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The Netherlands - Restructuring Plan SNS Reaal 2013

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EUROPEAN COMMISSION

Brussels, 19.12.2013
C(2013) 9592 final

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| <p>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 [...].</p> | | <p>PUBLIC VERSION</p> <p>This document is made available for information purposes only.</p> |
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Subject: State aid SA.36598 (2013/N) – The Netherlands – Restructuring Plan SNS REAAL 2013

Sir,

1. Procedure:

- (1) By decision of 22 February 2013¹ (hereafter "the Rescue Decision"), the Commission temporarily declared a number of State aid measures² in favour of SNS REAAL compatible with the internal market until it had taken a final decision on the company's restructuring plan. The Dutch State was granted six months to submit such a plan.

¹ State aid decision SA.35382 – Rescue SNS REAAL 2013, OJ C 104, 10.04.2013, p. 3.

² For more information on the State aid measures approved in that Rescue Decision see recitals (29) to (31) of that decision.

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- (2) By electronic mail of 2 July 2013, the Dutch State submitted a first version of the restructuring plan, which contained additional State aid in the form of a bad bank measure³. An updated plan was sent on 18 July 2013 and the plan was officially notified on 19 August 2013. The Dutch State subsequently provided additional information on the restructuring plan. On 13 and 15 August 2013, the Dutch State provided spread-sheets with detailed financial forecasts and it answered questions of the Commission on the restructuring plan posed on 10 September 2013 on 23 and 26 September 2013. On 30 September and 3, 5, 8 and 20 November 2013, the Dutch State also provided financial projections of SNS REAAL in an adverse case scenario. The Dutch State also translated the restructuring plan of SNS REAAL into a commitment catalogue, a signed version of which was sent to the Commission on 12 December 2013. On 28 November 2013, the Dutch State also submitted the term sheet for a bridge loan it had granted to SNS REAAL.
- (3) On 13 September 2013, the Commission received a complaint on the pricing behaviour of SNS REAAL primarily in the insurance market (registered under SA number SA.37359). The complainant further developed its complaint during a teleconference with the Commission on 19 September 2013. On 27 September 2013, the Commission forwarded a non-confidential version of the complaint to the Dutch State, which sent a reaction on 24 October 2013. A non-confidential version of the reaction of the Dutch State was sent to the complainant on 5 November 2013. A reaction of the complainant arrived at the Commission on 20 November 2013.
- (4) With regard to issues pertaining to the asset valuation methodologies employed in the context of the bad bank measure, the Commission has drawn on technical assistance provided by an external expert under contract to the Commission (i.e. Professor Wim Schoutens). On 9 August 2013, the Dutch State submitted the valuation reports of Cushman and Wakefield ("C&W") and also provided the Commission with a report on the bad bank prepared by BlackRock Solutions⁴. The expert of the Commission submitted his final evaluation report on the bad bank on 5 November 2013. On 23 November 2013, the Dutch State also submitted an official validation letter – in accordance with point (20)(a) of the Impaired Asset Communication⁵ – of the Dutch financial supervisor ("DNB") on the bad bank measure. On 3 December 2013, the Dutch State also sent a consolidated summary of the main findings of C&W.
- (5) During the administrative process, the Commission had numerous meetings and teleconferences with representatives of the Dutch authorities and SNS REAAL.
- (6) The Netherlands for reasons of urgency exceptionally accept the present decision to be adopted in the English language.

³ At the time of the Rescue Decision, the Dutch State had already hinted at the possibility of additional aid as is recorded in recital (30) of that decision.

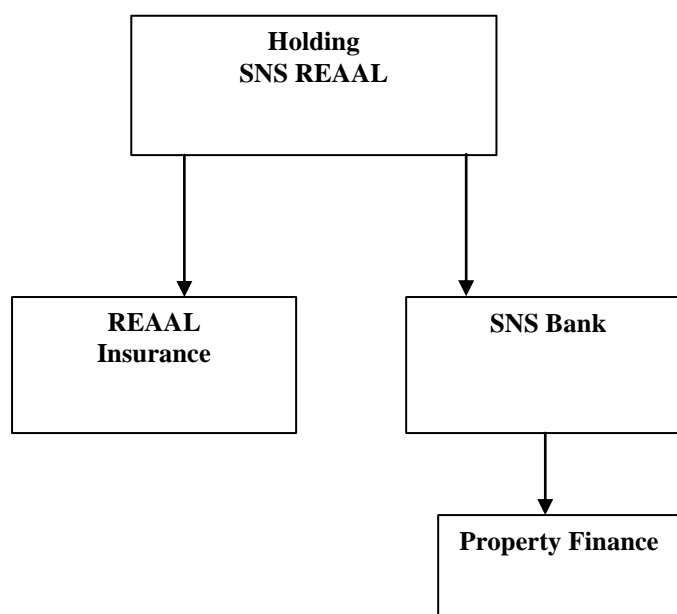
⁴ The Dutch authorities engaged BlackRock Solutions to advise on the process of separating SNS REAAL's property finance activities into a stand-alone bad bank. As part of that assignment BlackRock Solutions performed an independent assessment of the completeness and robustness of the data underlying the assets to be transferred and the reasonableness of the approach and methodology used to calculate the real economic value ("REV") of the property finance activities.

⁵ Communication from the Commission on the treatment of impaired assets in the Community banking sector, OJ C 72, 26.3.2009, p. 1.

2. Detailed description of the measures

2.1. Aid beneficiary

- (7) SNS REAAL is a bankinsurance holding company with separate banking (SNS Bank) and insurance (REAAL Insurance) subsidiaries. The company's organisational structure is depicted in the following chart :



- (8) In 2008 SNS REAAL had previously needed a EUR 750 million recapitalisation from the State, which was approved by Commission Decision of 28 January 2010 (hereafter the "2010 Restructuring Decision").⁶ That Decision was later amended by Commission Decision of 19 December 2011 (hereafter the "Amendment Decision").⁷ As part of the Amendment Decision, SNS REAAL committed to a repayment schedule of the remaining State aid (i.e. EUR 585 million plus a repayment penalty) as described in recital (16) of the 2010 Restructuring Decision.
- (9) At the end of 2012, SNS REAAL had total assets of EUR 133.6 billion; EUR 89.9 billion in SNS Bank and EUR 57 billion in the insurance subsidiary⁸. The bank's core Tier 1 capital amounted to EUR 1 253 million and RWA amounted to EUR

⁶ State aid Decision N371/2009 – Viability Plan SNS REAAL, OJ C 93, 13.4.2010, p.2; as described in recital (31) to (33) of that Decision, at the time the insurance subsidiary was at the basis of the company's troubles and from recital (67) it is clear that the 2008 aid amounted to 1.6% of risk weighted assets ("RWA") (see also recital (15) of the Rescue Decision).

⁷ State aid Decision SA.35382 – Re-notification capital injection of SNS REAAL, OJ C 33, 7.2.2012, p. 5.

⁸ Bank and insurance assets do not add up to total assets of SNS REAAL because of intra-group eliminations and unallocated group assets.

20.6 billion⁹, leading to a core Tier 1 ratio of 6.1%.¹⁰ In the insurance subsidiary, the minimum required solvency capital amounted to EUR 1 491 million and the available solvency capital was EUR 2 630 million. Those figures translate into a regulatory solvency ratio of 176%.¹¹ The double leverage ratio at the level of SNS REAAL amounted to 127.6%.

- (10) SNS REAAL is an important player on the Dutch banking and insurance market. Until 2004, SNS Bank's market share in mortgages (new production) ranged between 5 and 8%. Between 2004 and 2008, it increased to 10%, but then from 2008 to 2011 it decreased to approximately 5% before dropping still further to 2% in 2012. The market share in savings (volumes) was approximately 10% in 2012. In the market segment of individual life, REAAL Insurance had a market share of 18.3% (2012) and held the third-largest book¹². In the market segment of group life, the corresponding figures are a market share of 10.9% (2012) and the fifth-largest book. In the property and casualty market ("P&C"), REAAL is the eighth-largest player with a market share of around 5%.
- (11) In 2012, SNS REAAL made a large loss of EUR 972 million. That loss was to a great extent due to a negative result of EUR 813 million of the property finance activities, which have performed poorly since the beginning of the crisis in 2008 as is illustrated in Table 1:

Table 1 - Net result in EUR million

| In EUR million | 2008 | 2009 | 2010 | 2011 | 2012 |
|----------------------------|-------------|-----------|-------------|------------|-------------|
| SNS core Bank | 116 | 120 | 162 | 257 | 88 |
| REAAL Insurance | -550 | 196 | 277 | 193 | -147 |
| Group activities | -98 | -80 | -71 | -93 | -100 |
| Property finance | 28 | -219 | -593 | -243 | -813 |
| Reported net result | -504 | 17 | -225 | 114 | -972 |

Source: SNS investor relations presentations in the respective years

- (12) Because of the persistent problems in the property finance activities¹³ and after it became clear that last-minute negotiations between SNS REAAL, private parties and the Dutch State would not lead to a comprehensive solution¹⁴, the Dutch State decided on 1 February 2013 to nationalise SNS REAAL and its subsidiaries.

⁹ Converting insurance capital into "RWA" would result in theoretical RWA for SNS REAAL as a whole of EUR 39.2 billion (i.e. EUR 20.6 billion for the bank + EUR 1 491 million times 8% for the insurance subsidiary). For similar calculations see e.g. recital (67) of the 2010 Restructuring Decision.

¹⁰ Source: http://www.snsreaal.nl/jv_2012_en.pdf (SNS REAAL annual report 2012 page 293)

¹¹ Source : REAAL annual report page 160 (<http://www.snsreaal.nl/investors/reports/annual-reports-reaal.html>)

¹² Based on the level of the technical reserves.

¹³ The situation of the Dutch commercial property market is described for instance on page 23 and following of the DNB Overview of Financial Stability Report of Autumn 2012 (http://www.dnb.nl/en/binaries/OFS_Autumn12_UKWEB_tcm47-279389.pdf)

¹⁴ In all those proposals, the Dutch State had to play an important role, especially in a solution for the property finance activities.

- (13) As part of the nationalisation process the shareholders¹⁵ and hybrid debt-holders of SNS Bank and SNS REAAL were expropriated. The Intervention Law¹⁶ provides that the Enterprise Court of Amsterdam will now determine a fair compensation for the expropriated shareholders and hybrid debt-holders. The Minister of Finance has argued in court proceedings that a fair compensation for the shareholders and the hybrid debt-holders would be zero. The Dutch State also appointed a new CEO and CFO as of 1 February 2013.¹⁷

2.2. State measures

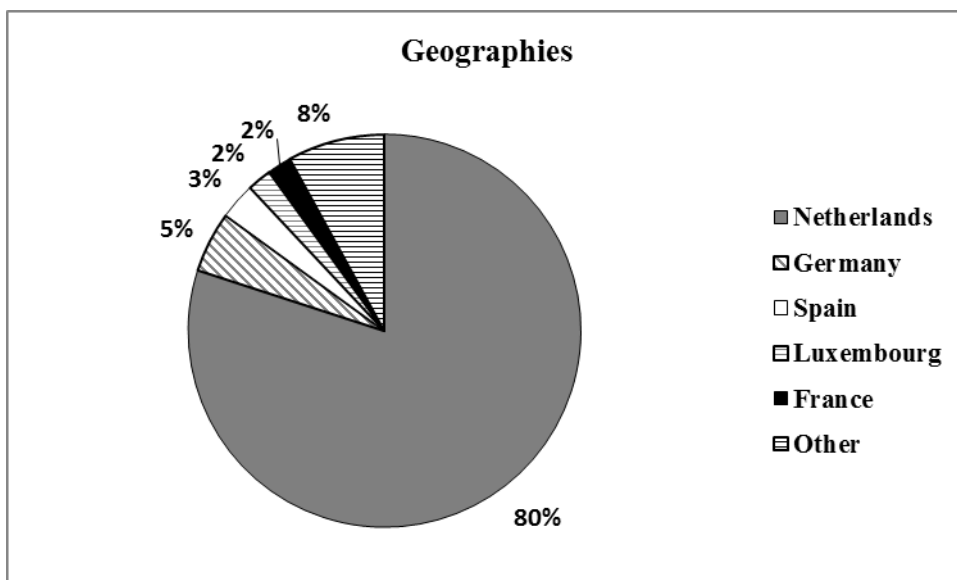
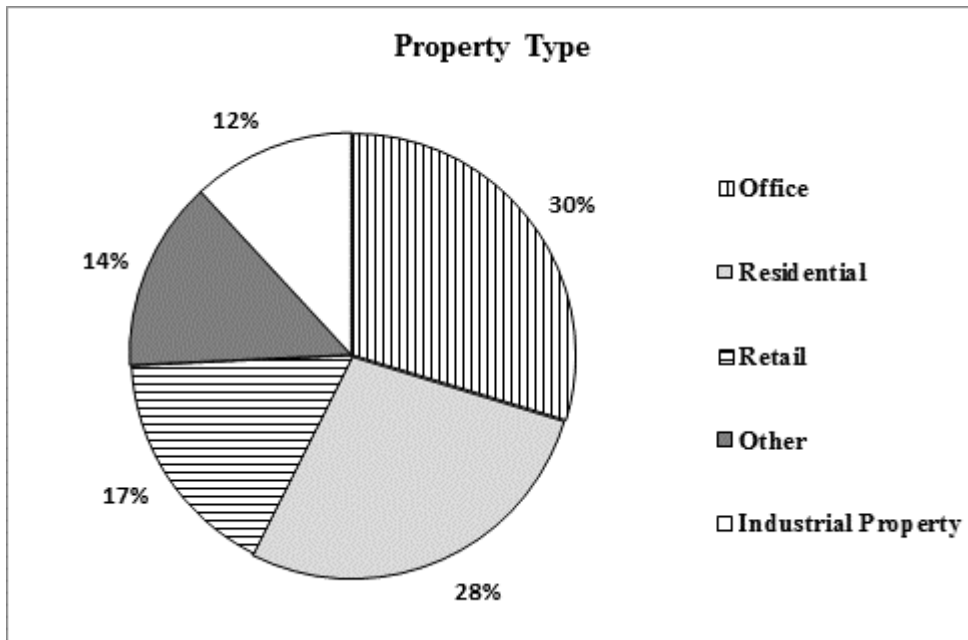
- (14) On 1 February 2013, the Dutch State notified the following State measures to the Commission:
- a EUR 1.9 billion recapitalisation of SNS Bank in the form of ordinary shares (measure A1); and
 - a EUR 300 million recapitalisation of SNS REAAL in the form of ordinary shares (measure B1) and a bridge loan of EUR 1.1 billion to SNS REAAL in order to secure the short-term funding needs of SNS REAAL (measure B2). The bridge loan instruments have a maximum maturity of less than one year. In terms of remuneration, SNS REAAL will pay a credit spread of 110 basis points ("bp") per annum over the higher of EURIBOR and the funding rate of the Dutch State. As already explained in recital (34) of the Rescue Decision, the bridge loan will help to fulfil payment obligations related to medium-term notes and inter-company funding from REAAL Insurance.
- (15) As part of the restructuring plan, the Dutch State has also explained that it wants to spin off the property finance activities into a bad bank at a transfer price above the market value¹⁸ (measure A2).
- (16) The transferred property finance loans contain 2 378 loans with an unpaid principal balance ("UPB") of EUR 7 823 million, divided between performing loans (EUR 4 806 million) and non-performing loans (EUR 3 017 million). The property finance portfolio in terms of property type and geographical exposure can be broken down as follows:

¹⁵ Including the B-shares held by SNS REAAL Foundation (i.e. the strategic shareholder of SNS REAAL).

¹⁶ https://zoek.officielebekendmakingen.nl/stb-2012-241.html?zoekcriteria=%3fzkt%3dUitgebreid%26pst%3dStaatsblad%26dpr%3dAnderePeriode%26spd%3d20120612%26epd%3d20120612%26sdt%3dDatumUitgifte%26pnr%3d1%26rpp%3d10%26_page%3d2%26sorttype%3d1%26sortorder%3d4&resultIndex=10&sorttype=1&sortorder=4

¹⁷ <http://www.government.nl/news/2013/02/01/state-of-the-netherlands-nationalises-sns-reaal.html>

¹⁸ The Dutch State will finance the bad bank via equity of EUR 500 million, while the Dutch State will also provide government guarantees for the remaining funding.



(17) In addition to the property loans, the transferred property finance activities also contain real estate assets with a book value of [...]*, equity stakes in real estate [...] with a book value of, undrawn balances with a nominal value of [...], outstanding guarantees with a nominal value of [...], derivatives with an outstanding market value of [...] and legal claims totalling[...].

(18) C&W – in its capacity as advisor of the Dutch State – made a valuation of the REV and the market value of the property finance activities, using cash-flow based valuation techniques. For non-performing loans, the assessment was based on the cash-flows generated by the associated collateral (rental income, collateral sell-out, corrected for foreclosure cost, diminution of cash flow and an exit value

* Confidential information

of the collateral after stabilising it). For performing loans, C&W assessed the cash-flows of the loans (interest rates, interest spreads, amortisation, prepayments, etc.). On the cash-flows of the performing loans, C&W applied estimated "PDs"¹⁹ and loss severities ("LGDs"²⁰).

(19) The Dutch State and C&W estimated that the REV of the total property finance activities (i.e. the property loan portfolio corrected for the items listed in recital (17)) amount to EUR [0-5] billion. The transfer to the bad bank was also based on that valuation of EUR [0-5] billion. The advisor of the Dutch State C&W estimated that the market value of the portfolio amounted to EUR [0-5] billion, which implies that the estimated difference between the transfer value and the market value amounts to EUR 859 million.

(20) The Commission received a letter from DNB in which DNB validated – in its capacity as financial supervisor – the valuation of the property finance activities in accordance with point (20)(a) of the Impaired Asset Communication. DNB explained that it was involved in the selection process and the formulation of the exact assignment (i.e. to conduct a valuation compliant with the guidelines to calculate the REV set out in section 5.5 of and Annex IV to the Impaired Asset Communication). DNB concludes that the valuations resulting from that exercise are reasonable and acceptable and it refers to the fact that DNB used the C&W valuations as a key input for its 2012 SREP²¹ decision. The expert hired by the Commission²² also made a consistency check of the REV and the market value of the property finance activities and concluded that in general the methodology and the procedures employed by C&W are reasonable and that the transfer price adequately took risks into account.²³ The expert also compared the approach used with that followed in other State aid cases and concluded that the REV calculations were consistent with past case practice.

(21) All the State measures since the nationalisation are listed in Table 2:

| Direct beneficiary | Measure | Type of measure | Nominal amount |
|--------------------|------------|--|-----------------|
| | | | |
| SNS Bank | | | |
| | Measure A1 | Recapitalisation | EUR 1.9 billion |
| | Measure A2 | Bad bank : Transfer price minus market price | EUR 859 million |
| SNS REAAL | | | |

¹⁹ Probability-of-default.

²⁰ Loss-given-default.

²¹ Supervisory Review & Evaluation Process.

²² See also recital (4).

²³ The Dutch State also hired BlackRock Solutions to assess the approach and the methodology used by C&W.

| | | | |
|--|------------|------------------|-----------------|
| | Measure B1 | Recapitalisation | EUR 300 million |
| | Measure B2 | Bridge loan | EUR 1.1 billion |

(22) For the sake of completeness, it should also be mentioned that SNS REAAL in 2008 had benefitted from a State recapitalisation of EUR 750 million, of which at the time of the nationalisation EUR 585 million was still outstanding. SNS REAAL had also previously received government guarantees on newly issued debt assigned under the Dutch Guarantee Scheme²⁴. The guarantees related to debt issuance of EUR 4.48 billion, \$ 900 million and £ 500 million.

²⁴ State Aid Decision N524/2008: Dutch Credit Guarantee Scheme, OJ C 328, 23.12.2008, p.9 and several times prolonged afterwards.

2.3. Restructuring Plan

- (23) The restructuring plan contains two important structural measures: the spin-off of the property finance activities into a bad bank and the divestment of the insurance subsidiary REAAL Insurance.
- (24) As regards the property finance activities, the restructuring plan explains that the spin-off of the property finance activities is an important measure to restore viability. As a result of the spin-off of the property finance activities, the balance sheet of SNS REAAL will decrease by 6%²⁵ while in terms of the RWA of SNS Bank, the decrease will amount to 30%. The property finance spin-off will also facilitate liquidity access for SNS Bank. In that context, the restructuring plan explains that continued exposure to property finance would obstruct SNS Bank's access to private funding.
- (25) A second structural measure is the divestment of REAAL Insurance which reduces the consolidated balance sheet and net revenues of SNS REAAL by 42% and 46% respectively. As a result of that divestment the double leverage on the balance sheet of SNS REAAL will disappear. The holding company SNS REAAL will be wound down.
- (26) The entity resulting from the restructuring will be a standalone bank focused on retail banking and the Dutch State is committed to privatise that bank. In order to refocus its banking business on the retail segment, SNS Bank will also run down its [...].
- (27) The restructuring plan contains separate projections for SNS Bank and REAAL Insurance²⁶ until 31 December 2017, which is also the end of the restructuring period. For the base case scenario of SNS Bank, the Dutch State has used the swap curve as per end May 2013 and assumed a further deterioration of the property market²⁷ and the unemployment rate²⁸. Activity-wise, SNS Bank will focus on mortgages and savings. For mortgages, the restructuring plan starts from the assumption that the market will marginally grow again to reach a total market size of EUR [700-750]billion by 2017 (CAGR²⁹ [0-5]%). For the savings market, the market is expected to increase to EUR [350-400] billion by 31 December 2017 (CAGR [0-5]%), with growth mainly in the fiscally incentivized "banksparen" segment.
- (28) Based on the base case assumptions described in recital (27), the Dutch State presented the financial projections in Table 3 for the profit & loss account of SNS Bank:

²⁵ 2017 figures vs. 2012 figures.

²⁶ The separate projections for the bank and the insurance company are then brought together in consolidated figures for SNS REAAL.

²⁷ [...]

²⁸ [...]

²⁹ Compound Annual Growth Rate.

| All figures in EUR million | 2012 (A) | 2013 (E) | 2014 (E) | 2015 (E) | 2016 (E) | 2017 (E) |
|----------------------------|-------------|-------------|-------------|-------------|-------------|-------------|
| Net interest income | 702 | [...] | [...] | [...] | [...] | [...] |
| Net fee income | 54 | [...] | [...] | [...] | [...] | [...] |
| Other income | 79 | [...] | [...] | [...] | [...] | [...] |
| Total income | 835 | [...] | [...] | [...] | [...] | [...] |
| Operational expenses | 479 | [...] | [...] | [...] | [...] | [...] |
| Impairment charges | 228 | [...] | [...] | [...] | [...] | [...] |
| Other expenses | 8 | [...] | [...] | [...] | [...] | [...] |
| Total expenses | 715 | [...] | [...] | [...] | [...] | [...] |
| Profit before tax | 120 | [...] | [...] | [...] | [...] | [...] |
| Profit after tax | 88 | [...] | [...] | [...] | [...] | [...] |

(29) In [...], the figures will be somewhat influenced by other income and other expenses, but as from [...], the figures should gradually normalise. Net interest income will be relatively stable between [...] and impairment charges – which are relatively high in the beginning of the period – will gradually normalise. At the end of the restructuring period, SNS Bank is forecasted to have a return on equity of [5-10] %.

(30) The balance sheet figures for the forecast period which are set out in Table 4 show that at the end of the period, SNS Bank will have a loan-to-deposit ratio of [110-120] %, while its fully loaded Basel III core Tier 1 ratio will come in at [10-20] %.

| | 2012 (A) | 2013 (E) | 2014 (E) | 2015 (E) | 2016 (E) | 2017 (E) |
|---------------------------------|-------------|-------------|-------------|-------------|-------------|-------------|
| Cash (equivalents) | 6 909 | [...] | [...] | [...] | [...] | [...] |
| Loans & advances | 55 179 | [...] | [...] | [...] | [...] | [...] |
| Total assets | 81 993 | [...] | [...] | [...] | [...] | [...] |
| | | | | | | |
| Retail savings | 42 345 | [...] | [...] | [...] | [...] | [...] |
| Wholesale funding | 30 681 | [...] | [...] | [...] | [...] | [...] |
| | | | | | | |
| Return on Equity | 5.5% | [...]% | [...]% | [...]% | [...]% | [...]% |
| Loan-to-deposit ratio | 126% | [...]% | [...]% | [...]% | [...]% | [...]% |
| Core Tier 1 ratio ³⁰ | 6.1% | [...]% | [...]% | [...]% | [...]% | [...]% |

(31) The restructuring plan also contains projections for an adverse case scenario, where it incorporates additional stresses for interest rates, residential property prices and the unemployment rate.³¹

(32) In an adverse scenario, the net result would be lower than in the base case scenario (EUR [...] million, EUR [...] million and EUR [...] million in 2013, 2014 and 2015), but would remain in positive territory. The core Tier 1 ratio (fully loaded Basel III) would also be lower ([10-20]%, [10-20]% and [10-20]% in 2013, 2014 and 2015) but still above minimum capital requirements. The Dutch State also provided the Commission with a sensitivity analysis showing that for a range of negative scenarios, the core Tier 1 ratio of SNS Bank would remain above [0-10] %.³²

³⁰ Core Tier 1 ratio are presented with Basel II figures for 2012 and fully loaded Basel III for the 2013-2017 period.

³¹ [...]

³² Sensitivity parameters relate to net interest income and impairment charges. If for instance in 2015 the net interest income would drop by [...](vs. the base case) and impairment charges would increase by [...], the core Tier 1 ratio would still amount to [...]

(33) As regards REAAL Insurance, the Dutch State provided information to the Commission which showed that the Solvency I ratio of the entity amounted to [150-200]% at 31 July 2013³³. From thereon, it slightly increased to [150-200]% and [150-200]% respectively at the end of September and October 2013 respectively. On 18 October 2013, DNB announced that it would tighten – in anticipation of Solvency II rules³⁴ – the supervision of mid-sized and larger life insurers by introducing a new, risk-weighted solvency criterion (the Theoretical Solvency Criterion or "TSC"). The life insurance business has a higher solvency under the TSC criterion than under Solvency I as a result of its prudent investment portfolio. The Dutch State also showed that in a liquidity stress scenario (with for instance a [0-10]% increase in the lapse rate³⁵ in 2013, 2014 and 2015) the insurance subsidiary would still have EUR [0-10] billion of liquid assets available. On that basis REAAL Insurance remains profitable in 2013 and the Commission expects an improvement in its financial performance in the following years due to the improvement of technical profitability on the life and non-life business (see recital (54)).

2.4. The complaint

(34) On 13 September 2013, the Commission received a complaint from Legal and General Nederland Levensverzekering Maatschappij NV ("L&G"), one of the competitors of SNS REAAL in the Dutch life insurance market, which has come through the financial crisis without resorting to State aid. According to the complainant, SNS REAAL has misused State aid at the expense of insurers that have not relied on State aid.

(35) The complaint mainly related the so-called "risk-insurances market", which are life insurance products paying out upon the death of the policy holder. However, the complainant pointed out that in mid-August 2013 REAAL Insurance had also announced that it would lower its mortgage rates in order to win back market share in that market. According to the complainant, mortgages and risk-insurance products are often sold together³⁶.

(36) The complainant underlines that the insurance subsidiary also benefitted from State aid. In that regard, the complainant recalled that the aid in 2008 was mainly related to the insurance subsidiary, while the 2013 aid measures also benefitted the insurance subsidiary. As an example, the complainant referred to the bridge

³³ On 12 July 2013, Fitch Ratings downgraded France's long term foreign and local currency Issuer Default Ratings (IDR) from AAA to AA+ with a stable outlook. As a result of that downgrade, French government bonds are no longer included in the calculation of the ECB AAA curve. REAAL Insurance uses the ECB AAA yield curve for amongst others discounting its liabilities in its solvency calculation.

³⁴ 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 2016 (http://europa.eu/rapid/press-release_MEMO-13-841_en.htm). It would, in particular, redefine capital requirements for insurance companies.

³⁵ The ratio of the number of policies that lapse during a period to the total number of policies.

³⁶ The complainant refers to a study of GfK from September 2012 "alles over ... overlijdensrisicoverzekeringen" to show that 54% of all risk insurances are mortgage-related.

loan which will be used to repay a EUR [600-650] million inter-company loan from REAAL Insurance.

- (37) First, the complainant argued that since July 2013 SNS REAAL has engaged in aggressive commercial practices. In that regard, the complainant drew the attention of the Commission to an article in "Insurance Magazine" which reported on 11 July 2013 that REAAL Insurance would reduce its premiums on risk-insurances for non-smokers by 10%. The same article indicated that REAAL Insurance had already lowered the minimum premium for risk insurances to EUR 8 per month and increased the maximum sum to be insured to EUR 2.5 million.
- (38) Second, the complainant suspected that REAAL Insurance was pricing below the integral cost price, which according to the complainant was only possible because SNS REAAL was able to benefit from State aid.
- (39) The complainant also provided price information showing that REAAL Insurance was offering better prices than L&G in a number of market segments. It also provided simulations based on a number of assumptions which suggested that REAAL Insurance was selling at loss-making prices.

3. Position of the Dutch State

3.1. Position of the Dutch State on the restructuring plan

- (40) In the restructuring plan, the Dutch State explained why it did not chose other alternatives like a (domestic) takeover, partial sale or complete wind-down. Those alternatives were deemed to have too many negative consequences for Dutch consumers and the Dutch financial sector. In that regard, the Dutch State refers in the restructuring plan to the fact that the financial supervisor DNB categorised SNS Bank as a domestic SIFI³⁷. The Dutch State also believes it is important for SNS Bank to remain a "challenger" bank, separate from the big three Dutch Banks (Rabobank, ING and ABN AMRO) to ensure competition in the Dutch banking sector.
- (41) As regards the bad bank, the Dutch State informed the Commission that it had appointed a new CEO of the bad bank. It also explained that the bad bank would not enter new markets (unless necessary for the support of the existing bad bank business). Concretely, the bad bank will not have a banking licence and will only carry out those activities which are necessary and consistent with managing the work-out of the legacy loan book. The bad bank will be liquidated once the entity's assets are fully worked out, either by run off or otherwise, including the sale of (all) assets. The Dutch authorities aim to liquidate the bad bank before 31 December [...].
- (42) As regards the remuneration of the bridge loan described in recital (14), the Dutch State explained that the interest rate on the bridge loan is set at the applicable EURIBOR rate. In the alternative, if the funding rate of the Dutch State is higher than EURIBOR, that Dutch State funding rate will be applicable. In addition, a fee based on the conditions of the Dutch Credit Guarantee Scheme is charged. Based on a loan with a maturity less than one year and a rating below A- the fee is set at 110 bps (where the Dutch State notes that the minimum

³⁷ Systemically important financial institution.

required by the Commission would be 90 bp). According to the Dutch State, the fee will provide SNS REAAL with a strong incentive to repay the loan as soon as market circumstances allow it to do so.

3.2. Position of the Dutch State on the complaint

- (43) In reaction to the complaint the Dutch State points out that the State measures implemented as part of the nationalisation of SNS REAAL did not concern the insurance activities. It also indicates that the Dutch risk insurance market has become more competitive since 2006. The Dutch State points to several factors underlying that evolution: the increased independence and transparency of the risk insurance market, the increased importance of pricing strategies in a market where direct sales channels are becoming more popular, increased longevity³⁸ and the forthcoming introduction of Solvency II³⁹.
- (44) The Dutch State also explains that the number of providers has declined and that as a result, the market share of the existing players has increased. Because of those higher volumes, the unit cost per policy has decreased. REAAL Insurance has also acquired a number of life portfolios which allows it to realise economies of scale and it claims that its operational focus also has a favourable impact on its competitive position.
- (45) The Dutch State also argues that it is not easy to compare prices in the insurance sector as insurers may have a different strategic focus (age, smoking/non-smoking, capital amounts, number of insured persons, etc.) and different risk management and hedging strategies. As regards the latter, the Dutch State points out that REAAL Insurance via its brand name "Zwitserleven" sells pension products which provide a natural hedge against risk-insurance-related longevity risk.
- (46) The Dutch State indicated that the risk insurance market share of REAAL Insurance in July 2013 had dropped to [10-20]% or [20-30]% (depending on the calculation method) which compares to a market share of 39% in May 2011.
- (47) The Dutch State provided comparative premium statistics for products with fixed premiums and decreasing premiums. According to those statistics, REAAL Insurance was not systematically offering better prices than L&G, not even in the target market segments which are strategically important for REAAL Insurance. The Dutch State points out that in the series for decreasing annual premiums, L&G's premiums are lower than REAAL Insurance's premiums in 50% of the targeted market segments.
- (48) As regards the allegations of aggressive commercial practices, the Dutch State described REAAL Insurance's pricing policy since 2006 and it explains that maximising the value of new business ("VNB"⁴⁰) played an important role in that

³⁸ As people live longer, there is a lower probability that insurers have to pay claims, while at the same time insurers on average receive more premiums for the entire contract period.

³⁹ Insurers' focus has shifted from products with guarantees to risk insurances as under Solvency II the latter require less capital.

⁴⁰ An insurance concept which is closely linked to net present value ("NPV") concepts.

strategy. It also provided a presentation which showed that the actual decision to adjust prices in 2013 had already been taken in 2012.

- (49) As regards the allegations that SNS REAAL distributed risk insurance products below cost price, the Dutch State submitted an actuary report dated 10 May 2013 and explained that the overall effect of price decreases on profitability has been positive.

3.3. Commitments from the Dutch State⁴¹

- (50) As part of the restructuring plan the Dutch State has provided the Commission with a number of commitments, which will be overseen by a monitoring trustee.
- (51) A first series of commitments relates to the entire group (i.e. the holding and all its subsidiaries)⁴²

Acquisition ban

Subject to the following, SNS REAAL will not acquire any stake in any undertaking defined as undertakings which have the legal form of a company or packages of assets which form a business. SNS REAAL may however, upon obtaining the Commission's approval, acquire a stake in an undertaking in case of 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 total of SNS REAAL at 31 December 2012 and that the cumulative purchase price paid by SNS REAAL for all such acquisitions is less than 0.025% of the balance sheet size of SNS REAAL at 31 December 2012. Acquisitions in the ordinary course of the banking business for the management of existing claims towards ailing firms are exempt from the ban. The acquisition ban will apply to all the parts of the group for a period of three years starting from the adoption of this Decision even after being divested.

Advertising 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.⁴³

Ban on commercial aggressive practices

SNS REAAL will refrain from employing any aggressive commercial strategies which would not take place without the State support.

Hybrid coupon ban/hybrid call ban/hybrid buyback ban

The Dutch authorities commit that SNS REAAL will refrain from making any payments on the hybrid debt instruments outstanding at the time of the present

⁴¹ The full commitment catalogue has been reproduced as Annex I.

⁴² Those commitments will apply until the end of the restructuring period, unless specified differently under the commitment itself.

⁴³ 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.

Decision, unless those payments stem from a legal obligation, and not call or buy back those instruments without prior approval of the Commission.

The commitment not to pay coupons does not apply to newly issued securities, provided the payment of coupons on newly issued securities will not create a legal obligation to make any coupon payments on SNS REAAL's securities existing at the moment of the adoption of the Restructuring Decision.⁴⁴

*Remuneration policy*⁴⁵

The total remuneration of any individual may not exceed 15 times the national average salary in the Member State where the beneficiary is incorporated or 10 times the average salary of employees in the beneficiary bank. Restrictions on remuneration must apply until the end of the restructuring period or until SNS REAAL has repaid the State aid, whichever occurs earlier.

- (52) In addition, there are a number of commitments which only relate to the holding company SNS REAAL:

Commitment not to reallocate capital between the bank and the insurance subsidiaries.

SNS REAAL will not transfer and reallocate capital from the bank to the insurance subsidiary and vice versa.⁴⁶

Commitment to transfer the administrative structure currently borne by the holding company to the bank and the insurance company.

SNS REAAL will create two separate standalone businesses while simultaneously winding down the holding company as described in more detail in the commitment catalogue.

Divestment of [...]

SNS REAAL will sell [...] following this Decision.

- (53) For SNS Bank, the Dutch State has provided the following commitments:

Regular testing of the market condition to reprivatize the bank.

Running down of all the [...] with individual (i.e. by counterpart) exposure [...].

Split off of the property finance portfolio combined with a ban to re-enter the property finance market during the restructuring plan.

- (54) For the insurance subsidiary, the following commitments will apply :

Phasing out of any financial link between the insurer and the bank.

⁴⁴ The commitments will cease to apply to REAAL Insurance from the date of signing of a binding agreement for the divestment of the insurance business by SNS REAAL.

⁴⁵ This commitment does not apply to REAAL Insurance.

⁴⁶ This commitment however does not relate to transfers/reallocations from holding excess capital to the bank or the insurance subsidiary, insofar as this capital is present in the holding at the time of the Decision.

*REAAL Insurance will select maturities of fixed income so as to optimise the matching of assets and liabilities, provided that REAAL Insurance has to comply with the existing and future regulatory framework of DNB.*⁴⁷

*The Dutch authorities and SNS REAAL commit that SNS REAAL will divest the insurance business within [...] after this Decision through an open and transparent process.*⁴⁸

If no binding agreement for the divestment of the insurance business is signed within [...] after this Decision a divestiture trustee will be appointed [...] to sell the insurance business [...].

The Dutch State commits to respect a precise sequencing for the divestment (consultation of the parliament, appointment of advisors, data room access e.g.) and the Dutch State commits to have an information memorandum/data room ready by [...] at the latest.

The Dutch authorities and SNS REAAL commit to use the proceeds of the divestment of the insurance company to reduce the double leverage of SNS REAAL.

For the insurance business, the Dutch State has also presented the following viability-related commitments

As regards the non-life business, the Dutch State commits that REAAL Insurance non-life will have a combined ratio⁴⁹ below 100% in December 2015 and after (the 2014 ratio would be determined with the linear trend between 2013 and 2015).

As regards the life business, the Dutch State commits that SNS REAAL and its insurance subsidiary will sell new life products (i.e. new product defined as newly signed contracts and the renewals on existing contracts where there is no contractual obligation to continue the pricing) under the following conditions:

The effect of the commercialisation of new products will have a positive effect on [...], when compared with the situation in which neither new business nor renewals will be done.

The value of the new business [...] will be positive covering marginal costs.

⁴⁷ This commitment will cease to apply from the date of signing of a binding agreement for the divestment of the insurance business by SNS REAAL.

⁴⁸ If turbulent market conditions, severe economic deterioration or other serious unforeseen circumstances mean that the deadline of [...] is likely to be missed, then the European Commission may allow an appropriate extension to the deadline.

⁴⁹ The combined ratio is the relation of insurance claims and administrative expenses to the premium income and is an indication of the operational profitability of a non-life insurance business.

4. Assessment of the aid

4.1. Existence of aid

- (55) 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.
- (56) 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 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.
- (57) As regards, measures A1, B1 and B2, the Commission refers to the analysis made in recitals (45) to (54) of the Rescue Decision. At that time, the Commission already concluded that those measures should be considered to be State aid.
- (58) As regards measure A2, the Commission concludes based on the observations in recitals (18) to (20) that the Dutch State uses State resources to acquire property finance activities at a value which exceeds the market price. Buying assets above the market price clearly represents an advantage to SNS Bank, and all the more so since it also frees up regulatory capital. In regulated sectors like banking and insurance such liberation of capital represents an important advantage as there is a direct link between the amount of regulatory capital held and the volume of business a company can do. Moreover, as explained in recital (24), the measure also facilitates SNS Bank's access to private funding. The advantage is also selective as the measure is an ad hoc measure tailored to the needs of one company (i.e. SNS Bank) and not offered to other economic actors which might also wish to offload their property finance exposure. The measure is not in line with the market economy investor principle. Market economy investors would not want to buy a portfolio above the market price and in the run-up to the nationalisation it was clear that private investors were not interested in the property finance activities and all the associated risks. In other words, the Dutch State merely set up the bad bank for public policy related reasons (i.e. the rescue of a systemic bank) and not to realise a risk-adjusted return in line with market behaviour. By granting a selective advantage to SNS Bank, measure A2 creates an uneven playing field and distorts competition. As subsidiaries and branches of foreign banks are active on the Dutch market for financial products, the measure is also likely to affect trade between Member States. In conclusion, measure A2 meets all the State aid criteria and should therefore be considered as State aid in the meaning of Article 107(1) TFEU.
- (59) Footnote 10 of the Impaired Asset Communication quantifies the State aid in an impaired asset measure as the difference between the transfer price and the market price. In the case at hand and taking into account the observations in recitals (18) to (20), the aid in the impaired asset measure therefore amounts to EUR 859 million.

- (60) For the sake of completeness, the Commission recalls that SNS REAAL already received EUR 750 million of State aid in 2008, of which it had repaid only EUR 185 million. In other words, the total outstanding amount at the time of the nationalisation was still EUR 565 million (plus repayment penalties), which was due to be repaid following the repayment schedule referred to in recital (8). As described in recital (22), SNS REAAL also benefitted from government guarantees on newly issued debt.
- (61) In conclusion, since the beginning of 2013 SNS REAAL has received EUR 3 059 million in recapitalisation aid (EUR 3 809 million when also including the 2008 recapitalisation aid) and EUR 1.1 billion in the form of a bridge loan.
- (62) When compared to the RWA of SNS REAAL⁵⁰, the recapitalisation aid (i.e. measure A1, A2 and B1) amounts to 7.8% (2013 aid). When taking into account the 2008 aid (which amounted to 1.6% of the then prevailing RWA), the recapitalisation aid would increase to 9.4% (2008 and 2013 aid).

4.2. Compatibility of aid

4.2.1. Legal basis

- (63) 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 Court⁵¹ has emphasised that Article 107(3)(b) TFEU should be applied restrictively, so that the economic disturbance should affect the entire Member State and not merely have a regional dimension.
- (64) The Commission explained in point 9 of the 2008 Banking Communication⁵² that given the crisis and the overall impact on the economy, Article 107(3)(b) TFEU would be made available as a legal basis for measures taken to address the systemic crisis. Since then the Commission has confirmed a number of times – for instance in the 2011 Prolongation Communication⁵³ and the 2013 Banking Communication⁵⁴ – that Article 107(3)(b) TFEU continues to be available as a legal basis⁵⁵. The Commission also takes note of the fact that SNS Bank is considered to be a domestic systemically important financial institution and the Commission considers that the relatively large market shares of SNS REAAL in a wide range of financial products described in recital (10) indicate that a

⁵⁰ See also footnote 9.

⁵¹ See Joined Cases T-132/96 and T-143/96 *Freistaat Sachsen and Volkswagen AG v Commission* [1999] ECR II-3663, paragraph 167.

⁵² 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, OJ C 270, 25.10.2008, p. 8.

⁵³ Communication from the Commission on the application, from 1 January 2012, of State aid rules to support measures in favour of financial institutions in the context of the financial crisis, OJ C 356, 6.12.2011, p. 7.

⁵⁴ Communication from the Commission on the application, from 1 August 2013, of State aid rules to support measures in favour of banks in the context of the financial crisis, OJ C 216, 30.7.2013, p. 1.

⁵⁵ Other recent decisions which have recently been taken under Article 107(3)(b) TFEU include SA.36175 MPS Restructuring, not yet published and SA.37029 Aide à la liquidation ordonnée du Crédit Immobilier de France, not yet published.

disorderly wind-down of the company would have led to a serious disturbance of the Dutch economy.

- (65) During the financial crisis, the Commission has developed compatibility criteria for different types of aid measures. Guidance for recapitalisation measures can be found in the Recapitalisation Communication⁵⁶ and the 2011 Prolongation Communication. 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 to the State. For guarantees and funding aid, compatibility criteria are discussed in the 2011 Prolongation Communication.
- (66) For impaired asset measures, the Impaired Asset Communication applies. The Impaired Assets Communication defines impaired asset relief as any measure which "free[s] the beneficiary bank from (or compensate[s] for) the need to register either a loss or a reserve for a possible loss on its impaired assets and/or free regulatory capital for other uses" and sets out criteria for the compatibility of such measures with the internal market. Those criteria comprise: (i) the eligibility of the assets; (ii) transparency and disclosure of impairments; (iii) the management of the assets; (iv) the correct and consistent approach to valuation; and (v) the appropriateness of the remuneration and burden-sharing.
- (67) Recently, those Communications have been amended by the 2013 Banking Communication⁵⁷, which for instance introduced remuneration restrictions and increased burden-sharing for those aid measures which have been notified after 1 August 2013. As measure A2 (i.e. the bad bank measure in favour of SNS Bank) has been notified after that date, the provisions of the 2013 Banking Communication apply in principle in full for that measure.

4.2.2. Compatibility of the impaired asset measure with the Impaired Asset Communication

- (68) As regards the impaired asset measure, the compatibility criteria listed in recital (66) are assessed below:

Eligibility of the assets

- (69) The Impaired Asset Communication cites as eligible assets those that have triggered the financial crisis but it also allows for the possibility to "extend eligibility to well-defined categories of assets corresponding to a systemic threat upon due justification, without quantitative restrictions". In that context the Impaired Asset Communication specifically mentions as one of those systemic threats the bursting of a bubble in the domestic real estate market. Given the

⁵⁶ Communication on 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.

⁵⁷ Communication from the Commission on the application, from 1st August 2013, of State aid rules to support measures in favour of banks in the context of the financial crisis, OJ C 216, 30.7.2013, p. 1.

evolution of real estate in the Netherlands⁵⁸ and the importance of property finance in the balance sheet of SNS Bank (cfr. 30% of RWA), the scope of assets to be included in the asset transfer to the bad bank is in line with the eligibility requirements of the Impaired Asset Communication.

Transparency and disclosure of impairments

- (70) The Dutch State hired an independent expert to value the transferred property activities and DNB sent a validation letter on the results of the analysis.
- (71) The property finance loans and other assets (e.g. legal claims) which will be transferred to the bad bank are well defined.
- (72) The requirements for transparency and disclosure are thus met.

Management of the assets

- (73) The assets are managed by the bad bank, which is fully independent from SNS Bank. The Dutch State has changed management of the property finance activities and the Dutch State has also hired BlackRock Services for advice on the organisational set-up of the bad bank.
- (74) The arrangements for the condition of separate asset management are thus in line with the Impaired Asset Communication.

The correct and consistent approach to valuation

- (75) Section 5.5 of the Impaired Asset Communication notes that a correct and consistent approach to valuation is of key importance to prevent undue distortions of competition. The main aim of the valuation is to establish the REV of the assets. That value constitutes the benchmark level in so far as a transfer of impaired assets at that level (or at a lower level) is an indication of compatible aid.
- (76) The Dutch State appointed C&W to assess the property finance activities and to calculate the REV. In addition, the Dutch State also provided a letter from DNB, certifying the results of the asset transfer to the bad bank. As indicated in recital (20), the Commission's expert confirmed that the C&W evaluation was compatible with the Commission's past case practice.
- (77) Therefore, based on the information in recitals (18) to (20), the Commission concludes that the transfer price is not higher than the REV.

4.2.3. Compatibility of the restructuring plan

- (78) According to the Restructuring Communication, in order to be compatible with the internal market under Article 107(3)(b) TFEU, the restructuring of a financial institution in the context of the current financial crisis must (i) lead to a restoration of the viability of the bank, or to the orderly winding-up thereof; (ii) ensure that the aid is limited to the minimum necessary and include sufficient

⁵⁸ See for instance for a description of the commercial property market the DNB report mentioned in footnote 14.

own contribution by the beneficiary (burden-sharing); and (iii) contain sufficient measures limiting the distortion of competition.

Viability

- (79) The Dutch State has presented a restructuring plan which addresses the viability concerns which brought SNS REAAL into difficulties. The property finance activities will be transferred to a bad bank thereby also facilitating SNS Bank's access to funding.
- (80) The restructuring plan also foresees the divestment of the insurance subsidiary at the latest [...] after the adoption of this decision. That divestment will simplify the business model of the remaining entity. For instance, as a result of the insurance divestment the double leverage will disappear.
- (81) The entity resulting from the restructuring will be a focused retail bank which the Dutch State wants to re-privatise. SNS Bank – without the property finance activities – has been profitable since 2008. Moreover, at the end of 2017 – which is also the end of the restructuring period – the bank will realise a return on equity of [5-10] %. Point (13) of the Restructuring Communication requires banks to realise enough income to cover all costs including depreciation and financial charges and provide an appropriate return on equity, taking into account the risk profile of the bank. In the present case that condition has been met. SNS Bank can also withstand considerable stress as described in recital (32).
- (82) A number of viability-related commitments are also related to the insurance subsidiary as described in recital (54). As regards the complaint, the Commission takes note of the fact that the Dutch State has shown that the pricing policy of REAAL Insurance has not fundamentally changed since the nationalisation, while the Dutch State also presented evidence that the pricing policy of REAAL Insurance takes into account the maximisation of the PVNB. For the future, the viability-related measures for the insurance subsidiary will ensure that REAAL Insurance could not distort the market with a value destructive pricing strategy.
- (83) While the solvency ratio of REAAL Insurance is still above the minimum required, recent events (e.g. downgrade of the France) highlight a certain sensitivity of the business to adverse conditions. In spite of the fact that no additional capital of the insurance company will be transferred to the bank (see recital (52)), the sensitivity of the insurance company might still be influenced by the fact that the bank is still in the process of restoring its viability. However, once the separation with the bank is completed, those spill-over worries should disappear, in particular when a sale marks a clear step in the process of a full disentanglement. In addition, a successful sale will also demonstrate that normal market operators have confidence in the business model of REAAL Insurance.
- (84) As already indicated in recital (13), the Dutch State also appointed a new CEO and CFO and committed to align the remuneration policies of SNS REAAL and SNS Bank with point (38) of the 2013 Banking Communication, which implies that their management is appropriately incentivized to implement the restructuring plan in the long-term interest of the company. As regards the further remuneration restrictions for REAAL Insurance, the Commission takes note that, as described in recital (52), the Dutch State has provided a commitment which ensures that there will be no capital transfer from SNS Bank to REAAL Insurance. They are in any event two separate legal entities, each with their own

capital position. Taking into account the genesis of measure A2, the specificities of this case (cf. separate legal entities with their own capital position) and in particular the commitment related to capital transfers from the bank to the insurance company and vice-versa, the Commission can accept that in the case at hand the increased remuneration requirements of the 2013 Banking Communication do not apply for REAAL Insurance.

- (85) Based on the above, it can be established that the restructuring plan of SNS REAAL and the related commitments provide sufficient evidence to conclude that the viability of SNS REAAL will be restored at the end of the restructuring period.

Burden-sharing

- (86) As regards the bridge loan (measure B2), the Dutch State committed in the Rescue Decision to bring the remuneration in line with the Commission's minimum requirements for liquidity measures. That adjustment has taken place as described in recital (14) and the Commission concludes that the remuneration of that measure is proportionate. It recalls that the Annex to the 2011 Prolongation Communication provides that the guarantee fee for debt with a maturity of less than one year should as a minimum be the sum of a basic fee of 50 bp and for banks without a rating an additional fee of 40 bp. In the case at hand, the credit spread amounts to 110 bp. For the remuneration of the capital increase measures A1 and B1, the Commission observes that in principle capital injections should be subscribed at a sufficient discount to the share price (after adjustment for the "dilution effect") to avoid that the Dutch State gives up part of its remuneration to existing shareholders. In the case at hand, as described in recital (13), the existing shareholders will only get a fair compensation as determined by the Enterprise Court of Amsterdam but will not get anything in excess of that amount, which would be detrimental for the Dutch State.
- (87) As regards burden-sharing in the impaired asset measure, section 5.2 of the Impaired Assets Communication repeats the general principle that banks ought to bear the losses associated with impaired assets to the maximum extent so as to ensure equivalent shareholder responsibility and burden-sharing. Thus, the assets should be transferred at a price that matches or remains below their REV.
- (88) Furthermore, the Impaired Assets Communication explains that burden-sharing is achieved through an adequate remuneration of the aid. In section II of Annex IV to the Impaired Assets Communication the Commission explains that the pricing of the impaired asset measure must include remuneration for the State that adequately takes account of the risks of future losses exceeding those that are projected in the determination of the REV. The expert of the Commission confirmed that the transfer value adequately took that risk into account.
- (89) In the case at hand, the impaired asset valuation is sufficiently prudent to provide for adequate burden-sharing.
- (90) The restructuring aid should be limited to covering those costs which are necessary for the restoration of viability. Aid beneficiaries should not be endowed with public resources to finance market-distorting activities which are not linked to the restructuring process. Acquisitions for instance can in principle not be financed through State aid. Against that background, the Commission takes positive note of the acquisition ban described in recital (51).

- (91) Strict executive remuneration policies also help minimise the need to have recourse to State support and therefore the commitment to align those remuneration policies with point (38) of the 2013 Banking Communication is seen as an important positive element.
- (92) As regards the increased burden-sharing requirements under the 2013 Banking Communication, the Commission notes that the Dutch State has not bailed out the shareholders of SNS REAAL and the hybrid debt-holders of SNS REAAL and SNS Bank. As described in recital (13), those shareholders and hybrid debt-holders were expropriated and will only receive a fair compensation in line with the relevant provisions of Dutch law. The Dutch State has also ensured that State aid will not be used to remunerate the hybrid debt instruments of REAAL Insurance by committing to a hybrid coupon, call and buyback ban and the Commission takes positive note of those bans. In relation to further burden-sharing by the hybrid debt-holders of REAAL Insurance, the Commission takes note that, as described in recital (52), the Dutch State has provided a commitment which ensures that there will be no capital transfer from SNS Bank to REAAL Insurance and vice-versa. They are in any event two separate legal entities, each with their own capital position. Taking into account the genesis of measure A2, the specificities of this case (cfr separate legal entities with their own capital position⁵⁹) and in particular that commitment related to capital transfers, the Commission can accept that in the case at hand the increased burden-sharing requirements of the 2013 Banking Communication do not apply for the hybrid debt-holders of REAAL Insurance.
- (93) The Commission notes that the commitment not to pay coupons does not apply to newly issued securities provided any payment of coupons on such newly issued securities will not create a legal obligation to make any coupon payments on SNS REAAL's shares and securities existing at the moment of the adoption of this decision⁶⁰. The Commission accepts that limitation of the coupon ban in order to permit the group to raise fresh hybrid capital on the market in line with point 26 of the Restructuring Communication. The issuance of subordinated securities after the date of adoption of this decision will permit the bank to raise additional funding and hybrid capital, while not triggering the payment of coupons on existing subordinated debt. SNS REAAL plans for instance to issue [...] subordinated debt from [...] onwards, which will contribute to balancing its funding profile. By virtue of the limitation of the coupon ban the bank will therefore be in a position to issue additional Tier 1 capital, which may potentially reduce the capital it needs in the form of equity. In that respect, it must be recalled that coupons must be optional and cannot be mandatory for debt instruments to qualify as Tier 1 capital. In the present case it can also be noted that no subordinated debt is left in either the holding or the bank. The limitation of the coupon ban does not undermine the useful effect of a coupon ban of the kind contemplated by the Restructuring Communication because the commitment provided by SNS REAAL that the payment of coupons on new instruments will not create a legal obligation to make any coupon payments on

⁵⁹ See for instance recitals (7) to (9).

⁶⁰ Other decisions refer to similar commitments: see recital 218 of RBS Decision C(2009)10112 final, OJ C 119, 07.05.2010, p.3 and recital 165 of Lloyds Decision C(2009)9087, OJ C 46, 24.02.2010, p.2.

SNS REAAL's existing securities will prevent any unnecessary outflow of capital.

- (94) Finally, the Commission notes positively that SNS REAAL commits to divest the insurance subsidiary – though in the first place a viability measure inasmuch as it simplifies the structure of the remaining unsold business (and not in the sense that the insurance business currently is loss-making) – which contribute to the compliance with point 24 of the restructuring communication, which requires that banks should first use their own resources to finance restructuring, by, for instance, the sale of assets.
- (95) In conclusion, on the basis of the above elements the Commission concludes that the Dutch State proposed sufficient measures to limit the aid to the strict minimum and provide for a significant own contribution to the restructuring costs.

Distortions of competition

- (96) The Commission accepts that in the current context State aid might be unavoidable to save systemic institutions, but at the same time, the Commission insists that State aid measures should not result in long-term damage to the level playing field. State aid should not be used to the detriment of competitors, which managed the challenging economic environment without support from the State.
- (97) Banks must not invoke State support as a competitive advantage and therefore the Commission takes positive notice of the State aid advertisement ban.
- (98) The acquisition ban also helps to avoid undue distortions of competition as it avoids that companies which have not received State aid when trying to buy acquisition targets are outbid by companies which strengthened their capital position via State aid. Moreover, the Dutch State has also committed that SNS REAAL will divest [...].
- (99) The Dutch State also committed that SNS REAAL would not start aggressive commercial practices and specifically in the insurance sector that REAAL Insurance will not enter into economically irrational behaviour as described in recital (54).
- (100) Taking into account the above, the restructuring plan provides proportionate measures to avoid undue distortions of competition.

5. Conclusion

The Commission concludes that measure A2 (i.e. the bad bank measure) contains aid of EUR 859 million.

In view of the commitments undertaken by the Dutch State regarding the restructuring of SNS REAAL, the Commission concludes that the bad bank measure as well as the aid notified at the time of the Rescue Decision and referred to in recitals (14) to (22) is compatible with the internal market pursuant to Article 107(3)(b) of the Treaty on the Functioning of European Union.

The Dutch State exceptionally accepts the adoption of this Decision in the English language for reasons of urgency.

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

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

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

Yours faithfully,
For the Commission

Joaquín ALMUNIA
Vice-President

Annex I – List of commitments

0. DEFINITIONS

- Restructuring Period: the period between the 2013 Restructuring Decision and 31/12/2017.
- Restructuring Decision: Decision published by the Commission approving the restructuring plan of SNS REAAL.
- SNS REAAL: the holding company SNS Reaal N.V.
- SNS Bank: the banking part of SNS REAAL, including all the banking subsidiaries of the group.
- REAAL Insurance: insurance part of SNS REAAL, including all the insurance subsidiaries of the group.
- REAAL non-life Insurance: include all the Non-Life products managed in the non-life segment as Fire, Car, Accident, Third party liability, Disability, Transport, non-life protection and all other non-life activities.
- REAAL Life Insurance: include all the Life products managed in the life segment as saving mortgages, life annuities, risk insurance, saving insurance, unit link, separate accounts and all other life products.

I. SNS REAAL

The commitments will apply to SNS REAAL until the end of the Restructuring Period, unless specified differently under the commitment itself.

- Acquisition ban

Subject to the following, SNS REAAL will not acquire any stake in any undertaking defined as undertakings which have the legal form of a company or packages of assets which form a business. SNS REAAL may however, upon obtaining the Commission's approval, acquire a stake in an undertaking in case of 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 total of SNS REAAL at the end of 2012 and that the cumulative purchase price paid by SNS REAAL for all such acquisitions is less than 0.025% of the balance sheet size of SNS REAAL at the end of 2012. Exempt are acquisitions in the ordinary course of the banking business for the management of existing claims towards ailing firms.

The acquisition ban will apply for a period of three years starting from the adoption of the 2013 Restructuring Decision.

- Advertising 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. 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.

- Ban on commercial aggressive practices

SNS REAAL will refrain from employing any aggressive commercial strategies which would not take place without the State support.

- Hybrid coupon ban/hybrid call ban/hybrid buyback ban

The Dutch authorities commit that SNS REAAL will refrain from making any payments on the 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.

The commitment not to pay coupon during the Restructuring Period does not apply for newly issued securities, provided the payment of coupons on newly issued securities will not create a legal obligation to make any coupon payments on SNS REAAL's securities existing at the moment of the adoption of the Restructuring Decision.

- Remuneration policy

With reference to the latest Banking Communication of the Commission (2013/C 216/01), in application from the 1st of August 2013, SNS REAAL shall adapt its remuneration policy accordingly.

The total remuneration of any individual may not exceed 15 times the national average salary in the Member State where the beneficiary is incorporated⁶¹ or 10 times the average salary of employees in the beneficiary bank.

- Commitment not to reallocate capital between the bank and the insurance subsidiaries.

SNS REAAL will not transfer and reallocate capital from the bank to the insurance subsidiary and vice versa. This commitment however does not relate to transfers/reallocations from holding excess capital to the bank or the insurance subsidiary, insofar as this capital is present in the holding at the time of the 2013 Restructuring Decision approving the restructuring plan of SNS REAAL.

- Commitment to transfer the administrative structure currently borne by the holding company to the bank and the insurance company.

SNS REAAL will create two separate standalone businesses with a simultaneous wind down of the Holding. This transition process contains at least the following actions:

- Allocation of employees of the Holding towards either the Bank or the Insurer (execution wave 1 and wave 2)
- Separation of Holding contracts towards the Bank and/or the Insurer (execution wave 2)
- Split off of IT systems and IT organisation (execution wave 3)

⁶¹ As published by the OECD on its website under Average Annual Wages in constant prices for the last available year, <http://stats.oecd.org/Index.aspx>

- Wind down Holding (execution wave 4)

Execution of the overall transition process will take place in 4 waves. The first and second wave entails the allocation of [...] employees towards the Bank or the Insurer. [...] The IT transition (both the IT systems and IT organisation) is included in wave 3 [...]. The overall operational and economical wind down of the Holding will take place before the end of 2018. However, full execution of the legal dissolution of the Holding might take longer due to legal obligations or legal proceedings.

- Divestment of [...]

SNS REAAL will sell [...] following the 2013 Restructuring Decision.

II. BANK SIDE

The commitments will apply to SNS bank and will be applicable until the end of the Restructuring Period, unless specified differently under the commitment itself.

- Acquisition ban

Subject to the following, SNS Bank will not acquire any stake in any undertaking defined as undertakings which have the legal form of a company or packages of assets which form a business. SNS Bank may however, upon obtaining the Commission's approval, acquire a stake in an undertaking in case of exceptional circumstances necessary to restore financial stability or to ensure effective competition. SNS Bank may also acquire stakes in undertakings provided that the purchase price paid by SNS Bank is less than 0.01% of the balance sheet total of SNS Bank at the end of 2012 and that the cumulative purchase price paid by SNS Bank for all such acquisitions is less than 0.025% of the balance sheet size of SNS Bank at the end of 2012. Exempt are acquisitions in the ordinary course of the banking business for the management of existing claims towards ailing firms.

The acquisition ban will apply for a period of three years starting from the adoption of the 2013 Restructuring Decision.

- Advertising ban

SNS Bank 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. Notwithstanding this prohibition, SNS Bank 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.

- Ban on commercial aggressive practices

SNS Bank will refrain from employing any aggressive commercial strategies which would not take place without the State support.

- Hybrid coupon ban/hybrid call ban/hybrid buyback ban

The Dutch authorities commit that SNS Bank will refrain from making any payments on the 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.

The commitment not to pay coupon during the Restructuring Period does not apply for newly issued securities, provided the payment of coupons on newly issued securities will not create a legal obligation to make any coupon payments on SNS Bank's securities existing at the moment of the adoption of the Restructuring Decision.

- Remuneration policy

With reference to the latest Banking Communication of the Commission (2013/C 216/01), in application from the 1st of August 2013, SNS Bank shall adapt its remuneration policy accordingly.

The total remuneration of any individual may not exceed 15 times the national average salary in the Member State where the beneficiary is incorporated⁶² or 10 times the average salary of employees in the beneficiary bank.

- Regular testing of the market condition to reprivatize the bank

The Dutch authorities are committed to reprivatize the bank. From the date of the 2013 Restructuring Decision, the Commission will be provided with an annual internal review of market conditions supported by the perspective of an external adviser. After the divestment of the insurance business is completed, market conditions for the reprivatisation of the Bank will be tested by the Dutch authorities and SNS REAAL at least once a year

- [...] with individual (i.e. by counterpart) exposure [...]

SNS Bank will focus the [...] portfolio on [...] and will run off all [...] following the 2013 Restructuring Decision.

- Split off of the property finance portfolio combined with a ban to re-enter the property finance market during the Restructuring Period.

From the date of the 2013 Restructuring Decision, the Dutch authorities and SNS Bank will proceed with splitting off the Property Finance portfolio from the Bank. SNS Bank will refrain from re-entering the Property Finance market during the 2013 Restructuring Period.

III. INSURANCE BUSINESS

The commitments will apply REAAL Insurance and will cease to apply from the date of signing of a binding agreement for the divestment of the insurance business by SNS REAAL, unless specified differently under the commitment itself.

- Acquisition ban

Subject to the following, REAAL Insurance will not acquire any stake in any undertaking defined as undertakings which have the legal form of a company or packages of assets which form a business. REAAL Insurance may however, upon obtaining the Commission's approval, acquire a stake in an undertaking in case of exceptional circumstances necessary to restore financial stability or to ensure effective competition. REAAL Insurance may also acquire stakes in undertakings

⁶² As published by the OECD on its website under Average Annual Wages in constant prices for the last available year, <http://stats.oecd.org/Index.aspx>

provided that the purchase price paid by REAAL Insurance is less than 0.01% of the balance sheet total of REAAL Insurance at the end of 2012 and that the cumulative purchase price paid by REAAL Insurance for all such acquisitions is less than 0.025% of the balance sheet size of REAAL Insurance at the end of 2012. Exempt are acquisitions in the ordinary course of the banking business for the management of existing claims towards ailing firms.

The acquisition ban will apply for a period of three years starting from the adoption of the 2013 Restructuring Decision.

- Advertising ban

REAAL Insurance 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. Notwithstanding this prohibition, REAAL Insurance 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.

- Ban on commercial aggressive practices

REAAL Insurance will refrain from employing any aggressive commercial strategies which would not take place without the State support.

- Hybrid coupon ban/hybrid call ban/hybrid buyback ban

The Dutch authorities commit that REAAL Insurance will refrain from making any payments on the hybrid debt instruments outstanding at the time of the Restructuring Decision, unless those payments stem from a legal obligation, and not to call or buy back those instruments without prior approval of the Commission.

The commitment not to pay coupon until the date of signing of a binding agreement for the divestment of the insurance business does not apply for newly issued securities, provided the payment of coupons on newly issued securities will not create a legal obligation to make any coupon payments on REAAL Insurance's securities existing at the moment of the adoption of the Restructuring Decision.

- The Dutch authorities and SNS REAAL commit that SNS REAAL will divest the insurance business [...] after the 2013 Restructuring Decision through an open and transparent process. If turbulent market conditions, severe economic deterioration or other serious unforeseen circumstances mean that the deadline [...] is likely to be missed, then the European Commission may allow an appropriate extension to the deadline.
- If no binding agreement for the divestment of the insurance business is signed within [...] after the 2013 Restructuring Decision a divestiture trustee will be appointed [...] to sell the insurance business [...].

The Dutch State will commit to respect a precise sequencing for the divestment (consultation of the parliament, appointment of advisors, data room access e.g.) and the Dutch State commits to have an information memorandum/data room ready [...] at the latest.

The following divestment steps have to be taken by SNS REAAL: (a) internal assessment on expected discussion areas / business due diligence, (b) preparation of Information Memorandum, (c) preparation of data room, (d)

sales process preparation, (e) assessment disentanglement issues etc. After this preparation phase a sale process with proposed buyers can be initiated. This process will take approximately [...].

Taking into account the above, the Dutch authorities commit to divest the insurance business [...].

The Dutch authorities and SNS REAAL commit to use the proceeds of the divestment of the insurance company to reduce the double leverage of SNS REAAL.

- Commitment to return to viability:

Non-life business: REAAL non-life Insurance commits to have a combined ratio⁶³ below 100% in December 2015 and after (the 2014 ratio will be determined with the linear trend between 2013 and 2015). The combined ratio covers all the non-life products and the calculation does neither include the financial result nor the reinsurance result.

The improvement of the combined ratio should be reached through reduction of costs, screening of the portfolio, [...], increase of tariffs, etc.

- Commitment with regard to the Life Business:

REAAL Life Insurance will sell new life products (ie new product concern newly signed contracts and the renewals on existing contracts where there is no contractual obligation to continue the pricing) under the following conditions:

The effect of the commercialisation of new products will have a positive effect on,[...] when compared with the situation where no new business nor renewals would be done.

The value of the new business [...] will be positive covering marginal costs.

- REAAL Insurance will select maturities of fixed income so as to optimize the matching of assets and liabilities, provided that REAAL has to comply with the existing and future regulatory framework of DNB.

- Phasing out of any financial link between the insurer and the bank.

All intercompany financing relationship between (subsidiaries of) REAAL Insurance and SNS Bank will be phased out and will be terminated no later than the date of the divestment of the insurance business.

Distribution relationships between SNS Bank and REAAL Insurance will be formalised by entering into distribution agreements. This process is currently on-going and expected to be finalised as per wave 1 or 2.

IV. MONITORING TRUSTEE

- Appointment of a monitoring trustee until the signing of a binding agreement for the sale of the insurance business. The monitoring trustee will send half yearly report on the commitment. From the date of signing of a binding

⁶³ Combined ratio, which is the relation of insurance claims and administrative expenses to the premium income, is an indication of the operational profitability of non-life insurance business.

agreement for the insurance business the Dutch Authority will send the commission a half yearly report on the commitments.

- The Netherlands and SNS REAAL shall appoint a Monitoring Trustee who is to report to the Commission on compliance by the Dutch authorities and by SNS REAAL with the Commitments listed in this document. The monitoring trustee shall be independent of SNS REAAL and shall possess the necessary qualifications to carry out its mandate, for example as an investment bank or consultant or auditor, and shall not be subject to a conflict of interests throughout the exercise of his mandate. The monitoring trustee shall also have a proven expertise in insurance matters (e.g. Solvency 1, MCEV and Solvency 2 calculation).
- The Trustee shall be remunerated by SNS REAAL in a way that does not impede the independent and effective fulfilment of its mandate.

Proposal by the Netherlands and SNS REAAL

- No later than four weeks after the Decision date, the Netherlands shall submit a list of two or more persons whom the Netherlands and SNS REAAL propose to appoint as the Monitoring Trustee to the Commission for approval, with an indication which of those is the Netherlands' and SNS REAAL's preferred choice. The proposal shall contain sufficient information for the Commission to verify that the proposed Trustee fulfils the requirements set out above and shall include:
 - (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Monitoring Trustee to fulfil its duties under these Commitments;
 - (b) the outline of a work plan which describes how the Monitoring Trustee intends to carry out its assigned tasks;

Approval or rejection by the Commission

- The Commission shall have the discretion to approve or reject the proposed Trustees and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, the Netherlands and SNS REAAL shall appoint or cause to be appointed, the individual or institution concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, the Netherlands and SNS REAAL shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by the Netherlands

- If all the proposed Monitoring Trustees are rejected, the Netherlands and SNS REAAL shall submit the names of at least two more individuals or institutions within one week of being informed of the rejection, in accordance with the requirements and the procedure set out above.

Trustee nominated by the Commission

- If all further proposed Monitoring Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom the Netherlands and SNS REAAL shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

Functions of the Monitoring Trustee

- The Monitoring Trustee shall assume its specified duties in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or the Netherlands, give any orders or instructions to the Monitoring Trustee in order to ensure compliance with the Commitments.

Duties and obligations of the Monitoring Trustee

- The Monitoring Trustee shall:
 - (i) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the Commitments.
 - (ii) monitor the compliance with the Commitments.
 - (iii) propose such measures as the Monitoring Trustee considers necessary to ensure the Netherlands' and SNS REAAL's compliance with the Commitments;
 - (iv) provide to the Commission, the Netherlands and SNS REAAL a written draft report in English within 15 days after the end of every semester. The report shall cover the compliance with the Commitments. In addition to these reports, the Monitoring Trustee shall promptly report in writing to the Commission, sending the Netherlands and SNS REAAL a non-confidential copy at the same time, if it concludes on reasonable grounds that SNS REAAL is failing to comply with these Commitments ;
 - (v) provide within two months of the end of each of SNS REAAL's half yearly reporting periods or as otherwise agreed with the Commission a draft written report in English to the Commission and the Netherlands, giving each the opportunity to submit comments within 5 working days. Within 5 working days of receipt of the comments, the Monitoring Trustee shall prepare a final report and submit it to the Commission, taking into account, if possible and at his sole discretion, the comments submitted. The Monitoring Trustee will also send a copy of the final report submitted to the Commission to the Netherlands and to SNS REAAL at the same time. Under no circumstances will the Monitoring Trustee submit any version of the report to the Netherlands and/or SNS REAAL before submitting it to the Commission.

Duties and obligations of the Netherlands and SNS REAAL

- The Netherlands and SNS REAAL shall provide and shall cause its advisors to provide the Monitoring Trustee with all such cooperation, assistance, managerial, administrative support and information as the Monitoring Trustee may reasonably require to perform its tasks.

Replacement, discharge and reappointment of the Monitoring Trustee

- If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Monitoring Trustee to a conflict of interest:
 - (i) the Commission may, after hearing the Monitoring Trustee, require the Netherlands to replace the Trustee; or
 - (ii) The Netherlands and SNS REAAL, with the prior approval of the Commission, may replace the Monitoring Trustee.
- If the Monitoring Trustee is removed, the Monitoring Trustee may be required to continue in its function until a new Monitoring Trustee is in place to whom the Monitoring Trustee has effected a full hand over of all relevant information. The new Monitoring Trustee shall be appointed in accordance with the procedure referred above.
- Beside the removal, the Monitoring Trustee shall cease to act as Monitoring Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Monitoring Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.