

Settlement Agreement Houston

Parties

1. **The State of the Netherlands** (Netherlands Public Prosecution Service, for the purposes of this document the National Office and the National Office for Serious Fraud, Environmental Crime and Asset Confiscation), having its seat in The Hague and in this matter legally represented by the public prosecutors drs. M.G. Vreugdenhil, Esq., and F.W. de Nerée tot Babberich, Esq., employed at the aforementioned Public Prosecutor's Offices, choosing as their address for service Posthumalaan 74 (3072 AG) in Rotterdam, hereinafter referred to as the State and/or the Netherlands Public Prosecution Service;

and

2. The public limited company **ING Bank N.V.**, having its registered office in Amsterdam at Bijlmerplein 888 (1102 MG), in this matter legally represented by R.A.J.G. Hamers and S.J.A. van Rijswijk, and represented in this matter by H.J. Biemond, Esq., attorney in Amsterdam, hereinafter referred to as ING;

the State and/or the Netherlands Public Prosecution Service and ING will hereinafter also jointly be referred to as the Parties,

The Parties consider the following:

- a) Under the direction and responsibility of the public prosecutors of the National Public Prosecutor's Office for Financial, Economic and Environmental Offenses and the National Public Prosecutor's Office, the Dutch Fiscal Information and Investigation Service (*Fiscale inlichtingen- en opsporingsdienst*, hereinafter referred to as FIOD) launched a criminal investigation into ING as of 2016 under the name "Houston", with fraud information system number (*gefisnummer*) 57999 and Netherlands Public Prosecution Service number (*parketnummer*) 10/9965510-16;
- b) This criminal investigation arose, among other things, from a number of other ongoing criminal investigations into ING clients;
- c) A summary of the relevant facts in the criminal investigation known as Houston has been laid down in a statement of facts which is attached to this settlement agreement as Part I of **Annex 1**. This settlement agreement must be considered in conjunction with Part I of the statement of facts which forms an integral part of this agreement;
- d) On the basis of the criminal investigation, the Netherlands Public Prosecution Service believes that ING, in the period from 2010 up to and including 2016, committed criminal offenses that arose from shortcomings in (the implementation of) its FEC CDD policy, as revealed in the Houston investigation (including the insufficient or inadequate operation of its internal client and transaction monitoring system), namely a violation of Articles 3, 5, 8 and 16 of the Anti-Money Laundering and Counter Terrorism Financing Act (*Wet ter voorkoming van witwassen en financieren terrorisme*, hereinafter referred to as the AML/CTF Act), punishable under Article 2(1) of the Economic Offenses Act (*Wet op de economische delicten*, hereinafter referred to as EOA), and doing so habitually as specified in Article 6(1) under 3 EOA, as well as culpable money

laundering (Article 420quater of the Dutch Criminal Code (*Wetboek van Strafrecht*, hereinafter referred to as DCC)), as specified in Part II of Annex 1;

- e) ING cooperated with the criminal investigation Houston. Even after this settlement has been concluded, ING will continue to actively allow the Netherlands Public Prosecution Service to investigate potentially criminal offenses arising from shortcomings in the FEC CDD policy to which this settlement relates;
- f) ING regrets past events and expressly distances itself therefrom;
- g) ING has taken remedial measures that serve (in part) to prevent the aforementioned criminal offenses. In this connection, ING has discussed its actions with its regulator, the Dutch Central Bank (*de Nederlandsche Bank N.V.*, hereinafter referred to as DNB). The measures taken were discussed with and approved by the DNB;
- h) ING has stated that it will not claim a tax deduction in connection with the payments referred to below in section 1.2 under (I) and (II);
- i) The Netherlands Public Prosecution Service decided to offer ING a settlement in accordance with the applicable Designation Order for High Settlements and Special Settlements (*Aanwijzing hoge transacties en bijzondere transacties*) pursuant to Article 74 DCC under the terms and arrangements stated below, which proposal has been accepted by ING;
- j) This settlement includes all of the facts and circumstances arising from shortcomings in (the implementation of) its FEC CDD policy, which facts and circumstances have occurred in the Netherlands in the years from 2010 up to and including the date this agreement is signed, as laid down in the Houston investigation, which the Netherlands Public Prosecution Service regards as a violation of Articles 3, 5, 8 and 16 AML/CTF Act and/or culpable money laundering (Article 420quater DCC);
- k) When formulating the terms for this out-of-court settlement, the Netherlands Public Prosecution Service has taken account of the fact that ING cooperated with the criminal investigation, the remedial actions taken by ING to reinforce its governance and compliance policy, and the fact that ING has acknowledged the facts laid down in the statement of facts that is attached to this settlement agreement as Part I of Annex 1;

The parties agree and determine as follows:

Article 1 (settlement conditions in order to avoid criminal prosecution)

- 1.1 The Netherlands Public Prosecution Service offers ING a settlement pursuant to Article 74 DCC, which is accepted by ING.
- 1.2 By virtue of this settlement ING shall make the following payments:
 - (I) payment to the State in the amount of € 675,000,000 (in words: six hundred and seventy-five million euros) pursuant to Article 74(2)(a) DCC, and
 - (II) payment to the State in the amount of € 100,000,000 (in words: one hundred million euros) as confiscation of unlawfully obtained gains pursuant to Article 74(2)(d) DCC.

- 1.3 Following the signing of this agreement, the amounts stated under 1.2(I) and (II) will be paid into bank account number _____ in the name of "FP OM", quoting "transactie ING / gefisnummer 57999 en parketnummer 10/9965510-16" as a reference. The payments must be received by the Netherlands Public Prosecution Service within one week following signing by both parties. In default thereof, this settlement agreement will be terminated by operation of law.
- 1.4 Following the Netherlands Public Prosecution Service (timely) receipt of the payments referred to under 1.2(I) and (II), the Netherlands Public Prosecution Service's right to criminally prosecute ING expires for all of the facts and circumstances specified above, more specifically under (d) and (j) in the preamble and in Part I of the statement of facts, arising from the shortcomings in (the implementation of) the FEC CDD policy, which facts and circumstances have occurred in the Netherlands in the period from 2010 up to and including the date this agreement is signed, as were established in the Houston investigation with fraud information system number 57999 and Netherlands Public Prosecution Service number 10/9965510-16, which the Netherlands Public Prosecution Service regards as a violation of Articles 3, 5, 8 and 16 AML/CTF Act and/or culpable money laundering (Article 420quater DCC), except in the event that the Court of Appeal orders the Netherlands Public Prosecution Service to start a prosecution within the framework of proceedings pursuant to Article 12 of the Dutch Code of Criminal Procedure (*Wetboek van Strafvordering*, hereinafter referred to as DCCP).
- 1.5 This settlement does not concern any other potential offenses – which have not yet become apparent – committed by ING in the aforementioned period and which cannot be qualified as referred to in Article 1.4. This settlement also does not concern possible criminal offenses committed by natural persons.

Further stipulations

Article 2 (press release)

- 2.1 The Netherlands Public Prosecution Service will publish a press release on the out-of-court settlement of this case that will include this settlement agreement with the Annex.
- 2.2 In its press statements, ING will acknowledge Part I (Statement of Facts) of Annex 1 and Part II (Conclusion of the Netherlands Public Prosecution Service) of Annex 1 and will not contradict the Netherlands Public Prosecution Service's press release.

Article 3 (full and final discharge)

- 3.1 The Parties hereby declare that they have no further claims against each other in respect of the body of facts referred to in this settlement agreement and all the consequences that have arisen and may still arise therefrom, of whatever nature, except as provided for in the provisions of this settlement agreement. In that connection, the Parties grant each other full and final discharge. This implies that ING will not be instituting proceedings against the State that are based on or related to the criminal investigation known as Houston with fraud information system number 57999 and Netherlands Public Prosecution Service number 10/9965510-16.

This shall include, but not be restricted to, any applications by virtue of Articles 591, 591(a), 578 and/or 578(a) DCCP.

- 3.2 The full and final discharge pertains to every (direct or indirect) participating interest, parent and/or subsidiary company, and/or group company of ING. ING shall guarantee that these (direct or indirect) participating interests and/or companies will not bring actions against the State that are based on or related to the aforementioned criminal investigation.

Article 4 (miscellaneous)

- 4.1 In the event that the Netherlands Public Prosecution Service has to prosecute ING following an order from the Court of Appeal on account of a complaint pursuant to Article 12 DCCP, this settlement agreement will be deemed to be terminated, without any further act being required to this end. In that event, the Netherlands Public Prosecution Service will repay the amounts referred to in 1.2(I) and (II) in accordance with Article 74(b)(2) DCC. There will be no compensation of interest in connection with such a repayment. In that case, the Parties will consult about the practical aspects of the completion of the termination of this settlement agreement or the termination of the settlement agreed in this agreement.
- 4.2 The Parties shall waive the right to terminate this settlement agreement (wholly or in part) or to annul it, for whatever reason, even if circumstances become known that were not known or could not have been known at the time this settlement agreement was concluded. This stipulation shall be without prejudice to termination by operation of law in the event of a failure to pay on time (Article 1.3) and any termination in the event of a prosecution order pursuant to Article 12 DCCP (Article 4.1).
- 4.3 Should any provision in this settlement agreement be invalid, this will not affect the other provisions in this settlement agreement. Where a gap is found, the Parties will consult with each other and try to resolve the gap in good faith.

Article 5 (address for communication)

All written communication between the parties that is executed on the basis of this settlement agreement must be sent or delivered to the following addresses:

ING: Allen & Overy LLP, to the attention of mr. H.J.Th. Biemond,

Netherlands Public Prosecution Service: to the attention of mr.drs. M.G.Vreugdenhil and mr. F.W. de Nerée tot Babberich,

Article 6 (choice of law and competent court)

This settlement agreement is subject to Dutch law. The District Court of The Hague has exclusive jurisdiction to hear any disputes in connection with this settlement agreement.

Article 7

The Parties declare that they have read this settlement agreement, that they completely understand its contents, have been given the opportunity to seek independent legal advice in this regard, and that they will sign this settlement agreement voluntarily.

Article 8

This settlement agreement and the statement of facts were drawn up in Dutch. An English translation of the settlement agreement and the statement of facts will also be made available or be published by the Netherlands Public Prosecution Service. Where the Dutch text and the English translation differ, the Dutch text will prevail.

Agreed on and drawn up in duplicate and signed,

..... September.. 2018

The State of the Netherlands
(the Netherlands Public Prosecution Service),
on their behalf,

.....
M.G. Vreugdenhil
Public Prosecutor

.....
F.W. de Nerée tot Babberich
Public Prosecutor

..... September .. 2018

ING Bank N.V.,
on their behalf,

.....
R.A.J.G. Hamers

.....
S.J.A. van Rijswijk