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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.

Subject: State aid SA.35382 (2013/N) – The Netherlands
Rescue SNS REAAL 2013

Sir,

I. PROCEDURE

1. By electronic mail of 1 November 2012, the Dutch State informed the Commission that it was considering measures in favour of SNS REAAL N.V. (hereinafter "SNS REAAL" or "the company"), which would provide that company with a comprehensive solution for its capital problems. During the same period, SNS REAAL's public communications indicated that there would be an upcoming announcement of a comprehensive solution to the company's capital difficulties.[1]

2. A number of follow-up meetings between representatives of the Dutch State and the Commission took place.

[1] For instance on 13 July 2012 (http://www.snsreaal.nl/press/press-release-1/market-update-sns-reaal-1.html), 16 Aug 2012 http://www.snsreaal.nl/press/press-release-1/net-profit-sns-reaal-first-half-2012-of-115-million.html) and on 6 and 15 November 2012 http://www.snsreaal.nl/investors/results-presentations/2012.html#accordion-section-2)

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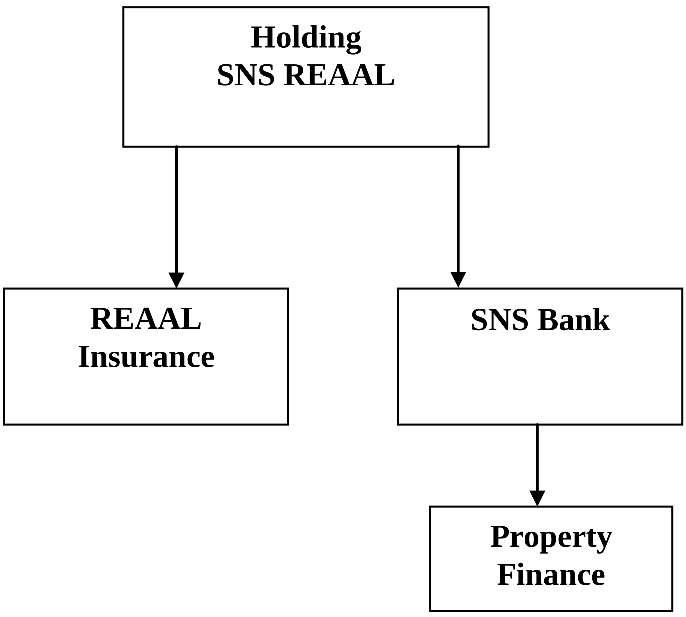
3. On 1 February 2013, the Dutch State officially notified a number of aid measures in favour of SNS REAAL. The notification also contains a letter of 24 January 2013 from the Dutch Central Bank (De Nederlandsche Bank (hereinafter “DNB”)) – sent in its capacity as financial supervisor - to the Dutch Minister of Finance and a letter from the Dutch Minister of Finance to the Dutch Parliament dated 1 February 2013. By electronic mail of 5 February 2013, the Commission asked a number of follow-up questions, which were answered on 8 February 2013. On 12 February 2013, the Dutch State sent a letter with further clarifications.

4. For reasons of urgency, the Netherlands exceptionally accepts this decision to be adopted in English.

II. FACTS

II.1. The beneficiary[2]

5. SNS REAAL is a bankinsurance company which was created in 1997 by a merger between SNS Bank and REAAL Insurance. The company is structured as a holding company with a banking subsidiary and an insurance subsidiary, as depicted in the following chart:



6. SNS Bank is the fourth-largest bank in the Netherlands and REAAL Insurance ranks third and fifth in respectively life and non-life insurance. SNS REAAL claims to have market shares of 10.2%, 18.8% and 20% in retail savings, regular individual life insurance and regular group life insurance respectively[3].

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[2] A more detailed description of SNS REAAL’s activities can be found in recitals (4) to (15) of the Commission Decision of 28 January 2010 on SNS REAAL's viability plan ("viability decision"), OJ C 93, 13.4.2010, p. 2.

[3] Source: SNS REAAL Investor Day presentation of 15 November 2012 page 11 available on: http://www.snsreaal.nl/investors-1/resultaten-presentaties/2012.html#accordion-section-1.

7. SNS REAAL employs approximately 6725 full-time equivalent ("FTEs")[4] and has been listed since 2006 on the NYSE[5] Euronext. As indicated in its 2011 annual report, SNS REAAL Foundation (hereinafter the "Foundation") has been the strategic shareholder of SNS REAAL with a participation of 50.00001%.

8. DNB and the Ministry of Finance have categorized SNS Bank as a domestic systemically important financial institution. SNS Bank has approximately 1 million current accounts and 1.6 million savings accounts. The latter contain approximately EUR 36.4 billion in savings (with EUR 35 billion falling under the Dutch deposit guarantee scheme (hereinafter "DGS")). REAAL Insurance has approximately 7.6 million policyholders.

9. Over the past decade, SNS REAAL made a number of high-profile acquisitions. For instance, in 2006 SNS REAAL acquired Bouwfonds – now SNS REAAL's property finance division and the root of the company's recent problems. Other acquisitions included Regio Bank (2007), AXA NL (2007) and Zwitserleven (2008).

10. At the end of the first semester of 2012, SNS REAAL's group balance sheet amounted to EUR 134.2 billion, with the assets of SNS Bank and REAAL Insurance representing respectively EUR 88 billion and EUR 55.5 billion.[6] At the same date, SNS Bank's risk-weighted assets (hereinafter "RWA") amounted to EUR 19.7 billion.

11. The property finance assets amounted at the same date to approximately EUR 8.5 billion (gross amount before provisions), of which 79% related to Dutch assets. The property finance assets are composed of performing and non-performing loans of respectively EUR 5.5 billion and EUR 3 billion.

12. SNS REAAL's bankinsurance model makes use of so-called "double leverage". Double leverage is a financial technique by which debt at the holding level of SNS REAAL is injected as equity in the subsidiaries (i.e. SNS Bank and REAAL Insurance). At the end of the first semester of 2012, the double-leverage debt at holding level amounted to approximately EUR 900 million. SNS REAAL's shareholders' equity only amounted to EUR 4.79 billion, but through the double-leverage debt, SNS REAAL was able to invest in total EUR 5.65 billion in equity of SNS Bank and REAAL Insurance (or, more precisely, EUR 1.92 billion in the bank subsidiary and EUR 3.73 billion in the insurance subsidiary).[7]

13. At the end of the first semester of 2012, SNS Bank's core Tier 1 (hereinafter "CT1") ratio and Tier 1 ratio amounted to respectively 9.6% and 12.2%. At the end of the third quarter of 2012, however, the CT1 ratio of SNS Bank had dropped to 8.8% and the DNB letter of 24 January 2013[8] explains that SNS Bank in a new calculation[9] arrived at a figure of 7.67% as of end 2012[10]. At the end of the first semester of

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4 Figure as of end September 2012.

5 New York Stock Exchange.

6 The combined total of the banking and insurance assets do not equal the figure for total assets because of intra-group eliminations and unallocated group assets.

7 Consequently, the double leverage ratio (i.e. the ratio between the equity of the subsidiaries over the equity of the holding entity) amounted to 117.7%

8 Mentioned in recital (3).

9 Made on 14 January 2013.

10 The European Banking Authority ("EBA") has put forward a minimum CT1 ratio of 9% - taking into account a sovereign buffer which in the case of SNS Bank has been set at EUR 183 million. At the end of 2011, EBA already concluded that SNS Bank was no longer complying with its minimum

2012, REAAL Insurance had available regulatory capital of EUR 2.72 billion, which compared to a minimum solvency requirement of EUR 1.364 billion, resulting in a regulatory solvency ratio in terms of minimum solvency requirements of 199%, which stayed virtually flat in the third quarter of 2012 (i.e. 198%).

14. In 2011, SNS REAAL realised a net profit of EUR 87 million. While the insurance activities and core activities of SNS Bank (all SNS Bank activities other than the property finance) contributed positively, the property finance division suffered major losses. In the first nine months of the 2012, the property finance division also contributed negatively to the company's results. Table 1 summarises the financial performance of SNS REAAL's business segments since 2008:

Table 1 - Net result in EUR million

In EUR million	2008	2009	2010	2011	9M 2012
SNS Bank Core	116	120	162	262	118
REAAL	-479	116	221	257	238
Zwitserleven	-71	80	56	-91	86
Group activities	-98	-80	-71	-93	-63
Property finance	28	-219	-593	-248	-230
Reported net result	-504	17	-225	87	149

Source: SNS investor relations presentations in the respective years

II.2. Description of aid received in 2008 and monitoring process

15. In December 2008, SNS REAAL received a EUR 750 million capital increase from the Dutch State[11] (hereinafter "the recapitalisation measure") in the form of core Tier 1 securities (hereinafter "CT1 securities"), which was equivalent to 1.6% of the company's RWA[12].

16. The CT1 securities[13] that the Dutch State used for the recapitalisation have a coupon set to be the highest of 8.5% or an increasing percentage of the company's shareholders' dividend.[14] At any point in time, SNS REAAL could, subject to approval of DNB, repurchase the CT1 securities at 150% of the issue price. In addition, starting from three years after the issuance date, the company could also convert the instrument into ordinary shares on a one-for-one basis. If such a conversion were to occur, the Dutch State would have the option to ask repayment at 100% of the issue price in cash. The Dutch State committed in 2008 to re-notify the measure to the Commission if there were indications that the remuneration was endangered. The absence of a coupon payment to the Dutch State for two consecutive years was one of those re-notification triggers.

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requirements – the shortfall amounting to EUR 159 million - and asked for corrective action by the end of June 2012. SNS Bank however was able to sort out its capital shortfall by the end of June 2012.

[11] At the same time, the Foundation also provided SNS REAAL with a capital injection of EUR 500 million but using a different recapitalisation instrument.

[12] Since SNS REAAL is a bankinsurance company and RWA are a typical banking concept, a similar concept was developed for the insurance activities, which is explained in detail in recital (67) of the viability decision.

[13] For a fuller description of the CT1 securities, see recitals (16) to (21) of the viability decision.

[14] The coupon payment was conditional on the payment of dividends to ordinary shareholders or dividends to holders of the so-called B-shares.

17. Besides the recapitalisation measure, SNS REAAL further benefitted from government guarantees on newly issued debt assigned under the Dutch Guarantee Scheme[15]. The guarantees related to debt issuance of EUR 4.48 billion, $ 900 million and £ 500 million.[16]

18. On 24 September 2009, SNS REAAL carried out a capital increase, which helped it to repay a first tranche of EUR 185 million of the CT1 securities in December 2009. As a result, the outstanding amount of the CT1 securities (in nominal terms, i.e., without the repayment penalty) was reduced to EUR 565 million.

19. By Decision of 10 December 2008 (hereinafter "the 2008 Rescue Decision"),[17] the Commission temporarily approved the recapitalisation measure as rescue aid subject to the commitment of the Dutch State to submit a viability plan.

20. The Dutch State submitted a viability plan, which was based on financial projections and which explained that SNS REAAL would run-off its property finance division. On 28 January 2010, by the viability decision[18], the Commission declared the aid compatible with the internal market.

21. On 9 December 2011, the Dutch State re-notified the recapitalisation of SNS REAAL as the company had not paid coupons for two consecutive years. By Decision of 19 December 2011 (hereinafter "the amendment decision")[19], the Commission confirmed that the recapitalisation continued to be compatible with the internal market, based on a repayment schedule commitment. The commitment letter of the Dutch State foresaw that contingent measures would be activated if the repayment schedule was not respected[20].

II. 3. Persisting difficulties of SNS REAAL and events leading to new intervention

22. The losses of the property finance division have been a continuous drag on the financial performance of SNS REAAL since the viability decision and a major obstacle to the return to its viability[21]. The fact that the company continued to report lacklustre figures also weighed on its credit ratings and those of its subsidiaries and increased their funding costs.

23. On 29 November 2012, the external auditor of SNS REAAL, KPMG, concluded that it doubted whether the business could be continued in the future.

24. On 18 January 2013, DNB informed SNS REAAL of the results of its 2012 Supervisory Review & Evaluation Process and indicated that SNS Bank urgently needed to be recapitalised. DNB gave SNS Bank until 31 January 2013 to either raise new capital or present alternative solutions to remove its capital shortfall.

25. On 1 February 2013 – after it became clear that last-minute negotiations between SNS REAAL and private parties had not led to a comprehensive solution - the Dutch

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[15] First approved by Commission Decision of 30 October 2008, OJ C 328, 23.12.2008, p.9 and subsequently prolonged several times.

[16] Current outstanding debt amounts are EUR 2.5 billion and $ 900 million. The remainder has matured. For more information see http://www.dsta.nl/Onderwerpen/Garantieregeling.

[17] OJ C 247, 15.10.2009, p. 2.

[18] OJ C 93, 13.4.2010 p.2

[19] OJ C 33, 7.2.2012, p. 5.

[20] For detailed description of contingent measures see recitals (19) to (21) of the amendment decision.

[21] See recital (14).

State decided to intervene. Subject to approval by the Commission, it announced aid measures to SNS REAAL. It also announced that SNS REAAL would be nationalised.

II.4. Description of the new measures

26. The Dutch State will recapitalise SNS Bank to address additional write-downs on the property finance portfolio. The Dutch State will also protect SNS REAAL from going bankrupt by recapitalising it and by providing it with a bridge loan.

27. On 1 February 2013, the Dutch State nationalised SNS REAAL using State powers under the so-called "Intervention law"[22,] to expropriate securities and capital components of SNS REAAL and SNS Bank[23]. In principle, the holders of those instruments will lose the full amount of their investment.

28. The Dutch State will also seek further burden-sharing from the Dutch banking sector by imposing a one-off non-tax deductible levy of EUR 1 billion, to be paid in 2014 by all Dutch banks proportionately to their share in retail deposits.

29. More concretely, the Dutch State has announced the following State measures:

    - The Dutch State will grant SNS Bank a recapitalisation worth EUR 1.9 billion […][*] (**measure A**);

    - The Dutch State will grant a recapitalisation of EUR 300 million to SNS REAAL […] (**measure B1**) and in order to secure short-term funding needs of SNS REAAL the Dutch State will also provide SNS REAAL with a bridge loan of EUR 1.1 billion (**measure B2**). The duration and the coupon of the bridge loan still have to be determined.

30. The Dutch State also indicated that it cannot exclude that follow-up measures may need to be taken. In that regard, the Dutch State informed the Commission that it is seriously considering a bridge bank to completely separate the problematic property finance portfolio from the remaining assets. The Dutch State indicated that it would only put the bridge bank in place after having received approval of the Commission. That potential measure is not covered by the present decision.

31. Table 2 summarises all the measures which have been notified to the Commission:

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[22] http://www.government.nl/documents-and-publications/decrees/2013/02/01/decree-by-the-minister-of-finance-regarding-the-expropriation-of-securities-and-capital-components-of-sns-reaal-nv-and-sns-bank-nv.html

[23] The Dutch State will also expropriate EUR 57 million of "participation certificates", which were sold to retail clients of SNS REAAL. Because there are mis-selling complaints, the Dutch Minister of Finance has asked the new management of SNS REAAL to conduct an investigation into the facts surrounding the sale of the participation certificates at the time they were offered on the market. The Minister of Finance has requested AFM and Kifid (The Dutch Authority for the Financial Markets and the Institute for complaints about financial services) to monitor that investigation and any compensation process.

[*] Confidential information […]

Table 2 – Overview of measures

Direct beneficiary	Measure	Type of measure	Nominal amount
SNS Bank			
	Measure A	Recapitalisation	EUR 1.9 billion
SNS REAAL			
	Measure B1	Recapitalisation	EUR 300 million
	Measure B2	Bridge Loan	EUR 1.1 billion

III. POSITION OF THE DUTCH STATE

III.1. Position of the Dutch State on the new measures

32. The Dutch State does not dispute that the notified measures entail State aid, but underlines that the purpose of the measures is to stabilise the financial system in the Netherlands.

33. The Dutch State points out that it could not allow SNS Bank to go bankrupt. In that case, the rest of the banking sector would – under the Dutch DGS - have to compensate deposits of SNS Bank, worth EUR 35 billion. In return, the Dutch banking sector would have a liquidation claim on SNS REAAL, but according to DNB calculations, a loss for the sector of up to EUR 5 billion could not be excluded. Therefore, the Dutch State concludes that triggering the DGS would have undesired consequences for the entire Dutch banking sector. The Dutch State also points out that allowing SNS Bank to go bankrupt could lead to a loss of confidence for the other banks. The Dutch State also points at the potential negative consequences for the 1 million current account holders of SNS Bank. Two-thirds of those current accounts reported cash inflows of at least EUR 500 on a monthly basis, indicating that they play an important role in Dutch transaction banking. The Dutch State also refers to the high amount of savings (EUR 36.4 billion) and makes the Commission aware of the fact that there had been already some outflows. The DNB's letter of 24 January 2013 indeed mentions that holders of savings accounts had already started to lose confidence, as illustrated by a EUR 1.4 billion outflow of savings accounts between 16 January 2013 and 24 January 2013.

34. The Dutch State notes that also allowing the holding company SNS REAAL to go bankrupt would have created a shock effect potentially leading to irrational market reactions with potentially severe consequences for the Dutch economy. In that respect, the Dutch State pointed for instance to the contagion risk for other companies with a similar holding structure and at the fact that there existed numerous links between SNS REAAL and its operational subsidiaries. SNS REAAL, for instance, performed many operational group functions for SNS Bank (like e.g. risk management and ICT) and was also the official employer of many employees of the SNS Bank. The Dutch State explains that DNB had therefore advised it to recapitalise SNS REAAL by EUR 300 million to reduce the double leverage below 115%, to pay for disentanglement costs and to provide for costs related to other intangible assets and liabilities (e.g. pension liabilities) of SNS REAAL. With respect to the bridge loan, the Dutch State indicates that DNB had

advised to pre-fund SNS REAAL by EUR 1.1 billion such that SNS REAAL could fulfil its payment obligations consisting of inter alia EUR 400 million medium-term notes due in March 2013 and EUR 650 million inter-company funding from REAAL Insurance.[24]

35. The Dutch State considers that the amount of State aid is kept to the minimum necessary. In that regard, the Dutch State mentions in its letter to parliament[25] that the calculations of the required recapitalisation needs and the bridge loan are based on a thorough analysis of DNB. In terms of burden-sharing, the Dutch State also points out that it has expropriated all subordinated debt holders of SNS Bank and SNS REAAL.

36. Finally, the Dutch State indicates that it will restructure SNS REAAL. The Dutch State […]. At the same time, the Dutch State is considering setting the property finance loans aside in a separate bad bank structure so as to improve the viability of the other banking activities and to facilitate an exit.

37. The Dutch State has committed to develop the details of the restructuring further in a restructuring plan, which it will submit within six months from the date of this decision.

III.2. Commitments of the Dutch State

38. The Dutch State has provided the following commitments:

Acquisition ban

39. Subject to the following, SNS REAAL will not acquire any stake in any undertaking. This commitment covers both undertakings which have the legal form of a company and packages of assets which form a business. This commitment will apply for the period starting from the date of the Commission's Rescue Decision until the Restructuring Decision is taken by the Commission. Notwithstanding this prohibition, SNS REAAL may, after obtaining the Commission's approval, acquire a stake in an undertaking if that is in exceptional circumstances necessary to restore financial stability or to ensure effective competition. SNS REAAL may also acquire stakes in undertakings provided that the purchase price paid by SNS REAAL is less than 0.01% of the balance sheet size of SNS REAAL at the date of the Commission's decision (Rescue Decision) and that the cumulative purchase price paid by SNS REAAL for all such acquisitions over the whole restructuring period is less than 0.025% of the balance sheet size of SNS REAAL at the date of the Commission's decision (Rescue Decision). Activities not falling under the acquisition ban are acquisitions that take place in the ordinary course of the banking business in the management of existing claims towards ailing firms.

24 That step would bring SNS REAAL in line with all other Dutch insurance companies that have been instructed by DNB in 2011 to unwind intercompany positions.

25 Mentioned in recital (3).

Hybrid debt call and coupon ban

40. SNS REAAL commits to refrain from making any payments on hybrid debt instruments, unless those payments stem from a legal obligation, and not to call or buy back those instruments without prior approval of the Commission.

Advertisement ban

41. SNS REAAL will not advertise the fact that it is State-owned nor make any reference to any State support received in its communications with existing or potential customers or investors for the period starting from the date of the Commission's Rescue Decision until the Restructuring Decision is taken by the Commission. Notwithstanding this prohibition, SNS REAAL may refer to the fact that it is State-owned and to any other State support it has received whenever such reference is required under applicable legislative or regulatory provisions.

Commitment to comply with EU remuneration rules for measure B2

42. The Dutch State commits to implement the bridge loan in line with the rules and case-law practice of the European Union. This implies that the interest rate will be at least the funding rate of the Dutch State to be increased by a guarantee as defined in the DG Competition Staff working document on the application of State aid rules to government guarantee schemes covering bank debt to be issued after 30 June 2011[26].

Commitment to notify additional measures

43. The Dutch authorities commit to notify additional aid measures and to not implement them before having received the approval of the Commission.

Commitment to notify restructuring/break-up plan

44. The Dutch authorities commit to notify a restructuring plan within six months after the date of the Commission's decision (Rescue Decision) in line with the Commission's Restructuring Communication.

IV. ASSESSMENT OF THE MEASURES

IV.1. Existence of State Aid

45. The Commission first has to assess whether the measures constitute State aid within the meaning of Article 107(1) TFEU. According to Article 107(1) of the TFEU, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, insofar as it affects trade between Member States, be incompatible with the internal market.

46. It follows that a measure qualifies as State aid if it meets the following four (cumulative) criteria: a) the measure must be financed by a Member State or through State resources; b) the measure must grant a selective advantage to certain

[26] http://ec.europa.eu/competition/state_aid/legislation/phase_out_bank_guarantees_2011.pdf.

undertakings or the production of certain goods; c) the measure must distort or threaten to distort competition; d) the measure must have the potential to affect trade between Member States.

47. With respect to the notified measures, the Commission observes that they are all financed directly by the Member State.

48. Moreover, each of the measures also provides a selective advantage to SNS REAAL (or its subsidiaries). They are ad hoc measures which are not available to the company's competitors. Thanks to measure A, SNS Bank can continue to comply with regulatory requirements, which is a necessary pre-requisite to stay on the market. Measure B1 and B2 have only been made available to SNS REAAL and help to avoid a bankruptcy of the holding entity, which, given the links with its subsidiaries, would also have had a negative impact on the company's subsidiaries.

49. Even though the Dutch authorities have made it clear that they are acting for reasons of financial stability and not in order to act in accordance with the behaviour of a private economic operator, the Commission observes that in any event the measures are not in line with the market economy investor principle (hereinafter the "MEIP"). In fact, SNS REAAL unsuccessfully tried to convince private investors to provide it with a comprehensive solution as already indicated in recital (25). It is therefore clear that private investors in the current market circumstances did not want to rescue SNS REAAL on similar terms to those accepted by the State. No private investor would have injected at the same conditions a similar amount of money in SNS Bank and a private investor would also not have injected capital or granted a bridge loan to SNS REAAL, which - for its cash flows - was fully dependent on its operational subsidiaries and their survival. Consequently, it can be confirmed that the Dutch State did not take the measures listed in recital (31) to obtain a risk-adjusted economic return in line with market conditions on its investment but to avoid a major disruption of the Dutch economy.

50. The measures distort or threaten to distort competition as they provide SNS REAAL and its subsidiaries with an advantage that competitors have not received. It was indeed only thanks to the measures that SNS REAAL and its subsidiaries have been able to stay in the market. The fact that the new measures follow after earlier State aid measures increases the distortive effect of the more recent measures.

51. The measures are likely to affect trade between Member States since SNS REAAL and its subsidiaries have some international activities (e.g. in property finance), while on the Dutch home market SNS REAAL and its subsidiaries compete with subsidiaries of foreign financial players.

52. The Dutch State acknowledges that the notified measures entail State aid.

53. Taken into account the above, the Commission concludes that the measures listed in recital (31) constitute State aid within the meaning of Article 107(1) TFEU.

54. Finally, the Commission observes that the Dutch State and SNS REAAL in the amendment decision committed to a repayment schedule to repay the outstanding balance of the CT1 capital (including 50% repayment premium) which it had received in 2008, as described in section II.2. In that respect, the Commission notes that the repayment schedule for those CT1 securities has not been respected. Possible aid resulting from the waiving of the repayment schedule commitment by the Dutch State will be assessed in the restructuring decision.

IV.2. Compatibility of State Aid

IV. 2. 1. Legal basis

55. Article 107(3)(b) TFEU provides a legal basis for the Commission to declare aid compatible with the internal market if it is intended "*to remedy a serious disturbance in the economy of a Member State*". In that regard, it is however important to recall that the General Court has emphasised that Article 107(3)(b) TFEU should be applied restrictively[27], so that the economic disturbance should affect the entire Member State and not merely have a regional dimension.

56. The Commission notes that SNS REAAL is an important Dutch financial institution. SNS Bank has a nation-wide branch network and sizeable market positions for a number of important financial products. In the context of the uncertainties surrounding the recovery from the global financial and economic crisis, the failure of SNS Bank would create a serious disturbance for the Dutch economy. Given the interwoven character of SNS REAAL with its subsidiaries[28], the same reasoning applies for the former. Consequently, the Commission considers that State aid granted by the Dutch State can be examined and assessed under Article 107(3)(b) TFEU.

57. In line with point (15) of the Commission Communication on the application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis (hereinafter "the Banking Communication")[29], in order for an aid to be compatible under Article 107(3)(b) TFEU it must comply with general criteria for compatibility under Article 107(3) TFEU, which imply compliance with the following conditions:

    (a) Appropriateness: the aid has to be well-targeted in order to be able to effectively achieve the objective of remedying a serious disturbance in the economy, which would not be the case if the measure is not appropriate to remedy the disturbance.

    (b) Necessity: the aid measure must, in its amount and its form, be necessary to achieve the objective. Thus, it must be the minimum amount necessary to reach the objective and take the most appropriate form to remedy the disturbance. As developed later in recitals (58) to (60), the Commission has detailed in a number of Communciations minimum remuneration criteria for different aid instruments which are relevant in ascertaining if there is compliance with the general principle of "necessity".

    (c) Proportionality: the positive effects of the measure must be properly balanced against the distortions of competition, in order for the distortions to be limited to the minimum necessary to reach the measure's objectives. A proper remuneration of the aid instruments concerned – as will be developed in recitals (58) to (60) – helps to limit undue distortions of competition.

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[27] See Joined Cases T-132/96 and T-143/96 *Freistaat Sachsen and Volkswagen AG* v *Commission* [1999] ECR II-3663, paragraph 167.

[28] In that regard, the Dutch State pointed at both operational links (e.g. the fact that risk management, ICT and human resources tasks were performed by the holding company) and financial links (e.g. EUR 650 million inter-company funding) as described in detail in recital (34).

[29] OJ C 270, 25.10.2008, p. 8.

58. With respect to recapitalisation measures (such as measure A and measure B1), the three principles of the Banking Communication have been further elaborated in the Recapitalisation Communication[30] and the 2011 Prolongation Communication[31]. The Commission will therefore also assess those recapitalisation measures in the light of those Communications.

59. With respect to recapitalisation instruments, the Recapitalisation Communication contains a number of important general principles such as the need for a proper remuneration for the State. The 2011 Prolongation Communication further clarifies a number of important issues specifically for recapitalisations in the form of ordinary shares. Point (8) of the 2011 Prolongation Communication underlines for instance that capital injections should be subscribed at a sufficient discount to the share price (after adjustment for the "dilution effect"), immediately prior to the announcement of the capital injection to give a reasonable assurance of an adequate remuneration for the State.

60. With respect to the liquidity measure (measure B2), the general principles of the Banking Communication apply, which have later been updated and made more explicit for instance in the DG Competition Staff working document on the application of State aid rules to government guarantee schemes covering bank debt to be issued after 30 June 2011[32].

IV. 2. 2. Assessment[33]

(i) *Appropriateness*

61. First, the Commission takes note of the arguments of the Dutch State (see recital (33)) that it could not allow SNS Bank to go bankrupt because of the wider implications for the Dutch financial system. With respect to the form of the intervention, capital injections into banks (such as measure A) are in principle an appropriate instrument to help banks to resist the consequences of the financial crisis, providing a cushion to absorb losses, to fulfil regulatory capital requirements, to ensure lending to the real economy and to prepare the bank´s return to long-term viability or its orderly winding up. The Commission takes further note of the DNB letter of 24 January 2013[34] that SNS Bank needed to strengthen its capital position. Therefore, taking into account the regulatory context and the concrete intervention of DNB, a recapitalisation of SNS Bank was the only appropriate instrument to prevent SNS Bank from entering bankruptcy and to avoid a serious disruption of the Dutch economy.

62. With respect to the recapitalisation of SNS REAAL (measure B1) and the bridge loan (measure B2), the Commission takes note of the fact that SNS REAAL was closely linked to its subsidiaries and that therefore, as explained in recital (34) the

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[30] Communication from the Commission – The recapitalisation of financial institutions in the current financial crisis: limitation of aid to the minimum necessary and safeguards against undue distortions of competition, OJ C 10, 15.1.2009, p. 2

[31] Communication from the Commission – The application from 1 January 2012 of State aid rules to support measures in favour of banks in the context of the financial crisis, OJ C 356, 6.12.2011, p. 7.

[32] http://ec.europa.eu/competition/state_aid/legislation/phase_out_bank_guarantees_2011.pdf

[33] For similar assessments see for instance Commission Decision SA.34820 Rescue measures in favour of BFA/Bankia, OJ C 220, 25.07.2012, p. 7 and Commission Decision SA.35137 Rescue aid to Monte dei Paschi di Siena, not yet published.

[34] See recital (24).

Dutch State also had to rescue the holding company. A recapitalisation is indeed an appropriate measure to deal with matters like the reduction of the double leverage, disentanglement and costs related to other intangible assets and liabilities (e.g. pension liabilities). To bridge the temporary liquidity needs related to upcoming maturity dates, a bridge loan is also an appropriate instrument.

(ii) *Limitation of the aid to the minimum necessary*

63. Second, capital interventions must be done on terms that minimise the amount of aid as regards the amount of the measure as well as the conditions at which it is provided.

64. The Commission also observes that the size of the capital increase was such as to allow SNS Bank to continue to meet regulatory requirements and to prepare for its in-depth restructuring. SNS REAAL was also provided with the means it needed to ensure it to continue to operate as a going-concern. In that regard, the Commission also takes note of the argument of the Dutch State (see recital (35)) that the recapitalisation figures are based on a thorough analysis of the financial supervisor. In view of the arguments provided in recital (34), the Commission sees no reason to dispute that argument.

65. With respect to the remuneration of the bridge loan (measure B2), the Commission observes that the Dutch State has committed to bring the remuneration in line with the Commission's minimum requirements for liquidity measures.[35]

66. The Commission also observes that the nationalisation preceding the recapitalisation resulted in far-reaching burden-sharing by shareholders and hybrid capital holders. With respect to the remuneration of the recapitalisations (measure A and B1), the Commission observes that existing shareholders have been completely wiped out. The capital needs were decreased proportionately to the losses imposed on shareholders and hybrid capital holders through the nationalisation process, ensuring that the aid is limited to the minimum.

67. The limitation of the aid to the minimum is further ensured through the commitments to an acquisition ban and a hybrid call and coupon ban which ensure that all resources are kept in SNS REAAL and its subsidiaries.

(iii*) Proportionality*

68. Third, the Commission has to verify whether the aid is proportionate. In that respect, the Commission observes that the aid measures comply with the minimum remuneration requirements set forward by the respective Communications, which helps to limit undue distortions of competition.

69. The Commission also takes positive note of the commitment to comply with an acquisition ban and an advertising ban. Those commitments should help to avoid that competitors are unnecessarily affected by the aid given to SNS REAAL and its subsidiaries.

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[35] For recent case practice see for instance Commission Decision in case SA.35144 Prolongation of Hungarian liquidity scheme for banks, OJ C 286, 21.09.2012, p. 2 and Commission decision in case SA.34811, 6th extension of Polish banking guarantee scheme, not yet published.

70. Distortions of competition resulting from the notified measures should be further addressed in the restructuring plan which the Dutch State committed to submit within six months.

71. Insofar as it relates to the rescue phase, the Commission considers that the Dutch State has offered sufficient commitments to limit the distortions of competition resulting from the aid to an acceptable degree and therefore finds the aid proportionate.

(iv) *Conclusion on compatibility of aid*

72. To conclude, the Commission considers that measures A, B1 and B2 are appropriate, necessary and proportionate to rescue SNS REAAL in the short-term and will for the time being not entail an undue distortion of competition.

73. The Commission however reiterates that its temporary approval of those measures as rescue aid does not prejudge the Commission's position on the final restructuring plan to be provided by the Dutch State at the latest six months from the date of the present decision and that the aid is approved only until the Commission takes the final decision on the restructuring plan submitted by the Dutch State.

74. In that regard, the Commission observes that the total aid amount for SNS REAAL has become substantial and that there has been repeated aid. Against that background, in-depth restructuring will be needed. Any surviving entities will have to demonstrate their viability, and the final restructuring plan will have to contain sufficient burden-sharing measures and other necessary measures to avoid undue distortions of competition

IV.3. Conclusions of assessment

75. The Commission observes that the measures listed in recital (31) constitute State aid within the meaning of Article 107(1) TFEU.

76. The Commission finds that those aid measures can be considered temporarily compatible with the internal market for reasons of financial stability on the basis of Article 107(3)(b) TFEU, in light of the commitments of the Dutch State referred to in recitals (38) to (44), until the Commission takes a final decision on the restructuring plan.

77. In that regard, the Commission recalls that the Dutch State has committed to submit a restructuring plan in line with the Restructuring Communication within six months after the date of this decision.

V. Conclusion

The Commission has accordingly decided:

- to consider the aid to be compatible with the internal market pursuant to Article 107(3)(b) of the Treaty on the Functioning of the European Union, until the Commission takes a final decision on the restructuring plan, which the Netherlands will submit within six months from the date of this decision.

The Commission notes that the Dutch State exceptionally accepts that the adoption of the Decision be in the English language.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site:

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

European Commission
Directorate-General for Competition
State Aid Greffe
J70 03/225
B-1049 Brussels
Fax No: +32-2-296 12 42

Yours faithfully,
For the Commission

Joaquín ALMUNIA
Vice-President

Annex I

Commitments

1. Acquisition ban

   Subject to the following, SNS REAAL will not acquire any stake in any undertaking. This covers both undertakings which have the legal form of a company and packages of assets which form a business. This commitment will apply for the period starting from the date of the Commission's Rescue Decision until the Restructuring Decision is taken by the Commission. Notwithstanding this prohibition, SNS REAAL may, after obtaining the Commission's approval, acquire a stake in an undertaking if that is in exceptional circumstances necessary to restore financial stability or to ensure effective competition. SNS REAAL may also acquire stakes in undertakings provided that the purchase price paid by SNS REAAL is less than 0.01% of the balance sheet size of SNS REAAL at the date of the Commission's decision (Rescue Decision) and that the cumulative purchase price paid by SNS REAAL for all such acquisitions over the whole restructuring period is less than 0.025% of the balance sheet size of SNS REAAL at the date of the Commission's decision (Rescue Decision). Activities not falling under the acquisition ban are acquisitions that take place in the ordinary course of the banking business in the management of existing claims towards ailing firms.

2. Hybrid debt call and coupon ban

   SNS REAAL commits to refrain from making any payments on hybrid debt instruments, unless those payments stem from a legal obligation, and not to call or buy back these instruments without prior approval of the Commission.

3. Advertisement ban

   SNS REAAL will not advertise the fact that it is State-owned nor make any reference to any State support received in its communications with existing or potential customers or investors for the period starting from the date of the Commission's Rescue Decision until the Restructuring Decision is taken by the Commission. Notwithstanding this prohibition, SNS REAAL may refer to the fact that it is State owned and to any other State support it has received whenever such reference is required under applicable legislative or regulatory provisions.

4. Commitment to comply with EU remuneration rules for measure B2

   The Dutch State commits to implement the bridge loan in line with the rules and case-law practice of the European Union. This implies that the interest rate will be at least the funding rate of the Dutch State to be increased by a guarantee as defined in the DG Competition Staff working document on the application of State aid rules to government guarantee schemes covering bank debt to be issued after 30 June 2011[36].

[36] http://ec.europa.eu/competition/state_aid/legislation/phase_out_bank_guarantees_2011.pdf

5. Commitment to notify additional measures

   The Dutch commits to notify additional aid measures and to not implement them before having received the approval of the Commission.

6. Commitment to notify restructuring/break-up plan

   The Dutch authorities commit to notify a restructuring plan within six months after the date of the Commission's decision (Rescue Decision) in line with the Commission's Restructuring Communication.