitional period up to the launch of the Van Gogh scenario (until the described structure of NN Bank becomes operational) WUB and NN Bank will start building consumer finance production capabilities as soon as possible. In light of that transitional period, ING commits to a pro rata market production between the launch of the Van Gogh scenario and 31 December 2013. Any shortfall in production in the relevant year will be made up in the consecutive years in order to reach the business case projections.

32 That consumer lending client portfolio of ING Bank Netherlands is an ING Bank-owned portfolio.

33 The size will depend on the need to come to the market shares set out in Recital (80); the selection of ING's portfolio with probabilities of default (PDs) and losses given default (LGDs) which would be in line with the NN Bank business plan.

(82) ING will send a marketing mailing with regard to NN Bank to 350 000 of its clients in accordance with Dutch privacy law. ING will be allowed to explain to its clients that the mailing is being made in order for ING to comply with Union State aid rules.

Linked ban

(83) ING commits that ING Bank's yearly mortgage production (excluding renewals) will not be higher than [2-4] times the new production of NN Bank. On a quarterly basis ING's new production cannot exceed [2.5-5] times NN Bank's new production in the same quarter and [2.25-4.5] times NN Bank's new production on a half-year basis. If NN Bank's new production on a yearly basis exceeds EUR [2-8] billion, there are no restrictions on new production for ING Bank (meaning that if over one semester (half of a year) the new production of NN Bank exceeds EUR [1-4] billion, ING will not be constrained in the volume of its new production in the consecutive semester).

(84) The ratio of [2-4] times between ING's new production excluding renewals and NN Bank's new production is based on the figures shown in Figure 2 provided by the Netherlands. From January 2011 to June 2012, the period for which the Netherlands provided data, the average annualised production was EUR [5-15] billion which, when it is divided by the EUR [1.5-6] billion per year (that is, the minimum production of NN Bank to which ING has committed), corresponds to the specified ratio.

Figure 2 – New mortgage production by ING over 2011 and the first half of 2012

Mortgages Netherlands: new production and renewals *(excluding WUB mortgages)*

AMOUNTS x EUR 1 mln	jan-11	feb-11	mrt-11	apr-11	mei-11	jun-11	jul-11	aug-11	sep-11
new production	878	835	1.020	856	921	888	762	679	549
renewals	[500-1000]	[300-800]	[300-800]	[500-1000]	[500-1000]	[500-1000]	[600-1100]	[600-1200]	[600-1200]

	okt-11	nov-11	dec-11	jan-12	feb-12	mrt-12	apr-12	mei-12	jun-12
new production	485	369	466	403	421	624	627	571	547
renewals	[600-1200]	[500-1000]	[600-1200]	[600-1200]	[500-1000]	[400-900]	[600-1200]	[600-1200]	[600-1200]

(85) NN Bank needs to provide new production data (new proposals, accepted proposals) and forecasts on a monthly basis to ING without any undue delay. Compliance with the cap will be measured on the basis of the production numbers published by the Kadaster.[34]

(86) The restriction described in Recital (85) applies from 1 January 2013 until 31 December 2015. In the transitional period up to the launch of NN Bank, ING commits to a maximum new production (excluding renewals) of [2-4] times EUR [1.5-6] billion (EUR [3-24] billion) on a yearly basis. ING will report on progress on a quarterly basis.

Self-funding commitment

(87) NN Bank will be largely self-funded through retail savings and excess funding from the insurance business, complemented by external funding as needed. Nationale

[34] The Kadaster is the Dutch public land registry.

Nederlanden has access to funding and capital to enable growth and production of mortgages, which is a competitive advantage in current market conditions.

(88) NN Bank needs to self-fund its balance sheet. NN Bank's funding profile will be in line with the projections of the balance sheet as proposed in the business case. ING will not increase its funding of NN Bank in absolute amounts beyond the amounts in the NN Bank business plan for each year and the maximum funding provided by ING in 2015 will be EUR 2.7 billion.

(89) The funding provided by ING at the end of 2015 (with a maximum amount of EUR 2.7 billion) has to take the form of marketable securities, where ING can buy at market prices unsecured or secured notes, such as covered bonds or residential mortgage-backed securities ("RMBS"). The notes can also be bought by investors other than ING. 100% of the notes should have a tenor at issuance of five years or more, 66% a tenor equal or longer than seven years and 33% a tenor equal or longer than ten years. The determination of an 'arm's-length' pricing will be either decided by the pricing of the security itself or, if ING is the only buyer of the security, by secondary market prices of comparable peers proposed by the Monitoring Trustee.

(90) The funding amount of NN Bank (total deposits and wholesale funding)[35] will amount to at least 75% in the first year, 80% in the second year and 85% in the third year (with a maximum wholesale funding of EUR [1-4] billion) versus the base case projections.

(91) If, due to material changes to the regulatory environment and/or market circumstances, the actual funding is below those ranges, as a result of which the balance sheet projections need to be updated, ING will report that fact to the Monitoring Trustee and the Commission. The Monitoring Trustee in consultation with the Commission will propose which measures should be taken in order to safeguard the viability of NN Bank to be approved by Commission.

(92) ING's level of funding will be reviewed on an annual basis starting from the launch of NN Bank, i.e. the moment from which the described NN Bank structure becomes operational, and until 31 December 2015.

(93) If the funding projections of the NN Bank business plan are not met by the end of each year, ING will take the following corrective measures described in Recitals (94) to (96).

(94) After the first year, ING will send a marketing mailing with regard to NN Bank to an additional 50 000 ING clients if actual funding is under 80% and an additional 100 000 ING clients if actual funding is under 75% of the base case projection of the first year. After the second year, ING will send a marketing mailing with regard to NN Bank to an additional 100 000 ING clients if actual funding is under 85% and 150 000 additional ING clients if actual funding is under 80% of the base case projection of the second year. Mailings will be done in accordance with Dutch privacy law. ING will be allowed to explain to its clients that the mailing is required in order for ING to comply with Union State aid rules.

[35] Excluding funding by ING (or any of its direct or indirect subsidiaries).

(95) After the first year, ING will provide an additional marketing budget to NN Bank of EUR 1 million if actual funding is under 80%, and EUR 2 million if actual funding is under 75%, of the base case projection of the first year. After the second year, ING will provide an additional marketing budget to NN Bank of EUR 2 million if actual funding is under 85%, and EUR 4 million if actual funding is under 80%, of the base case projection of the second year. After the third year, ING will provide an additional marketing budget to NN Bank of EUR 5 million if actual funding is under 85%, and EUR 6 million if actual funding is under 80%, of the base case projection of the third year. NN Bank will use those marketing budgets for new direct sales marketing[36].

(96) If the actual funding of 2015 is under 85% of the base case projection of 2015, ING will, in addition to the corrective measures described in Recitals (94) to (95), provide a two-year extension of free access to the ING ATMs for NN-branded credit-card holders (until 31 December 2017).

(97) The Commission will assess the commitments set out in Recitals (73) to (96) upon the divestment of more than 50% of ING Insurance Europe or, as the case may be, of NN Bank or by 31 December 2015, whichever date comes earlier. The commitments will end on the date of the divestment of more than 50% of ING Insurance Europe or, as the case may be, NN Bank, unless specified otherwise.

(98) The creation of NN Bank will be carried out under the supervision of the currently appointed Monitoring Trustee. ING will ring-fence NN Bank up to the divestment of more than 50% of ING Insurance Europe, to be monitored by the Monitoring Trustee. For the implementation of the ring-fencing, a leading design principle will be that it will allow NN Bank and NN Insurance to adequately execute an integrated commercial strategy between retail insurance and retail banking products & services.

(99) ING will refrain for an interim period up to and until 12 months after the divestment of NN Bank (divestment of more than 50% of ING Insurance Europe and NN Bank) from actively soliciting customers of NN Bank for products that NN Bank is supplying to those customers on the date of the adoption of the present Decision.

Capitalisation

(100) By executing NN Bank business plan, part of the existing mortgages portfolio of WUB will be retained by ING. The balance sheet of NN Bank will be modest at the start, to provide adequate matching of assets and liabilities and grow quickly to a mid-sized player. The capitalisation of NN Bank will be sufficient to execute its long-term growth plan: ING will transfer economic benefits of the ING-retained portfolio (EUR 350 million based on the net present value of the (economic) profits of that portfolio) as an upfront capital injection, and will provide additional capital (up to EUR 120 million) if and when needed but ultimately just before divestment (if Basel III leverage ratio becomes mandatory, and when NN Bank needs capital to execute its business plan). That planned evolution in capitalisation of NN Bank will ensure growth until about 2016, after which NN Bank will be able to fund its growth by itself. In sum, ING will

[36] Mainly promotional […] and […] incentives, and to a lesser extent other marketing methods. If the measures do not consist mainly of promotional […] or […] incentives, they need to be approved by the Monitoring Trustee and can be rejected by the Commission

bear all expenses and risks of the retained mortgages portfolio (until maturity) and will transfer the profits to NN Bank.

(101) ING commits that the minimum targeted Tier-one level of NN Bank will be 12% (which is well above the regulatory minimum requirement) by the earliest of 31 December 2015 or upon divestment of more than 50% of ING Insurance /IM Europe or, as the case may be, NN Bank.

Divestment commitment

(102) ING continues to reduce its balance sheet by approximately 45% compared to the third quarter figures of 2008 via divestments[37] or other measures aimed at reducing the size of the balance sheet (such as run-down of portfolios)[38] until 31 December 2015. The committed balance sheet reduction is based on Q3 2008 data and does not take into account the possible impact of organic growth, foreign exchange rate changes, interest rate changes or additional increases due to potential new regulatory requirements, such as for example if banks are required to hold significantly larger liquidity buffers due to new Union-wide regulations.

(103) ING will not have a restriction on organic growth (that is to say growth not related to acquisitions) of the balance sheet of its businesses. ING continues to have a general policy to use its growth in funds entrusted by customers mainly to increase lending to the real economy (corporates and consumers) and continues to decrease its exposure to higher risk asset classes within commercial mortgage-backed securities and RMBS. It will not start new initiatives that increase its direct real estate exposure[39], in line with ING's general de-risking policy.

(104) ING commits to divest more than 50% of ING Insurance Asia operations before 31 December 2013, more than 50% of ING Insurance US operations before 31 December 2014 and more than 50% of ING Insurance Europe operations before 31 December 2015,[40] in addition to the entities/business activities which ING already has divested, placed in run-off or completed which are listed in Recital 77 of the 2012 Restructuring Decision and the latest bi-annual progress report[41]. In addition, for the US Insurance business, ING commits to divest at least 25% of the business before 31 December 2013.[42]

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37 ING will realise at least EUR […] billion of the total balance sheet reduction (of 45%) in the form of divestments (in line with ING's restructuring plan of 22 October 2009)..

38 The run-down of the United States variable annuities and Financial Products can be taken into account as a divestment, provided that the implementation of the run-down is in line with the conditions listed in Annex II.

39 That is to say excluding mortgages, as they are not considered direct real estate exposure.

40 50% is measured in terms of shares of 50% plus 1 and a loss of the majority in the board and the accounting deconsolidation of the entity.

41 Progress report on ING's restructuring plan final version 19 June 2012.

42 United States run-offs (i.e. Variable Annuities and Financial Products business) qualify as pro forma divestments. Those run-offs measured by allocated equity capital measurement (based on financial year 2011 data) together with a divestment of at least 25% of the interest in ING Insurance US will result in a divestment of more than 50% (pro forma) before 31 December 2014.

(105) Divesting control of more than 50% of ING’s interest (measured in shares) in a business qualifies as meeting the divestment requirement. In such a case, ING will lose the majority in the board and will deconsolidate the business (in line with International Financial Reporting Standards accounting rules). ING will divest its remaining interests in (i) ING Insurance Europe before 31 December 2018, (ii) ING Insurance US before 31 December 2016, and (iii) ING Insurance Asia before 31 December 2016.

(106) ING commits to eliminate double leverage. To that end, as insurance divestments take place, divestment proceeds will be used to reduce double leverage - to the extent that proceeds are not needed to keep the leverage of the remaining insurance business at an acceptable level - ultimately leading to the full elimination of double leverage. Separately, to the extent that surplus capital is being generated in excess of what is needed to satisfy Basel III or Solvency II needs, dividends to ING Group can form an additional source to help accelerate the elimination of double leverage.

Amended behavioural commitments

Acquisition ban

(107) The Netherlands furthermore commits that ING will adhere to an acquisition ban.

(108) ING will refrain from acquisitions of financial institutions for an additional period, until 18 November 2015 or until the date on which more than 50% of the Insurance operations in Asia, 50% of Insurance US and 50% of Insurance Europe have been divested, whichever date comes earlier.[43] Moreover, ING will refrain, for the same period, from acquiring any other businesses that would slow down the repayment of the CT 1 Securities to the Netherlands.

(109) Notwithstanding that prohibition, ING may, after obtaining the Commission’s approval, acquire businesses, in particular if it is essential in order to safeguard financial stability or competition in the relevant markets.

Price leadership ban

(110) The Netherlands furthermore commits that ING Bank will adhere to a price leadership ban.

(111) A monitoring trustee preselected and proposed by ING, will be appointed by the Netherlands to monitor that commitment (the "PLB Monitoring Trustee"). The appointment of the PLB Monitoring Trustee is subject to the Commission’s approval.

ING EU (non-ING Direct) > 5% market share

(112) No price leadership ban will apply for the Netherlands (mortgages, savings, small and medium-sized enterprises' (SMEs) deposits, private banking etc.). For other non-ING

[43] For Insurance US, the 50%+ divestment criterion will be reached as soon as ING has divested at least 25% of that business and taking into account a pro-forma divestment of the United States run-off businesses (by allocated equity capital financial year 2011 data).

Direct businesses in the EU with a market share of more than 5%, the restrictions in Recitals (113) to (114) apply.

(113) Without prior authorisation of the Commission, ING will not offer more favourable prices on standardised ING products (on markets as defined in Recital (114)) than its three best-priced direct competitors with respect to EU markets in which ING has a market share of more than 5%. As a result, ING can at best offer a price while there are at least three products on the market with a better price.

(114) That commitment is limited to ING's standardized products on the following product markets: (i) retail savings market, (ii) retail mortgage market, (iii) private banking insofar it involves mortgage products or saving products or (iv) deposits for SMEs (where SME is defined according to the definition of SME customarily or currently used by ING in its business in the relevant country). As soon as ING becomes aware of the fact that it offers more favourable prices for its products than its three best-priced competitors, ING will as soon as possible adjust, without any undue delay[44], its price to a level which is in accordance with that commitment. At the moment ING sets its prices, it will assess whether they comply with the price leadership restrictions. In order to minimise conflicts between the price leadership ban and legal and regulatory restrictions on adjusting prices, ING will limit the validity of its market offerings to a maximum of three months.

ING Direct EU

(115) Moreover, to support ING's long-term viability, ING Direct will refrain, without prior authorisation of the Commission, from offering a more favourable price than its best priced direct competitor (among the ten financial institutions[45] having the largest market share in the relevant product market)[46] with respect to standardised ING products on the retail mortgage and retail savings markets within the EU. As a result, ING can at best offer a price while there is at least one product on the market with a better price. All prices offered by such a financial institution (including prices of second brands and subsidiaries) can be used for benchmarking.

(116) As soon as ING Direct becomes aware of the fact that it has become the price leader on a retail mortgage or retail savings markets within the EU, ING Direct will adjust its price to a level which is in accordance with that commitment as soon as possible without any undue delay[47]. At the moment ING Direct sets its prices, it will assess whether they comply with the restrictions. In order to minimise conflicts between the price leadership ban and legal and regulatory restrictions to adjust prices, ING Direct will limit the validity of its market offerings to a maximum of three months.

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[44] By "without undue delay", it is meant that ING will adjust its price within [0-20] working days, if it is allowed to do so on basis of (local) legal and regulatory rules.

[45] A "financial institution" is defined as all companies within a group. As a result, second brands and subsidiaries are included.

[46] If ING Direct is not in the top ten itself, it may compare to (the) ten (largest) players. If ING Direct is among the top ten largest players, the comparison should be made against the other nine largest players on the market. The latter does not apply to ING Direct Austria, which can always compare itself to ten other (largest) players.

[47] By "without undue delay", it is meant that ING will adjust its price within [0-20] working days, if it is allowed to do so on basis of (local) legal and regulatory rules.

(117) In case the number of prices in the benchmark based on the best rate from each of the top ten financial institutions is less than ten, the 11th, 12th 13th etc. largest financial institution will be used until ten prices from different financial institutions have been found.

(118) For each country and product group, a pre-set top ten financial institutions list has been agreed (which is included in an additional technical attachment that will be the basis for the monitoring) and will be used until 30 June 2013 and updated periodically. In the second quarter of 2013 the PLB Monitoring Trustee[48] will review the list and propose changes if needed.

(119) For Spain, France and Italy specific benchmarking agreements have been made. In the specific case of Italy (core rate), ING commits to price lower than the number 1 core rate in Italy compared to the full savings market (excluding three niche players: […]). New market entrants will be assessed by the PLB Monitoring Trustee. The benchmark for Italian variable savings promotional rates is constructed based on the top ten financial institutions. For each financial institution, the highest variable savings promotional rate will be taken into account. If the financial institution does not offer a variable savings promotional rate, the highest [1-12]-month fixed-term deposit offer will be taken instead. However, if more than [2-6] out of the top ten financial institutions offer a variable savings promotional rate, the ability to include [1-12]-month fixed term deposits is no longer valid. ING commits to price lower than the best offer in that benchmark list. Details to the exceptions and other clarifications are included in the attachment referred to in Recital (118).

(120) Moreover, ING will not offer acquisition incentives (e.g. cash bonuses) paid to open a savings account that are, in combination with the interest rate offered, more favourable than the highest combination of interest rate and acquisition incentive on the savings market. In addition, when offering a bundle of products (including a savings account), any combination of interest rates and acquisition incentives for such bundle will not be higher than the highest combination of interest rates and acquisition incentives on the savings market or for a similar bundle. A bundle includes the pricing of the product itself. In order to calculate the combined value of the offer, the acquisition incentive is discounted with ING's average first deposit for the campaign on a twelve-month basis, resulting in an effective combined interest rate. For ING Retail[49], the bundles will be compared to the three best-priced direct competitors. For ING Direct, the bundles will be compared to the ten financial institutions having the largest market share in the relevant product market.

(121) In case of market changes leading to a lack of significant competition within a certain benchmark category, even after having included all financial institutions, or in case of competitors (i) providing incorrect or incomplete information to customers with regard to ING’s price leadership ban or (ii) trying to expose ING to the risk of breaching the price leadership ban, the PLB Monitoring Trustee will, after hearing the Commission, make a proposal and seek the agreement of Commission and ING in order to find a solution in the spirit of the solutions as included in the attachment.

48 See Recital 124.

49 That is, all ING branches or subsidiaries that are not part of ING Direct and which have a market share above 5 %.

(122) The price leadership ban commitments made by ING in 2009, which are included in the Annex to the 2012 Restructuring Decision, will remain in force for a transition period of three months after the present Decision is adopted. The amended restrictions set out in Annex I will enter into force three months after the present Decision is adopted. The price leadership ban will apply until 18 November 2015 or until the date on which more than 50% of the Insurance operations in Asia, 50% of the Insurance operations in the US[50] and 50% of the Insurance operations in Europe have been divested, whichever date comes earlier.

Restructuring period prolongation and prolongation of other commitments of the restructuring plan

(123) ING will continue to orientate its non-deposit funding towards longer-term funding by issuing more debt instruments with a maturity more than one year. That strategy will imply that the relative share of outstanding long-term funding (with maturity of more than one year) in the non-deposit part of ING's balance sheet will continue to increase. The success of that strategy depends on markets reverting to less stressed conditions.

(124) Regarding calling of Tier 1 and Tier 2 securities the Netherlands commits that ING will propose to the Commission for authorisation every calling or buy-back of Tier 2 capital and Tier 1 hybrids until the earlier date of 18 November 2014 or the date on which ING has fully repaid the CT1 securities to the Netherlands (including the relevant accrued interest on coupons on those CT1 securities and exit premium fees).

(125) ING will not be obliged to defer coupon payments on hybrids.

(126) The Dutch authorities understand that the Commission is against State aid recipients remunerating own funds (equity and subordinated debt) when their activities do not generate sufficient profits and that the Commission is in that context in principle against the calling of Tier 2 capital and Tier 1 hybrids.

(127) Notwithstanding the restriction set out in Recital (126), ING will be allowed to call the EUR 1.25 billion ING Verzekeringen NV hybrid (ISIN XS0130855108) that has a change of control trigger, upon which ING Verzekeringen NV would be in default. The calling of that instrument is a pre-requisite for the required restructuring to allow for a standalone insurance business. The change of control clause will be triggered upon the divestment of Insurance Asia.

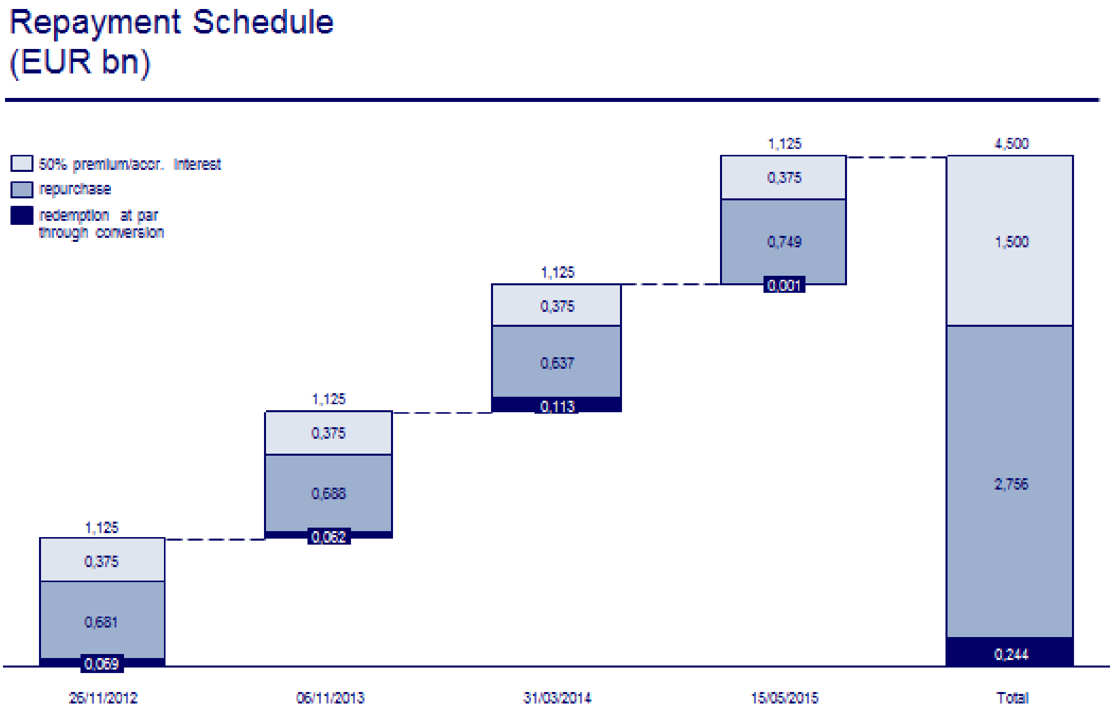
(128) The Netherlands commits that ING will refrain from mass marketing invoking the recapitalisation measure as an advantage in competitive terms.

(129) The Netherlands commits that the full execution of ING's restructuring will be completed before 31 December 2015, unless otherwise specified e.g. the divestment of the remaining interest (i.e. interest below 50%) in the ING Insurance business.

50 For the Insurance US, the 50%+ divestment criterion will be reached as soon as ING has divested 25% of that business and taking into account a pro-forma divestment of the run off businesses (by allocated equity capital (FY '11 data)).

Repayment schedule

(130) ING will repay the remaining 300,000,000 Core Tier 1 securities to the Netherlands in line with the following schedule: (i) EUR 1,125 million by 26 November 2012, (ii) EUR 1,125 million by 6 November 2013, (iii) EUR 1,125 million by 31 March 2014, and (iv) EUR 1,125 million by 15 May 2015 as further detailed in the repayment schedule below.



To bring the total payment exactly to EUR 4.5 billion, for a very small part ING will need to exercise the conversion option of the CT1 securities, because repurchase at 150% will trigger accrued interest if not done on 13 May of each year. In case of (such) conversion (also as described under this commitment below), the Dutch State will opt for redemption at par in cash.

(131) Those repayments will predominantly be done by repurchasing the CT1 securities from the Netherlands and by paying the related 50% premium. The schedule leads to a total repayment of EUR 4.5 billion translating into an overall IRR of exactly 12.5%, which is above the overall return of at least 10% mentioned in the Rescue Decision. ING will only use its conversion option to the extent that coupon payments are triggered and/or accrued interest is payable, such that the proceeds will be equal to a total of EUR 4.5 billion. In such a case, the coupon and/or accrued interest payments leading to proceeds over the total of EUR 4.5 billion will be effectively deducted from or as the case may be credited against the 50% premium payment. Bringing the total repayment to EUR 4.5 billion EUR can be achieved by a - pro rata - conversion of part of the remaining securities instead of repurchasing them. All remaining payments (notional, premium, coupons and/or accrued interest) sum up to a total of EUR 4.5 billion.

(132) The actual repayments of the tranches within the above-mentioned schedule are conditional upon approval of DNB.

(133) It is ING's ambition to repay the Netherlands as quickly as possible, and ING will accelerate payments if it is prudent under prevailing financial circumstances. If ING

accelerates the payments, it would consequently lead to an IRR above 12.5%[51].

(134) If a repayment tranche cannot be made in full or in part, ING will make it up by a corresponding increase of the subsequent tranche. The Netherlands commits to re-notify the recapitalisation measure in the event that ING does not repay in full two consecutive repayment tranches.

(135) If ING does not repay a total of EUR 4.5 billion by 15 May 2015 as indicated in the schedule, the Dutch State commits to re-notify the recapitalisation measure.

Additional comments of the Netherlands with regards to the repayment of the CT1 securities

(136) With respect to the repayment schedule, it should be recalled that according to the terms of the CT1 securities ING - after three years following the granting of recapitalisation measure - was free to choose between repaying the CT1 securities at 150% or convert them into shares on a one-on-one basis (in which case the Netherlands could request a repayment in cash at 100%). The Netherlands recalled that ING's right to convert its CT1 securities to shares was activated on 12 November 2011.

(137) The Netherlands points at ING's repayment schedule with a total payment of EUR 4.5 billion, making very limited use of its conversion right. The repayment schedule included in this Decision leads to an IRR of 12.5%. […]

(138) The Netherlands further informed the Commission that DNB has taken a framework decision on 22 October 2012 based on the divestment measures examined in the present Decision. In addition to its framework approval of the divestment measures, DNB also needs to give approval for each of the repayment tranches of the CT1 securities at the time of repayment in order to ensure that a repayment is prudentially acceptable. The repayment of EUR 750 million nominally and EUR 1.125 billion including the premium for 2012 has already been approved by DNB. The Netherlands expresses its confidence that if market circumstances do not change materially and ING delivers on its capital plan, they are confident that DNB will approve the repayment tranches envisaged in Annex I.

Monitoring and re-notification commitment

(139) Full and proper implementation of all the commitments and obligations set out in Annex I will be continuously and thoroughly monitored until 31 December 2015 by a suitably qualified monitoring trustee who is independent of ING. The company currently entrusted with that task will continue monitoring the commitment regarding the Van Gogh scenario and all other commitments in Annex I, except for the monitoring of the price leadership ban. The price leadership ban will be monitored by a new trustee, the PLB Monitoring Trustee. The appointment and performance of both Trustees will be reviewed by the Commission after six months and from then onwards on a continuous basis. The costs of all trustees appointed during the restructuring process will be borne by ING.

[51] The IRR would be higher because the total amount of repayment would not decrease whereas the time of repayment would advance, reducing therefore the period over which the IRR is calculated.

(140) ING and the Netherlands commit that the progress reports about the implementation of the restructuring plan will be provided to the Commission every six months until 31 December 2013 and annually thereafter until 2018 or until the full divestment of the ING Insurance business.

(141) If ING has not satisfied a divestment commitment or any NN Bank-related commitments to be executed in 2015, the Netherlands will re-notify the recapitalisation measure to the Commission.

5.3 Further information on ING Direct

(142) According to the Netherlands the allegation of Mediobanca is incorrect because Banca Sistema raised its rate to 4.25% on 30 August 2011. ING provided evidence that the interest rate offered by Banca Sistema on its SI Conto! was 4.25% on 30 August 2011.

(143) According to the Netherlands the market share of ING in savings in Italy decreased from [1-4]% at the end of 2008 when the State aid was received to [1-4]% at the end of 2011.

(144) The Netherlands explained to the Commission that although ING considers that it has formally respected the price leadership ban in Italy, ING is willing to accept a revised price leadership ban in order to avoid misunderstandings and in order to meet the Commission's concerns so that complaints such as that of MedioBanca in Italy can be avoided. In some markets, like Italy ING Direct offers products that are not offered by the mainstream banks. As a result, ING Direct was sometimes required to benchmark those products against low-volume products of smaller players. The revised price leadership ban ensures that ING Direct's prices are benchmarked against the top-ten mainstream financial institutions (groups). The revised price leadership ban also includes (procedural) clarifications and/or amendments, e.g. regarding the timeline for adjusting prices after ING has become aware of a price leadership position combined with a limit on the validity of market offerings.

(145) In respect of the financial performance of ING Direct, the Netherlands provided information according to which the EUR 608 million impairments for ING Direct are attributable to impairments of Greek government bonds for an amount of EUR 347 million. A further EUR 187 million of impairments result from the reduction of the exposure of ING Direct to over-concentrated assets in the region classified as "southern Europe" by ING. That EUR 187 million loss resulted from a sale of EUR 2.3 billion of exposure in that category. Finally, EUR 74 million in impairments related to a RMBS portfolio in ING Direct US.

(146) According to the data provided, the level of LLPs for 2011 is divided between EUR 326 million recorded by ING Direct USA and only EUR 136 million to other locations.

VI. ASSESSMENT

(147) This Decision concerns the assessment of doubts with respect to the re-notification of the recapitalisation measure and the amendment of the restructuring plan of 22 October

2009 and of commitments approved in the 2012 Restructuring Decision. In order to address those doubts the Netherlands has updated its previously submitted restructuring plan and commitments[52] (hereafter also referred to as "the amendment"), which is the basis for the present assessment. The Commission may approve an amendment to a restructuring plan and commitments, as it has discretion to allow such modifications as long as the modifications are equivalent to their original counterparts in that the modifications also ensure the compatibility of the aid with the internal market and do not entail any additional aid.

6.1. No granting of additional aid

(148) The present amendment does not entail additional aid to the benefit of ING.

(149) The Commission has established in the 2012 Restructuring Decision that ING has received State aid of more than EUR 15 billion, of which the recapitalisation measure represents EUR 10 billion. Further the Commission has established that the amendment of the repayment conditions of the CT1 securities constituted aid in favour of ING.

(150) The Commission notes that the notified amendments do not change the repayment conditions of the CT1 securities. The commitment of the Netherlands to put in place a repayment schedule is in line with the repayment conditions approved in the Rescue Decision. That schedule allows for a partial repurchase at 150% and partial conversion[53]. Both redemption mechanisms are currently possible under the conditions considered in the Rescue Decision and do not require an amendment of the repayment conditions for the CT1 securities. The current availability of both mechanisms contrasts with the situation in 2009, when ING only had the contractual option to repay at 150% because the conversion option would only become available three years after the CT1 securities were granted.

(151) In contrast to the situation in 2009, the Netherlands did not enter into an ad-hoc arrangement whereby the Netherlands would have made an investment choice by accepting a modification of an existing contract. The Netherlands was not required, in accepting the repayment schedule of ING to which it commits, to make an investment decision. As a result, the Commission considers that the Netherlands could not be foregoing any revenues under the repayment schedule.

(152) The Commission also notes that the triggering of the re-notification commitment in the Rescue Decision does not give rise to the existence of additional aid. That re-notification solely concerns an issue of compatibility insofar as it raises the question of whether the Netherlands will receive an adequate remuneration. Therefore the commitment by ING to a fixed repayment schedule should thus be examined only to determine the compatibility of the modifications to the restructuring plan.

[52] That applies to the Annex of the Restructuring Decision and, if the need arises, i,e to the extent that the second paragraph of Article 2 of the 2009 Restructuring Decision and Annex II to that decision is considered by the Union Courts to be valid, also to the commitments in the Annex of the 2009 Restructuring Decision.

[53] A conversion would ensure for the Netherlands at least a repayment at nominal value, which the Netherlands can require in case of conversion under the conditions approved in the Rescue Decision.

6.2. Compatibility of restructuring aid

(153) As the notified amendments do not entail additional State aid to the benefit of ING, the amendments can be considered as a substitution of a certain number of commitments by other commitments. The Commission should therefore examine if the substituted commitments also ensure the compatibility of the aid provided in 2008 and 2009[54].

(154) The conclusion of the 2012 Restructuring Decision as to the compatibility of that aid should not alter as long as it can be established that the new commitments continue to ensure viability, an appropriate degree of burden-sharing and sufficient measures to address distortions of competition[55].

Viability

(155) In the absence of additional aid the Commission will not assess the viability of ING afresh. It will only examine whether the modifications to the restructuring plan call into question the conclusion as to the viability of ING reached in the 2012 Restructuring Decision. The notified amendments affect the viability of ING in two ways: through the reduction of complexity of the business model and the elimination of double leverage and through the sustainability of the pricing strategy of ING Direct.

(156) In the 2012 Restructuring Decision the Commission based its viability assessment on the commitment by ING to eliminate double leverage and increase its capital ratios in order to be in a better position to face possible adverse economic developments in the future and absorb unexpected losses[56].

(157) First, the new deadlines for the divestment of Insurance Europe prolong the commitment to reduce complexity and eliminate double leverage. By divesting more that 50% of all insurance entities by the end of 2015 and losing control of the board of the legal entities of ING Insurance, ING's strategic decision-making will only take place in the banking market and no longer in the insurance market. Moreover, the modification does not call into question the commitment of ING to fully eliminate double leverage. The full divestment of the insurance subsidiaries will lead to the elimination of double leverage at the latest in 2018.

(158) The modified commitment in respect of the divestment of the VA business in the US […] by ING compared to the 2012 Restructuring Decision. However […] through the commitment by ING to comply with strict run-down provisions stipulated in Annex II including full hedging of the exposure and a conservative reinvestment policy. Furthermore the possibilities of a sale must be periodically explored and the retention […] should therefore be only temporary.

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54 The same approach has been adopted in the Decision in case SA.34539 Commerzbank OJ C 177, 20.6.2012, p. 20 Recital (25).

55 In the case SA.29833 KBC OJ C 135, 9.5.2012, p. 5 Recitals 74 to 83, the Commission reassessed the restructuring aid of KBC in view of the requirements of the Commission Communication on the return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the State aid rules, OJ C 195,19.8.2009, p. 9, (the “Restructuring Communication”) because the modifications to the restructuring plan gave rise to additional State aid.

56 Recital (180) of the Restructuring Decision.

(159) Moreover, the Commission notes that in the implementation of its restructuring plan ING has been able to absorb unexpected losses such as the losses on its Greek bonds[57]. Further the Commission notes that ING was able to meet the EBA capital exercise requirements in which no capital shortfall has been identified[58]. In view of the demonstrated capacity of ING to absorb unexpected shocks the prolongation of the deadline for the elimination of the double leverage does not affect the assessment of the viability of ING in the 2012 Restructuring Decision.

(160) Second, the allegation that ING has acted as a price leader has been rebutted. ING has submitted evidence that it was not the best priced among all participants in the market and thus did not infringe the price leadership ban in the 2009 Restructuring Decision.

(161) The Commission notes that Banca Sistema offered better rates than ING Direct in September 2011. However, Banca Sistema is not among top players in the market in terms of market share and brand recognition. While the Netherlands have demonstrated that ING Direct has not infringed the text of the commitment on price leadership, the positioning of ING Direct in Italy just below Banca Sistema nevertheless confirms that pricing is still a key element in the commercial strategy of ING Direct.

(162) Against that background, the strengthened commitment which gives rise to a better calibrated price leadership ban will, along with a more prudent definition of the peer group for ING Direct, ensure that ING will not be driven in the future into yield-searching investment strategies which could expose it to impairments, as was the case of their investment portfolio in the United States. That calibration is based in particular on data provided by ING as to underlying market dynamics[59]. In the case of Italy the explicit exclusion of […] from the benchmarking sample will ensure that ING will only be compared to actors with comparable strength.

(163) In addition, in order to avoid conflicts of interpretation and enhance the monitoring process, monitoring criteria specific to each market and based on the products offered by ING Direct Europe in each Member State in which it operates have been discussed with ING and the Netherlands and were specified in a separate document attached to the commitment catalogue[60]. In particular, the clear definition of the peer group for all of those markets will improve the monitoring and effective implementation of the commitment.

(164) On that basis, it should be ensured that ING Direct will not adopt a more aggressive pricing strategy than its well-established competitors.

57 see Recital (71)

58 see Recital (70)

59 Although those data were not used in the RBB Economics study (see Recital (16)), which was based on a more aggregate market information, it is assumed that the concerns of the RBB Economics study would have been altered in the light of that more detailed information. The detailed data on the market dynamics did not call into question the relevance of the market definition used in the 2012 Restructuring Decision. The Commission also did not receive any third party comments to the Opening Decision regarding the relevance of the market definition.

60 see Recital (18).

(165) Finally, the Commission notes positively that ING implemented in a timely fashion its divestment commitment regarding ING Direct US, which constituted a key viability measure of the restructuring plan.

(166) Therefore, the amendments do not call into question the viability analysis of the 2012 Restructuring Decision and have allayed the Commission's doubt expressed in the Opening Decision.

Burden-sharing

(167) The doubts that the Commission raised in the Opening Decision that ING regarding the remuneration strategy in respect of the CT1 securities, which have put into question the appropriate remuneration of the CT1 securities have been allayed by the proposed new repayment schedule and its inherent commitment to an IRR of 12.5%.

(168) However, the Commission cannot agree with the argument of ING indicated in Recitals (39), (40) and (41) that the Commission was not entitled to comment on its dividend policy as the Rescue Decision only refers to the IRR being at a level of at least 10% and that there can be no doubt that such a level of return will be achieved. In particular the Commission cannot agree with the argument that it was not entitled to re-examine the dividend policy of ING as, independently of the payment of coupon, that policy would not lead to a return in excess of 8.5% and that as a result the failure of ING to pay dividends (and so coupons) cannot be linked to the level of IRR. Contrary to what ING contends, it is not the case that the Commission has in the 2012 Restructuring Decision (as well as the now annulled 2009 Restructuring Decision) taken note of ING's dividend policy.

(169) Those arguments must be rejected because they rest on a partial reading of Recital 32 of the Rescue Decision. To put into context the commitment given by the Netherlands and on which the Rescue Decision is based, it is necessary to take account of the observations made by that Member State and by ING which are recorded in Recital 31 of that Decision. Against that background, it is clear that the Commission took a favourable view of the recapitalisation measure in light of the re-notification commitment precisely because the Member State had indicated that an appropriate return would be secured *in part* through the payment of coupon and because ING had indicated that it would continue its previous dividend policy. Since the Commission was aware that the level of assistance to a bank through a direct recapitalisation would vary depending on the degree of remuneration provided to the Member State, the Commission was in a position to temporarily approve the recapitalisation measure in light of the commitment of the Member State to re-notify which offered the Commission a degree of reassurance that the bank would not obtain State assistance without paying a suitable return.

(170) The Commission also underlines that when it approves a measure, it does so on the basis of any accompanying commitments which form an integral part of the measure in question. As such, the re-notification commitment was built into the measure examined and temporarily approved by the Rescue Decision. When the Commission re-examined the recapitalisation measure in the 2012 Restructuring Decision, the re-notification commitment remained an integral part of that measure and there is nothing in the latter decision to indicate that the Commission had ceased to consider the re-notification

commitment as relevant to its assessment. Moreover, the very wording of the re-notification commitment indicates that the Commission understood it to be applicable for five years and that the Netherlands had offered its commitment to cover that time period. As such, there is nothing to indicate that the Commission's treatment of the recapitalisation measure as a component of the restructuring aid approved in the 2012 Restructuring Decision affected the re-notification requirement.

(171) Therefore the re-notification of the recapitalisation measure and the underlying facts were apt to call into question the compatibility of the remuneration of the CT1 securities. However, in line with the 2008 Rescue Decision, the measure's compatibility can in any event be ensured if sufficient behavioral commitments have been put in place by the Netherlands in order to ensure an adequate remuneration of the State capital.

(172) The fixed repayment schedule is an appropriate behavioural commitment that has been given for the purposes of the re-notification commitment made by the Netherlands in 2008. In fact, the proposed fixed repayment schedule remedies the uncertainty of remuneration embedded in the recapitalisation measure and guarantees the Netherlands a fixed return of 12.5%. The Commission observes that other financial institutions which were recapitalised by means of similar capital instruments have also committed to a fixed repayment schedule.[61] Moreover, the fact that DNB has already approved repayment of EUR 750 million nominally and EUR 1.125 billion including a premium for 2012 provides the Commission with sufficient confidence that the repayment will take place.

(173) The Commission considers that the indicated IRR of 12.5% resulting from the repayment schedule is acceptable for the purposes of the present compatibility analysis, notwithstanding the fact that the 2012 Restructuring Decision contained a repayment schedule with a higher IRR[62]. The Commission notes that the IRR achieved through the repayment schedule is 12.5%, which is lower than the rate accepted in the 2012 Restructuring Decision as adequate for the repayment of the first half of the CT1 securities and is lower than the indicative IRR of [15-25]% which ING had projected in the restructuring plan of 22 October 2009. However the 12.5% IRR resulting from the repayment schedule is certain, unlike the indicative values previously provided. Also, it is in line with IRR levels approved as sufficient to make State aid compatible with the internal market in other Commission decisions on fixed repayment schedules for banks recapitalised with similar instruments[63]. The IRR of 12.5% can be considered as an adequate remuneration.

(174) Second, the amendments to the restructuring plan regarding the divestiture period for the Insurance business concern burden-sharing. The divestments were supposed to enable ING to obtain the necessary resources to cover the restructuring plan's costs[64] and in particular to repay the State aid. However, the worsening of the financial

[61] N372/2009 AEGON OJ C 290, 27.10.2010 p.1 and SA.33303 SNS REAAL OJ C 33, 7.2.2012, p.5

[62] Originally [15-25] %, see Recital (97) of the 2012 Restructuring Decision. In recital (189) of the 2012 Restructuring Decision the Commission already accepted a reduction to an IRR of 15% as adequate remuneration for the purposes of its compatibility analysis.

[63] SA.33303 SNS REAAL OJ C 33, 7.2.2012, p.5, SA.29833 KBC OJ C135, 09.05.2012,p.5.

[64] See Recital (192) of the 2012 Restructuring Decision.

environment (see Recital ((26) and following) has resulted in difficult conditions for insurance sales transactions[65].

(175) However, the divestment deadline for ING Insurance Europe, which is the main reason for the delay, is affected by various other aspects which were not foreseeable in 2009 and which render meeting the 2013 deadlines nearly impossible. They are, first, continued uncertainties relating to the Solvency II rules as well as the uncertainties relating to the European sovereign debt crisis, and its direct effect on the insurance sector considering that insurance companies are a significant investor group in sovereign bonds. Second, ING Insurance Europe has a modified scope through the integration of a part of WUB in Nationale Nederlanden. Thirdly there exist […] in the home market of Nationale Nederlanden.[66] That modified scope as well as the regulatory and macroeconomic environment have increased the difficulty of the divestment process of ING Insurance Europe considerably in the short-term. Given that background and considering that the increased burden-sharing is preserved as a result of the associated prolongation of the acquisition ban and the ban to call or buy back hybrids, the extension of the divestiture period until 2015 can be seen as reasonable.

(176) Regarding the prolongation of the deadline of ING Insurance US, the Commission notes […]. The resulting delay in divestment can be considered appropriate as ING has put the VA business in run-down and would be subject to strict commitments in future stipulated in Annex II […].[67] At the same time ING remains committed to go on with the envisaged IPO for the rest of ING Insurance US and commits to a reduction of 50% of ING Insurance US at the end of 2013 (counting the run-down of the VA portfolio as reduction), when considering the capital involved. In 2014, ING will then divest 50% of the business excluding the VA portfolio. The Commission considers that approach to be an acceptable solution […]. It is also appropriate in terms of burden-sharing by dint of the associated prolongation of the acquisition ban and the ban to call or buy back hybrids.

(177) Above all, despite the delays in the sale of the European and the United States Insurance business ING should still be able to adhere to a fixed repayment schedule by 2015. That assessment is not altered by the modification of the detailed arrangements of the divestment which, according to the modified commitment, would in the first place proceed through the sale of more than 50% of the relevant insurance businesses. While the Commission notes that the sale of a majority of the relevant businesses will allow them to be disaggregated from ING from an accounting and regulatory perspective, it also takes positive note that the Netherlands commits in addition that ING will divest

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[65] Although some transactions have taken place they were of smaller size than ING Insurance. For instance the IPO of Talanx; the acquisition of JEVCO by Intact Financial Corporation (deal size USD 530 million, price to book 1.3, May 2012); acquisition of Old Mutual Skandinavia by Skandia LifeSkandia AB (deal size EUR 2496 million, price to book 1.7, December 2011); acquisition of AXA Canada by Intact Financial Corporation (deal size USD 2665 million, price to book 1.8, May 2011; acquisition of Tower Australia by Dai Ichi Life (deal size USD 1432 million, price to book 1.94, December 2010).

[66] See Recital (28).

[67] Finally, the retention should only be temporary because ING commits to sell the VA business […]. The monitoring of that commitment includes periodic market soundings in order to ascertain that the prolongation of divestment deadline by the change in the divestment modalities regarding the VA portfolio is limited to the required minimum.

the Asian and United States Insurance business by the end of 2016 and ING Insurance Europe in full by the end of 2018.

(178) In view of the above the Commission considers that the amendments do not call into question the conclusion of the 2012 Restructuring Decision as to the level of burden-sharing and have allayed the Commission's doubts regarding the remuneration of the CT1 securities.

Distortion of competition

(179) The amendments notified to the Commission concern, in particular, the adequate remuneration of State aid and the divestment of a new competitive force in the Dutch retail market.

(180) First, the Commission notes that ING has provided an adequate remuneration of the CT1 securities.[68] The level of remuneration should be assessed in association with the repayment. Whereas an adequate level of remuneration is necessary to address the existing distortions of competition, early repayment will limit the effect of the State aid. The Commission has already established that, according to the repayment schedule the IRR achieved on the recapitalisation measure is set at 12.5%, which it considers adequate. Moreover according to the commitments, that State capital will be fully repaid by 2015.

(181) Second, by committing to divest WUB, the Netherlands and ING undertook to bring a viable and competitive new force to the Dutch retail market. The Netherlands and ING failed to implement that initial commitment. They have proposed the Van Gogh scenario as an alternative, on which the Commission raised doubts in the Opening Decision. Those shortcomings have in the meantime been rectified through three key commitments, which together re-align the incentives of ING to create a sustainable new actor on the Dutch market.

(182) The Commission takes positive note of the linked ban commitment described in Recitals (83) to (86) which constitutes a cap on ING's new mortgage production as a multiple of the production of NN Bank. It ensures that ING will have the incentives to achieve the committed level of production for NN Bank and thereby the committed market share of around [2-9]%. The multiple of [2-4] linking the mortgage production of ING and NN Bank is based on the average ING production of new mortgages excluding renewals since 2011[69] compared to the projected EUR [1.5-6] billion of annual new production of NN Bank. If NN Bank underperforms compared to its minimum targets of new production, ING would suffer a loss of market share in turn.

(183) In the current macroeconomic environment, where the future evolution of the size of the market can only be predicted with relatively high uncertainty, it is appropriate to fix a production cap relative to the performance of NN Bank rather than at an absolute level. The linkage in the ban will ensure that if the market grows or declines more than

[68] Point 34 of the Restructuring Communication notes that adequate remuneration is one of the most appropriate limitations of distortions of competition, as it limits the amount of aid.

[69] See Figure 1 in Recital (77)

expected ING will have the necessary incentives to keep the market share of NN Bank in line with the projected level.

(184) That linked ban commitment is further strengthened through the self-funding commitment described in Recitals (87) to (96). In fact, the new production of NN Bank should be self-funded to ensure real independence from ING in the medium-term. The linked ban could lead ING to encourage NN Bank to fund its new production in an unsustainable way in order to avoid a production constraint for ING in the short-term. ING committed that the funding will to a large extent consist of customer liabilities, insofar as total deposits and wholesale funding will constitute at least 75% in the first year, 80% in the second year and 85% in the third year of the funding in the base case projections, whereas wholesale funding must be limited to EUR [1-4] billion.

(185) In addition, in order to achieve a critical mass of a market share of [2-9]% it is acceptable that ING funds NN Bank up to the maximum amount of EUR 2.7 billion in line with the NN Bank business plan until the moment of the divestment. However in order to achieve independence of NN Bank as a new actor on the Dutch retail banking market, that funding beyond the divestment can only take the form of securities issued by NN Bank and purchased by ING in transactions in line with market conditions. The Commission positively notes that under that commitment ING cannot influence the business strategy of NN Bank by threatening to suddenly withdraw the latter's funding, as the securities will have a minimum maturity of five to ten years.

(186) The business case of NN Bank projects to fund up to EUR [2-8] billion in a sustainable way. If that level is reached NN Bank would have achieved a sufficient size to establish itself as a new entrant. Therefore, it is acceptable that ING is not constrained in its own production beyond that level.

(187) The credibility of the self-funding strategy of NN Bank is ensured through the corrective actions envisaged in the commitments made by the Netherlands being monitored and implemented on a continuous basis. Those corrective actions are targeted to address possibly self-funding deficits and create additional incentives for ING to ensure that the NN Bank funding objectives are achieved. The continuous monitoring will allow shortcomings to be detected in a timely way and before the final divestment deadline.

(188) Third, with respect to NN Bank's competitive impact on the retail banking market in the Netherlands, which will be the core market on which ING will continue to be active after the restructuring process has ended, the Commission takes positive note of the fact that ING committed to minimum new annual production figures and market shares for NN Bank in both mortgages[70] and consumer finance[71]. That commitment should ensure that NN Bank reaches a critical scale in those two important business lines on the asset side of the balance sheet.

(189) Once again, the credibility of those commitments is ensured by the fact that ING will take corrective action if NN Bank undershoots its targets. The Commission observes that ING has committed to transfer individual client relationships through a transfer of mortgages to NN Bank where switching costs would be fully and solely borne by ING.

70 EUR [1.5-6] billion respectively [2-9]% on average during the period 2013-2015, see Recital (79).
71 EUR [40-140] million respectively [0.5-6]% by 2015, see Recital (80).

Such a mechanism avoids risks of low-quality implementation by, for example securitisation of an old portfolio which would offer few business opportunities for NN Bank to increase its market share.

(190) With respect to the scope of NN Bank's product assortment, the Commission takes note of the fact that NN Bank will have activities in five product domains that is to say mortgages, consumer finance, savings, bank annuities and retail securities. The fact that NN Bank has enlarged its product scope compared to that envisaged for the WUB commitment in the 2012 Restructuring Decision by developing a payments facility in the form of a credit card further contributes to the diversification of the business model and thereby addresses one of the shortcomings of the WUB business model, namely its status as a mortgage monoliner.

(191) A number of the viability-related concerns which made the divestment of WUB difficult (in particular the large funding gap) have been addressed by the Van Gogh scenario. The current financial projections of NN Bank indicate that it could be a viable entity. With respect to capital adequacy, the Commission notes the solvency of the bank will be in the medium-term ensured by the commitment of ING to provide NN Bank with a minimum Tier 1 ratio of 12%. At the same time, NN Bank's credit card offer should also help to improve the stickiness of savings accounts. Finally, the Commission notes that NN Bank will benefit from the financial strength of its parent, ING Insurance Europe. Altogether, the measures proposed by the Netherlands provide a plausible scenario for a viable and competitive force in the Dutch retail market. The commitments and in particular the clearly defined corrective actions and triggers should provide sufficient certainty of successful implementation. That assessment is also underlined by the third party observations, which reiterate the credibility of the business model of NN Bank.

(192) The Commission notes that the prolongation of the price leadership ban in markets where ING's market share is at 5% or above constitutes an additional measure to address distortions of competition. That prolongation is not applicable in the Netherlands where the preservation of the current market share of ING in the mortgages is conditional on the success of NN Bank, through the linked ban. Notwithstanding the fact that the comments by *Vereniging Eigen Huis* are not of relevance in relation to the doubts brought forward by the Commission in the Opening Decision and do not reveal a direct causal relationship between the price leadership ban on ING and the behaviour of the Dutch market in mortgages, they would have been in any case addressed by the reduced scope of the price leadership ban.

(193) The prolonged behavioural safeguards also neutralise the distortions of competition resulting from the fact that the divestment process has been delayed. Such mitigation is in line with the Commission's practice in other recent cases.[72]

(194) Therefore the Commission considers that the amendment of the WUB commitment combined with the prolongation of the price leadership ban and the acquisition ban does not call into question its conclusion in the 2012 Restructuring Decision that there are sufficient measures to limit distortion of competition.

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[72] Decision in case SA.34539 Commerzbank, OJ C177of 20.06.2012, p.20 and Decision in case SA.29833 KBC OJ C135 of 09.05.2012, p.5.

(195) Taking into account the balance of measures, the Commission concludes that the new commitments are sufficient to allay the doubts of the Commission expressed in the Opening Decision as regards undue distortions of competition and to ensure the compatibility of the restructuring aid.

Conclusion

(196) In conclusion, the amended commitments together with the repayment of EUR 4.5 billion based on a fixed repayment schedule bring the compatibility assessment in line with the 2012 Restructuring Decision in so far as they are apt to ensure the restoration of viability, burden-sharing and address distortions of competition. The proposed amendment of the 2012 Restructuring Decision, on the basis of the new commitments continues to ensure compatibility of the recapitalisation measure and of the restructuring aid granted by the Netherlands to ING. On that basis the doubts that the Commission has raised in the Opening Decision have been allayed,

HAS ADOPTED THIS DECISION:

Article 1

The capital injection of EUR 10 billion subscribed by the Netherlnads on 22 October 2008 continues to be compatible with internal market, in the light of the commitments set out in Annex I.

Article 2

The State aid referred to in Commission Decision of 11 May 2012 in case SA.28855 (N 373/2009) (ex C 10/2009 and ex N528/2008) continues to be compatible with the internal market, in the light of the commitments set out in Annex I.

The commitments in the Annex to Commission Decision of 11 May 2012 in case SA.28855 (N 373/2009) (ex C 10/2009 and ex N528/2008) are replaced by the commitments in Annex I.

Article 3

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels, 16.11.2012

For the Commission

Joaquín ALMUNIA
Vice-President

Notice

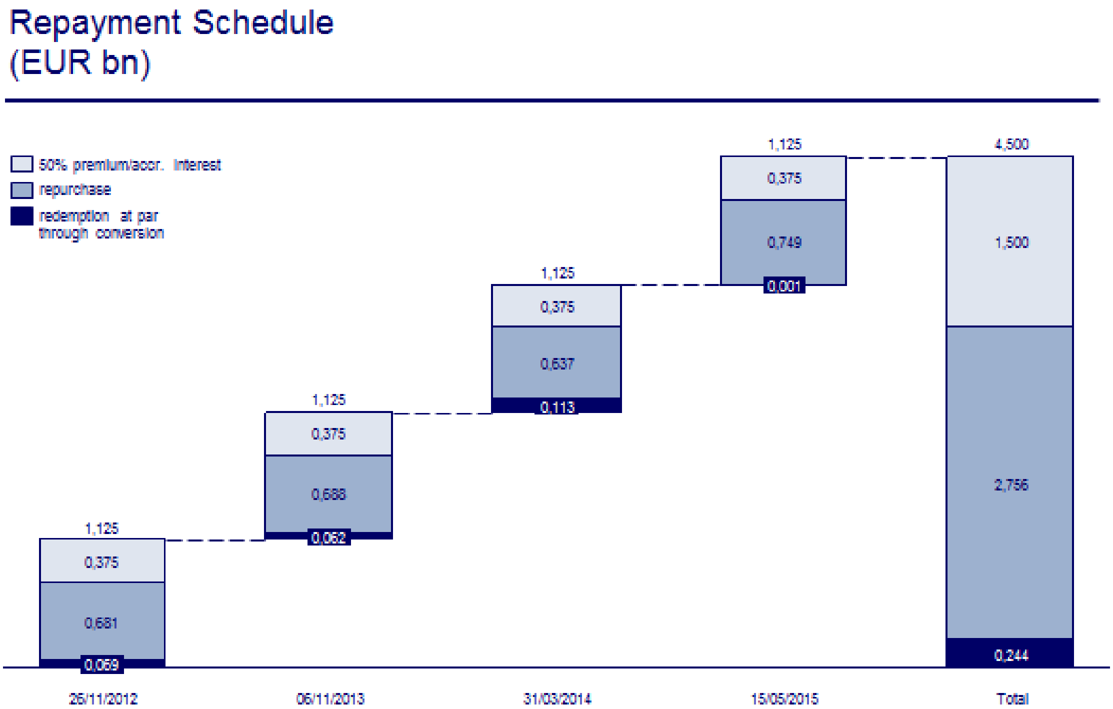
If the decision contains confidential information which should not be published, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to publication of the full text of the decision. Your request specifying the relevant information should be sent by registered letter or fax to:

European Commission
Directorate-General for Competition
COMP State aid Greffe
J70 03/225
B-1049 Brussels
Fax No: +32 2 29 61242

ANNEX I
CATALOGUE OF COMMITMENTS

a) Repayment of the remaining Core Tier 1 Securities;

- ING will repay the remaining 300,000,000 Core Tier 1 Securities to the Netherlands according to the following schedule: (i) EUR 1,125 million by 26 November 2012, (ii) EUR 1,125 million by 6 November 2013, (iii) EUR 1,125 million by 31 March 2014, and (iv) EUR 1,125 million by 15 May 2015 as further detailed in the schedule below.



To bring the total payment exactly to EUR 4.5 billion, for a very small part ING will need to exercise the conversion option of the Core Tier-1 securities, because repurchase at 150% will trigger accrued interest if not done on 13 May of each year. In case of (such) conversion (also as described under this commitment below), the Dutch State will opt for redemption at par in cash.

- Those repayments will predominantly be done by repurchasing the Securities from the Dutch State and by paying the related 50% premium. The above-mentioned schedule leads to a total repayment of EUR 4.5 billion translating into an overall internal rate of return (IRR) of exactly 12.5%, which is above the overall return of at least 10% mentioned in the Commission's Decision of 12 November 2008. ING will only use its conversion option to the extent that coupon payments are triggered and/or accrued interest is payable, such that the proceeds will be equal to a total of EUR 4.5 billion. In such a case, the coupon and/or accrued interest payments leading to proceeds over the total of EUR 4.5 billion will be effectively deducted from *casu quo* credited against the 50% premium payment. Bringing the total repayment to EUR 4.5 billion EUR can be achieved by a - pro rata - conversion of part of the remaining securities instead of repurchasing them. All remaining payments (notional, premium, coupons and/or accrued interest) sum up to a total of EUR 4.5 billion.

- The actual repayments of the tranches within the above-mentioned schedule are conditional upon approval of the Dutch Central Bank (DNB).

- It is ING's ambition to repay the Dutch State as quickly as possible, and ING will accelerate payments if it is prudent under prevailing financial circumstances. If ING accelerates the payments, it would consequently lead to an IRR above 12.5%.

- If a repayment tranche cannot be made in full or in part, ING will make it up by a corresponding increase of the subsequent tranche. The Dutch State commits to re-notify the Core Tier 1 recapitalisation measure in the event that ING does not repay in full two consecutive repayment tranches.

- If ING does not repay a total of EUR 4.5 billion by 15 May 2015 as indicated in above schedule the Dutch State commits to re-notify the Core Tier 1 recapitalisation measure.

b) Commitments regarding ING's balance sheet reduction;

- ING continues to reduce its balance sheet by approximately 45% compared to Q3 2008 via divestments[73] or other measures aimed at reducing the size of the balance sheet (such as run down of portfolios)[74] until 31 December 2015. The committed balance sheet reduction is based on 'Q3 2008 data and does not take into account the possible impact of organic growth, FX changes, interest rate changes or additional increases due to potential new regulatory requirements, such as for example if banks are required to hold significantly larger liquidity buffers due to new EU-wide regulations.

- ING will not have a restriction on organic (that is to say not related to acquisitions) growth of the balance sheet of its businesses. ING continues to have a general policy to use its growth in funds entrusted by customers mainly to increase lending to the real economy (corporates and consumers) and continues to decrease its exposure to higher risk asset classes within CMBS and RMBS. It will not start new initiatives that increase its direct real estate exposure[75], in line with ING's general de-risking policy.

- ING commits to divest more than 50% of ING Insurance/Investment Management (IM) Asia operations before 31 December 2013, more than 50% of ING Insurance/IM US operations before 31 December 2014 and more than 50% of ING Insurance/IM Europe operations before 31 December 2015,[76] in addition to the entities/business activities which ING already has divested/placed in run-off/completed as listed in Recital 77 of the 2012 Commission Decision and the latest bi-annual progress report[77].

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73 ING will realise at least EUR […] billion of the total balance sheet reduction (i.e. of 45%) in the form of divestments (in line with ING's 2009 restructuring plan).

74 The run-down of the US variable annuities and Financial Products can be taken into account as a divestment, provided that the implementation of the run-down is in line with the conditions listed in Annex II.

75 That is to say excluding mortgages, as these are not considered direct real estate exposure.

76 I.e. 50% is measured in terms of shares of 50% plus 1 and a loss of the majority in the board and the accounting deconsolidation of the entity.

77 Progress report on ING's restructuring plan final version 19 June 2012

In addition, for the US Insurance/IM business, ING commits to divest at least 25% of the business before 31 December 2013.[78]

- Divesting control of more than 50% of ING's interest (i.e. measured in shares) in a business qualifies as meeting the divestment requirement. In such a case, ING will lose the majority in the board and will deconsolidate the business (in line with IFRS accounting rules). ING will divest its remaining interests in (i) ING Insurance/IM Europe before 31 December 2018, (ii) ING Insurance/IM US before 31 December 2016, and (iii) ING Insurance/IM Asia before 31 December 2016.

c) The Netherlands furthermore commits that ING will adhere to an acquisition ban:

- ING will refrain from acquisitions of financial institutions for an additional period. Moreover, ING will refrain, for the same period, from acquiring any (other) businesses that would slow down the repayment of the Core Tier 1 Securities to the Netherlands. The acquisition ban will apply until 18 November 2015 or until the date on which more than 50% of the Insurance/IM operations in Asia, 50% of Insurance/IM US and 50% of Insurance/IM Europe have been divested, whichever date comes earlier.[79]

- Notwithstanding that prohibition, ING may, after obtaining the Commission's approval, acquire businesses, in particular if it is essential in order to safeguard financial stability or competition in the relevant markets.

d) The Netherlands furthermore commits that ING Bank will adhere to a price leadership ban:

ING EU (non-ING Direct) > 5% market share

- No price leadership ban will apply for the Netherlands (mortgages, savings, SME deposits, private banking etc). For other non-ING Direct businesses in the EU with a market share of more than 5%, the following applies.

- Without prior authorization of the Commission, ING will not offer more favourable prices on standardized ING products (on markets as defined below) than its three best-priced direct competitors with respect to EU-markets in which ING has a market share of more than 5%. This means that ING can at best offer a price while there are at least three products on the market with a better price.

- That commitment is limited to ING's standardized products on the following product markets: (i) retail savings market, (ii) retail mortgage market, (iii) private banking insofar it involves mortgage products or saving products or (iv) deposits for SMEs (where SME is defined according to the definition of SME customarily/currently used

[78] US run offs (i.e. Variable Annuities and Financial Products business) qualify as pro forma divestments. Those run offs measured by allocated equity capital measurement (FY '11 data) together with a divestment of at least 25% of the interest in ING Insurance/IM US result in a divestment of more than 50% (pro forma) before 31 December 2014.

[79] For Insurance/IM US, the 50%+ divestment criterion will be reached as soon as ING has divested at least 25% of that business and taking into account a pro-forma divestment of the US run-off businesses (by allocated equity capital FY'11 data)

by ING in its business in the relevant country). As soon as ING becomes aware of the fact that it offers more favourable prices for its products than its three best-priced competitors, ING will as soon as possible adjust, without any undue delay - within [0-20] working days if allowed on basis of (local) legal and regulatory rules -, its price to a level which is in accordance with this commitment. At the moment ING sets its prices, it will assess whether they comply with the price leadership restrictions. In order to minimise conflicts between the price leadership ban and legal and regulatory restrictions on adjusting prices, ING will limit the validity of its market offerings to a maximum of three months.

ING Direct EU

- Moreover, to support ING's long-term viability, ING Direct will refrain, without prior authorisation of the Commission, from offering a more favourable price than its best priced direct competitor (among the ten financial institutions having the largest market share in the relevant product market)[80] with respect to standardised ING products on the retail mortgage and retail savings markets within the EU. This means that ING can at best offer a price while there is at least one product on the market with a better price. A financial institution will be defined as all companies within a group (e.g. second brands, subsidiaries are included). All prices offered by such a financial institution (including prices of second brands and subsidiaries) can be used for benchmarking.

- As soon as ING Direct becomes aware of the fact that it has become the price leader on a retail mortgage or retail savings markets within the EU, ING Direct will adjust its price to a level which is in accordance with this commitment as soon as possible without any undue delay - within [0-20] working days if allowed on basis of (local) legal and regulatory rules. At the moment ING Direct sets its prices, it will assess whether they comply with the restrictions. In order to minimise conflicts between the price leadership ban and legal and regulatory restrictions to adjust prices, ING Direct will limit the validity of its market offerings to a maximum of three months.

- In case the number of prices in the benchmark based on the best rate from each of the top ten Financial Institutions is less than ten, the 11th, 12th 13 etc largest Financial Institution will be used until ten prices from different Financial Institutions have been found.

- For each country and product group, a pre-set top ten Financial Institutions list has been agreed (which is included in a separate document which has been agreed with the Commission as the basis for the monitoring) and will be used until 30 June 2013 and updated periodically. In the second quarter of 2013 the PLB Monitoring Trustee will review the list and propose changes if needed.

  For Spain, France and Italy specific benchmarking agreements have been made. In the specific case of Italy (core rate), ING commits to price lower than the number 1 core

[80] If ING Direct is not in the top ten itself, it may compare to (the) ten (largest) players. If ING Direct is among the top ten largest players, the comparison should be made against the other nine largest players on the market. The latter does not apply to ING Direct Austria, which can always compare to ten other (largest) players.

rate in Italy compared to the full savings market (excluding three niche players: […]). New market entrants will be assessed by the PLB Monitoring Trustee. The benchmark for Italian variable savings promotional rates is constructed based on the top ten Financial Institutions. For each Institution, the highest variable savings promotional rate will be taken into account. If the Financial Institution does not offer a variable savings promotional rate, the highest [1-12] month fixed-term deposit offer will be taken instead. However, if more than [2-6] out of the top ten Financial Institutions offer a variable savings promotional rate, the ability to include [1-12]-month fixed term deposits is no longer valid. ING commits to price lower than the best offer in that benchmark list. Details to the exceptions and other clarifications are included in a separate document which has been agreed with the Commission for the monitoring.

General

- Moreover, ING will not offer acquisition incentives (e.g. cash bonuses) paid to open a savings account that are, in combination with the interest rate offered, more favourable than the highest combination of interest rate and acquisition incentive on the savings market. In addition, when offering a bundle of products (including a savings account), any combination of interest rates and acquisition incentives for such bundle will not be higher than the highest combination of interest rates and acquisition incentives on the savings market or for a similar bundle. A bundle includes the pricing of the product itself. In order to calculate the combined value of the offer, the acquisition incentive is discounted with ING's average first deposit for the campaign on a 12-month basis, resulting in an effective combined interest rate. For ING EU ((non-ING Direct) > 5% market share), the bundles will be compared to the three best priced direct competitors. For ING Direct, the bundles will be compared to the ten financial institutions having the largest market share in the relevant product market.

- In case of market changes leading to a lack of significant competition within a certain benchmark category, even after having included all Financial Institutions, or in case of competitors (i) providing incorrect and/or incomplete information to customers with regard to ING's price leadership ban or (ii) trying to expose ING to the risk of breaching the price leadership ban, the PLB Monitoring Trustee will, after hearing the Commission, make a proposal and seek the agreement of Commission and ING in order to find a solution in the spirit of the solutions as included in a separate document which has been agreed with the Commission for the monitoring.

- The price leadership ban restrictions committed by ING in 2009, which are included in the Annex to the Commission's Decision of 11 May 2012, will remain in force for a transition period up to three months after the Commission's Decision on this amended Annex. The amended restrictions set out in this Annex will enter into force three months after the Commission's Decision on this amended Annex. The price leadership ban will apply until 18 November 2015 or until the date on which more than 50% of the Insurance/IM operations in Asia, 50% of the Insurance/IM operations in the US[81] and 50% of the Insurance/IM operations in Europe have been divested, whichever date

[81] For the Insurance/IM US, the 50%+ divestment criterion will be reached as soon as ING has divested 25% of that business and taking into account a pro-forma divestment of the run off businesses (by allocated equity capital (FY '11 data))

comes earlier. A monitoring trustee preselected and proposed by ING, will be appointed by the Netherlands to monitor this commitment ("the PLB Monitoring Trustee"). The appointment of the PLB Monitoring Trustee is subject to the Commission's approval

e) The Netherlands commits to a number of detailed provisions as regards the carve-out and divestment of WUH/Interadvies:

- Reference is made to the review request/business case proposal (Van Gogh) of the Netherlands of 4 November 2011 and later updates submitted to the Commission, in particular the business case update of 11 July 2012. The Van Gogh commitments are listed below.

- ING will create a new company for divestment in the Netherlands, which will be carved out from its current Dutch retail banking business. The key financial projections of that business will be as follows: [82]

Client balances & funding projections NN-bank

(millions)	Start	2013	2014	2015	2016	2017
Client balances						
Mortgages	€ 2.600	[...]	[...]	[...]	[...]	[...]
Consumer Finance	€ 188	[...]	[...]	[...]	[...]	[...]
Customer Deposits	€ 2.940	[...]	[...]	[...]	[...]	[...]
Wholesale Funding						
ING Bank funding	[...]	[...]	[...]	[...]	[...]	[...]
Capital Markets	[...]	[...]	[...]	[...]	[...]	[...]

- The result has to be that the new company is a viable and competitive business, which stands alone and is separate from the businesses retained by ING. That new company will comprise parts of the business of the already carved out and stand alone Westland Utrecht/Interadvies banking division ("Westland Utrecht Bank") and the current (limited) activities of the recently established banking Division of Nationale Nederlanden (NN Bank).

- The Divestment Business will be placed under ING Insurance/IM Europe which has a long-term strategic commitment to the Dutch retail market and will operate under the "Nationale Nederlanden" brand (as "NN Bank"), with its own funding capabilities and a broad distribution network. As a result, NN Bank will be divested as part of ING Insurance/IM Europe no later than 31 December 2015. That divestment will most likely take place through an initial public offering (IPO).

82 The projections with regard to mortgages are based on a yearly production of EUR [1.5-7] (base case). The projections with regard to consumer finance are based on the production targets as included below. Actuals may deviate due to customer prepayment behavior, however production will be in line with the committed targets as included below. Total deposits and wholesale funding will be within the below committed ranges per year.

- NN Bank will offer a broad and coherent product line, with mortgages, savings, bank annuities, investments and consumer credit products, combined with core retail insurance products of NN Life and P&C insurance companies.[83] NN Bank will reach customers through an integrated multi-channel distribution model, employing independent financial advisors and tied agents with nationwide coverage for advice on complex financial situations and products, and increasingly internet and call centers for sales and service. All these distribution channels together provide access to over 2.5 million NN customers.

- NN Bank will be largely self-funded through retail savings and excess funding from insurance business, complemented by external funding as needed. NN has access to funding and capital to enable growth and production of mortgages, which is a competitive advantage in current market conditions.

- By executing the business case proposal, part of the existing mortgages portfolio of Westland Utrecht Bank will be retained by ING. The balance sheet of NN Bank will be modest at the start, to provide adequate matching of assets and liabilities and grow quickly to a mid-sized player. The capitalisation will be sufficient to execute its long-term growth plan: ING will transfer economic benefits of the ING-retained portfolio (EUR 350 million based on the net present value of the (economic) profits of that portfolio) as an upfront capital injection, and will provide additional capital (up to EUR 120 million) if and when needed but ultimately just before divestment (if Basel III leverage ratio becomes mandatory, and when NN Bank needs capital to execute the business plan). This will ensure growth to about 2016, after which NN Bank will be able to fund its growth by itself. Hence, ING will bear all expenses and risks of the retained mortgages portfolio (until maturity) and will transfer the profits to NN Bank.

- NN Bank will have the following targets with respect to mortgages and consumer lending:

  <u>Mortgages</u>
  In mortgages, NN Bank will have an average annual new production, including renewals from the ING Bank-owned (NN branded) portfolio, of at least EUR [1.5-6] billion annually and [2-9]% of the total mortgage production on the Dutch market with a maximum of EUR [2-8]billion annually over the years 2013 (measured from go-live date NN Bank[84]) to 2015. If those criteria are not met, ING will commit cumulatively to:
  - transfer individual client relationships through a transfer of mortgages to NN Bank (based on individual offers to mortgage clients of ING Bank[85]) (size

83 Currently NN Bank offers only Bank-annuities and credits (mortgages). Any extension of activities or products needs prior approval by DNB.

84 In the transitional period up to the launch of van Gogh, the Van Gogh mortgage production commitment will be carried out by the current Westland Utrecht Bank. During that period, Westland Utrecht Bank will report on those commitments to the Monitoring Trustee. The new production of mortgages (including renewals) and customer deposits produced in that transition period will be transferred to the new NN-bank at or before its launch.

85 Including ING Bank's subsidiaries

depending on need to come to abovementioned market share; selection of ING's portfolio with PD's and LGD's[86] in line with the business case);
- transfer of ownership of those mortgages at no additional charge for the client or charge for NN Bank;
- allow NN Bank to use the ING Bank distribution channels to offer NN Bank mortgages to ING Bank clients to achieve the targets.

Consumer Lending

In consumer lending, NN Bank will have an annual new production of at least EUR [10-100] million and at least [0.5-4]% of the total consumer lending production on the Dutch market by 31 December 2013.[87] NN Bank will have an annual new production of at least EUR [40-140] million annually and at least [0.5-5]% to be measured as of 31 December 2015 with a maximum of EUR [100-200] million. If those criteria are not met, ING commits to:

transfer individual client relationships through a transfer of a consumer lending client portfolio of ING Bank Netherlands (being an ING Bank-owned portfolio) to NN Bank (size depending on need to come to abovementioned market share; selection of ING's portfolio with PD's and LGD's in line with the business case);
transfer of ownership of those consumer loans at no additional charge for the client or charge for NN Bank.

- ING commits that by 31 December 2015 or upon divestment of more than 50% of ING Insurance/IM Europe *casu quo*. NN Bank the minimum targeted Tier-one level of NN Bank will be 12%, which is well above the regulatory minimum requirement.

- ING commits to include a payments facility to NN Bank in the form of a NN-branded credit-card at a cost to the consumer not higher than that of a debit card. With regard to the NN-branded credit-card holders, ING will provide access free of charge to its ATMs for three years after the launch of the product and ultimately until 31 December 2015.

- ING will send a marketing mailing with regard to NN Bank to 350.000 of its clients in accordance with Dutch privacy law. ING will be allowed to explain to its clients that the mailing is being made in order for ING to comply with the State aid rules.

- ING Bank will cap its new mortgage production. ING commits that ING Bank's yearly mortgage production (excluding renewals) is not higher than [2-4] times of the new production of NN Bank. On a quarterly basis ING's new production cannot exceed [2.5-5] times NN Bank's new production in the same quarter and [2.25-4.5] times NN Bank's new production on a half-year basis. If NN Bank's new production on yearly basis exceeds EUR [2-8] billion there are no restrictions on new production for ING Bank, meaning that if over one semester (half year) the new production of NN Bank

86 Probability of default (PD) and Loss given default (LGD).

87 In the transitional period up to the launch of Van Gogh, Westland Utrecht Bank/NN Bank will start building consumer finance production capabilities as soon as possible. In light of that transitional period, ING commits to a pro rata market production between the launch of Van Gogh and 31 December 2013. Any shortfall in production in the relevant year will be made up in the consecutive years in order to reach the business case projections.

exceeds EUR [1-4] billion, ING will not be constrained in the volume of its new production in the consecutive semester.

NN-Bank needs to provide new production data (new proposals, accepted proposals) and forecasts on a monthly basis to ING without any undue delay. Compliance with the cap will be measured on the basis of the production numbers published by the Kadaster.

That above-mentioned restriction applies from 1 January 2013 until 31 December 2015. In the transitional period up to the launch of van Gogh, ING commits to a maximum new production (excluding renewals) of [2-4] times EUR [1.5-6] billion (EUR [3-24] billion) on a yearly basis. Progress reporting will be on a quarterly basis.

- NN Bank needs to self-fund its balance sheet. NN Bank's funding profile will be in line with the projections of the balance sheet as proposed in the business case. This means that ING will not increase its funding of NN Bank in absolute amounts beyond the amounts in the business plan for each year and the maximum funding provided by ING in 2015 will be EUR 2.7 billion.

  Funding provided by ING at the end of 2015 with a maximum amount of EUR 2.7 billion has to take form of marketable securities, where ING can buy at market prices unsecured or secured notes like covered bonds or RMBS. The notes can be bought also by investors other than ING. 100% of the notes should have a tenor at issuance of five years or more, 66% a tenor equal or longer than seven years and 33% a tenor equal or longer than ten years. The determination of an 'arm's length' pricing will be either decided by the pricing of the security itself or if ING is the only buyer of the security by secondary market prices of comparable peers proposed by the Monitoring Trustee.

  The funding amount of NN Bank (total deposits and wholesale funding)[88] will amount to at least 75% in the first year, 80% in the second year and 85% in the third year (with a maximum wholesale funding of EUR [1-4] billion) versus the base case projections.

  If, due to material changes to the regulatory environment and/or market circumstances, the actual funding is below those ranges, as a result of which the balance sheet projections need to be updated, ING will report that fact to the Monitoring Trustee and the Commission. The Monitoring Trustee in consultation with the Commission will propose which measures should be taken in order to safeguard the viability of NN Bank to be approved by Commission.

  ING's level of funding will be reviewed on an annual basis starting from the launch of NN Bank (Van Gogh) until 31 December 2015.

  If the funding projections of the business case are not met by the end of each year, ING will take the following corrective measures:

  - After the first year, ING will send a marketing mailing with regard to NN Bank to an additional 50.000 ING clients if actual funding is under 80% and an additional

[88] Excluding funding by ING (or any of its direct or indirect subsidiaries).

100.000 ING clients if actual funding is under 75% of the base case projection of the first year. After the second year, ING will send a marketing mailing with regard to NN Bank to an additional 100.000 ING clients if actual funding is under 85% and 150.000 additional ING clients if actual funding is under 80% of the base case projection of the second year. Mailings will be done in accordance with Dutch privacy law. ING will be allowed to explain to its clients that the mailing is required in order for ING to comply with the State aid rules.

- After the first year, ING will provide an additional marketing budget to NN Bank of EUR 1 million if actual funding is under 80% and EUR 2 million if actual funding is under 75% of the base case projection of the first year. After the second year, ING will provide an additional marketing budget to NN Bank of EUR 2 million if actual funding is under 85% and EUR 4 million if actual funding is under 80% of the base case projection of the second year. After the third year, ING will provide an additional marketing budget to NN Bank of EUR 5 million if actual funding is under 85% and EUR 6 million if actual funding is under 80% of the base case projection of the third year. NN Bank will use those marketing budgets for new direct sales marketing (mainly promotional […] and […] incentives, and to a lesser extent other marketing methods etc. If the measures do not consist mainly of promotional […] or […] incentives, they need to be approved by the Monitoring Trustee and can be rejected by the Commission)

If the actual funding of 2015 is under 85% of the base case projection of 2015, ING will take in addition to the above the following corrective measure:

- Provide a two-year extension of free access to the ING ATMs for NN-branded credit-card holders (i.e. until 31 December 2017).

- The Commission will assess the above-mentioned commitments upon the divestment of more than 50% of ING Insurance/IM Europe *casu quo* NN Bank or by 31 December 2015, whichever date comes earlier. The commitments will end on the date of the divestment of more than 50% of ING Insurance/IM Europe *casu quo* NN Bank, unless specified otherwise.

- The creation of NN Bank will be carried out under the supervision of the currently appointed Monitoring Trustee. ING will ringfence NN Bank up to the divestment of more than 50% of ING Insurance/IM Europe, to be monitored by the Monitoring Trustee. For the implementation of the ringfencing, a leading design principle will be that it will allow NN Bank and NN Insurance to adequately execute an integrated commercial strategy between retail insurance and retail banking products & services.

- ING will refrain for an interim period up to and until 12 months after the divestment of NN Bank (i.e. divestment of more than 50% of ING Insurance/IM Europe and NN Bank) from actively soliciting customers of NN Bank for products that NN Bank is supplying to those customers on the date of the adoption of the Commission’s Decision.

f) The costs of all trustees appointed during the restructuring process will be borne by ING.

g) For restoring viability, the Netherlands commits that ING will adhere to the following:

- ING will continue to orientate its non-deposit funding towards longer-term funding by issuing more debt instruments with a maturity more than one year. This will imply that the relative share of outstanding long-term funding (with maturity of more than one year) in the non-deposit part of its balance sheet will continue to increase. The success of this does depend on markets reverting to less stressed conditions

- ING commits to eliminate double leverage. To that end, as insurance divestments take place, divestment proceeds will be used to reduce double leverage - to the extent that proceeds are not needed to keep the leverage of the remaining insurance business at an acceptable level - ultimately leading to the full elimination of double leverage. Separately, to the extent that surplus capital is being generated in excess of what is needed to satisfy Basel III or Solvency 2 needs, dividends to the group holding company can form an additional source to help accelerate the elimination of double leverage.

h) Regarding the deferral of coupons and calling of Tier 1 and Tier 2 securities the Netherlands commits that ING will adhere to the following:

- ING will not be obliged to defer coupon payments on hybrids.

  The Dutch authorities understand that the Commission is against State aid recipients remunerating own funds (equity and subordinated debt) when their activities do not generate sufficient profits[89] and that the Commission is in that context in principle against the calling of Tier 2 capital and Tier 1 hybrids. The calling or buy-back of Tier 2 capital and Tier 1 hybrids will in the future be proposed case by case to the Commission for authorisation until the earlier date of 18 November 2014 or the date on which ING has fully repaid the Core Tier 1 Securities to the Netherlands (including the relevant accrued interest on Core Tier 1 coupons and exit premium fees).

  Notwithstanding the above-mentioned restriction, ING will be allowed to call the EUR 1.25 billion ING Verzekeringen NV hybrid (ISIN XS0130855108) that has a Change of Control trigger, upon which ING Verzekeringen NV would be in default. The calling of that instrument is a pre-requisite for the required restructuring to allow for a standalone insurance business. The Change of Control clause will be triggered upon the divestment of Insurance Asia.

[89] See point 26 of the Commission Communication on the return to viability and the assessment of restructuring measures in the financial sector in the current crisis under State aid rules (Restructuring Communication).

i) The Netherlands commits that ING will refrain from mass marketing invoking the recapitalisation measure as an advantage in competitive terms.

j) The Netherlands commits that ING will maintain the restrictions on its remunerations policies and marketing activities as previously committed to under the agreements concerning the Core Tier 1 Securities and illiquid assets back-up facility.

k) ING and the Netherlands commit that the progress report about the implementation of the restructuring plan will be provided to the Commission every six months until 31 December 2013 and annually until 2018 or until the full divestment of the ING Insurance business.

l) If ING has not satisfied a divestment commitment or any 2015 NN Bank-related commitments the Dutch State will re-notify the recapitalisation measure to the Commission.

m) Full and proper implementation of all the commitments and obligations set out in this Annex will be continuously and thoroughly monitored by a suitably qualified monitoring trustee who is independent of ING until 31 December 2015. The company currently entrusted with that task will continue with monitoring the commitment regarding the Van Gogh scenario and all other commitments in this annex, except for the monitoring of the price leadership ban. The price leadership ban will be monitored by a new trustee, the PLB Monitoring Trustee. Both Trustees will be reviewed with the Commission after six months and from then onwards on a continuous basis. The arrangements for the appointment of the PLB Monitoring Trustee and its duties are set out in a separate agreement.

n) The Netherlands commits that the full execution of ING's restructuring will be completed before 31 December 2015, unless otherwise specified e.g. the divestment of the remaining interest (i.e. interest below 50%) in the ING Insurance/IM business.

ANNEX II
THE PRINCIPLES APPLIED TO INTERNAL WIND DOWN UNITS IN THE INSURANCE SECTOR

Applicable while ING Group has full control of a business.

Competition concerns
(i) no new production, no underwriting of new policies with existing or new clients (absent contractual commitments or ALM purposes).
(ii) exploring possibilities to terminate in force policies with the consent of clients
(ii) no improvement of commercial conditions on in force policy
(iii) where commercial conditions can be adjusted by the insurer the commercial conditions need to be set at the least advantageous possible level

Viability concerns
(i) periodically explore possibility of a sale as a whole or in parts of remaining assets and liabilities (yearly market sounding calls to be reported to Trustee; full documented market sounding every two years)
(ii) ring fence the possible impact on the viable business through separation of accounts and clear cost allocation between good bank and run down business
(iii) estimate future capital needs of the run down business in a conservative manner and allocate the necessary capital, in the form of provisions or other
(iv) conservative management of assets relative to liabilities (reinvestment guidelines to be documented).
(v) conservative hedging policy with a target hedge efficiency in the range of 80-120% of the overall hedge objective, subject to materiality
(vi) possibilities of partial or full reinsurance to be examined periodically (to be documented)
(vii) above to be consistent with applicable local regulatory requirements and objectives