

# Investigation Vanguard

*the criminal investigation into Econosto Mideast B.V., Econosto N.V. and ERIKS N.V.*

## Statement of Facts and Conclusions Netherlands Public Prosecution Service

**OPENBAAR MINISTERIE**

National Office for Serious Fraud, Environmental Crime and Asset Confiscation  
(Functioneel Parket)

## **Table of contents**

### **Part I: Statement of facts**

#### **1. Introduction**

- 1.1 Purpose and contents
- 1.2 Description of the affected legal entities
  - 1.2.1 EME
  - 1.2.2 Econosto
  - 1.2.3 ERIKS
- 1.3 Grounds for the criminal investigation

#### **2 Investigative findings**

- 2.1 Commission payments to employees of clients
- 2.2 Processing of commission payments in the administrative records
- 2.3 Knowledge of legal entities of risks of cash commission payments
- 2.4 Transactions with Iranian entities

### **Part II: Conclusions of the Netherlands Public Prosecution Service (NPPS)**

#### **3 Offences**

- 3.1 Offences
  - 3.1.1 Commercial bribery
  - 3.1.2 Falsification of documents
  - 3.1.3 Violation of sanction legislation and regulations
- 3.2 Attribution of offences to legal entities
  - 3.2.1 EME
  - 3.2.2 Econosto
  - 3.2.3 ERIKS

#### **4 Role of SHV**

#### **5 Serious nature of the facts**

- 5.1 Introduction
- 5.2 Internationally operating companies
- 5.3 Obtaining orders from clients through bribery
- 5.4 Concealing bribery in administrative records
- 5.5 Performing transactions with sanctioned entities

#### **6 Considerations for offering a settlement**

- 6.1 Legal framework
- 6.2 Statement of reasons
  - 6.2.1 Self-reporting and cooperation with the investigation
  - 6.2.2 Remediation and compliance measures
  - 6.2.3 Acknowledgement of facts

#### **7 Settlement agreement**

- 7.1 Fine and unlawfully obtained gains
  - 7.1.1 Fine
  - 7.1.2 Unlawfully obtained gains
- 7.2 Publication of settlement agreement

## **Part I: Statement of facts**

### **1 Introduction**

#### **1.1 Purpose and contents**

This statement of facts describes the grounds for and the findings of the criminal investigation into Econosto Mideast B.V. (hereinafter referred to as EME), Econosto N.V. (hereinafter referred to as Econosto) and ERIKS N.V. (hereinafter referred to as ERIKS) by the Dutch Fiscal Information and Investigation Service (hereinafter referred to as FIOD), under the auspices of the Netherlands Public Prosecution Service (hereinafter referred to as NPPS).

#### **1.2 Description of the affected legal entities**

##### **1.2.1 EME**

EME is a Dutch legal entity with its registered seat in Rotterdam. It had its operational head office in Dubai, and undertook no activities in the Netherlands. EME was a trading company and sold and installed pipes, pipe appendages and industrial valves to companies active in the petrochemical industry (oil and gas), construction (heating, ventilation and air conditioning), mining, the maritime sector and firefighting.

Starting in 1985, EME was active in various countries in the Middle East and Asia. During the investigation period, EME had sales offices in Saudi Arabia, Qatar, Pakistan and India.

In 2016, the decision was taken to gradually dismantle and wind up EME. At present, EME has ceased operational activities. The winding up of EME will be concluded in the near future.

##### **1.2.2 Econosto**

EME is part of Econosto, an internationally operating company specialising in flow engineering. Until mid-2008, Econosto was quoted on the Amsterdam stock exchange.

##### **1.2.3 ERIKS**

In mid-2008, Econosto was taken over by ERIKS. ERIKS is an international provider of industrial services. Following the takeover of Econosto, the Chief Executive Officer (hereinafter referred to as CEO) of Econosto also became a Board member of ERIKS. The CEO and Chief Financial Officer (hereinafter referred to as the CFO) of ERIKS also became members of the Supervisory Board at Econosto. Until mid-2009, ERIKS was quoted on the Amsterdam stock exchange.

#### **1.3 Grounds for the criminal investigation**

On 14 December 2016, at the request of its client SHV, the legal firm Allen & Overy LLP (hereinafter referred to as A&O) presented a memorandum and supporting documents to the National Office for Serious Fraud, Environmental Crime and Asset Confiscation (hereinafter referred to as the FP) in Amsterdam. The memorandum describes the findings of an investigation commissioned by SHV into possible irregularities at EME in the period between 2008 and 2015. This investigation revealed that employees of EME paid (cash) commissions to employees of potential customers of EME, with a view to obtaining orders.

This memorandum led to a reasonable suspicion that EME had been repeatedly guilty of commercial bribery and falsification of documents. On 20 December 2016, the FIOD therefore launched an extensive criminal investigation into EME, during which numerous persons were heard as witnesses, telephone conversations were tapped and large volumes of data, including administrative records and email traffic, were investigated. The investigation covered the period between 2008 and 2015.

## **2 Investigative findings**

### **2.1 Commission payments to employees of clients**

The criminal investigation revealed that in the period between 2008 and 2015, EME promised and made commission payments to persons employed as buyers at (potential) clients of EME, or to persons commissioned by (potential) clients of EME, such as architects, procurement consultants or project managers. It is probable that almost all recipients of commissions occupied positions at or for the client of EME such that they could influence the decision whether or not to award orders to EME.

The commission payments were administratively processed by EME in an administration that was kept outside the regular company administration of EME and was intended exclusively for internal use (hereinafter referred to as the parallel administration). The recipients of the commissions were recorded in this parallel administration. The parallel administration shows that in the period between 2008 and 2015, EME agreed to pay more than 1.500 commissions with 350 people relating to around 2.350 sales orders from 250 different clients.

The parallel administration shows that employees of EME made commission payments both in cash and by bank transfer. The investigation by the FIOD into the commission payments by bank transfer did not reveal commercial bribery. With regard to the cash payments, cases of bribery were revealed. The remainder of the investigation therefore focused on cash commission payments.

Around EUR 3.7 million of the commissions paid in the period between 2008 and 2015 were paid in cash. This involves around 1.000 separate payments, ranging from several tens of euros to EUR 176.000. These cash commission payments related to 22% of the total turnover of EME.

The investigation revealed that the employers of the recipients were probably not aware of the commission payments to their employees. Arrangements between EME and the employees in question were almost exclusively made verbally, and not recorded in writing (for example) in agreements and invoices. Invoices from the recipient were drawn up in occasional cases, but referred to invented activities. Moreover, the payments were in contravention of the codes of conduct of a large number of EME's clients, which explicitly state that the acceptance of cash gifts by their employees is not permitted.

### **2.2 Processing of commission payments in the administrative records**

In EME's company administration, the commission payments to third parties were processed in two different ledger accounts as sales bonuses for own staff ('staff bonus sales').

The cash payments were recorded in the regular administration using cash forms. Up to and including 2008, the director of EME signed these forms for receipt of the cash. From 2009 onwards, the forms were signed by various sales staff at EME. The director and sales staff of EME passed on the money to employees of clients of EME. In this way, in total around 1.000 cash forms were created.

The regular company administration of EME also includes a number of invoices from employees of clients, listing work that was allegedly carried out by the persons in question on behalf of EME. However, the investigation revealed these persons performed no (legitimate) work for EME. In the period between 1 January 2012 and 31 December 2014, 36 such invoices were entered in the regular company administration.

For the years 2008 and 2009, the director of EME and the CFO of Econosto respectively drew up Letters of Representation which were then issued to the external accountant. In Letters of Representation, the management of a company guarantees that the annual

accounts are a fair representation of the facts and are in compliance with the applicable reporting system. The Letters of Representation in question confirmed that the amounts accounted for in the regular administration for staff costs did in fact relate to staff costs.

The criminal investigation also revealed that EME included the cash commission payments in the annual accounts for the years 2009 and 2010 under the heading 'wages and salaries'. The annual accounts for 2009 were signed by the CEO and CFO of Econosto and the annual accounts for 2010 were signed by the CEO of Econosto. Both annual accounts were filed with the Netherlands Chamber of Commerce.

It also emerged from the investigation that the management of EME and Econosto knew that a considerable proportion of the staff costs ('wages and salaries') actually referred to costs relating to commission payments to third parties. The Letters of Representation and the annual accounts therefore do not provide a (full) insight into the true nature of the costs.

### **2.3 Knowledge of legal entities of risks of cash commission payments**

The investigation has revealed that persons, including directors, within EME, Econosto and ERIKS were aware of the cash commission payments to employees of clients in exchange for obtaining orders, and of the administrative processing of these payments.

In 2008, the external accountant of EME reported on the cash commission payments by EME. The investigation shows that as a consequence of this reporting, in the meetings of the Executive Board and Board of Supervisory Directors of Econosto and ERIKS, it was mentioned on several occasions that EME had paid cash commissions to clients. At the time, it was the director of EME who received the so-called sales bonuses, and who signed for the passing on of the payments to third parties.

The investigation revealed that the next external accountant of EME also expressly pointed out the bribery risk of cash commission payments to clients in the accountant's audit of ERIKS at the end of 2009. He also warned ERIKS about possible violations of legislation and regulations and the obligation to report the commission payments as unusual transactions to the FIU, pursuant to the Anti-Money Laundering and Counter Terrorism Financing Act (hereinafter referred to as the AML/CTF). The external accountant also pointed out to ERIKS that accounting for these commissions as staff costs could potentially represent falsification of documents.

In response, the directors of EME, Econosto and ERIKS decided that in the future, cash payments to third parties should be accounted for in the administration as sales bonuses to own employees (staff bonus sales) and that employees of the company - not the director - should sign for receipt of the money that was subsequently passed on. The parallel administration revealed that EME agreed to pay commissions and cash commission payments were made in this manner, up to and including 2015.

### **2.4 Transactions with Iranian entities**

Since 2007, Iran has been subject to trade sanctions, because in connection with its nuclear activities, Iran fails to comply with the obligations pursuant to the international Non-Proliferation Treaty. The investigation revealed that the management of ERIKS informed the managing directors of its subsidiary companies of these sanction rules, in detail, via internal guidelines and memoranda. Until the end of 2010, on the basis of the guidelines, EME was required to request permission from the CEO of Econosto for transactions in Iran or with Iranian entities. At the end of 2010, the management of ERIKS made it known that until further notice, the doing of business with Iran was entirely forbidden. In contravention of this instruction, EME continued to business with Iran. The investigation did not reveal that Econosto and ERIKS were aware of this.

The investigation shows that EME maintained bank accounts at the Dubai branch of Bank Melli and the Dubai branch of Bank Saderat. EME also made transfers to and from these accounts, despite the fact that these Iranian banks were subject to sanctions.

It also follows from the investigation that in 2011 and 2012, EME sold goods to the Iranian company Iran Marine Industrial Company (SADRA), which company had been subject to sanctions since 23 May 2011. The investigation revealed that the sales order in question was placed before SADRA was included on the relevant sanction list. The deliveries and invoices for the order took place on seven different occasions, after SADRA had been included on the sanction list in question.

## **Part II: Conclusions of the Netherlands Public Prosecution Service (NPPS)**

### **3 Offences**

#### **3.1 Offences**

On the basis of the investigative findings of the FIOD, the NPPS concludes that EME is guilty of the following criminal offences:

1) ***Commercial bribery***

in the period between 1 January 2009 and 15 November 2015 in Iran, Qatar, Pakistan, Iraq, Bahrein, Jordan and Egypt, made punishable by Article 328ter(2) of the Dutch Criminal Code, committed repeatedly;

2) ***Falsification of documents***

in the period between 1 January 2005 and 30 November 2015, in the Netherlands and Dubai, made punishable by Article 225(1 and 2) of the Dutch Criminal Code, committed repeatedly;

3) ***Violation of sanction legislation and regulations***

in the period between 1 January 2009 and 22 October 2016 in Dubai, Qatar and Iran, made punishable by Article 2 of the Sanctions Act 1997 in conjunction with Article 1 of the Economic Offences Act, committed repeatedly.

In addition, the NPPS concludes on the basis of the investigative findings of the FIOD that Econosto and ERIKS are guilty of falsification of documents in the Netherlands and Dubai, as concerns Econosto in the period between 1 January 2005 and 30 November 2015, and as concerns ERIKS in the period between 28 August 2008 and 30 November 2015.

#### **3.1.1 Commercial bribery**

The FIOD unveiled the entire scope of the commercial bribery. The NPPS observes that in the period between 2008 and 2015, approximately 1.000 cash bribery payments were made. Due to the barring of the bribery offences prior to 1 January 2009 by limitation, and the fact that commercial bribery is not punishable in a number of the countries where the payments were made (including in the United Arab Emirates, Oman, Saudi Arabia, Sri Lanka and Kuwait), the NPPS has no right to prosecute for a number of these offences. The present settlement relates to 294 prosecutable cases of commercial bribery.

#### **3.1.2 Falsification of documents**

The NPPS determines that the legal entities in question are guilty of falsification of documents, committed repeatedly.

Over a period of 10 years, EME falsely accounted for the commission payments to third parties in two different ledger accounts, as if they were sales bonuses for own staff ('staff bonus sales').

To be able to administratively process the cash commission payments in the regular company administration, approximately 1.000 falsified cash forms were produced.

The regular company administration of EME also includes 36 invoices from sales staff of clients, with the false description that the recipients performed work for EME, while EME knew that this work had not been carried out and that the sole purpose of the invoices was to allow the commission payment to be processed in the administration.

Although EME was aware of the parallel administration, the falsified invoices and the falsified cash forms, the management of EME still prepared and used Letters of Representation for the years 2008 and 2009 which - contrary to reality - confirmed (among

others) that all amounts accounted for in the regular company administration for staff costs did actually relate to staff costs.

Finally, the NPPS concludes that EME drew up falsified annual accounts for the years 2009 and 2010 in that the commission payments to third parties were deliberately wrongfully accounted for in the annual accounts under the heading 'wages and salaries'. These annual accounts were signed by members of the Board of Directors of Econosto and filed with the Netherlands Chamber of Commerce.

### **3.1.3 Violation of sanction legislation and regulations**

The NPPS observes that in the period between 2009 and 2016, EME repeatedly violated the 1977 Sanctions Act. Pursuant to the Sanction Regulations Iran<sup>1</sup>, during the period in question, there was a ban on financial and economic transactions with businesses and persons appearing on the EU sanctions list.<sup>2</sup> EME carried out transactions with two banks and a company that at the time appeared on the sanctions list.

## **3.2 Attribution of offences to legal entities**

The NPPS concludes that the criminal behaviour as referred to in 3.1 can be attributed to EME. Furthermore, the falsification of documents can also be attributed to Econosto and ERIKS, with the exception of the falsified annual accounts of EME for the years 2009 and 2010, which cannot be attributed to ERIKS.

### **3.2.1 EME**

The NPPS observes that the criminal behaviour as referred to in 3.1 was committed by employees of EME, in particular sales staff and the director. They were responsible for the promises made concerning the commissions and the actual payments. This way of doing business was an integral part of the policy and the culture within EME. Deliberately and knowingly, with the knowledge of and assisted by the active involvement of the director, hundreds of falsified documents were created. The commission payments and the incorrect processing thereof, were of benefit to EME in that a large proportion of the company's turnover was generated as a consequence.

The transactions with sanctioned entities were also undertaken by employees of EME. Not only was insufficient diligence employed in preventing violation of the sanction rules; a deliberate choice was made to do business with Iran in contravention of these statutory rules and internal rules. The transaction with the Iranian company generated turnover.

The criminal behaviour was accepted by EME. All offences can therefore be attributed to EME.

### **3.2.2 Econosto**

Between 2008 and 2011, Econosto was sole director of EME. After that time, the company remained joint director until mid-July 2015.

It can be concluded from the criminal investigation that one or more directors and supervisory directors of Econosto were aware from March 2008 onwards that EME was making cash commission payments, and of the way in which these payments were accounted for in the regular company administration. These persons knew that commission payments to third parties were falsely accounted for in the administration of EME as sales bonuses. They had the authority to end these payments. Nonetheless, they did not intervene. It has not been found that Econosto took measures to prevent the criminal behaviour. Indeed, even after it became clear that the cash commission payments represented a bribery risk, and possibly falsification of documents, the directors of EME, Econosto and ERIKS agreed in mutual consultation that the cash payments to third parties

---

<sup>1</sup> In the relevant period, this relates to the Sanction Regulations Iran 2007, Sanction Regulations Iran 2010 and Sanction Regulations Iran 2012.

<sup>2</sup> In the relevant period, this relates respectively to EC 423/2007, EU 961/2010 and EU 267/2012.

should from then on be accounted for as (sales) bonuses to employees of EME, in the company's administration.

The falsification of documents, committed repeatedly, can therefore be attributed to Econosto.

### **3.2.3 ERIKS**

On 28 May 2008, Econosto was taken over by ERIKS. Following the takeover of Econosto, the directors of ERIKS also became supervisory directors of Econosto. In that role, they were responsible for supervising the policy of the board of directors, and the general course of business within Econosto.

It can be concluded from the criminal investigation that EME was required to report to the CEO and director of Econosto, and that in turn, this director was required to report to the supervisory directors of Econosto, who were also directors of ERIKS.

From August 2008 onwards, the directors of ERIKS were aware of the cash commission payments by EME, and the way in which these were accounted for in the company's regular administration. These directors knew that commission payments to third parties were falsely accounted for in the administration of EME as sales bonuses. They had the authority to end these payments. Nonetheless, they did not intervene. It has not been revealed that ERIKS took measures to prevent the criminal behaviour. Indeed, even after it became clear that the cash commission payments represented a bribery risk, and possibly falsification of documents, the directors of EME, Econosto and ERIKS agreed in mutual consultation that the cash payments to third parties should be accounted for as (sales) bonuses to employees of EME, in the company's administration. ERIKS then reported to its external accountant that the cash payments were common practice in the Middle East, and that they were not in violation of the Code of Conduct of ERIKS. This course of affairs demonstrates that ERIKS deliberately accepted the corrupt practices and failed to intervene.

The falsification of documents, committed repeatedly, can therefore be attributed to ERIKS, with the exception of the falsified annual accounts of EME for the years 2009 and 2010.

## **4 Role of SHV**

SHV took over ERIKS on 12 August 2009. It can be concluded from the criminal investigation that via an accountant's report, SHV was informed in December 2009 of cash commission payments to third parties by EME. In the subsequent months, the problem regarding the commission payments was repeatedly addressed to ERIKS, by SHV, whereby SHV insisted that ERIKS halt these payments of EME. The board of directors of ERIKS repeatedly promised to review its policy and the administrative processing of the commission payments, and to monitor these activities via Econosto. This was followed up by SHV, in the subsequent months, after which the board of directors of ERIKS confirmed that the issue of commission payments had been dealt with. In that year, the external accountant issued unqualified audit opinions with the annual accounts of EME, Econosto and ERIKS.

In the subsequent years, there were no grounds for SHV to doubt the fact that ERIKS had complied. Moreover, in these years, too, the external accountant issued unqualified audit opinions with the annual accounts of EME, Econosto and ERIKS. As a consequence, during this period, SHV saw no reason to once again check with ERIKS whether the action points had been implemented.

It was not until the end of 2014 that SHV became aware of the continued commission payments by EME in the Middle East. At that time, SHV was in the process of drawing up

and implementing new, group-wide guidelines for cash commission payments. SHV commissioned its Internal Audit department to investigate the matter. As part of this process, in 2015, SHV commissioned a more extensive investigation. The findings of this investigation were grounds for SHV, in December 2016, to report the observed irregularities to the National Office for Serious Fraud, Environmental Crime and Asset Confiscation (Functioneel Parket). Remediation measures were also immediately taken (see 6.2.2).

The investigation shows that the criminal offences were not accepted by SHV. The fact that SHV subsequently discovered that EME had continued committing these offences does not mean that SHV is culpable of criminal behaviour.

## **5 Serious nature of the facts**

### **5.1 Introduction**

On the basis of the findings of the FIOD, the NPPS concludes that EME is guilty of commercial bribery and that EME, Econosto and ERIKS are jointly guilty of the falsification of documents, committed repeatedly. In addition, EME violated the sanction legislation and regulations. The NPPS views this behaviour as particularly objectionable, for a number of reasons.

### **5.2 Internationally operating companies**

EME, Econosto and ERIKS are internationally operating companies, carrying out (part of) their business activities in a sector and in countries susceptible to corruption. These companies can be expected to be aware of and comply with (international) legislation and regulations, including anticorruption laws.

### **5.3 Obtaining orders from clients through bribery**

The investigation by the FIOD reveals that the business model of EME during the period of the investigation was aimed at generating a considerable proportion of the turnover by means of commercial bribery. Despite warnings from the external accountant, this policy was continued for a number of years. EME unfairly obtained orders, and generated turnover. Practices of this kind disrupt the level playing field that is essential for a smoothly functioning economy, in such a way that new entrants to the market have no chance of success and bona fide companies are forced out of a market.

### **5.4 Concealing bribery in the administrative records**

In order to keep the commission payments outside the regular company administration, a parallel administration was created. The commission payments were falsely accounted for in the regular company administration as sales bonuses to own staff. By creating a large number of falsified documents, the actual nature of the payments was concealed from external parties. By creating and using falsified documents on a large scale, EME harmed the confidence placed according to generally accepted standards in the accuracy of written documents. The NPPS considers it particularly reprehensible that EME wrongfully informed its external accountant by means of falsified Letters of Representation, and commissioned the drawing up of falsified annual accounts. In this behaviour, the NPPS sees a serious violation of the standards and rules for financial reporting.

### **5.5 Performing transactions with sanctioned entities**

It emerged from the criminal investigation that EME was aware of the sanction rules applicable against Iran, but nonetheless performed transactions with sanctioned Iranian entities. The sanction measures that came into force in 2007, 2010 and 2012 against Iran were the consequence of concerns within the international community regarding the nuclear weapons programme of and human rights violations in Iran. By doing business with a sanctioned Iranian company during this period, and by performing transactions via sanctioned Iranian banks, EME deliberately ignored the aim of these sanctions. Behaviour

of this kind undermines the purpose and effectiveness of the international system of sanctions.

## **6 Considerations for offering a settlement**

### **6.1 Legal framework**

Criminal cases can be settled in various ways. One of the options is for the public prosecutor to offer the suspect a settlement, to avoid criminal prosecution. The public prosecutor may set out one or more conditions as described in Article 74(2) of the Dutch Criminal Code. If these conditions are met, the right to criminal prosecution is waived. The settlement is an option provided for by law to settle criminal cases outside the courts.

In this case, given the size of the settlement amount, it is considered a high settlement. Such a settlement is subject to the 'Designation Order for High Settlements (*Aanwijzing hoge transacties*) (hereinafter referred to as the Designation Order).<sup>3</sup> In the case of crimes that have caused public concern, the Designation Order includes the basic principle not to settle unless there is a very good reason for doing so.

First of all, the factual behaviour that forms the basis for the high settlement must be (publicly) acknowledged by the suspect.

In a decision to settle a criminal case with a high settlement, in accordance with the Designation Order, the following elements must be considered:

- the role of the suspect in revealing the criminal offences;
- the attitude of the suspect throughout the process and the way in which the suspect cooperated with the investigation;
- measures taken by the suspect (of its own volition) or which it has promised to take in order to prevent new criminal behaviour.

### **6.2 Statement of reasons**

The NPPS considers a high transaction to be an appropriate settlement in the criminal investigation Vanguard, for the following reasons:

- 1) On behalf of its (indirect) subsidiary companies ERIKS, Econosto and EME, SHV self-reported the observed irregularities relating to commission payments to the NPPS;
- 2) EME, Econosto and ERIKS cooperated in the criminal investigation and provided relevant information to the FIOD and the NPPS;
- 3) both SHV and its indirect subsidiary companies ERIKS, Econosto and EME took remediation measures and compliance measures to prevent the committing of criminal offences in the future;
- 4) EME has ceased operational activities and EME is currently being wound up, so that repetition of similar facts by EME is excluded;
- 5) EME, Econosto and ERIKS have acknowledged the facts;
- 6) EME, Econosto and ERIKS have paid the unlawfully obtained gains to the Dutch State;
- 7) EME, Econosto and ERIKS have not previously been convicted for criminal offences (first offenders).

#### **6.2.1 Self-reporting and cooperation with the investigation**

In 2015 and 2016, SHV commissioned an investigation into possible irregularities at EME, Econosto and ERIKS in the period between 1 January 2008 and 15 November 2015. The results of this investigation led to SHV itself reporting the suspicion of criminal offences relating to cash commission payments by employees of EME to employees of clients, to the National Office for Serious Fraud, Environmental Crime and Asset Confiscation, on 14 December 2016.

---

<sup>3</sup> Aanwijzing hoge transacties (2020A005), <https://wetten.overheid.nl/BWBR0044047/2020-09-04>.

After being informed of the criminal investigation, both into the cash commission payments and the transactions with Iranian entities, the affected legal entities cooperated with the investigation, on their own initiative. This cooperation included supplying and issuing all relevant documents and information to the FIOD, including relevant information from Dubai. In this framework, among others the investigation data from the completed investigation commissioned by SHV were issued to the FIOD. The data supplied included the email boxes of various employees of EME, Econosto, ERIKS and SHV, and the parallel administration kept by EME of the commissions promised and paid. For the FIOD, these data provided a solid basis for further investigation, including the analysis and comparison of the parallel accounts and ledger accounts in the regular accounts and the hearing of the involved (former) employees of the suspected companies.

### **6.2.2 Remediation and compliance measures**

Soon after suspicions arose of irregularities within EME, SHV took structural measures to prevent the recurrence of similar matters in the future. For example, SHV further intensified its already existing programme aimed at reinforcing both the culture and processes relating to compliance. SHV also implemented a series of projects to improve compliance with legislation and regulations within its group, and to reinforce its supervision of compliance. The measures taken by SHV included the following elements:

- SHV established Ethics & Compliance (E&C) departments within all groups, headed by E&C Officers with considerable experience in the field;
- SHV established E&C Committees within SHV and its subsidiary companies;
- SHV implemented an E&C policy which further focused supervision of the screening of third parties and compliance with legislation and regulations in the field of anti-corruption and international trade sanctions;
- SHV implemented an internal control framework for both SHV and its subsidiary companies, the effectiveness of which is evaluated twice a year; and
- SHV made sure that all its subsidiary companies established their own Internal Audit department, headed by an Internal Auditor with broad experience in the field.

More specifically, as a result of sub investigation Vanguard, SHV and its groups took various remediation measures within the ERIKS group, including disciplinary measures against the employees of EME, Econosto and ERIKS who were involved, the deployment of an intervention team within EME and a review of the internal business processes within EME. As already described in section 1.2.1, the decision was also taken to cease the operational activities of EME and to wind up EME.

Moreover, over the past few years, ERIKS has implemented the compliance policy developed by SHV, that has been introduced and monitored throughout the group. Part of this policy is a compulsory periodic validation of an action plan with improvement points in respect of compliance, and the relevant reporting to the Board of Directors of SHV. An Internal Audit department was also established within ERIKS, in 2017.

### **6.2.3 Acknowledgement of facts**

EME, Econosto and ERIKS acknowledged the facts as outlined in part I to the NPPS, and expressed their regret.

## **7 Settlement agreement**

### **7.1 Fine and unlawfully obtained gains**

As part of this settlement, EME, Econosto and ERIKS paid a total of EUR 40.111.000 to the Dutch State. This amount consists of a fine of EUR 10.953.000 and the confiscation of unlawfully obtained gains in the amount of EUR 29.158.000.

### **7.1.1 Fine**

A fine of EUR 10.953.000 is part of the settlement. This fine breaks down into a fine of EUR 10.878.000 for commercial bribery and falsification of documents and a fine of EUR 75.000 for violation of the 1977 Sanctions Act.

In determining the amount of the fine, the seriousness of the established facts as explained in chapter 4 was taken into account by the NPPS. With regard to calculating the fine for commercial bribery and falsification of documents, the NPPS took particular account of the large number of offences, the length of time during which these offences were committed, and the involvement of the management of EME, Econosto and ERIKS.

The NPPS has decided to apply fine category 5, as contained in the law at the time when the criminal offences were committed, to all observed criminal offences.

In calculating the fine, the NPPS assesses whether the suspect itself reported the offences to the NPPS. The NPPS also assesses whether, and if yes to what extent, the suspect cooperated in the criminal investigation. The extent of cooperation is assessed according to a variety of aspects, including the scope, quantity, quality and timing of the cooperation in the given circumstances. One important relevant aspect is whether the defence cooperated proactively or reactively. Also relevant is the extent to which the FIOD and the NPPS are able to use the documents and information provided to verify the information.

On its own behalf, and on behalf of EME, Econosto and ERIKS, SHV reported the commission payments, and the way in which they were accounted for in the accounts, to the NPPS (see section 6.2.1). For this reason, in determining the amount of the fine relating to commercial bribery and falsification of documents, the NPPS applied a discount of 25%.

The suspects did not themselves report the prohibited transactions with the Iranian entities to the NPPS. The self-reporting discount has therefore not been applied in respect of the component of the fine relating to the violation of the sanction legislation and regulations.

In addition, EME, Econosto and ERIKS cooperated fully with the investigation by the FIOD into all of the investigated facts (see section 6.2.1). For this reason, in determining the amount of the fine, the NPPS applied an (additional) discount of 25% on the fine calculated for commercial bribery, falsification of documents and violation of the sanction legislation and regulations.

### **7.1.2 Unlawfully obtained gains**

As a result of the bribery payments and their concealment through the creation and use of falsified documents, the suspects obtained gains of EUR 29.003.000. The prohibited transactions with sanctioned entities in Iran generated gains of EUR 155,000. As part of the settlement, the NPPS therefore confiscated a total amount of EUR 29.158.000 in unlawfully obtained gains.

## **7.2 Publication of settlement agreement**

The settlement agreement between the NPPS and EME, Econosto and ERIKS has been published in its entirety on the website of the NPPS.