



Press and Information

General Court of the European Union  
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Judgment in Case T-319/11  
ABN Amro Group NV v Commission

## **The General Court confirms the prohibition on ABN Amro making acquisitions**

*That prohibition was imposed by the Commission in 2011 in the context of the recapitalisation of ABN Amro by the Dutch State due to the financial crisis*

ABN Amro Group NV ('ABN Amro') is a financial institution which has its registered office in Amsterdam (Netherlands). It holds 100% of the shares in ABN AMRO Bank NV, which is organised across two client centres: (i) retail and private banking and (ii) commercial and merchant banking.

ABN AMRO's current structure is the result of a 2007 agreement between the companies Fortis SA/NV, Royal Bank of Scotland and Banco de Santander. That agreement was aimed at the acquisition and division into several parts of the former parent company ABN AMRO Holding. Given the financial crisis and uncertainty concerning the long-term viability of Fortis in the autumn of 2008, the Dutch State acquired Fortis Bank Nederland (FBN), the Dutch subsidiary of Fortis, and some commercial units of ABN AMRO Holding (including ABN AMRO N). The Dutch State decided to merge FBN and ABN AMRO N to create a new legal entity, namely ABN AMRO.

Those acquisitions and the recapitalisation measures carried out by the Dutch State for the benefit of ABN Amro were the subject of a Commission investigation procedure.

In that regard, the Dutch State, ABN Amro and the Commission variously held meetings and corresponded with each other in 2010 and 2011 on the subject of the scope and duration of a prohibition on making acquisitions (an 'acquisition ban'). The Commission deemed such a measure to be necessary if it was to be in a position to consider the aid granted to ABN Amro to be compatible with the internal market.

Since no agreement could be reached on the terms of that prohibition, the Commission adopted, on 5 April 2011, a decision subject to conditions<sup>1</sup>.

In that decision, the Commission concludes that ABN Amro received State aid in the form of recapitalisation aid to an estimated value of between €4.2 and €5.45 billion (or between 2.75 and 3.5% of its risk-weighted assets), and liquidity aid amounting to €71.7 billion. However, the Commission accepted, subject to conditions, the compatibility of the restructuring plans in the light of the communication on bank restructuring<sup>2</sup>.

The decision includes an acquisition ban for a period of three years, with the exception however of acquisitions of specified types and of a specified minimum size. That ban is extended to five years if the Dutch State continues to own more than 50% of ABN Amro at the end of three years.

ABN Amro brought an action against that decision, in order to challenge the scope and duration of the prohibition as formulated in the contested decision.

<sup>1</sup> Decision on the measures implemented by the Dutch State for ABN AMRO Group NV, 2011/823/EU (OJ 2011 L 333, p. 1).

<sup>2</sup> Commission communication on the return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the State aid rules (OJ 2009 C 195, p. 9).

In that context, ABN Amro claims that the aid which was granted to it does not entail any distortion of competition, because the aid was not made necessary by excessive risk taking. Given that fact, ABN Amro considers that the scope of the acquisition ban imposed on it is excessively wide, since it is prohibited from controlling more than 5% of any undertaking whatsoever and since the exceptions are restrictively worded.

In its judgment today, the General Court recalls first the discretion of the Commission as regards the conditions which must be met before an aid measure which remedies a serious disturbance in the economy of a Member State can be declared to be compatible with the internal market. The General Court also recalls that a behavioural measure imposed in that context cannot be assessed in isolation.

The General Court then upholds the Commission's analysis that the aim of acquisitions must be to ensure the viability of the body receiving aid, which means that any acquisition financed by means of State aid which is not strictly necessary to ensure the return to viability of the beneficiary company is in breach of the principle that the aid must be limited to the strict minimum. The objective is to ensure that the money of the bank receiving the aid should be used for the repayment of that aid prior to the bank making any new acquisitions.

Consequently, the General Court concludes that, in the circumstances of this case, the prohibition on making acquisitions in the form of shareholdings of 5% or more in undertakings of any sector is consistent with the principles contained in the various Commission communications, in particular the communication on restructuring<sup>3</sup>.

The General Court considers that the same is true of the duration of the prohibition. The prohibition must therefore remain in force for at least three years from the date of adoption of the contested decision or until the shareholding of the Dutch State falls below 50 %, but will cease to apply at the latest five years after the date of adoption of the contested decision.

ABN Amro however submitted that the TFEU prohibits the Commission from taking a decision on the basis of whether an undertaking is in public or private ownership. The General Court states, in that regard, that the contested decision does not treat State ownership as the equivalent of State aid and identifies an objective reason why the State's majority shareholding in the bank is used as a point of reference, and consequently there can be no question of discrimination against State ownership.

Further, the General Court states that, in the particular circumstances of this case, the Commission could properly take the view that the advantage derived from the aid would come to an end at the point in time when the Dutch State no longer held a majority shareholding in ABN Amro. Likewise, the Commission was justified, in order to define the maximum duration of the prohibition, in taking account of, inter alia, the strategy of the Dutch State for exiting the capital of ABN Amro (a strategy submitted to the Commission during the administrative procedure).

Last, rejecting also ABN Amro's arguments relating to a failure to state sufficient reasons and infringements of the principles of proportionality, equal treatment and good administration, the General Court dismisses the action in its entirety.

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**NOTE:** An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months of notification of the decision.

**NOTE:** An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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<sup>3</sup> Idem.

*Unofficial document for media use, not binding on the General Court.*

The [full text](#) of the judgment is published on the CURIA website on the day of delivery

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