EUROPEAN COMMISSION

Brussels, 17.08.2010
C(2010)5740 final

Subject: State aid N 372/2009 – The Netherlands
Restructuring Aid to AEGON

Sir,

1. Procedure

(1) On 12 November 2008 the Netherlands notified to the Commission its intention to provide a loan of EUR 3 billion to Vereniging AEGON (AEGON Association). Vereniging AEGON transferred this amount to AEGON N.V (AEGON) in exchange for Non-Voting Convertible Capital Securities (CCS).

(2) The Commission temporarily approved the capital increase as rescue aid for six months on the basis of Article 107(3)(b) of the Treaty on the Functioning of the European Union[1] (TFEU) in its decision of 27 November 2008 (hereafter "the Rescue Decision"[2]). The temporary approval was conditional upon the submission of a plan within six months from the Rescue Decision demonstrating how AEGON will secure long term viability and how distortions of competition are limited to the strict minimum. The measure was implemented on 1 December 2008.

1 With effect from 1 December 2009, Articles 87 and 88 of the EC Treaty have become Articles 107 and 108, respectively, of the Treaty on the Functioning of the European Union. The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 107 and 108 of the TFEU should be understood as references to Articles 87 and 88, respectively, of the EC Treaty where appropriate.

2 OJ C 9, 14.01.2009, p. 3 (full text http://ec.europa.eu/community_law/state_aids/comp-2008/n569-08.pdf).

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(3) A plan was submitted by the Dutch authorities on 22 June 2009. The Netherlands submitted an amended plan registered by the Commission on 19 November 2009. A final plan was submitted on 26 July 2010 (hereinafter "the plan").

(4) On 12 April 2010 the Commission received a complaint about allegedly distortive commercial behaviour of AEGON on the Dutch market in the group pension business and in certain segments of the banking market[3]. A non-confidential version of the complaint was transmitted to the Netherlands for comments on 13 April 2010. On 12 May 2010 the Netherlands submitted to the Commission their comments on the complaint.

(5) On 8 July 2010 the Netherlands informed the Commission that it exceptionally accepts that this Decision is adopted in the English language.

2. Facts

2.1 The Beneficiary

(6) AEGON is a Dutch company providing insurance and investment services on a global scale. Its businesses include life insurance, asset accumulation and retirement products. It is one of the leading financial institutions in the Netherlands employing approximately 28 thousand people and serving around 40 million customers worldwide.

(7) AEGON is one of the world's largest listed life insurance and pension companies. AEGON is included in the stock market index Dow Jones Eurostoxx 50 as one of the five largest insurance companies in the Eurozone by market capitalisation. […] *.

(8) In 2009, AEGON was profitable with worldwide revenues of EUR 29.7 billion and a positive net result of EUR 204 million, as opposed to the loss of EUR 1,082 million in 2008.

(9) At the end of 2009, AEGON's balance sheet totalled EUR 298 billion, with shareholders' equity of EUR 12 billion and total capital of EUR 19 billion. The Insurance Group Directive (IGD)[4] solvency ratio was 204%.

(10) Tables 1 to 3 below illustrate the contribution of different geographical areas and business lines to AEGON's operating income, as well as the distribution of revenues from each of them.

Table 1: Net income per country (in EUR million)[5]

[3] The complainant is a competitor of Aegon in the Dutch life and pension insurance market but requested not to reveal its identity.

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

[5] Negative figures are put between brackets.

* Confidential information

	2007	2008	2009
Americas	1,596	(1,379)	496
The Netherlands	606	94	241
United Kingdom	267	80	5
Other countries	73	(9)	(285)
Holding and other activities	(2)	113	(254)
Eliminations e.g. to avoid doublecounting	11	19	1
Total net income	**2,551**	**(1,082)**	**204**

Table 2: Total assets breakdown (in EUR billion)

	2008	2009
Americas	155.6	155.6
Netherlands	65.6	66.1
United Kingdom	54.6	66.2
Other Countries	10.5	6.9
Holding and other activities	28.3	31.8
Eliminations	(25.6)	(28.0)
Total assets	**289**	**299**

Table 3: Revenues and operating earnings before tax by business line

	Revenues (in EUR billion)			Operating earnings (in EUR million)		
	2007	2008	2009	2007	2008	2009
Life and protection	14.7	14.3	-	1,284	795	988
Individual savings and retirement	2.8	2.5	-	524	(922)	(315)
Pensions and asset management	15.4	12.6	-	181	251	48
Institutional products	3.4	1.7	-	339	8	161
Life reinsurance	1.8	1.7	-	135	(361)	203
Distribution	0.5	0.5	-	6	1	(3)
General insurance	0.6	0.7	-	47	45	36
Other	0.1	0.1	-	(149)	137	(418)
Total	**39.3**	**34.1**	**29.7**	**2'367**	**(46)**	**700**

(11) AEGON does not have a dominant position in any of its markets. Overall in 2008 AEGON was ranked in national markets (based on its life premiums, including pension business premiums): 8 in the US, 6 in the Netherlands, 3 in the UK, 9 in Spain and 7 in Canada.

Table 4: AEGON national market shares per business in December 2008

Americas		**Netherlands**		**UK**	
Institutional	[6-10%]	Pensions	[20-25%]	Pensions	[10-15%]
Individual Life	[0-5%]	Individual Life	[5-10%]	Annuities	[10-15%]
Variable annuities	[0-5%]	Accidents and health	[0-5%]	Offshore Bonds	[10-15%]
Fixed annuities	[0-5%]	Property and casualty	[0-5%]	Protection	[5-10%]

(12) Before the crisis, AEGON Group was mainly active in the following business lines:

1. *Life & protection business line* provides life insurance and financial protection products, offering traditional, term, universal, permanent life insurance, as well as individual and group financial protection, including accident and health cover.

2. *Individual savings & Retirement business line* includes fixed and variable annuities, mutual funds and a limited number of banking products (only in Netherlands). AEGON provides individual savings and retirement products mainly in the United States and the Netherlands.

3. *Pensions & Asset management business line* of AEGON covers pension products and services and fund management for individuals and corporations.

4. *Institutional products business line* includes Guaranteed Investment Contracts (GICs) and funding agreements for US pension and retirement funds, US municipalities and other investors. Under GICs, AEGON guarantees a certain return on the funds provided by institutional investors during a fixed period of time.

5. *Life reinsurance business line* provides life and annuity reinsurance products to insurance companies. The company’s core product – mortality risk transfer – is offered primarily through coinsurance, but is also available under yearly renewable term arrangements.

6. *Distribution business line* is conducted in the Netherlands, through its Unirobe-Meeùs subsidiary, and in the United Kingdom through Positive Solutions and Origen. In both countries, AEGON companies sell and distribute insurance products and other financial services.

7. *General insurance business line* includes non-life insurance, primarily household, fire, car and liability insurance.

2.2 Reasons for the financial difficulties of AEGON

(13) After the collapse of Lehman Brothers in the US, AEGON's underlying earnings were increasingly badly affected. Lower equity values and higher volatility resulted in a requirement for reserve strengthening and accelerated deferred policy acquisition cost

write-downs, mainly in the US variable annuity business. AEGON also suffered losses of EUR 336 million on the bankruptcies of Lehman Brothers and Washington Mutual and its negative revaluation reserve amounted to EUR 8.5 billion as a result of unrealised losses on its investment portfolio. As a result shareholders' equity decreased to EUR 4.9 billion at the end of the first quarter 2009. The losses incurred meant that AEGON needed additional capital in order to maintain appropriate capital levels […].

(14) There are a number of factors that combined explain why the company needed to be recapitalised by the Dutch State. The three main reasons are (i) the spread business of the US-based Institutional Management Division (IMD) which made AEGON dependent on its AA rating, (ii) losses resulting from the un-hedged variable annuities products and (iii) a level and quality of capital which proved to be insufficient in the crisis environment.

IMD business

(15) The IMD business was composed of three segments: the spread business, the synthetic fee business and structured products.

Table 5: Product balance of IMD segments per 30 June 2008 (in EUR billion)

IMD segment	Product balance
Spread	33.4
Fee	52.3
Structured products	9.5
Total	**95.2**

(16) The spread business was the only on-balance sheet business within the IMD[6]. The spread business consisted mainly of funding agreements and Guaranteed Investment Contracts (GICs), under which AEGON guarantees a certain return on the funds provided by institutional investors during a fixed period of time. Those funds are managed by AEGON, which consequently bears all risks. GICs differ from funding agreements to the extent they enjoy certain tax advantages for qualified investors[7]. The IMD spread business model was based on securing financing with institutional investors at low rates based on AEGON's AA Insurer Financial Strength (IFS) rating and investing these funds into riskier assets with higher yields. As a result, the major source of earnings on institutional spread business was the profits achieved on credit spreads.

(17) The IFS rating is important for the financing of the spread business. Without a high rating (and therefore low interest rates to pay for the funds) the business would not be profitable. Furthermore, in-built rating triggers can be included in financing contracts in the spread business whereby investors can require AEGON to post collateral if the rating of the issuer

6 Hedge funds products, which are part of the structured products segment, are also on-balance sheet. The product balance for hedge funds at the end of June 2008 was USD 1 billion out of the USD 9.5 billion balance of structured products.

7 GICs typically offer a return that is a few basis points below the interbank rate LIBOR, which is made up for by the tax advantage attached to GICs.

goes below a certain level. In particular some types of GICs contain rating triggers if the issuer's IFS rating is downgraded below the level of AA.

(18) AEGON has broadly avoided rating triggers in its financing contracts with, however, the exception of municipal GICs of USD [3-5] billion. Therefore in the end of 2008 a downgrade of AEGON's IFS rating to single 'A' […] have triggered collateral calls[8] of up to USD [3-5] billion compared to a cash position for the group of EUR [10-15] billion at the end of 2008.

(19) […]

(20) The fee business component of the IMD is an off-balance sheet business for AEGON and consists mainly of "synthetic" GIC contracts. In a synthetic GIC contract, the customer remains the owner of the assets. AEGON in a synthetic GIC contract provides a wrap that guarantees the principal amount and the accumulated interest on the assets, which remain managed and funded by AEGON's customer. The assets in a synthetic GIC contract remain on the balance sheet of AEGON's customer, whereas for AEGON synthetic GIC business is off-balance sheet and does not require direct funding by AEGON. If a synthetic GIC-provider fails, the exposure of the customer is substantially lower than in the case of a traditional GIC in the spread business. The assets are owned by the customer and not by AEGON as is the case for traditional GICs in the spread business. Therefore the synthetic GICs are less dependent on ratings.

(21) The pre-tax underlying earnings of the IMD business have been positive between 2006 and 2008. However due to impairments following the outbreak of the crisis the net result of AEGON for 2008 amounted to a loss of USD [0-1] billion. Besides the accounting loss, the decrease in the fair value of the assets of the investment portfolio of the IMD business resulted in negative revaluation reserves of USD [5-10] billion pre-tax at the end of 2008. A substantial portion of the negative revaluation reserves was related to US subprime RMBS[9] securities held by AEGON.

Table 6: Development of the IMD business in period 2006 – 2009 (in USD million)

	2009	**2008**	**2007**	**2006**
Impairments	[(1000)-(400)]	[(1000)-(400)]	[(100)-0]	[0-100]
Net income	[(500)-500]	[(1000)-0]	[0-200]	[200-500]
Revaluation reserve (pre-tax)	[(5000)-(3000)]	[(10000)-(5000)]	[(3000)-(2000)]	[0-300]

Variable annuities

(22) AEGON's US variable annuity business operates in a highly competitive environment characterized by price competition and aggressive product design. Total US variable

8 Collateral has to be posted in the form of high-quality assets; if collateral is not posted the financing contract can be terminated.

9 Residential Mortgage-Backed Securities

annuity-related losses from 3Q2008 to 2Q2009 amounted to EUR [500-1000] million (after […]% tax), which accounts for almost […%] of AEGON's total financial market-related losses over the period.

(23) Although AEGON hedges its newly designed products, its historical portfolio (pre-2003 business) remained unhedged. On 31 December 2008, only [10-20]% of the Guaranteed Minimum Income Benefit (GMIB) portfolio of USD [5-15] billion and [2-10]% of the Guaranteed Minimum Death Benefit (GMDB) was hedged. Since 2003, AEGON has hedged the equity and interest rate risks of new variable annuities sales and in June 2009 additional hedging was put in place to lower the remaining equity exposure by [30-50]%.

Increasing leverage and deterioration of quality of capital

(24) In the years preceding the financial crisis, AEGON's core capital leverage increased. Improvements through net cumulative earnings of EUR 5.7 billion in 2006 and 2007 were partly off-set by dividend payments and transactions, with own share buybacks of EUR 3.7 billion in 2006-2008, as well as by losses in 2008 in excess of EUR 1 billion related to credit and equity markets. In addition, AEGON's equity was reduced by the change in net unrealized gains position of EUR 1.6 billion in 2006 to a net unrealized loss position of EUR 7.2 billion in the revaluation account by the end of 2008.

Table 7: Reduction of core capital through dividend payments and shares buybacks in the period 2006 – 2008 (in EUR million)

	2008	**2007**	**2006**
Purchase of own shares	217	1,439	262
Dividends paid	660	668	471

(25) The effect on core capital was partially compensated by the issue of hybrid capital. However, this hybrid capital demonstrated limited loss-absorption capacity ([…]). The proportion of the core capital (i.e. excluding hybrids) in AEGON's total capital base decreased from 77% in 2006 to 66% in 2008 (taking into account already the capital provided by the State)

2.3 Description of the aid measure

(26) The restructuring aid measure is the continuation of the loan of EUR 3 billion which the Netherlands provided to Vereniging AEGON as rescue aid. Vereniging AEGON acquired 750 million newly issued Non-Voting Convertible Capital Securities (CCS) from AEGON at an issue price of EUR 4 per security

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

- EUR 0.34 (i.e. 8.5% p.a.) per security, non cumulative, payable annually in arrears[10];

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

(28) The coupon payments are set at the same dates that interim or final dividends are being paid to holders of common shares. If no dividend is paid to the holders of common shares there is no coupon payment on the CCS. The coupon period is the period commencing on (and including) the Issue Date and ending on (but excluding) the first Coupon Payment Date and each successive period commencing on (and including) a Coupon Payment Date and ending on (but excluding) the next succeeding Coupon Payment Date. The Executive Board of AEGON formally defines these dates at the beginning of the year. On 28 January 2010, the Executive Board resolved that payment, if any, on common and preference shares would be made on 25 May 2010.

(29) On the initiative of AEGON, the securities can either be repurchased at 150% of the issue price, i.e. EUR 6 per security, or, after a minimum period of three years, be converted into ordinary shares on a one-for-one basis. If AEGON triggers the conversion option, the Netherlands may opt for the alternative redemption of the securities at the issue rate, i.e. EUR 4 per security plus accrued interest that, if the repayment would not have occurred, would have been due over the relevant period.

(30) In addition, according to the initial repayment conditions of the Rescue Decision, AEGON was allowed to repay EUR 1 billion, during the first year of the deal, under special conditions (AEGON made use of the special conditions as described in points (32) and (33) below). If AEGON exercises this option, it is required to repay the EUR 1 billion in cash together with at least the coupon (8.5% p.a.). On top of that, the original contract terms provided that, depending of the circumstances, AEGON is required to pay additional compensation of 0 to 13% of the issue price, depending on the share price[11][12].

(31) The initial repayment conditions were amended in the final submitted plan. The amended conditions are described in points (64) and (65) below.

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10 AEGON made a payment of EUR 121 million to the Dutch authorities on 22 May 2009 because AEGON paid an interim-dividend in 2008 and the participation has a short first coupon of 8.5% p.a. calculated over the period from the issue date of the securities until the coupon date.

11 Early repurchase premium = (130,000,000*((Days from Issue)/365)*(Prevailing Price – EUR 4)); If Market Price is > than or equal to EUR 5 per share, then the Prevailing Price = EUR 5; If Market Price is < or equal to EUR 4 per share, then the Prevailing Price = EUR 4; If Market Price is >EUR 4 but <EUR 5 per share, then the Prevailing Price = Market Price; Market Price = 5 day VWAP prior to the Early Repurchase Date as determined from Bloomberg page <AGN NA Equity VAP>; Days from Issue = (Early Repurchase Date - Issue Date (calculated as a number of days))

12 The CCS are further described in paragraphs 11 to 15 of the Rescue Decision.

2.4. Partial repayment of the capital injection

(32) On 13 August 2009 AEGON announced that it had completed a EUR 1 billion equity issue via an accelerated bookbuilding. The issue comprised 157.8 million new common shares and 32.7 million treasury shares. The shares were sold at a price of EUR 5.25. The issue was settled on 19 August 2009.

(33) The proceeds of the capital increase were used to repay 250 million CCS (representing EUR 1 billion at issue price) to the State representing a nominal amount of EUR 1 billion. The repurchase of the State-owned securities took place on 30 November 2009. AEGON paid EUR 1 billion notional, EUR 108 million repayment premium[13] and EUR 44 million accrued coupon.

2.5 Complaint in the Dutch market

(34) The complainant provided information on distortions of competition resulting from the State intervention in favour of AEGON in the Dutch group pension insurance, mortgage and savings bank markets.

Group pension insurance

(35) In the Dutch pension market, pension funds may reinsure the risk with a pension insurer. The Dutch Central Bank (DNB) may require pension funds to maintain extra buffers on their balance sheet to cover the credit risk associated with pension insurers. The amount of capital to be set aside by the pension funds depends on the rating of the insurer. Under this regime the insured pension funds need to maintain no additional capital for pension insurers rated AA or higher.

(36) After the rating downgrades in the aftermath of the financial crisis AEGON became the pension insurer with the highest rating in the Dutch market. According to the complainant this situation gave AEGON an advantage compared to firms which did not benefit from State aid. According to the complainant the State intervention was aimed precisely at maintaining AEGON's AA rating.

(37) Although the implementation of this regime has been suspended since the beginning of the crisis, the regime has not been revoked and the existence of the regime can still affect expectations for the future and therefore the decision of pension funds as to the choice of an insurance company.

Mortgage market

(38) According to the complainant AEGON applied an aggressive pricing policy in the Dutch long-term mortgage market. As a result of this alleged aggressive commercial behaviour AEGON's market share doubled in 2009 when AEGON became the fourth largest mortgage

[13] EUR 130'000'000*250'000'000/250'000'000*364/365*(Prevailing Price-4) with Prevailing Price 4.8315

provider in the Netherlands as compared to 2008 when AEGON was tenth. The complainant alleges that such a pricing policy could not have been funded by AEGON in the absence of the capital injection by the State.

Savings products market

(39) In 2009 the interest rates offered by AEGON on saving products were relatively attractive compared to those of other actors in the market, in particular compared to non-State aided firms. This alleged aggressive behaviour was observed in the non-restricted savings segment of the market and could only be financed, according to the complainant, through the State aid measure in favour of AEGON.

3. Description of the Plan

(40) The Netherlands committed in the Rescue Decision to submit a plan within six months showing "how AEGON will secure long term viability and how distortions of competition are limited to the strict minimum"[14]. A final version of this plan was submitted on 26 July 2010, with the main elements of it being described below

(41) The plan contains detailed financial information and projections aimed at demonstrating the viability of AEGON. Further, the plan has been complemented by detailed commitments to structural and behavioural measures which aim at addressing the sources of difficulties of AEGON in the past, ensuring an adequate level of burden-sharing and limiting distortions of competition resulting from the State's intervention.

3.1 Financial projections

Assumptions used for financial projections

(42) AEGON presented a business plan for the period 2009-2014. The company made projections for a base case and a worst-case scenario and also performed a sensitivity analysis for a number of key parameters.

(43) Detailed projections were provided for the different geographic business units of the company (USA, Netherlands and UK).

(44) The company's projections are mostly based on appropriate methodologies agreed at EU level, completing these where necessary[15] with information from the national financial supervisor. Where assumptions agreed at a European level were available, AEGON used these assumptions. For a limited number of data points the company used its own expert assumptions.

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[14] Paragraph 34 of the Rescue Decision.

[15] E.g. forecasts for equity markets, corporate bond spreads and macro-economic assumptions for the period after 2011.

Base Case

(45) The base case scenario of AEGON foresees a very gradual recovery of the global economy by 2014, which would go hand-in-hand with a return to normal conditions in the financial markets. The company has made different projections for the US, UK and the Netherlands. In 2014, it foresees in these geographic areas GDP-growth of […]%, […]% and […]% respectively.

(46) Whereas AEGON realised a net profit of EUR 204 million over 2009, the company forecasts in the base case scenario further profits of EUR [500-2000] million in 2010 and EUR [500-2000] million in 2011, that is […] the average yearly net profit of AEGON of EUR 2.6 billion for the pre-crisis years 2005-2007[16].

(47) For the end of 2010, AEGON foresees a net underlying return on equity of around [5-15]%, which is expected to rise to [5-15]% and [5-15]% by the end of respectively 2013 and 2014.

(48) The solvency metrics will meet regulatory requirements as the consolidated IGD solvency ratio is forecast to remain in a range between [150-300]% and [150-300]% over the entire forecast period.

Adverse scenario

(49) AEGON has also made projections for an adverse scenario which contains a considerable degree of extra stress. The adverse case scenario shows a significant drop in equity markets for 2010, following the important cumulative drop that took place since the end of 2007. Equity markets would only recover gradually in the subsequent periods. Longer-term interest rates would remain virtually flat in Europe, but would drop to very low levels in the US caused by deflation. Given the importance of the US in AEGON's overall business activities, this is an important element of stress. Credit levels are forecast to increase to the peak levels reached in the 2008/2009 crisis.

(50) In the adverse scenario, it will take […] years for AEGON to return to profitability. The company projects losses of EUR [0-1000] million in 2010 and foresees a profit of EUR [0-1000] million […] which should increase gradually in the periods thereafter.

(51) The solvency ratios of AEGON withstand the worst case scenario. In 2011, when the IGD Solvency Ratio reaches its lowest level, it is still [150-300]%, substantially above minimum requirements. In the following years, AEGON would be able to rebuild capital again which would lead to an IGD Solvency Ratio of approximately [150-300]% in 2014.

Current and prospective capital adequacy

(52) AEGON's current capital position compares favourably with regulatory minimum requirements. At the end of 2009, the company's IGD Solvency Ratio was at 204% and the

16 Net results (in EUR) of AEGON were as follows: a profit of 2,145 million in 2005; of 3,169 million in 2006 and of 2,551 million in 2007 and a loss of 1,082 million in 2008.

company indicated that it had 3.7 billion EUR in excess capital over and above AA-requirements of S&P[17]. Also the company's revaluation reserves – a basic measure of the company's latent result on its investment portfolio – improved markedly from a negative 7.2 billion EUR at 31 December 2008 to minus 1.7 billion EUR at 31 December 2009.

Sensitivity analysis

(53) AEGON has performed a sensitivity analysis testing to what extent the company's IGD Solvency Ratio would be impacted by adverse developments in specific parameters[18]. Extra impairments, lower equity markets and higher equity markets would lead to substantial, though manageable, changes in the company's excess capital.

3.2 Measures already implemented

(54) AEGON has already put in place a number of measures to address its past difficulties. The following capital preservation measures and divestments have already been implemented:

- Sale of hedge fund holdings (in USA and the Netherlands).
- Monumental Life Letter of Credit transaction (LOC).
- Macro-hedge programme put in place in the second quarter 2009 to hedge its equity exposure associated with its variable annuities business, reducing US equity sensitivities by around 20%. The programme will be expanded as part of additional measures described below.
- Sale of the Taiwan subsidiary of AEGON and associated stakes held in joint-venture partners in the Taiwanese market with total assets of EUR 4.5 billion (at the end of 2008) and total premiums of EUR 772 million (in 2008), resulting in a capital relief of EUR 65 million.
- Sale of funeral business in Netherlands with total assets of EUR 1.1 billion (at the end of 2009) and premiums of EUR 70 million (in 2009).
- Dissolution of the IMD business unit. Termination of the structured product activities and continuation of the run-off of the institutional spread balances when they come due.
- Closure of the auto credit insurance business in the US.
- Closure of the group life business in the UK.
- Reinsurance of catastrophic risks in the CEE portfolio.
- Issuance of EUR 788 million of senior debt.
- Cost reduction of around EUR 250 million in 2009.

(55) Further, the Netherlands committed to additional measures as described below to be implemented during the restructuring period which should end by the end of [2011-2014].

[17] These figures are after the repayment of the first tranche of 1 billion EUR of State aid.

[18] The parameters that were tested included : different yield curve scenarios, a very important increase in impairments, substantial extra stress related to equity markets, adverse currency movements, extra stress on implied volatilities, a decrease of real estate prices, substantial increases in lapse and surrender rates and an increase in inflation.

3.3 Measures to be implemented

(56) In addition to the already implemented measures the plan includes the following additional structural and behavioural measures. AEGON provided a commitment to duly implement the measures and to appoint a monitoring trustee who will ensure compliance with the commitments described below. 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. The Trustee shall be remunerated by AEGON in a way that does not impede the independent and effective fulfilment of its mandate.

(57) The Trustee will provide within two months of the end of each of AEGON's quarterly 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 five working days. The report shall cover the compliance with the commitments. Within five 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 AEGON at the same time. Under no circumstances will the Monitoring Trustee submit any version of the report to the Netherlands or AEGON before submitting it to the Commission. In addition to these reports, the Monitoring Trustee shall promptly report in writing to the Commission, sending the Netherlands and AEGON a non-confidential copy at the same time, if it concludes on reasonable grounds that AEGON is failing to comply with these commitments.

(58) In the Institutional Markets Division (IMD) AEGON will accelerate the run-off of the institutional spread balances. This additional reduction will contribute to an overall AEGON USA general account reduction.

(59) AEGON will reduce the total general account assets of the consolidated AEGON USA balance sheet on a constant currency and amortized cost basis by USD 25 billion from 2007 (USD 130 billion) to end 2012 (USD 105 billion). The reduction will consist of the regular run-off of the institutional spread business, the acceleration thereof and lower production of fixed annuities.

(60) In regard to its variable annuities business AEGON will implement and maintain a structural equity hedging programme on the previously un-hedged back book of US retail Guaranteed Minimum Income Benefit (GMIB) variable annuity guarantees. The hedge will be designed and implemented such that the market value change of the GMIB guarantees due to a movement in […] will be offset within a corridor of […]% by a corresponding market value change in the hedging instruments used. AEGON will monitor the performance of the hedge on a quarterly basis and produce an attribution analysis to demonstrate the effectiveness of the […] hedging. If the […] hedging attribution falls outside a corridor of […]% of expected values, the hedge programme will immediately be brought back within acceptable tolerances. As a consequence, all GMIB guarantee-related

[…], including the previously un-hedged portion, will be covered by an extension of the existing hedging programmes. Furthermore AEGON will continue to price new variable annuity products globally on a […] basis ([…]) in accordance with the AEGON Group Pricing Policy and to hedge these products. AEGON currently prices variable annuities to achieve a LIBOR + […]basis points pre-tax return on capital. AEGON will continue to price at such levels and in any case at a level that covers AEGON's cost of capital.

(61) By 31 December 2012, AEGON commits to improve the ratio of consolidated shareholders' equity (excluding revaluation reserve) to total capital base (including equity, CCS, hybrids and net senior debt) from 70% currently to at least 75%, […].

(62) AEGON will improve the loss-absorption capacity of its capital base. Senior debt of EUR [500-2000] million maturing before 31 December 2012 will be redeemed or refinanced with instruments that will qualify as at least Tier 2 capital under Solvency II and that will in any case contain the following provisions:

1. Subordination: the instrument must be effectively subordinated in a winding up;
2. Loss absorbency: AEGON must be able to defer coupon payments at its sole discretion;
3. Coupons/interest have no cumulative feature;
4. Duration: the instrument will not have a legal maturity of less than five years at the issue date; the instrument must be effectively locked in upon a breach of the Solvency Capital Requirement, where redemption is only permitted if the instrument is replaced by an own fund instrument of equivalent or higher quality and subject to the consent of the supervisor;
5. Repayment: the instrument must only be redeemable at the option of AEGON (i.e. not at the option of the holder) and no mechanism will be attached to the instrument which encourages early redemption, in particular step ups. Any redemption should be subject to the approval of the supervisor;

(63) AEGON will not make dividend payments to its common stock holders and will not call or repurchase any of the outstanding hybrid securities prior to the full repayment of the CCS.

(64) AEGON will repay 125 million CCS (i.e. principal amount of EUR 500 million) as soon as possible and prior to 1 December 2010. This repayment will be done under amended conditions as compared to the initial conditions of the Rescue Decision. The amount to be repaid will consist of the notional amount of EUR 500 million and a repayment premium set in such a way as to ensure a minimum IRR for the Dutch State of 15% on the first half of the CCS repaid (i.e. principal amount of EUR 1.5 billion). According to the initial repayment conditions the amount to be repaid is composed of the issue price of EUR 500 million, an accrued coupon of 8.5% p.a. and a repayment premium of 50%. The difference between the initial repayment conditions and the amended repayment conditions confers an

advantage to AEGON, as the State foregoes payment that would have been due in case of repayment prior to 1 December 2010 under the initial repayment conditions.

(65) AEGON will repay the remaining 375 million CCS before the end of June 2011. AEGON will pay a repayment premium of 50% (EUR 750 million)[19]. This constitutes an amendment of the initial repayment conditions where an accrued coupon of 8.5% p.a. was added to the repayment amount but will not be paid under the amended conditions. Under the amended repayment conditions of the remaining 375 million CCS, the State foregoes the right to an accrued coupon which would have been due under the initial repayment conditions in case of a repayment before end of June 2011. The amount of the foregone accrued coupon constitutes therefore an additional advantage to AEGON.

(66) Prior to the full repayment of the CCS AEGON will not acquire stakes of 20% or more in business entities, excluding those that are (1) required for AEGON to maintain its position in existing joint-ventures or partnerships, (2) related to administration, service or IT companies with the objective to increase process efficiency of the current activities, or (3) related to Spanish bancassurance partnerships, or otherwise only with prior approval of the European Commission. Prior to the full repayment of the CCS AEGON will not increase its overall consolidated market share on the Spanish life market as measured by […] as a result of its merger, acquisition and disposal activities in the Spanish market from its 2009 level ([…]%).

(67) AEGON will sell or run off its Dutch […] pension portfolio with insurance liabilities of EUR [<0.7] billion and run off its […] portfolio with EUR [<1.2] billion of insurance liabilities. AEGON will sell or run off its UK bulk purchase annuity business. AEGON will make a decision on whether to sell or run off those three product lines (2 in the Netherlands and 1 in United Kingdom) by […]. If AEGON decides to run off one or more of these businesses, the company commits to refrain from writing new business as of the date of the relevant run-off decision.

(68) AEGON will request Standard and Poor's no longer to publish or make available to third parties a financial strength rating for its Dutch AEGON Levensverzekering NV (AL) subsidiary until full repayment of the CCS.

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[19] This commitment will not apply if AEGON needs to raise additional funds for such a repayment and AEGON can demonstrate that it cannot raise sufficient additional funds for such repayment through the sale or issuance of shares or replacement equity instruments due to materially adverse market conditions, or that it is otherwise not economically feasible to raise sufficient funds through such sale or issuance. If repayment is not possible on or before the end of June 2011, AEGON will make every reasonable effort to ensure that the remaining CCS are repaid, including a 50% premium and any accrued coupon, regardless of the date when this repayment finally occurs. Should AEGON not have repaid the capital provided by the State which was temporarily approved by decision C(2008) 7734 of 27 November 2008 by the end of June 2011, the Dutch State commits to notify the arrangements that it proposes to enter into with AEGON to compensate for not fulfilling the early repayment commitment (i.e. to repay by June 2011) and that shall apply after June 2011. Such notification shall be without prejudice as to whether those proposed arrangements shall constitute State aid and might require additional measures to compensate for any potential advantage.

(69) [2]With respect to the segment of internet savings account not accessible through branches in the Netherlands, AEGON will not rank first, second or third in terms of most attractive price among all financial institutions in the Dutch market that participate in the Dutch Deposit Guarantee system. This commitment covers at least 85% of AEGON's internet savings volumes. Compliance with this commitment will be monitored through bi-weekly measurements. In the event that three financial institutions jointly rank first, AEGON is allowed to match the rate of these three financial institutions.

(70) With respect to the residential mortgage market (excluding mortgages of 20 and 30 years) in the Netherlands, AEGON will not rank first, second or third in terms of most attractive price. This commitment covers at least 85% of AEGON's new production in this segment. Compliance with this commitment will be monitored through bi-weekly measurements. Rabobank does not publish its rates and will be assumed to have a top-three position in terms of price. In the event that three financial institutions jointly rank first, AEGON is allowed to match the rate of these three financial institutions.

(71) With respect to mortgages of 20 and 30 years in the Netherlands, AEGON will not rank first or second in terms of most attractive price. This commitment covers at least 85% of AEGON's new production in this segment. Compliance with this commitment will be monitored through bi-weekly measurements. In the event that two financial institutions jointly rank first, AEGON is allowed to match the rate of these two financial institutions.

(72) As soon as AEGON detects that it offers a price for any of the above products which is more favorable than the price to which it has committed, AEGON shall immediately start the process of adjustment of the price to the committed level. The adjustment will have been implemented no later than two weeks from the date at which AEGON detected the deviation from the committed level, unless it concerns products for which the price can only be amended at the end of a month and the period between detection of the deviation by AEGON and the end of the month is less than two weeks. In that case, the adjustment will be made prior to the end of the subsequent month at the latest.

(73) AEGON will divest or put in run off its Transamerica Reinsurance business (i.e. its incoming reinsurance activities) covering its operations in the US, Europe, Asia and Latin America. AEGON will make a decision to sell or run off the reinsurance activities by […]. If AEGON decides to run off the business, the company commits to refrain from writing similar new business as of the date of that decision and by […] at the latest.

(74) Execution of the structural measures set out above will be completed before […]. Repayment of the CCS is foreseen before 30 June 2011. Upon repayment, the behavioural constraints set out above will expire. The behavioural constraints will apply as from the date of the final decision.

4. Position of the Netherlands

(75) The Netherlands consider that the submitted plan fully complies with the requirements of the Restructuring Communication[20].In particular the Netherlands consider that the plan demonstrates the viability of AEGON, while it provides for adequate burden-sharing and measures to mitigate distortions of competition.

(76) The Dutch authorities are committed to ensure that AEGON carries out the measures included in the plan.

(77) According to the Netherlands, any growth in market share of AEGON on any of the markets mentioned in the complaint is the result of competition on the merits.

(78) In the calendar year 2009, there have been nine large tenders by pension funds for collective pension contracts where AEGON was one of the bidders. Out of those nine tenders, AEGON has won only one contract. Other insurance companies and pension funds, such as especially […] and […], were more successful.

(79) Further as of 5 March 2010, pension funds have benefited from a Decree exempting them temporarily from maintaining additional reserves where they enter into a reinsurance contract. Moreover, AEGON lost contracts with large corporates to competitors […].

(80) According to the Netherlands AEGON gained market share in the mortgage market due to the preference for longer-term mortgages in crisis time, whereas AEGON has historically specialised in the longer-term segment. Moreover, AEGON benefitted from the (partial) exit of smaller competitors […].

(81) Finally according to the Netherlands the development of AEGON's market share on the market for short-term savings does not point to a distortion of competition. On the contrary, AEGON's market share on this market decreased from [1-5]% in 2007 to [1-5]% in 2008, and to [1-5]% in 2009.

5. Assessment

5.1 Beneficiary of aid

(82) It has already been established in the Rescue Decision[21] that although the loan will be provided to Vereniging AEGON, Vereniging AEGON will derive no economic benefit from the loan as it has to use the amount to acquire the securities from AEGON N.V. but will not acquire economic ownership of those securities nor benefit from any interest payments. Therefore the Commission concluded that the sole beneficiary of the aid is AEGON.

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[20] Commission Communication on the return to viability and the assessment of restructuring measures in the financial sector in the current crisis under State aid rules, C 195, 19.8.2009, p 9-19

[21] Paragraphs 36-39 of the Rescue Decision

5.2 Existence of aid

(83) As stated in Article 107(1) 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, in so far as it affects trade between Member States, be incompatible with the internal market.

(84) The Commission already found in the Rescue Decision that the EUR 3 billion capital injection granted by the Dutch State constitutes State aid.[22] As the restructuring measures are a continuation of the rescue aid they also constitute State aid within the meaning of Article 107(1) TFEU. The advantage persists and is affecting trade and distorting competition.

(85) The amendment of the repayment conditions (as described in points (64) and (65) above) of the remaining 500 million CCS (i.e. principal amount of EUR 2 billion) gives rise to additional State aid. For the reasons set out below, AEGON receives an advantage because the State is foregoing resources which it was entitled to obtain pursuant to the original contractual conditions. This advantage is selective, because it concerns AEGON alone, and involves the loss of State resources. The amendment is capable of distorting competition, since AEGON will be better-positioned than it would otherwise have been as compared with its unassisted counterparts in the various markets on which it is active. Since the beneficiary is active in several Member States the aid involved in the amendment is capable of affecting trade between Member States.

(86) A repayment of 125 million CCS (i.e. a principal amount of EUR 500 million) on 1 December 2010 under the amended conditions described above in point (64) would amount to an additional aid of about EUR 185 million. The amount repaid to the State would be around EUR 585 million for 125 million CCS under the amended conditions as opposed to around EUR 770 million (including 50% repayment premium and accrued coupon) which would have been payable under the conditions described in the Rescue Decision. This alteration leaves the Dutch State EUR 185 million worse off than it would have been had the conditions been left unaltered, and leaves AEGON correspondingly better off than it would have been without the amendment.

(87) In addition, the repayment conditions on the remaining 375 million CCS representing the second half of the total capital injected have been amended so that the accrued coupon is no longer payable to the Dutch State. As is already indicated in point (65), the accrued coupon starts to accumulate each year from zero after the previous dividend date (the latter set each year by the company's Executive Board). If the accrued coupon is at its highest level (i.e. at the dividend date), the accrued coupon foregone by the State would amount to EUR 127.5

[22] Paragraphs 41-51 of the Rescue Decision

million[23]. Assuming for instance repayment on 1 December 2010, the foregone accrued coupon would be around EUR 66 million[24].

(88) Thus the total additional aid amount resulting from the amendment of the repayment conditions of the outstanding 500 million CCS ranges between EUR 251 million and EUR 312.5 million, assuming repayment on 1 December 2010 or just before the dividend reset date.

(89) Under the assumptions described above, the total aid amount in favour of AEGON ranges between EUR 3.251 billion and EUR 3.312 billion.

5.3 Compatibility of measures with Article 107(3)(b) TFEU

(90) Article 107(3)(b) TFEU allows aid to remedy a serious disturbance in the economy of a Member State. It is clear that this provision should be applied restrictively[25].

(91) The Commission established in the Rescue Decision that the Dutch economy was experiencing a serious disturbance and that in such a market situation support for banks is, under certain circumstances, a suitable measure to remedy this disturbance[26]. The compatibility of the aid with the internal market will therefore be assessed on the basis of Article 107(3)(b) TFEU. The purpose of the aid is to secure the long-term viability of AEGON by way of a capital injection that is limited in amount and effect regarding distortions of competition.

(92) In order to assess State aid to banks under Article 107(3)(b) TFEU the Commission has issued inter alia a 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[27] ("the Recapitalisation Communication") and a 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[28] ("the Restructuring Communication").

(93) According to the Restructuring Communication the degree of the required restructuring (and implicitly the full application of the Restructuring Communication) depends on the specific circumstances of the financial institution. A restructuring plan is required in particular, but not exclusively, in situations where a distressed bank has been recapitalised by the State, or where a financial institution benefiting from asset relief has already received State aid in whatever form that contributes to coverage or avoidance of losses

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23 Just before the coupon reset date,the accrued coupon would amount to EUR 1500 million *8.5 % = EUR 127.5 million.

24 EUR 1500 million * 8.5 % *6,16 months/12 months = 65.9

25 See in principle Joined Cases T-132/96 and T-143/96 *Freistaat Sachsen and Volkswagen AG v Commission* [1999] ECR II-3663, paragraph 167, as well as various Commission Decisions; cf. Commission Decision of 4 June 2008 in Case C 9/2008 *Sachsen LB*, OJ L 104, 24.4.2009, p. 34.

26 Paragraph 56 of the Rescue Decision.

27 OJ C 20, 15.01.2009, p.2.

28 OJ C195, 19.08.2009, p.9.

(except participation in a guarantee scheme) which altogether exceeds 2 % of the total bank's risk weighted assets (RWA)[29]. The Commission considers that these conditions are met in the case of AEGON.

(94) For banking activities, the Commission uses a threshold of 2% of RWA (which is equivalent to 25% of the minimum required total capital of 8%) and for insurance the Commission uses by analogy a threshold of 25% of required minimum solvency capital. Although the minimum capital requirements are defined in terms which are not directly comparable between insurance and banking, the Commission considers that 25% of minimum solvency margin is comparable to the 2% RWA threshold to the extent that both represent one-forth of the minimum capital required by the regulator in the respective industries[30]. The aid amount of EUR 3.251 billion granted to AEGON represents 48% of its minimum capital requirements[31] which is a level comparable to 3.8% RWA[32].

(95) Moreover, the Commission notes that in November 2008 the Netherlands and AEGON committed to jointly submit a plan within six months showing how AEGON will secure long-term viability and how distortions of competition are limited to the strict minimum[33]. It follows that the Commission has to assess the compatibility of the plan with the internal market under the Restructuring Communication regarding the capability to restore long-term viability and whether the submitted plan provides for sufficient burden-sharing and measures to limit distortions of competition.

(96) In conclusion, the plan submitted by the Netherlands is assessed by the Commission as a restructuring plan. The Commission considers that the plan submitted by Netherlands contains all the elements of a restructuring plan as defined in the Restructuring Communication.

5.4 Restoration of long-term viability

(97) When assessing a restructuring plan the Commission makes sure that the company is able to restore long-term viability without State aid. This implies that any State aid received is either redeemed over time, as anticipated at the time of the granting of the aid, or is remunerated according to normal market conditions, thereby ensuring that any form of additional State aid is terminated. The Restructuring Communication further makes clear that long-term viability is achieved when a bank is able to cover all its costs including depreciation and financial charges and provide an appropriate return on equity, taking account of the risk profile of the bank. In principle, a bank should be able to comply with the relevant regulatory requirements in stress scenarios with a protracted global recession.

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[29] Cf. point 4 of the Restructuring Communication which refers to the Recapitalisation Communication.

[30] See also footnote 42 of Commission Decision ING of 18 November 2009 http://ec.europa.eu/competition/state_aid/register/ii/doc/C-10-2009-WLAL-en-18.11.2009.pdf, not yet published in the Official Journal and point 67 of Commission Decision SNS OJ C93, 13.04.2010, p.2-3

[31] Minimum required capital stood at EUR 6.8 billion in 4Q2008

[32] EUR 3.312 billion represents in analogy 3.9% RWA.

[33] Paragraph 34 of the Rescue Decision.

Finally, the restructuring plan should also identify the causes of the difficulties for the bank, its weaknesses and outline how the proposed restructuring measures will remedy the past problems.

(98) The submitted plan demonstrates that AEGON will meet the regulatory requirements at any point in time during the restructuring period in a base case and also in a stress case. Both the assumptions of the base case and the stress case have been agreed on with the Commission and are considered to be conservative and prudent. In the base case AEGON will operate in the future at an adequate level of profitability. In the base case scenario, AEGON foresees a net underlying return on equity of around [5-15]%, which is expected to rise to [5-15]% and [5-15]% by the end of respectively 2013 and 2014. The solvency metrics will meet regulatory requirements as the consolidated IGD solvency ratio is forecast to remain in a range between [150-300]% and [150-300]% over the entire forecast period. Further the sensitivity analysis demonstrates that AEGON can withstand different severe external shocks. Therefore the Commission concludes that the plan sufficiently demonstrates the capacity of AEGON to restore long-term viability as well as to achieve an appropriate return on equity in the future.

(99) Further the plan addresses the sources of difficulties of AEGON. As identified in the plan submitted by the Netherlands, the IMD business was at the root of AEGON's difficulties causing losses as well as negative revaluation reserves. Under the IMD business AEGON conducted transactions which would have triggered collateral calls had […]. This situation made […] and created a structural moral hazard problem. To remedy this situation AEGON already terminated all contracts where a collateral trigger was associated with the rating level. Further AEGON committed to fully run down its IMD spread business. In this regard AEGON will cease engaging in new contracts, run down the existing contracts in line with its maturities and where possible accelerate the run down by buying back spread products on the market. In addition the structured products division will be closed down. Meanwhile, AEGON will continue its synthetic GIC business which it will transfer to the Employment Solutions Division (with underlying earnings of $ [0-100] million or [5-25]% of the total IMD division). The synthetic GIC business has a lower risk profile than the spread business as it does not require funding and is less rating-dependent. It performed in a satisfactory way during the crisis. The Commission therefore is of the view that the continuation of the synthetic GIC business does not impede the restoration of long-term viability.

(100) The submitted plan also addresses the weaknesses of AEGON's variable annuities business which was another source of the company's difficulties, as described by the Dutch authorities in the submitted plan. Variable annuities strongly contributed to AEGON's losses during the crisis because of the existence of a large unhedged exposure to equity market movements. To prevent the variable annuities business from endangering the viability of AEGON in the future, the company committed to a prudent pricing and a hedging policy. On the one hand the commitment to price its variable annuity products with reference to an appropriate level of profitability ensures that AEGON will not engage in aggressive pricing and design of product which would not be sustainable in the long-term and would create incentives for AEGON to engage in risky investments. On the other hand

the commitment to hedge the exposure in the variable annuities business is appropriate to remove a risk factor that caused difficulties to the company in the past.

(101) Moreover, AEGON commits to improve its capital structure by raising its core capital ratio to at least 75% of total capital (excluding revaluation reserves) at the end of 2012, […], whereas traditionally a ratio of 70% should suffice to meet the AA-requirements of the rating agencies.

(102) Further AEGON commits to improve the loss-absorption capacity of its capital base by refinancing its maturing senior debt with instruments which will qualify as at least Tier 2 capital under the new solvency rules, which are currently prepared by the EU and which are commonly known as Solvency II[34]. Those instruments will in any case contain loss absorption features in respect of conditions of deferral of coupons, duration, subordination and early repayment incentives. Such conditions constitute a significant improvement of the quality of the hybrid instruments issued by AEGON.

(103) AEGON's commitments to maintain the core capital ratio at above 75 to […]%, as well as to improve the loss absorption capacity of its overall capital base, will strengthen its capital structure and provide for additional buffer in case of future unforeseen losses.

(104) Finally the Commission notes positively that AEGON has been able to raise EUR 1 billion of capital on the market in August 2009, which demonstrates the renewed confidence of the market participants in AEGON.

(105) In view of the above the submitted plan adequately addresses the reasons for the difficulties in the past and is apt to restore AEGON's long-term viability.

5.5 Burden-sharing

(106) In order to be in line with the Restructuring Communication, AEGON's plan must provide for an appropriate own contribution to the restructuring costs. An appropriate own contribution is an important point for burden-sharing and addressing moral hazard. AEGON committed to a precise schedule for the repayment of the outstanding State capital. The commitments will ensure an overall internal rate of return (IRR) for the Dutch State in a range between 17.8[35] and 21%[36]. This level of IRR provides for a high remuneration of the State, it ensures that AEGON bears adequate responsibility for the consequences of its past behaviour and it limits moral hazard. In addition, the Commission values positively […] the […] cash repayment at 150% […]

(107) This assessment is not altered by the modification of the repayment terms of the first EUR 500 million which AEGON will repay after the adoption of the present decision. The Commission considers that such a modification is acceptable because it encourages early repayment. The rationale for such an early redemption is that redemption removes the

[34] http://ec.europa.eu/internal_market/insurance/solvency/background_en.htm

[35] Assuming a repayment of EUR 500 million on 1 December 2010 and the remaining EUR 1.5 billion in June 2011.

[36] Assuming a full repayment of the outstanding EUR 2 billion on 1 December 2010.

ongoing distortive effects of State aid. A modification of the redemption premium is considered as appropriate in view of the early repayment commitment. Further, the modified redemption premium is set in such a way as to ensure an IRR on the first half of the capital injected of 15%; such a level in association with an early repayment commitment has been considered as adequate in earlier Commission practice[37].

(108) The repayment conditions of the remaining EUR 1.5 billion have also been amended by cancelling the accrued coupon which would have been due under the initial repayment conditions at the moment of the repayment. The Commission considers that this additional amendment to the repayment conditions of that remaining amount of aid is justified in view of a commitment to repay by 30 June 2011 at the latest. In particular, the Commission observes that if the EUR 1.5 billion were repaid just after the coupon reset date, no coupon would be due. Accordingly, the absolute amount to be repaid would be higher if AEGON were to repay at any point in time before the reset date of the coupon. Thus any repayment between the last dividend date and the reset date of the coupon would be unattractive for AEGON and would discourage it from repaying. In order to eliminate that dissuasive outcome the Commission sees no reason to not allow the waiver of the coupon. Further the Commission considers that the distortion of competition resulting from the contractual amendment is limited. Therefore it is appropriate to incentivise full repayment before June 2011.

(109) Consequently the aid to AEGON in the form of the reduction of the repayment premium for the outstanding 500 million CCS, which ends up in a range between roughly EUR 251 and 312 million, will be considered as additional aid which is compatible with the internal market pursuant to Article 107(3)(b) TFEU.

(110) Burden-sharing is ensured by the contribution of capital and hybrid instrument holders of AEGON to the costs of the restructuring. In this respect it is noted first that the capital increase of August 2009, which was used to repay one-third of the State capital, provided burden-sharing through the dilution of existing shareholders. Second, the commitment by the Netherlands whereby AEGON will not make dividend payments to its common stock holders and will not call or repurchase any of the outstanding hybrid securities prior to the full repayment of the CCS ensures that the owners and hybrid instrument holders of AEGON contribute to the restructuring.

(111) The fact that there are commitments (see points (64) and (65)) to repay all the outstanding State aid by 30 June 2011 demonstrates that the payment of coupons on hybrid instruments does not hinder the capacity of AEGON to repay the State and is therefore not considered as necessary in this case, as long as the repayment commitments mentioned above are complied with.

(112) In view of the above, the submitted plan provides for an appropriate own contribution as required by the Restructuring Communication.

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37 Commission decision C 10/2009 on State aid implemented by the Netherlands for ING's Illiquid Assets Back-Up Facility and Restructuring Plan of 18 November 2009, paragraph 133.

5.6 Measures to address distortions of competition

(113) According to point 30 of the Restructuring Communication measures to limit the distortions of competition should be tailor-made to address the distortions identified on the markets.

(114) Point 34 of the Restructuring Communication notes that adequate remuneration is one of the most appropriate limitations of distortions of competition, as it limits the amount of aid. The Commission notes that according to the submitted plan the IRR of the Dutch State achieved on the State capital injected will range between 17.8 and 21%. This can be considered as very high remuneration.

(115) The level of remuneration is to be assessed in association with the early repayment. Whereas the high level of remuneration will address the existing distortions of competition, the early repayment will terminate the effect of the State intervention. The early repayment at a high cost for the beneficiary ensures in this respect that the aid is limited to the minimum necessary and that it is not used for further expansion to the detriment of the competitors of AEGON.

(116) AEGON has been one of the price leaders on the Dutch mortgage and savings market in the period after the capital injection by the State. It also observed that the company increased its market share in mortgages throughout 2009. The Commission considers that past pricing practice of AEGON amounts to aggressive commercial behaviour. Against this background, a price leadership ban as committed to by AEGON seems to be an appropriate measure to avoid in the future distortions of competition on the Dutch mortgage and savings markets and fully addresses the allegation of the complainant in that respect.

(117) In view of the argument of Netherlands in regard of the limited distortive effect of the rating of AEGON in the Dutch pension market (see in point (79)), the Commission considers that the commitment in point (68) to abstain from using the benefit associated with AEGON's rating on the Dutch pension fund market fully addresses the issues raised by the complainant in that respect.

(118) In addition, AEGON will sell or run off a pension portfolio of EUR [<0.7] billion and run off its […] portfolio representing EUR [<1.2] billion in the Netherlands. AEGON will also sell or run off its bulk purchase annuity business in the UK, exiting this segment of the UK market.

(119) In addition AEGON committed to refrain from acquiring stakes of 20% or more in business entities prior to the full repayment of the State (see also point (66)). According to point 40 of the Restructuring Communication, aided companies should not use State aid for the acquisition of competing businesses. The exclusions from the acquisition ban of transactions which are required for AEGON to maintain its position in existing joint-ventures or partnerships or which are related to administration, service or IT companies with the objective to increase process efficiency of the current activities do not aim at increasing market share in AEGON's core markets but allow AEGON to maintain its current position or to enhance its process efficiency. In view of the specificities of the Spanish insurance market which is currently undergoing consolidation involving changes

in legal structure for existing actors, a market share cap will ensure that overall AEGON will not increase its position in the Spanish market.

(120) The term of the acquisition ban and the other behavioural commitments is linked to the full repayment of the Dutch State. This provides a strong incentive to repay the aid as soon as possible and even before the date committed to.

(121) The submitted plan contains a number of divestments reducing the market presence of the beneficiary. In this respect, AEGON commits to reduce its USA balance sheet by USD 25 billion, representing a reduction of around 19% of its total USA balance sheet as compared to 2007 and around 6% of the 2009 total balance sheet of AEGON.

(122) Further AEGON commits to completely exit one of its business lines by running off or selling its reinsurance activities covering its operations in the US, Europe, Asia and Latin America with a total balance sheet of EUR [0-4] billion.

(123) Finally, AEGON already implemented a number of divestments in order to comply with the requirements of the Restructuring Communication to refrain from expansion of its business activities that it would not have pursued without the capital injection. In this respect, AEGON already withdrew from its subsidiary in Taiwan and sold its funeral business in the Netherlands. Both measures are structural and represent in total a balance sheet reduction of EUR 5 billion reducing AEGON's overall market presence.

(124) The scale of the proposed reductions is appropriate to mitigate the distortions of competition resulting from the State intervention which enabled AEGON to maintain its market presence at the expense of its competitors.

(125) In view of the above the Commission considers that AEGON has taken the necessary steps to address the competition distortions and address moral hazard. The submitted plan is in line with the requirements of the Restructuring Communication in terms of viability, burden-sharing and measures to mitigate distortions of competition.

5.7 Conclusion

The presented plan meets the commitment provided by the Netherlands in so far as the capital injection enables AEGON to restore its long-term viability, is sufficient in respect to burden-sharing and is proportional to offset the market-distorting effects of the aid measures in question. The plan submitted by AEGON therefore fulfils the relevant criteria of the Restructuring Communication and can therefore be considered compatible pursuant to Article 107(3)(b) TFEU.

6. Monitoring

The plan presented by the Netherlands will need to be properly implemented. In order to ensure a proper implementation, the Netherlands will provide the Commission with an annual monitoring report. In addition, the plan and the commitments provided by the Netherlands foresee a

Monitoring Trustee who will assist the Commission in monitoring the implementation of the plan and various provisions therein.

7. Decision

The 3 billion EUR capital injection by the Netherlands in favour of AEGON constitutes restructuring aid which fulfils the conditions to be considered compatible with the internal market pursuant to Article 107(3)(b) TFEU. Consequently, the Commission raises no objection against the notified aid.

The Netherlands have exceptionally accepted to receive the text of this decision only in English.

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/community_law/state_aids/state_aids_texts_en.htm

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

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Yours faithfully,
For the Commission

Joaquín ALMUNIA
Vice-President of the Commission