EUROPEAN COMMISSION

Brussels, 5.11.2013
C(2013) 7443 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.

Subject: State aid n° SA.29832 (2013/N-2 and MC10/2009) (ex SA.27991 (C10/2009), ex SA.28855 (N373/2009), ex SA.33305 (2012/C)) – The Netherlands
Amendment to the restructuring plan of ING

Sir,

I Procedure

(1) By decision of 11 May 2012[1,2] (hereafter "the Restructuring Decision"), the Commission declared a number of State aid measures[3] granted to ING in the framework of its restructuring plan compatible with the internal market.

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1 On 18 November 2009, the Commission had already decided to approve the restructuring aid granted to ING and its restructuring plan but on 2 March 2012, the General Court annulled the first and second paragraphs of Article 2 of that decision. Therefore, the Commission was obliged to take a new decision.

2 Commission Decision SA.28855 (ex N373/2009, ex C10/2009, ex N528/2008), OJ C260, 29.8.2012, p. 1.

3 For a full list of the State aid measures approved, see recitals (39) to (67) of the Restructuring Decision.

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(2) On 31 October 2012, the Netherlands submitted a formal request to amend the Restructuring Decision. On 16 November 2012, the Commission adopted a new decision (hereafter "the First Amendment Decision"[4]) confirming the compatibility of the State aid measures in favour of ING based on the amended set of commitments set out in Annex I to that decision. Point (m) of that Annex I provides that a Monitoring Trustee will monitor the proper implementation of the restructuring plan.

(3) On 24 June 2013, the Monitoring Trustee responsible for among other things the divestment programme submitted its first general progress report. At the request of the Commission, the Monitoring Trustee also prepared a special ad-hoc report on the divestment of ING Life Japan ("ILJ"), which was submitted on 5 September 2013.

(4) On 26 August 2013 ING had provided a general presentation on the implementation of its restructuring plan and on 12 September 2013 it sent the Commission another presentation on the divestment process of ILJ. On 4 September 2013, ING also submitted correspondence from its supervisor De Nederlandsche Bank ("DNB"), while on 12 September 2013 ING also provided the Commission with an overview of all the divestments it had made as of September 2013 whether or not they had been made pursuant to commitments. The Netherlands also updated the Commission on the implementation of the restructuring plan of ING.

(5) The Commission had a number of meetings and telephone conferences with representatives of the Dutch authorities and ING during the same period.

(6) On 30 October 2013, the Netherlands submitted to the Commission a formal request to amend the Annex to the Restructuring Decision and in particular the divestment deadline for the divestment of 50% of ILJ as it results from point (b) of Annex I to the First Amendment Decision.

(7) On 30 October 2013, the Netherlands submitted to the Commission a formal request – in line with the approach envisaged in point (h) of Annex I to the First Amendment Decision – to call a USD 2 billion Tier 1 instrument and to launch a capital-for-capital exchange for seven Tier 2 securities.

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

II Facts

1. Description of the beneficiary

(9) ING is a Dutch bankassurance holding company which has both banking and insurance activities. In the first half 2013 the core Tier 1 ratio of the bank amounted to 11.8%. At that time the insurance subsidiary ING Insurance/IM[5] Eurasia[6] reported a Solvency I ratio of 304%. At the end of the first half of 2013, ING had reduced its double leverage[7] to EUR 4.4 billion down from EUR 7.1 billion at the end of the first quarter of 2013. In the first half of 2013, ING realised

[4] SA.33305 (2012/C) and SA.29832 (2012/C); not yet published.

[5] Investment Management.

[6] ING is divesting ING Insurance/IM Europe and ING Insurance/IM Asia separately, but part of its reporting still relates to the combined entity ING Insurance/IM Eurasia.

[7] Double leverage means that, next to (external) debt at subsidiary level, a holding company can finance (part of) its equity investments in subsidiaries with debt.

a net result of EUR 2 592 million, which compares to EUR 2 020 million over the same period in 2012. The company's net result over the full year 2012 came in at EUR 3 894 million[8].

(10) A detailed description of ING's business activities can be found in recitals (20) to (37) of the Restructuring Decision.

(11) ILJ contains two separate business segments:

(i) a corporate owned life insurance ("COLI") business; and

(ii) a closed variable annuities ("VA") book for which ING has transferred the economic risk to a large extent to ING Re (a Dutch-regulated reinsurance company which is part of ING Insurance/IMEurope).

(12) The COLI division is mainly active in the corporate life and health insurance segment, whereas the VA business targeted the retail segment with retirement-related survival benefit and death benefit policies.

(13) The VA portfolio – which at the end of the second quarter of 2013 represented 71% of the insurance liabilities of ILJ - is in run-off[9]. By the end of 2015, the book is projected to have decreased to 55% of the size it was in the third quarter 2008. ING foresees further declines to 40% and 20% respectively by the end of 2016 and the end of 2018.

(14) ILJ had at the end of the first half of 2013 total assets of EUR 29 471 million and technical provisions of EUR 26 560 million. For comparision, the continuing operations of ING Insurance/IM Eurasia[10] have assets of EUR 114 007 million and technical provisions of EUR 90 018 million.

2. The First Amendment Decision

(15) In run-up to the adoption by the Commission of the First Amendment Decision, the Netherlands and ING committed to a divestment schedule for all the geographic insurance subsidiaries of ING. That divestment schedule is described in detail in point (b) of Annex I to that decision under the chapter of the balance sheet reduction commitments:

"…ING commits to divest more than 50% of ING Insurance/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, 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. In addition, for the US Insurance/IM business, ING commits to divest at least 25% of the business before 31 December 2013.

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

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8 http://www.ing.com/Our-Company/Investor-relations/Results-Interim-Accounts/Latest-Quarterly-Results.htm

9 Recital (77) of the Restructuring Decision already recorded that ING had completed its commitment to stop selling single premium variable annuities in Japan.

10 In its reporting ING still makes reference to ING Insurance/IM Eurasia but the Asian entities, which are part of the separate divestment process, are in the "held for sale" category (see also http://www.ing.com/Our-Company/Press-room/Press-release-archive/PressRelease/ING-records-2Q13-underlying-net-profit-of-EUR-942-million.htm).

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. …"

(16) In point (h) of Annex I to the First Amendment Decision, the Dutch State and ING also committed to not call hybrid instruments unless authorised to do so by the Commission:

"… 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) …"

3. Implementation of ING's restructuring plan

(17) In the framework of the First Amendment Decision, the Dutch State and ING committed that ING would repay the remaining State aid following a pre-determined repayment schedule. ING would repay in total EUR 4.5 billion in four equal tranches of EUR 1.125 billion (on 26 November 2012, 6 November 2013, 31 March 2014 and 15 May 2015). ING repaid the tranche of 26 November 2012 as foreseen.[11]

(18) On 1 May 2013, ING Insurance/IM US – which was later renamed Voya – was brought to the market in the form of an IPO. Overall, ING brought its stake in Voya down by 43%%, which leaves it now with a 57% participation as per end October 2013.[12]

(19) As regards ING Insurance/IM Asia, ING will not divest 50% of ILJ in 2013, but the other parts of the Asian entity have been divested, including the subsidiaries in Hong Kong, Macau and Thailand[13], as well as Life Korea[14].

(20) NN Bank – which was a key compensatory measure to create more competition on the Dutch retail banking market – formally started operations on 1 July 2013 as soon as its banking licence entered into force.

4. Monitoring Trustee report on the ILJ divestment process

(21) On 28 August 2013, the Commission asked the Monitoring Trustee to produce an ad hoc report on ILJ which was submitted on 5 September 2013[15].

[11] http://www.ing.com/Our-Company/Press-room/Press-release-archive/PressRelease/ING-pays-EUR-1.125-billion-to-Dutch-State-1.htm.

[12] On 21 October 2013, ING announced its plans to divest a further stake (http://www.ing.com/Our-Company/Press-room/Press-release-archive/PressRelease/ING-announces-size-of-planned-sale-of-shares-in-ING-U.S.-1.htm). On 24 October 2013, ING announced that a sale of shares to the underwriters further reduced ING's ownership stake in Voya to approximately 57%. (http://www.ing.com/Our-Company/Press-room/Press-release-archive/PressRelease/ING-prices-offering-of-ING-U.S.-shares-at-USD-29.50-per-share-1.htm)

[13] http://www.ing.com/Our-Company/Press-room/Press-release-archive/PressRelease/ING-completes-sale-of-insurance-units-in-Hong-Kong-Macau-Thailand.htm.

[14] http://www.ing.com/Our-Company/Press-room/Press-release-archive/PressRelease/ING-to-sell-ING-Life-Korea-to-MBK-Partners-1.htm.

[15] The Commission also received information on the divestment process of ILJ from one potential buyer who shared in notes dated 18 March, 10 April and 22/23 October 2013 its views on the divestment

(22) In that report, the Monitoring Trustee described in detail the sales efforts and all the alternatives for structuring a sales deal that ING had explored. For all those alternatives, the Monitoring Trustee reconstructed the divestment process and verified the underlying documentation and evidence. The Monitoring Trustee investigated for instance documents in which stakeholders (such as regulators) explained their viewpoint. Finally, the Monitoring Trustee evaluated whether there was adequate evidence for each alternative that ING deemed infeasible.

(23) The Monitoring Trustee was provided with a letter from DNB to ING dated 1 July 2013 and another letter of the Japanese regulator ("JFSA") to its Dutch counterpart dated 3 July 2013. In those letters, the regulators commented on the regulatory approval process.

(24) In its letter of 1 July 2013, DNB explains that:

[…] [*]

and that:

[…]

(25) The Monitoring Trustee reported that ING's sales processes were thorough. The Monitoring Trustee submitted that ING investigated a broad range of alternatives where each process was run with sufficient attention.

(26) Based on the evidence obtained, the Monitoring Trustee observed that all alternatives considered by ING proved not to be feasible.

5. Position of the Netherlands

(27) The Netherlands submits that ING has not been able to divest ILJ, even though ING has explored all conceivable options. It explains that in the prevailing market circumstances, it was not possible to reconcile the (limited) interest of market players with the applicable legal framework and the conditions set by DNB and JFSA.

(28) Therefore, the Netherlands proposes the following alternative commitments:

(i) Except for ING Life Japan, ING will divest 100% of its interest in the remaining Asian Insurance/IM businesses in which ING currently has a stake of 50% or more, by signing binding agreements before year-end 2013;

(ii) ING will divest ING Life Japan in line with the deadlines for divesting ING Insurance/IM Europe[16];

(iii) ING will advance the deadline (of 31 December 2018) to divest 100% of ING Insurance/IM Europe by two years, i.e. to 31 December 2016.

(29) The Netherlands concedes that ING is not meeting the original divestment deadline for the divestment of 50% of ILJ but it argues that by accelerating the divestment

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process. The potential buyer indicated that it was willing to acquire ILJ but would require some form of on-going reinsurance arrangement, with appropriate collateral and a certain level of guarantee. That stance implies that the potential buyer would not assume the economic risk of the asset and in turn implies that the potential buyer would not assume the economic risk of the VA business.

[*] Confidential information

[16] As regards the divestment of ING Insurance/IM Europe, ING announced already to the investor community that the divestment process might start as early as 2014 (http://www.ing.com/Our-Company/Investor-relations/Presentations/Analyst-Presentations.htm).

deadline of 100% of ING Insurance/IM Europe, the overall level of burden-sharing is maintained.

(30) The Netherlands also emphasises that ING has undertaken additional divestments on top of those that were the objects of the commitments given by the Netherlands to the Commission. ING provided the Commission with a document showing that ING had also concluded a number of additional divestments not foreseen in those commitments. In total, the latter divestments amount to EUR 42 billion (measured in terms of total assets) and they include ING Real Estate Investment Management[17], ING Car Lease[18], the UK portfolio of ING Direct[19] and ING Direct Canada[20].

(31) The Netherlands and ING also seek authorisation from the Commission to call a USD 2 billion Tier 1 instrument[21] and to exchange seven Tier 2 instruments[22] at a price between market price and par for other capital instruments with rates that are in line with market conditions. Those Tier 2 instruments have a total nominal amount of approximately EUR 4.8 billion. The Netherlands and ING explain that they have first issued another capital instrument of similar size[23] to ensure that the total capital position of ING remains the same. Moreover, ING and the Netherlands commit that they will use the benefit from the transactions to accelerate the repayment schedule of the State aid. In other words, the repayment of 31 March 2014 will be increased by the benefit, while the repayment of 15 May 2015 will be correspondingly reduced. The total repayment amount as implied by the repayment schedule described in recital (17) remains unchanged at EUR 4.5 billion.

III. Assessment

(32) A restructuring decision can in principal be amended by the Commission where the amendment does not entail any additional aid and the modification is based on new commitments which can be considered equivalent to those originally provided.[24] In that situation, the existing aid measures would remain compatible on the basis of Article 107(3)(b) TFEU if the overall balance of the original decision remained. In order for the original balance to remain intact, the altered commitments should not negatively affect the viability of the aid beneficiary, with the overall set of commitments should remain equivalent in terms of burden-sharing and

[17] http://www.ing.com/Our-Company/Press-room/Press-release-archive/PressRelease/ING-Completes-Divestment-of-ING-REIM.htm.

[18] http://www.ing.com/Our-Company/Press-room/Press-release-archive/PressRelease/ING-closes-sale-Car-Lease-activities-to-BMW.htm.

[19] http://www.ing.com/Our-Company/Press-room/Press-release-archive/PressRelease/ING-completes-sale-of-ING-Direct-UK.htm.

[20] http://www.ing.com/Our-Company/Press-room/Press-release-archive/PressRelease/ING-completes-sale-of-ING-Direct-Canada.htm.

[21] The instrument with Cusip-number: 456837806.

[22] The instruments with the following ISIN-numbers: XS0240868793; XS0255306671; XS0256836171; XS0268815528; XS0275827292; XS0306992545; NL0000113892.

[23] On 16 September 2013, ING issued a USD 2 billion capital instrument with a coupon of 5.8%.

[24] For other similar decisions see, for instance, SA.29833 KBC – Extension of the target date of certain divestments by KBC and Amendment of restructuring commitments, OJ C 135, 9.5.2012, p. 5 : SA.29833 KBC – Accelerated phasing-out of the State Protection measure and amendments to the KBC restructuring plan, OJ C 163, 8.06.2013, p. 1; SA.34539 Commerzbank – Amendment to the restructuring plan of Commerzbank, OJ C 177, 20.06.2012, p. 20.

compensatory measures taking into account the requirements of the Restructuring Communication.[25]

(33) The Commission observes that the requested amendment does not entail any additional State aid to ING. The requested amendment concerns merely the exchange of one commitment with other commitments. While the Netherlands will not ensure that ING divests a part of all entities of ING insurance/IM Asia by 31 December 2013 as initially committed (since ING will not divest 50% of ILJ in time), the Member State has notified a number of additional measures regarding ING which the Commission should now examine.

Viability of ING

(34) 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 ING's viability reached in the Restructuring Decision and confirmed in the First Amendment Decision.

(35) The notified amendments are relevant for the viability of ING as the divestment of the insurance subsidiaries and the associated unwinding of the double leverage reduced the complexity of ING and therefore contributed to the restoration of ING's viability.

(36) First, the fact that ING has realised large profits in 2012 and the first half of 2013 and that ING's capital ratios are in healthy territory as described in recital (9) is positively noted. Moreover, ING has also been able to reduce its double leverage in a substantial manner since the beginning of the year. ING has repaid a tranche of State aid on 26 November 2012, which illustrates that it is well on its way to restoring viability without State aid.

(37) Second, while ING will keep 50% of ILJ beyond the deadline of 31 December 2013, ILJ will be divested in line with the divestment schedule for ING Insurance/IM Europe. Therefore, ING will *de facto* also reduce its stake in ILJ to below 50% by 31 December 2015 at the latest. While the intermediate exposure to Japanese insurance activities will be somewhat higher than was foreseen under the restructuring plan examined in the First Amendment Decision, the end result remains however the same. ING will dispose of the entirety of ILJ by 31 December 2016 at the latest. In addition, the Commission recalls that via the reinsurance contract the economic risk of the VA portfolio is already to a large extent borne by ING Re, which is part of ING Insurance/IM Europe.

(38) Third and most importantly, the Netherlands have brought forward one of the key simplification measures i.e. the full divestment of ING Insurance Europe by a full two years. As a result, the full divestment of all insurance subsidiaries will be finalised by the end of 2016 (and not by the end of 2018) and double leverage, one of the Commissions biggest concerns with respect to ING, will be terminated by that earlier date.

Burden-sharing

(39) The amendments to the restructuring plan regarding the divestiture period for ILJ concern burden-sharing. The divestments of ING Insurance/IM were supposed to

[25] 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.

enable ING to obtain the necessary resources to cover the restructuring plan's costs and in particular to repay the State aid. Therefore, the Commission will have to analyse whether the proposed amendments are at least equivalent to the original commitments in terms of burden-sharing.

(40) First, the Commission observes that the repayment schedule of ING is not put into question.

(41) Second, the Commission acknowledges that by not selling ILJ, ING cannot book potential divestment proceeds associated with that deal. However, the Commission takes note that ING made full efforts to divest ILJ, which was confirmed by the Monitoring Trustee as described in recitals (21) to (26). Even more important in terms of neutralising the delay in booking such proceeds, in terms of divestments ING has done in any event more than it had committed to. It has thereby been generating additional proceeds to repay the aid. In 2013 it sold 43% of Voya rather than the 25% to which it was committed and also finalised a number of other divestments not foreseen in the commitments as listed in recital (30).

(42) Third, the Commission also takes into account the new commitment of the Dutch State which provides that except for ILJ ING will divest 100% of its interest in the remaining Asian Insurance/IM businesses in which ING currently has a stake of 50% or more, by signing binding agreements before year-end 2013.

(43) Finally, and above all, the Commission considers that by bringing forward the divestment of 100% of ING Insurance/IM Europa, ING will advance a considerable part of the divestments from 2018 to 2016. In sum, the Dutch State and ING thus provide appropriate compensation in terms of burden-sharing.

Distortions of competition

(44) ING's divestment programme was also examined by the Commission in terms of mitigating distortions of competition as the divestments reduced its market presence. However, the ILJ divestment was not a measure undertaken to address distortions of competition. Moreover, the Commission finds that the fact that ING will divest 100% of ING Insurance/IM Europe two years earlier more advantageous for competition in Europe than the partial extension of the deadline for the sale of the first part of ILJ. Moreover, as a result of the two-year advance NN Bank, which is part of ING Insurance/IM Europe, will now be sooner fully separated from ING than originally envisaged. Given the importance of the creation of NN Bank as a compensatory measure on the Dutch retail banking market, the Netherlands and ING have also provided adequate compensation in terms of compensatory measures.

Acceptance of the hybrid calls

(45) As regards the repayment schedule, the Commission accepts the hybrid-related request described in recital (31). The Commission notes that the Tier 1 call is financed by another capital instrument so that the total capital position remains the same, and the terms of the transaction are in line with the Commission's requirements. As for the Tier 2 capital-for capital exchange, the Commission notes that also that transaction will keep the total amount of capital unchanged. Moreover, the Commission notes positively the fact that the benefits from the two transactions (i.e. the Tier 1 call and the Tier 2 capital-for-capital exchanges) will be

used to accelerate the repayment schedule as the repayment of 31 March 2014 will be increased by the benefit of the transaction, while the repayment of 15 May 2015 will be correspondingly reduced.

Conclusion

(46) In conclusion, the amendments do not have a negative impact on ING's viability, while the amended commitments are equivalent to the original ones in terms of burden-sharing and mitigation of competition distortions. The replacement of the original commitment by the new commitment does not alter the compatibility of the aid with the internal market as concluded by the Restructuring Decision and confirmed by the First Amendment Decision.

Decision

The proposed amended commitment which provides that ING Life Japan will be sold following the new deadlines for divesting ING Insurance/IM Europe, with the divestment deadline for 100% of ING Insurance/IM Europe brought forward by two full years from 31 December 2018 to 31 December 2016 and the above described hybrid transactions (i.e. the Tier 1 call and the Tier 2 capital-for-capital exchanges) do not affect the compatibility of the State aid provided to ING with the internal market on the basis of Article 107(3)(b) TFEU.

The Commission notes that the Netherlands exceptionally accepts the decision to be adopted in the English language.

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http://ec.europa.eu/competition/elojade/isef/index.cfm

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

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Yours faithfully,
For the Commission

Joaquín ALMUNIA
Vice-President