

Press release Council of State: 25 February 2013

Minister of Finance was entitled to expropriate SNS securities and loans, but not future claims

The Minister of Finance was entitled to expropriate the securities, including shares, subordinated bonds and participation certificates, and the subordinated private loans of SNS Bank and SNS REAAL on 1 February 2013, but not future claims. This was the conclusion of the judgment given today by the Administrative Jurisdiction Division of the Council of State. Numerous organisations and private individuals from the Netherlands and other countries had lodged an appeal against the expropriation with the Council of State. They included the Investors Association VEB, the SNS Bondholders Organisation, the Trade Union Confederation FNV and many individuals. There is no appeal against the judgment.

Stability of financial system

The Council of State, the highest administrative court, held that the minister was entitled to expropriate the securities and subordinated private loans of SNS Bank and SNS REAAL. This was partly based on the consideration that SNS Bank was unable by itself to overcome the capital shortage arising mainly from losses on its real estate portfolio. In addition, De Nederlandsche Bank (the Dutch central bank) had demanded that a long-term solution to the capital shortage be found by 31 January. However, this proved impossible. Without the minister's intervention, SNS would most likely have gone bankrupt, which would also have entailed the bankruptcy of ASN Bank and Regio Bank. Due to the deposit guarantee system, a bankruptcy would also have had major consequences for other Dutch banks and the State. In view of this situation, the minister was entitled to conclude that the stability of the financial system faced a serious and immediate threat.

Many objections were raised to the fact that the minister had based his decision on Cushman & Wakefield's valuation report on the real estate portfolio. The Council of State held that the minister was entitled to base his decision on that report.

Future claims

The Council of State quashed the minister's expropriation order in respect of any claims that former shareholders and bondholders might make in the future. The expropriation of these claims, which are unsecured, is at odds with his own decision to exclude these claims. Expropriation of these future claims is also hard to reconcile with the compensation system under the Financial Supervision Act.

Expropriation

On Friday 1 February, the Dutch State nationalised SNS Bank and SNS REAAL. The expropriation order was based on the Financial Supervision Act, which since 2012 has allowed the Minister of Finance to intervene in banks that get into difficulties.