

**PROCEEDINGS AT HEARING
OF
MAY 13, 2021**

COMMISSIONER AUSTIN F. CULLEN

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May 13, 2021
(Via Videoconference)

(PROCEEDINGS COMMENCED AT 7:00 A.M.)

THE REGISTRAR: Good morning. The hearing is now resumed. Mr. Commissioner.

THE COMMISSIONER: Thank you, Madam Registrar. Yes, Mr. McCleery.

MR. McCLEERY: Good morning, Mr. Commissioner.

Before we get to today's evidence I have one quick matter to attend to. I'm going to ask to have marked as an exhibit an overview report titled "Documents Related to Anti-Money Laundering Issues in the Netherlands." I understand that Madam Registrar has the report and I can confirm it has been circulated to participants who have had an opportunity to provide comment. I expect to refer to some of the documents attached to that report during today's proceeding, so I suggest it be marked now. I believe the next exhibit is 980.

THE COMMISSIONER: Yes, all right. Thank you. We'll mark that as 980.

THE REGISTRAR: Exhibit 980.

**EXHIBIT 980: Overview Report: Documents
Related to Anti-Money Laundering Initiatives in**

1 **the Netherlands**

2 MR. McCLEERY: Thank you very much. And with that we
3 can move forward with today's witness,
4 Ms. Francien Rense, who I do see on the screen.
5 Ms. Rense is joining us from Rotterdam where she
6 is a practising lawyer focused on corporate
7 criminal law and I understand that Ms. Rense
8 will affirm.

9 **JOHANNE (FRANCIEN)**
10 **RENSE, for the**
11 **commission, affirmed.**

12 THE REGISTRAR: Please state your full name and spell
13 your first name and last name for the record.

14 THE WITNESS: Do you want my official first name, I
15 think, yes?

16 THE REGISTRAR: Your full name, yes.

17 THE WITNESS: That is Johanne, so J-o-h-a-n-n-e.

18 THE REGISTRAR: And also please spell your last name.

19 THE WITNESS: That is Rense, R-e-n-s-e.

20 THE REGISTRAR: Thank you.

21 THE COMMISSIONER: Yes, Mr. McCleery.

22 **EXAMINATION BY MR. McCLEERY:**

23 Q Good afternoon, Ms. Rense. Thank you very much
24 for joining us. Can you see and hear me
25 clearly?

1 A Yeah, for sure.

2 Q If at any point that changes please just let us
3 know and we can sort things out.

4 A Sure.

5 Q I want to just begin by discussing your
6 background and professional experience.

7 MR. McCLEERY: And to begin, Madam Registrar, can you
8 please pull up the profile that Ms. Rense
9 provided to us.

10 Q And, Ms. Rense, you see on the screen before you
11 a profile of your background and qualifications
12 and professional experience that you provided to
13 us with some of the contact information
14 redacted?

15 A Yeah, that is.

16 MR. McCLEERY: And, Mr. Commissioner, if we could
17 have that marked as the next exhibit please.

18 THE COMMISSIONER: Very well. 981.

19 THE REGISTRAR: 981.

20 **EXHIBIT 981: Profile of Francien Rense**

21 MR. McCLEERY:

22 Q Ms. Rense, I'm just going to walk you through
23 some of the highlights of your professional
24 experience and background and I wonder just to
25 begin that if you could just quickly give the

1 Commissioner an overview of your educational
2 background.

3 A Yeah. Basically Dutch law, and which might be
4 of relevance and interest as well is a post-doc
5 forensic auditing education.

6 Q And where did you study Dutch law?

7 A In Rotterdam, the Netherlands.

8 Q Thank you. And as we've already said you are a
9 qualified lawyer and have practised corporate
10 criminal law in the Netherlands for nearly
11 25 years?

12 A That's for sure, yeah. As from 1997, to be more
13 precise?

14 Q Thank you. Can you give us a brief overview of
15 the process for qualifying as a lawyer in the
16 Netherlands.

17 A Well, basically you have to study Dutch law
18 first of all and you have to graduate, of
19 course, and, well, depending on the specifics of
20 your Dutch law degree, you have the option to
21 become a lawyer and if you want to become an
22 attorney at law, so a registered lawyer with the
23 Dutch bar, you have to, basically speaking,
24 enter into a firm, practise with another lawyer
25 being your patron, as we call it, for

1 three years and during that three years you have
2 to practise law under, well, the guidance of
3 that other lawyer together with some more
4 education and training, and after those
5 three years you are unconditionally permitted
6 and registered with the bar and that's basically
7 when you become an unconditional lawyer for
8 after that.

9 Q And I take it you completed that process at the
10 beginning of your career; is that fair?

11 A Yeah, I did, yeah.

12 Q And currently you are a partner with the law
13 firm NautaDutilh based in the Rotterdam in the
14 Netherlands?

15 A Yeah, based in Rotterdam and Amsterdam in the
16 Netherlands.

17 Q And you are the co-head of the firm's fraud and
18 white collar crime team; is that right?

19 A Yeah, that's also right.

20 Q I wonder if you can maybe briefly describe for
21 the Commissioner the type of work that you do as
22 part of your legal practice, and in particular
23 how it might connect to the issue of money
24 laundering as is the focus of this commission?

25 A Yeah. Sure. Well, basically I think that the

1 core of our business is assisting and rendering
2 legal advice and legal assistance to corporates
3 confronted with enforcement measures of
4 authorities, supervisory authorities and
5 criminal law authorities in the Netherlands
6 which appears in different areas of law, so to
7 say, and especially during the last couple
8 of years one of the main areas of law in which
9 we practise that or in which we assist in and
10 advise companies is the area of anti-money
11 laundering rules and regulations. And our
12 advisors and services vary from compliance
13 advice up until assisting and advising and
14 enforcement procedures up until criminal
15 procedures before a criminal court in the
16 Netherlands.

17 Q So your practice, then, is it fair to say would
18 encompass both providing advice to corporations
19 about how to comply with anti-money laundering
20 regulations and assisting them in cases where
21 perhaps they have been accused of failing to
22 comply with those regulations?

23 A As it concerns anti-money laundering rules and
24 regulations yeah, that's correct.

25 Q And I understand that you regularly -- your

1 profile indicates you regularly lecture and
2 publish on areas related to your work?

3 A Yeah. That is true as well.

4 Q Okay. And that would include lecturing and
5 publishing on areas related to anti-money
6 laundering?

7 A Amongst others of course but, well, yeah, I
8 typically and very regularly train, for example,
9 other lawyers in the field of anti-money
10 laundering rules and regulations. We have to
11 comply with those as well, so that's one of the
12 areas in which I train regularly and the same
13 goes with regard to publications, but with
14 regard to publications myself and my team
15 regularly publish on, for example, case law in
16 relation to anti-money laundering rules and
17 regulations or enforcement cases in that regard
18 as well.

19 Q Thank you.

20 MR. McCLEERY: If we can jump ahead to page 2 of the
21 profile please, Madam Registrar. Thank you.

22 Q And maybe just as an example, Ms. Rense, there's
23 a reference here in the third to last
24 paragraph of your contribution to a publication
25 titled the *Financial Legal Edition 2021*. I

1 wonder if you can maybe just briefly describe
2 the nature of that publication and your
3 contribution to it?

4 A Yeah, sure. That publication is basically a
5 more practical guidance for financial
6 institutions, how to comply with anti-money
7 laundering rules and regulations in the
8 Netherlands, and some of the chapters has been
9 written by me and my team, for example the
10 chapter on publicly exposed persons and also the
11 chapter on sanctions laws and trade embargoes
12 more particularly in relation to anti-money
13 laundering rules and regulations.

14 Q Thank you very much. I want to move ahead now
15 and speak a little bit about the development of
16 Dutch law in the area of anti-money laundering.

17 MR. McCLEERY: And, Madam Registrar, we can take
18 Ms. Rense's profile down now.

19 Q Is it fair to say over the course of your nearly
20 25 years of practice you've had the opportunity
21 to observe the development of anti-money
22 laundering law in the Netherlands?

23 A Yeah.

24 Q Thank you. I wonder if you can maybe describe
25 for the Commissioner to the extent it existed

1 what the nature of anti-money laundering law and
2 regulation in the Netherlands was at the
3 beginning of your career approximately 25 years
4 ago.

5 A Yeah. Basically the anti-money laundering rules
6 and regulations were already in place. In the
7 Netherlands they originate from the EU,
8 basically, and are implemented on a national
9 level, and the rules and regulations we are
10 currently working with originate from, let's
11 say, the early, 90s but nevertheless when I
12 entered into practising law in the end of the
13 90s, I think, well, we did not work that much
14 with anti-money laundering rules and
15 regulations. It was not a real topic. It was
16 not an enforcement priority so we did not come
17 across these kinds of enforcement cases that
18 often in that period of time.

19 And I think that of course I am not
20 completely sure when it all started and happened
21 to occur more often, but I think that -- well,
22 that area of law more specifically and rather
23 differently evolved during the last, let's say,
24 10 to 15 years. And that is basically I think
25 as from the introduction of the *Anti-Money*

1 *Laundering and Counter Terrorism Financing Act,*
2 which we call the *WWFT*, which is not that easy
3 to pronounce, but entered into 2008, which is
4 basically the start of, I would say, the
5 awareness and the importance of anti-money
6 laundering rules and regulations and as a result
7 thereof, of course, also enforcement
8 prioritization and enforcement case law.

9 Q We'll get into the current state of a law in a
10 little bit. You've mentioned there was a
11 significant change in 2008 with the introduction
12 of the *WWFT*. Can you maybe briefly describe
13 what the nature of the changes that that act
14 brought into effect?

15 A Yeah. I'm not quite familiar with how the laws
16 were before and what was actually changed in the
17 *WWFT*, but I think that the fact that there were
18 different kinds of law before we had a law which
19 was basically regulating the area of the KYC,
20 know your customer principle, and there was a
21 separate law dealing with the obligation to
22 notify the authorities in relation to unusual
23 transactions and into our eight those laws were
24 combined into that -- well, AML rule and
25 regulation, let's call it like that. And it

1 might not even be that different from the period
2 before, but entering into force of that law was
3 a -- well, point in time in which everybody was
4 a bit more aware of the importance of the
5 anti-money laundering rules and regulations.
6 And as from then the scope broadened
7 sufficiently or substantially, I must say, after
8 that incorporating other institutions and
9 professions than financial institutions as well,
10 so as from then developments and evolvment was
11 that anti-money laundering rules and regulations
12 became more and more important.

13 Q Thank you. Were there -- at least as far as you
14 are aware, were there particular events or
15 developments that led to that change in 2008, or
16 was it something that parliament decided to do
17 of their own accord?

18 A I do not know for sure but my impression is that
19 main trigger to develop and evolve that area of
20 law were international discussions. For
21 example, OACD criticism claiming, basically,
22 that the Netherlands of one of the countries
23 being criticized, I think, but that the
24 Netherlands did not sufficiently combat money
25 laundering and -- yeah, money laundering and the

1 financing of terrorism. And I think that that
2 international criticism has been one of the
3 triggers for the Dutch authorities to develop
4 that area even more and to prioritize that area
5 as well.

6 Q Thank you. That leads nicely into my next set
7 of questions which was going to be about the
8 international context in which the Netherlands
9 operates, which I think is a little bit
10 different from Canada, so I thought it might be
11 helpful to talk about that a little bit. Maybe
12 first to address an area of commonality, like
13 Canada the Netherlands is a member of the
14 Financial Action Task Force; is that correct?

15 A Yeah, that's correct.

16 Q And of course where perhaps it differs from
17 Canada, it's also a member of the European
18 Union; correct?

19 A Yeah, that's correct.

20 Q And the Commissioner has heard some evidence
21 already about the nature of EU regulation in
22 this area and you've' already mentioned that
23 there have been anti-money laundering directives
24 from the EU beginning, I think, in the 1990s; is
25 that correct?

1 A Yeah, that's correct.

2 Q And the Netherlands as a member of the EU is
3 obligated to apply those directives or is there
4 some discretion there?

5 A No. A member state is obliged to implement
6 those directives, so those directives do not
7 apply directly in the member states, so the
8 member states are obliged to implement the
9 directives into their own national law, which is
10 the *WWFT* at the moment in the Netherlands. So
11 it could be that that implementation is delayed,
12 which happens quite often in the EU, but
13 ultimately member states are obliged to
14 implement it and of course as from there
15 comply -- well, with at least the principles of
16 the directive in any case.

17 Q Thank you. And from your perspective how much
18 freedom, then, is there for a member state like
19 the Netherlands to set its own course and make
20 its own decisions on anti-money laundering law
21 and to what degree is that decided for member
22 state by the EU directives?

23 A There is no -- not much discretion, I think. It
24 depends on -- well, the nature of the directive
25 being established and being obliged to be

1 implemented, but as regards the AML directive,
2 it concerns, as we say, minimum standards, so
3 each member state have to meet those minimum
4 standards, at a minimum, and the only deviation
5 that is possible is that the member state is
6 even more harsher, so to say, than the directive
7 itself. That could be a deviation but something
8 below the minimum standards is basically not
9 allowed.

10 Q So would it be fair to say that the Netherlands
11 could go beyond and implement stricter
12 anti-money laundering measures than the European
13 Union requires but not less strict; is that
14 fair?

15 A Yeah, that's correct.

16 Q Okay. And then what about in areas like I'll
17 say policing or prosecution in terms of how
18 those types of areas are either funded or
19 organized? Does the EU directives dictate those
20 kinds of issues, or is that an area where the
21 Netherlands would have some freedom to make its
22 own decisions?

23 A Actually, I think that's the area where the
24 member states could rather substantially differ
25 from each other because, well, basically and

1 more generally speaking, those directive
2 describe, for example, more in general that the
3 member states need to take care of enforcement
4 of the directive and the principles in the
5 directive but not necessarily describing how
6 that enforcement needs to be established, let
7 alone what the capacity and budgets, et cetera,
8 need to be. So basically I think that the --
9 well, the areas in which the member states could
10 rather substantially differ from each other is
11 in prioritizing and practically making it
12 possible to enforce AML rules and regulations.
13 Yeah, indeed.

14 Q Thank you. I wonder if you have a perspective
15 on whether membership in the European Union
16 presents particular challenges for addressing
17 money laundering in the Netherlands. In
18 particular I'm thinking with the EU policy of
19 free movement of people and goods and capital,
20 if that kind of free movement makes it more or
21 maybe less difficult for a national government
22 like that of the Netherlands to address some of
23 these challenges.

24 A To be honest, I do not consider myself a real
25 expert in that area, but, well, my gut feeling

1 would be that on the one hand that directive
2 being there and that obligation to implement AML
3 rules and regulations which are at a minimum the
4 same is helping the member states to cope with
5 AML similarly and to cooperate in enforcement in
6 that regard as well because, well, basically the
7 principles are the same, so normally speaking it
8 must be that perpetrators are approached
9 similarly or the same. Where on the other hand,
10 I think that, well, the freedom of goods and the
11 freedom of services and et cetera implies that a
12 lot of transactions and a lot of economic
13 business, et cetera, is rather international and
14 cross-border, and that makes compliance, but
15 enforcement especially, rather difficult, also
16 from the Dutch perspective but also from the
17 perspective of the other member states. So I
18 think that, well, we always say that the
19 Netherlands is basically a country in transit,
20 basically. All business is passing through the
21 Netherlands. And by being that Netherlands is
22 considered to be rather -- well, it could be
23 that there is more money laundering transactions
24 going through the Netherlands than other
25 countries maybe due to that position of being an

1 international transient country dealing with
2 international transportations, international
3 business, et cetera.

4 Q Thank you very much. Let's move ahead now and
5 maybe briefly discuss sort of the current state
6 of the law in the Netherlands. We talked a
7 little bit about its development and the context
8 in which it operates, and I appreciate it's a
9 complicated area. We could probably spend many
10 hours discussing all the details and nuance of
11 the current law. So I hope just to address it
12 at a fairly high level right now to provide some
13 context for a more detailed discussion of
14 certain features of the system and some
15 proposals to change it as we move forward.
16 You've mentioned already the reporting system
17 that I think is largely dictated by the European
18 Union regulations and directives. Is it fair to
19 say that the Netherlands' anti-money laundering
20 law would also include criminal prohibitions
21 related to activity related to money laundering?

22 A Not necessarily directly. The anti-money
23 laundering rules and regulations describe the
24 principles which need to be complied with,
25 basically, so it more in general describes which

1 results need to be met. For example, the
2 obligation to know your customer establishes an
3 obligation to perform a client due diligence and
4 on the basis of that, well, the aim must be that
5 you know your client and that's basically it.
6 And it does not describe more specifically how
7 would you would know your customer, your client.
8 And what it actually means, knowing your client,
9 it's all more principles based, you know your
10 client must be the result of that client due
11 diligence. And our system works like -- well,
12 that is the principle that needs to be met. If
13 that principle is not met there is a more
14 general criminal law under Dutch law which
15 describes that not meeting that obligation
16 establishes an, as we call it, economic criminal
17 act which is basically as simple as not meeting
18 that condition. So not meeting that condition
19 is a violation of the law, e.a., if
20 intentionally violated that law it's a criminal
21 act. And that's basically the system.

22 Q Okay. Just to follow up on that, you've
23 indicated, if I understood correctly, there's
24 essentially an obligation like an obligation to
25 know your customer and it's sort of up to the

1 institutions that are subject to that law to
2 essentially decide how to go about doing that.
3 Is that fair?

4 A Yeah. The system is principle based and also
5 risk-based, so it's up to the institution to
6 which the AML rules and regulations apply to
7 make a risk assessment of their businesses or of
8 its business, its clients, its products, its
9 services, et cetera, and on the basis of that
10 establish a structure, a system in which its
11 businesses and clients and projects are assessed
12 sufficiently in order to ultimately meet that
13 goal of knowing your customer. Yeah.

14 Q Given that level of discretion in determining
15 how best to meet those standards how is it that
16 Dutch authorities can determine whether or not
17 an institution or actor is compliant, if -- you
18 know, whether they have met that obligation, if
19 there is that level of discretion?

20 A Yeah. Well, it's of course not that simple as I
21 just mentioned. So there are some conditions
22 being described in the law, how to meet that
23 result of knowing your customer. So, for
24 example, again as regards the obligation to know
25 your customer, to know your client, the law

1 specifies, for example, that you must know the
2 contact person of your client, knowing means
3 identify your client and the contact person of
4 your client but also verify that identification.
5 You need no know the structure of your client if
6 your client is a legal entity. You need to know
7 the ultimate beneficial owner of your client
8 when your client is a legal entity. So there
9 are some conditions described in the law which
10 need to be met in order to be able to meet that
11 principle obligation. But in the end ultimately
12 I think that -- well, that is exactly why that
13 system is rather complex. In the end the result
14 and meeting that result, meeting that condition
15 is rather case specific and fact specific, I
16 think, and one of my concerns would be that with
17 hindsight bias it's always rather easy to say
18 well, that risk has not been mitigated
19 sufficiently, you did not meet that goal, where
20 it could be that upfront it was far more -- far
21 less easy to establish that risk, to mitigate
22 that risk and to -- well, recognize that the
23 goal to know your client could not be met
24 ultimately. So, yeah, it's up to the
25 authorities to decide if that goal has been met

1 and it's their assessment ultimately, and of
2 course you can present your views and your
3 position in that, but it could be a rather
4 complex and difficult discussion afterwards;
5 that's for sure.

6 Q In your experience does that make it difficult
7 for institutions or businesses to understand
8 exactly what their obligations are, or are they
9 able to figure that out fairly clearly?

10 A Yeah. That is a difficult one. Supervisory
11 authorities are helping them of course by
12 publishing some guidance, guidelines, et cetera,
13 so there is -- well, there are some conditions
14 in the law and there are conditions or
15 explanations described in those guidances which
16 are of help of course, but ultimately the
17 supervisory authorities underline as well it's
18 your obligation, it's your responsibility,
19 institution to which the AML rules and
20 regulations apply, to in the end ultimately on
21 the basis of your own risk assessment meet all
22 the obligations and principles. So yeah, that's
23 rather difficult in complex international
24 situations to cope with those principle-based
25 rules.

1 Q One of the areas the Commissioner has heard some
2 evidence about is with respect to the
3 application of reporting requirements in Canada
4 where there's been some challenges with respect
5 to lawyers and law firms. I want to ask you a
6 couple of questions about the applicability of
7 these rules in that context. Are lawyers and
8 law firms required to comply with the AML
9 regulations in the Netherlands?

10 A Yeah. The system we now work with is that as we
11 call it the secrecy keepers, so the professions
12 that need to keep secret the services and
13 assistance, e.a., lawyers and notaries,
14 basically, fall under the scope of the AML rules
15 and regulations but solely for more particular
16 services and assistances. So the law specifies
17 that, for example, a lawyer needs to comply with
18 the AML rules and regulations provided the
19 lawyer provides services like A, B and C.
20 Something like that. So it specifically
21 describes the areas of services to which the AML
22 rules and regulations apply. And otherwise not,
23 so otherwise the secrecy, the confidentiality
24 obligation is fully applicable and when the AML
25 rules and regulations are applicable, the

1 confidentiality obligation is still applicable,
2 but nonetheless there is a -- well, superseding,
3 is that the right word? A more important
4 stipulation under law, Dutch law, that says
5 under which conditions that lawyer or that
6 notary needs to notify unusual transactions
7 anyhow.

8 Q Are you able to give us any examples of the
9 types of services that would be captured by the
10 regulations for lawyers and notaries?

11 A Yeah. I think that on top of my head the main
12 categories are assisting and advising clients in
13 relation to the sale and the purchase of
14 businesses, the sale and the purchase of shares
15 in businesses and the sale and the purchase of
16 real estate. I think that are basically the
17 main categories.

18 Q Thank you. And I think you mentioned earlier on
19 if a business or an institution fails to
20 properly comply with the regulations that
21 essentially amounts to an offence under Dutch
22 law. Is that correct?

23 A Yeah.

24 Q And are there also offences under Dutch law for
25 money laundering directly or things like

1 possession of the proceeds of crime?

2 A Yeah. There is. In addition to those basically
3 criminal acts constituted -- well, by violating
4 the AML rules and regulations in itself, there
5 is also a more general paragraph in Dutch
6 criminal law describing -- well, the criminal
7 offence of money laundering, basically, and that
8 is incorporated in Dutch criminal as from 2001.
9 So before it wasn't because in the opinion of
10 the Netherlands that was sufficiently dealt with
11 by basically the more general prohibition of the
12 handling of proceeds of crime, but again after
13 international criticism the Netherlands
14 introduced the more general criminal act of
15 money laundering as from 2001 and that has
16 developed and evolved as well a bit in the last
17 couple of years, but basically I always say all
18 you do with the proceeds of crime is prohibit it
19 under Dutch law and you need not even know
20 exactly what that crime is. So it's a rather
21 broad prohibition helping the authorities
22 enormously in combatting money laundering for
23 sure.

24 Q Thank you. The Commissioner has also heard
25 evidence from a number of different

1 jurisdictions about asset forfeiture and the
2 seizure and forfeiture of the proceeds of crime.
3 I am not sure if this would fall within your
4 practice area so it may be an unfair question,
5 but to your knowledge does Dutch law provide for
6 the forfeiture of criminal assets and the
7 proceeds of crime?

8 A Yeah, ultimately it does. First of all there
9 are some measurements which can help the
10 authorities to seizure the assets basically to
11 prevent -- well, that asset from disappearing,
12 and after all in relation to convictions there's
13 also an option to forfeiture assets or to claim
14 the illegally obtained gains, so that is --
15 well, not necessarily the same under Dutch law
16 but a forfeiture of assets and/or the obligation
17 to reimburse illegally obtained gains is
18 something which is rather intensively used by
19 the Dutch authorities as well, prioritized again
20 as well, so investigating the assets,
21 investigating the money flows is one of the
22 priorities of the authorities definitely, but in
23 international context it's rather difficult
24 again. So I think that tracing of assets, well,
25 that does not succeed that often I would say in

1 the international context where discussions with
2 regard to the obligation to reimburse illegally
3 obtained gains is again more easy, basically,
4 especially when it comes to Dutch-based
5 gatekeepers.

6 Q And in Canada and some of the jurisdictions
7 there's the provision for the forfeiture of
8 criminal assets in the absence of a conviction.
9 To your knowledge is there within Dutch law a
10 mechanism for we'll call a non-conviction based
11 forfeiture of criminal assets?

12 A To be honest I'm not completely sure. I don't
13 think so, but I might be wrong.

14 Q Okay. Thank you. I want to move forward now
15 with that context and discuss what I understand
16 was a fairly significant moment in anti-money
17 laundering regulation in the Netherlands which
18 was the prosecution and eventual settlement
19 involving ING. And I'm hopeful that in doing so
20 we can also discuss in a bit more detail some of
21 the features of the anti-money laundering system
22 that made that prosecution possible. Beginning
23 with maybe the basic, the very basics, ING is a
24 Dutch bank; is that correct?

25 A Yeah.

1 Q And maybe to help our Canadian audience
2 understand the significance of the case, how
3 significant is ING within the Dutch banking
4 industry?

5 A It's one of the biggest, most important
6 financial institution in the Netherlands.

7 Q Okay. And I'll dive into some more detailed
8 questions as we move forward, but maybe just to
9 help us sort of set the context can you give us
10 just a high level overview of what the ING case
11 was about?

12 A Well, depending on the statement of facts being
13 published I think that that case was about, as
14 the Dutch public prosecutor office mentioned, a
15 structural and systemic violation of anti-money
16 laundering rules and regulations by that
17 financial institution, and what was for the area
18 of law of most importance I think is that
19 qualification of structural and systemic
20 violation or non-compliance with AML rules and
21 regulations on the one hand but implying as well
22 the conclusion that by doing that signals of
23 money laundering would have been or must have
24 been missed and by doing that ING was also
25 considered, well, the perpetrator of culpable

1 money laundering in specific cases in which
2 authorities found out that money laundering did
3 occur amongst others via accounts of ING. And I
4 think that combination, well, is a point of
5 interest in, well, that field, that AML area in
6 the Netherlands not solely for the financial
7 institutions but all the institutions to which
8 that AML rules and regulations are applicable
9 was a very important point of time showing the
10 necessity and the importance of being compliant
11 with AML rules and regulations because it's not
12 just about some minor offences if those rules
13 and regulations are violated but it has a major
14 financial impact, but also running the risk of
15 being -- of having committed culpable money
16 laundering, which is not something a financial
17 institution likes of course.

18 Q Thank you. And you've just referred to I think
19 the two allegations that were made against ING,
20 one of which as I understand was essentially
21 failing to comply with anti-money laundering and
22 counter-terrorist financing laws, and the second
23 was, as you said, culpable money laundering. Is
24 that right? Those are the two allegations?

25 A Yeah, that's right.

1 Q And maybe can you speak a little bit more about
2 the distinction between those two allegations as
3 they were made in that case, and in particular
4 the significance of the culpable money
5 laundering allegation.

6 A Yeah. I think that again from the outset
7 because as I've only seen that case as a --
8 well, as a professional, being a corporate
9 criminal lawyer in that area of law, I think
10 that we recognized that it was important that
11 the authorities established that anti-money
12 laundering rules and regulations were violated
13 structurally and systematically looking into the
14 system of the legal entity. The legal entity
15 coping with anti-money laundering rules and
16 regulations, so it was the authorities were
17 basically looking at the entity, not necessarily
18 individuals within that entity but that entity
19 as such, how did that entity deal with all the
20 AML rules and regulations, how were its
21 compliance system established and structured and
22 implemented and complied with. And again
23 establish that, well, on the basis of what the
24 entity did actually those anti-money laundering
25 rules and regulations were not complied with and

1 not incidentally not complied with but
2 structurally and systematically not complied
3 with on the one hand, and on the other hand
4 stressing that on the basis of that it must be
5 that signals of money laundering would have been
6 or must have been missed and on the basis of
7 that committed the criminal act of culpable
8 money laundering in cases in which the
9 authorities also established that money
10 laundering did actually occur, and that were
11 various cases. Again depending on the statement
12 of facts, it could concern any fraud case,
13 basically, but when the authorities established
14 that money laundering occurred in relation to
15 fraud or in relation to VAT fraud or money
16 laundering in itself, I think that in the end
17 ultimately the authorities established four
18 cases in which money laundering had occurred in
19 the opinion of the authorities and the
20 authorities said well, on the basis of that
21 structural systemic violation of the AML rules
22 and regulations we also think ING as a legal
23 entity has committed the offence of culpable
24 money laundering and -- well, this case is not
25 that -- well, has not been discussed in detail

1 of course because the case has not been brought
2 before court, but in my opinion that allegation
3 of having committed culpable money laundering
4 does therefore not necessarily relate to only
5 those four cases but more in general by
6 establishing culpable money laundering in those
7 four cases. More theoretically speaking the
8 entity also accepted the risk of committing
9 culpable money laundering in other cases and
10 that's why it's a severe allegation which every
11 financial institution would want to prevent
12 and -- well, would want to prevent from being
13 discussed and being involved in, et cetera.

14 Q So if I understand, just to make sure I
15 understand correctly, the culpable money
16 laundering allegation, then, essentially was in
17 failing -- that ING had failed to properly
18 report as required under the AML regulations and
19 as a result money laundering occurred through
20 ING's accounts and as a result of that ING, at
21 least in the theory of the prosecutor, was
22 guilty of not just of failing to report but
23 guilty of money laundering itself?

24 A I think it was not necessarily in relation to
25 the failure to report under the AML rules and

1 regulations but more specifically, for example,
2 the obligation to know your customer. So by not
3 establishing a sufficient threshold of knowing
4 your customer it did not beat the conditions of
5 the AML rules and regulations and by doing that
6 it was also culpable in relation to money
7 laundering occurring via its bank accounts. And
8 I think that one of the major findings in that
9 regard was that signals which are relevant in
10 relation to transaction monitoring more
11 specifically, signals in relation to, for
12 example, corruption or fraud would have been
13 missed, would have triggered alerts but would
14 not have been followed up by the financial
15 institution as it must have done on the basis of
16 the AML rules and regulations, and again by
17 doing that, by not meeting those conditions, it
18 basically committed or accepted committing
19 culpable money laundering.

20 Q And for the culpable money laundering
21 allegation, and I appreciate this case
22 ultimately did not go to court and we will talk
23 a little bit about how it was resolved, but was
24 it the conclusion that money laundering did
25 occur through ING accounts, was that sort of a

1 necessary element to get to the culpable money
2 laundering charge in your view?

3 A I think so. I think that you need some
4 established occurrence of money laundering in
5 order to be able to actually write down that the
6 entity in itself committed culpable money
7 laundering, yeah. I think that again if to a
8 certain extent money laundering has been
9 established, the actual allegation could be a
10 bit broader because on the basis of that you
11 could, strictly legally speaking, establish that
12 you accepted money laundering more in general,
13 but in the end ultimately I think you need some
14 cases of money laundering being actually
15 established, yeah.

16 Q And I think this probably goes without saying,
17 but it was not the case that there was an
18 allegation that ING was deliberately laundering
19 money or trying to facilitate money laundering;
20 is that fair?

21 A I am of course not that familiar with the case
22 to know that for sure, but again in the
23 documents being published that is not discussed,
24 no. It's about culpable money laundering solely
25 and it specifically says signals have been

1 missed and by doing that it's culpable in that
2 regard.

3 Q Thank you. And in 2018 ING entered into a
4 settlement agreement with respect to these
5 allegations; is that correct?

6 A Yeah.

7 MR. McCLEERY: Madam Registrar, can we please pull
8 exhibit 980 up again and if we could go to
9 appendix C to that which is PDF page 34.

10 Q Ms. Rense, do you see the document on the screen
11 in front of you?

12 A Yeah.

13 Q And does this appear to be a settlement
14 agreement that would have been entered into in
15 the ING case?

16 A Apparently. It's the one being published.

17 Q Fair enough. And I think many of those in
18 attendance will be familiar with the plea
19 bargaining and guilty pleas as they exist in
20 common law systems and I don't want to assume
21 that Dutch law works in the same way, so I
22 wonder if you can maybe help us put us in
23 context of the Dutch legal system and just give
24 us a sense of what it means to enter into a
25 settlement agreement like this one in the Dutch

1 legal system.

2 A Yeah, what we would say upfront it does not
3 include a guilty plea so no, we do not know
4 that, well, phenomenon, so to say. Entering
5 into and out of court settlement basically means
6 that you do not discuss the case before the
7 courts and you do not actually discuss guilt or
8 no guilt. Of course the public prosecutor's
9 office need to be convinced that the prosecution
10 is legal and also rightly, so from that angle
11 the public prosecutors's office needs to be
12 convinced that ultimately if the case would be
13 brought before the court that would lead to a
14 conviction, but in the end in a settlement is
15 concluded parties do not discuss that guilt.
16 Earlier we did not discuss any recognition of
17 facts and circumstances neither where currently
18 because these kinds of settlements are rather
19 heavily scrutinized politically and societally,
20 I would say, in the Netherlands. One condition
21 of the public prosecutor's office to enter into
22 these kind of settlements is that at least the
23 suspect needs to recognize the facts as being
24 described. So it does not be guilty or
25 something like that, but it says and I think in

1 this settlement agreement it has not been
2 mentioned that literally but in the ABN AMRO
3 settlement which is currently entered into, it
4 is on top of my head it specifically says the
5 suspect recognizes the facts and circumstances
6 as being established in this investigation and
7 mostly something like and as being described in
8 the statement of facts. And by doing that it
9 basically takes responsibility for the facts and
10 the criminal acts that, well, are subject of the
11 settlement agreement. That is our line of
12 reasoning and our line of thinking, I would say.

13 Q Thank you. And we'll come to that ABN AMRO
14 settlement in a little bit. In the Canadian
15 system of criminal justice there's a guilty plea
16 needs to be accepted by are the court. Is there
17 any judicial oversight or acceptance of a
18 settlement agreement like this one in the Dutch
19 legal system?

20 A Not yet, but we are discussing that, well,
21 instrument as well currently. So up until
22 rather recently, the settlements were entered
23 into by the suspect and the Dutch state and for
24 the Dutch state the public prosecutor's office
25 and such a settlement above a certain threshold

1 with these kinds of settlements are always above
2 that certain threshold needed approval of the
3 minister of justice or the minister of justice.
4 That has changed into a system in which these
5 kind of settlements are being assessed by a
6 special committee and that committee is -- well,
7 let's say a committee of wise men, and women of
8 course, looking into that settlement and in the
9 legitimacy thereof, and they provide an advice
10 in relation to that settlement. That was not
11 the case with this ING settlement, but it has
12 been with the ABN AMRO settlement that was
13 currently entered into for example. But that is
14 also for the time being, basically, because we
15 are discussing a framework in which these kinds
16 of settlements will be presented before a court
17 in order to make a final assessment on the
18 legitimacy of the settlement, yeah.

19 Q And with the ING settlement, and we can go to
20 the part of the agreement if that specifies and
21 it will be helpful, but ultimately there was a
22 payment of 775 million euros as fine and
23 confiscation of unlawfully obtained gains; is
24 that right?

25 A Yeah.

1 Q Can you maybe just briefly describe the
2 difference between those two components of the
3 payment, the fine and the confiscation of
4 unlawfully obtained gains and maybe the
5 significance of that in Dutch law?

6 A Yeah. Basically the penalty is a punishment and
7 the obligation to reimburse illegally obtained
8 gains is, let's say, an obligation to redress
9 the criminal act, so to redress the illegal
10 situation and change that into a legitimate
11 situation. So it's something that adds up the
12 punishment.

13 Q And you may not be aware of this. Do you know
14 does that money, the two components of that
15 payment, do they ultimately all just go to the
16 Dutch government, or is there some mechanism
17 for, say, repaying victims or anything like that
18 with the confiscation and lawfully obtained
19 gains?

20 A No, these go to the Netherlands state because
21 there's also another mechanism reimbursing
22 damages of victims if there are victims in a
23 criminal case. So that could also be another
24 measurement obliging the suspect to pay for
25 damages of victims. It doesn't happen that

1 often in these kinds of settlements, but it's
2 another instrument, so to say, under criminal
3 law which could even add up to a penalty, an
4 obligation to reimburse legally obtained gains,
5 so it's another instrument.

6 Q This is undoubtedly a very, very large amount of
7 money that ING has had to pay. I wonder if you
8 could help us understand how significant a
9 penalty this would be compared to what we might
10 see in other cases involving large companies in
11 the Netherlands?

12 A Yeah. I believe that it's one of the, as we
13 call it, biggest, most huge settlements in the
14 last couple of years. So there are others which
15 are impressive, but this is one of the most
16 impressive, especially in relation to anti-money
17 laundering rules and regulations because the
18 others are in relation to corruption, basically,
19 cross border corruption mainly, and, well, this
20 was the first huge settlement, as we call it,
21 under Dutch law in relation to anti-money
22 laundering rules and regulations.

23 Q I suppose it's clear from that that this was
24 quite a significant development in Dutch
25 anti-money laundering law and I think based on

1 the evidence that the Commissioner has heard
2 over the last number of months I think I feel
3 reasonably confident in saying there has not
4 been a money laundering prosecution of this
5 magnitude in British Columbia. So what I'd like
6 to do now is maybe just examine some more of the
7 details of this case in the hope of sort of
8 better understanding some of the features of the
9 Dutch anti-money laundering system that allowed
10 for this kind of an investigation and
11 prosecution and ultimately settlement to take
12 place.

13 MR. McCLEERY: And to assist us with that, Madam
14 Registrar, I wonder if we could go to appendix B
15 to this document which begins at page 10.

16 Q So, Ms. Rense, we have here a document entitled
17 "Investigation Houston, Criminal Investigation
18 Into ING Bank N.V., Statement of Facts and
19 Conclusion of the Netherlands Public Prosecution
20 Service." You see that on the screen in front
21 of you?

22 A Yeah.

23 Q I wonder if again to help maybe just orient us
24 with the Dutch criminal justice system, can you
25 describe what the purpose of this document would

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be.
A Well, it's a document basically I think I would say to be accountable for the suspect and also the public prosecutor's office. Before this practice of making the settlement agreement public provide a statement of facts and a press release, suspects and the public prosecution offers in the Netherlands entered into settlement agreements basically behind the screens, and that of course is not common practice for the last couple of years but before it was, and these settlement agreements did not become public, and after a while a press release was issued, but mostly it were rather short press releases describing -- well, in short, in one paragraph or something like that that settlement agreement was entered into by a suspect and the public prosecutor's office, and that developed into a practice of course on the basis of being politically and societally scrutinized, claiming that the public prosecutor's office needs to take accountability and need to take responsibility in order to explain why a settlement is entered into, what the findings were, what the criminal acts having

1 been committed were, et cetera, et cetera.
2 Well, has developed into a practice in which a
3 settlement agreement is entered into and made
4 public together with their press release and a
5 rather substantive statement of facts describing
6 the findings of the investigating team, the
7 public prosecutor's office and basically the
8 rationale to enter into an out of court
9 settlement, in order to publicly explain what
10 has happened and why that has happened, and by
11 doing that we think you could enter into an out
12 of court settlement instead of prosecuting the
13 entity and bringing the case before the court
14 because ultimately the result of prosecuting
15 that case before the court will be more or less
16 similar.

17 MR. McCLEERY: Thank you. If we can move ahead to
18 page 12, please, Madam Registrar.

19 Q And what I'd like to do now, Ms. Rense, is there
20 are a few different institutions and agencies
21 mentioned in this document and I'm hoping you
22 can maybe help us identify them and give us a
23 little bit of idea of what they are and their
24 role in the Dutch anti-money laundering system.

25 A Sure.

1 Q And the first one, if we look to the first
2 paragraph it begins, it says:

3 "The statement of facts describes how and
4 why ING Bank N.V. became the subject of a
5 criminal investigation by the Dutch Fiscal
6 Information and Investigation Service
7 (hereinafter referred to as FIOD) at the
8 beginning of 2016."

9 I've skipped over the name of that agency in
10 Dutch as I don't want to embarrass myself with
11 my attempt to pronounce it, but I wonder if you
12 can maybe tell us a little by what the FIOD is
13 and its role in anti-money laundering efforts in
14 the Netherlands.

15 A Yeah. Well, the Dutch term says that it's
16 actually the fiscal intelligence unit of the tax
17 authorities within the Netherlands and, well,
18 originally that authority dealt with fiscal
19 fraud, tax fraud and investigated tax fraud
20 cases, et cetera, but that developed and evolved
21 into a more, as we call it, financial economic
22 crime and intelligence and investigation unit
23 within the tax authority of the Netherlands and
24 it's now basically the investigation authority
25 conducting most of the financial criminal

1 investigations, amongst which anti-corruption
2 cases or corruption cases for example but also
3 money laundering cases.

4 Q Thank you. So fair to say part of its mandate
5 is money laundering investigations, but that is
6 not the entirety of what it does?

7 A Yeah. That's true.

8 MR. McCLEERY: If we can jump ahead to page 16,
9 please, Madam Registrar.

10 Q And we see at the bottom of the page that it
11 reads:

12 "A transaction reported as unusual will
13 then be further investigated by the FIU.
14 This investigation may lead to the
15 transaction being declared suspicious and
16 to the investigating authorities being
17 informed. In this way, reports of unusual
18 transactions can lead to a criminal
19 investigation into money laundering or the
20 financing of terrorism."

21 The reference to FIU in this paragraph, that
22 will stand for financial intelligence unit?

23 A Yes, that's correct.

24 Q The Commissioner has heard evidence about
25 financial intelligence units in different

1 jurisdictions. I take it based on I think some
2 of the evidence given earlier on, part of the
3 role of this financial intelligence unit would
4 be to receive reports of suspicious and unusual
5 financial transactions. Is that correct?

6 A Yeah, that's basically its core role and task,
7 so to say, yeah.

8 Q And the paragraph suggests, and I appreciate I
9 think this is a translation so it may be that
10 the language is not as precise as it should be,
11 but it suggests that the FIU has some kind of an
12 investigative role as well. To your knowledge
13 is that the case?

14 A Yeah, that is. So it's actually correct what is
15 stated there because under our law not
16 suspicious transactions need to be reported but
17 unusual transactions, so that's slightly
18 different from suspicious transactions and I
19 think it's a slightly broader term than
20 suspicious transactions, so on the basis of
21 those unusual transactions being reported to the
22 FIU where the FIU is always the recipient of
23 that notification, the FIU has the authority to
24 investigate and to assess if that unusual
25 transaction qualifies as a suspicious

1 transaction. And, well, that's one of the roles
2 and tasks of the FIU, assessing unusual
3 transactions if those qualify as suspicious
4 transactions. And if those transactions
5 qualifies as suspicious indeed, well, that I do
6 not know if that's for certain if that's always
7 the case, but that is one of the reasons of
8 those transactions being reported to
9 investigation authorities as well, so that could
10 trigger -- that assessment and that
11 qualification could trigger further
12 investigations by criminal investigations
13 authorities like the fields we just discussed.

14 Q Are you able to say what types of investigative
15 steps the FIU would take when it receives an
16 unusual transaction. To try to assess whether
17 it's suspicious, what does that assessment look
18 like and what can the FIU do to try to make that
19 assessment?

20 A I'm not completely sure, to be honest. I have
21 understood that there are some processes being
22 conducted by the FIU in cooperation with other
23 investigating authorities and, well, as far as
24 I've understood the FIU assesses unusual
25 transactions and, well, assesses if those

1 qualify as suspicious transactions. I do not
2 know how they identify the transactions that
3 need to or could be assessed like that, but if
4 that is the case, well, that could trigger a
5 report to the investigating authorities. I
6 think and I believe that that is on the basis,
7 for example, of multiple reports in relation to
8 one and the same financial institution or other
9 institution under the scope of the anti-money
10 laundering rules and regulations, so it could be
11 that a system of the FIU flags, hey, here we see
12 an unusual transaction being reported
13 simultaneous or repeatedly or an institution
14 being notified or repeatedly. That could lead
15 to an assessment of that transaction or those
16 transactions, I think. It could also be that
17 the FIU conducts, as we call it, thematic -- I
18 do not know if that is the right word in
19 English, but investigations, so looking into a
20 certain area of, well, problematic or risky area
21 and by doing that establishes, well, some
22 relevant investigation --

23 THE COMMISSIONER: It looks to me as though we are
24 experiencing some technical problems --

25 THE WITNESS: Areas and reporting, so for example you

1 could imagine -- sorry, am I back? Or...

2 MR. McCLEERY: Yes, you seem to be back now. You
3 froze for ten seconds or so. I think it seems
4 to be all right now. Mr. Commissioner, does it
5 look okay to you?

6 THE COMMISSIONER: It does, Mr. McCleery. It seems
7 fine now. I wonder, though, if Ms. Rense
8 could -- difficult to ask her, but if she could
9 repeat her last answer. I think we missed some
10 portions of it.

11 MR. McCLEERY:

12 Q Sure.

13 A Sure.

14 Q And just to reiterate the question, it was to
15 the extent you're able, and I appreciate the
16 intricacies of investigative agencies are not
17 always publicly known, but to the extent you're
18 able to comment on the investigative -- the
19 process that FIU goes into to investigate an
20 unusual transaction for the purpose of assessing
21 whether it's a suspicious transaction.

22 A Yeah, well one of the processes being conducted
23 by the FIU is assessing unusual transactions
24 being notified and assessing if these
25 transaction qualify as suspicious transactions,

1 and I think that is on the basis of, well, for
2 example, an institution that falls under the
3 scope of the AML rules and regulations being
4 reported, repeatedly or simultaneous or
5 something like that, there's some trigger I
6 think for the FIU in order to conduct such an
7 assessment.

8 Another route as far as I know could be that
9 they conduct -- I said I do not know if that
10 word in English is correct but thematic
11 investigations, so looking into a certain aspect
12 of interest. For example, you could imagine
13 assessing cash transactions and by doing that
14 flagging some transactions being reported as
15 suspicious transaction and again reporting that
16 to the investigating authorities of areas of
17 interest to look into. And one other aspect is
18 that also the investigating authorities, the
19 criminally investigating authorities could also
20 ask the FIU to conduct a certain kind of
21 investigation into an institution that falls
22 within the scope of the AML rules and
23 regulations or, for example, ask are you aware
24 of some notifications in that regard in relation
25 to that specific transaction or in relation to

1 that specific institution. So there are the
2 three basic lines of conducting further
3 investigations by the FIU, as far as I know.

4 Q Are you able to say whether the investigator
5 steps the FIU can take would be limited to
6 reviewing reports that have been made by
7 reporting institutions, or are they able to take
8 investigative steps outside of just looking at
9 those reports in the broader world?

10 A I think it's not such a deep dive, to be honest.
11 So I think it's basically an assessment of the
12 report being made where normally speaking the
13 report in itself is not assessed at all maybe.
14 It's just reported and being registered where
15 certain transactions and reports are taken out
16 and further assessed by the FIU on the basis of
17 the information at hand, I think, because what
18 I've seen in specific cases I'm dealing with is
19 that that report of the FIU qualifying a
20 transaction as a suspicious transaction is
21 basically a report in which the original
22 notification is mentioned and that notification
23 includes all kinds of facts and circumstances
24 that are relevant and also must be notified in
25 that notification, and on that the basis of that

1 information I think the FIU investigates if that
2 transaction qualifies as a suspicious
3 transaction as well, or of course taking into
4 account other reports as well, so it could be
5 that on the basis a of combined report a
6 transaction is considered to be suspicious.

7 Q Thank you very much.

8 MR. McCLEERY: Madam Registrar, can we please move
9 ahead to page 27 of the PDF. Sorry, I may have
10 the wrong page. Could you go down to the bottom
11 of the page, please, Madam Registrar. No, that
12 is the right one. Back up to the top. My
13 apologies. Yes, there, I found my spot now.

14 Q Ms. Rense, in the second paragraph on this
15 page it begins with:

16 "In the period from 2005-2016, DNB
17 conducted a number of investigations at
18 ING NL, including investigations into ING
19 NL's prevention of involvement in money
20 laundering and terrorist financing. DNB
21 took formal measures against ING NL on a
22 number occasions during that period."

23 I think you probably can guess where my question
24 is going, but DNB is the Dutch central bank; is
25 that right?

1 A Yeah, that's right, that's the supervisory
2 authority in this regard.

3 Q And the sentence suggests that the central bank
4 has some again some investigative role with
5 respect to money laundering. You just mentioned
6 it's the supervisory authority. I wonder if you
7 can just explain what the role of a supervisory
8 authority is within the Dutch anti-money
9 laundering system and maybe to the extent it
10 will be helpful to expand on exactly what the role
11 of the central bank is in terms of their
12 investigation of money laundering.

13 A Yeah. Well, yeah, AML rules and regulations
14 under Dutch law can be enforced by, as we call
15 it, administrative law measures and criminal law
16 measures, and basically and, well, more
17 generally speaking DNB, the Dutch National Bank,
18 is the supervisory authority conducting the
19 administrative investigations, supervisory
20 administrative investigations and enforcement
21 measures in that regards. Those enforcement
22 measures, including as we call it redress
23 measure, so redressing the illegal situation
24 into a legal situation, but also certain
25 punitive measures, for example an administrative

1 penalty, imposing administrative penalties where
2 in parallel to that or in cooperation with the
3 supervisory authority or in sequence to the
4 supervisory authority the criminal law
5 enforcement authorities conduct criminal
6 investigations and could -- well, those could
7 lead up to criminal prosecution as well.

8 So basically the authorities we are now
9 discussing like the FIOD and the DNB could
10 cooperatively act in a case of violation of the
11 anti-money laundering rules and regulations and
12 that actually happened in the ING case. So DNB
13 conducted its investigations and imposed some
14 measures where the criminal authorities like the
15 FIOD and the public prosecutor services did in
16 parallel or to a certain extent succeeding those
17 actions the same.

18 Q Maybe to help distinguish the roles of the FIU
19 and the DNB or the supervisory authority while
20 reports of suspicious or unusual transactions
21 would be made to the FIU, it's the DNB that's
22 responsible for essentially investigating and
23 enforcing compliance as opposed to the FIU doing
24 that function?

25 A Yeah. And I think that in comparison to, for

1 example, the criminal investigating authorities
2 DNB is not solely investigating non-compliances
3 but it's really a supervisory authority, so in
4 regular contact with deregulated institutions
5 like, for example, financial institutions
6 dealing with all kind of regulatory aspects and
7 of course on a regular basis dealing with
8 compliance in this regards of which AML rules
9 and regulations are a part and an important
10 part but not the sole part, and if it comes to a
11 violation of those rules and regulations and
12 non-compliance in that regard, DNB could conduct
13 investigations and impose measures as well,
14 again in cooperation with the criminal
15 investigating authorities or in parallel or --
16 well, all kinds of combinations, but its role
17 and task is more broad than the role and tasks
18 of criminal investigating authorities in this
19 regard where the FIU is solely the authority
20 where the reports are made and the reports are
21 being assessed.

22 Q Thank you.

23 MR. McCLEERY: Madam Registrar, if we could move
24 ahead to page 36 of the PDF, please.

25 Q And to orient us, we are now back into the ING

1 settlement agreement and, Ms. Rense, I'll just
2 direct you to subparagraph (g) on this
3 page which again refers to the DNB. It says:

4 "ING has taken remedial measures that
5 serve (in part) to prevent the
6 aforementioned criminal offences. In this
7 connection, ING has discussed its actions
8 with its regulator, the Dutch Central Bank
9 (hereinafter referred to as DNB). The
10 measures taken were discussed with and
11 approved by the DNB."

12 And just that refers to essentially some
13 remedial measures that ING would have agreed to
14 take to essentially prevent this issue from
15 coming up again; is that fair?

16 A Yeah. I think where agreeing might be -- well,
17 it basically is the Dutch Central Bank requiring
18 compliance with rules and regulations, including
19 AML rules in regulations in these kind of
20 processes in parallel to the criminal
21 investigations being conducted, and on the other
22 hand while sufficient compliance is mostly a
23 precondition to enter into an out of court
24 settlement at all, so if there is no comfortable
25 sufficient level of compliance being

1 established, an out of court settlement is no
2 option for the public prosecutor's office and in
3 that regard there is always to a certain extent
4 cooperation between the supervisory authorities
5 and the criminal authorities.

6 Q Thank you very much. So we've now touched on at
7 least three agencies that have some role in
8 investigating matters related to money
9 laundering in the Netherlands, that being the
10 FIOD, the FIU and the DNB. I'm wondering, and
11 we'll talk a little bit about the public
12 prospective service in a little bit, aside from
13 those are there any other agencies or
14 authorities that you are aware of that have a
15 significant role in investigating matters linked
16 to money laundering in the Netherlands?

17 A Yeah. There are different supervisory
18 authorities dealing with institutions falling
19 under the scope of the AML rules and
20 regulations, so DNB is one of them dealing with
21 the financial institutions. That's why DNB is
22 in this settlement agreement because this is a
23 settlement agreement with one of the Dutch
24 financial institutions. Where if it comes to,
25 for example -- well, what is good example?

1 Notaries, there's another supervisory authority.
2 It's the professional organization of the
3 notaries. And a supervisor included in that
4 professional organization. So I think on top of
5 my head, but please do not pinpoint me on that,
6 there are five or six different supervisory
7 authorities dealing with the various
8 institutions and professions falling within the
9 scope of the AML rules and regulations who have
10 to deal with compliance in this regard and
11 investigations into non-compliance issues as
12 well.

13 Q Would every business or institution that has
14 responsibilities under AML regulations be
15 subject to the authority of one of those
16 supervisory authorities, or are there any that
17 are not underneath the supervisory authority?

18 A There was a flaw in the law up until 2018 which
19 meant that not all institutions were -- well,
20 supervised, basically, but that flaw has been
21 dealt with in the new law of 2018. So now every
22 category of institutions that fall under the
23 scope of the *WWFT* has a supervisor dealing with
24 compliance in that regard. And some of them a
25 bit more let's say regular than others. For

1 example, financial institutions are highly
2 regulated institutions in itself, where, for
3 example, the traders of goods are not. So there
4 is a supervisor looking into that category of
5 traders of goods as far as they fall under the
6 scope of the AML rules and regulations, but --
7 well, yeah, there's always a supervisor dealing
8 with compliance and non-compliance issues.
9 Yeah.

10 Q Thank you. I want to jump ahead, then, and talk
11 a little bit about the role of the prosecution
12 service, and again maybe just to help orient us
13 with the Dutch legal system as I understand the
14 role of prosecutors in your country are a little
15 bit different from what they are in ours, can
16 you maybe just briefly give us an overview of
17 the role of prosecutors in the Dutch legal
18 system and in particular the role they would
19 play during an investigation as opposed to the
20 court proceedings.

21 A Yeah. Well, I think that what might be
22 different from -- but I'm not that familiar with
23 your practice of course, but I think that what's
24 different or what could be different is that the
25 public prosecutor service is a government

1 organization in the Netherlands, an independent
2 public government organization solely dealing
3 with investigating and prosecuting criminal
4 acts, basically, and in that role and capacity
5 it's basically the head of the investigating
6 team where an investigation is being conducted
7 and is also -- well, the one deciding if that
8 investigation is followed up by a prosecution,
9 so the public prosecutor and that's actually the
10 public prosecutor in that specific case is the
11 one deciding if a case is being prosecuted at
12 all, and if yes, who is being prosecuted. So
13 the legal entity and/or others as well or --
14 well, it depends on the fact and circumstances
15 of the specific case. So the head of the
16 investigation and the one deciding about
17 prosecution and after that if prosecution has
18 been initiated also conducting that prosecution
19 which is basically litigating the case before a
20 criminal court.

21 MR. McCLEERY: Thank you. If we can move to page 10
22 of the PDF please, Madam Registrar. If we could
23 scroll down just a little bit.

24 Q I want to bring you to this page, Ms. Rense,
25 there's a reference here to the National Office

1 for Serious Fraud, Environmental Crime and Asset
2 Confiscation. Am I correct that that's
3 essentially a specialized unit of the
4 Netherlands public prosecution service?

5 A Yeah, a centralized unit of that. Our office is
6 geographically organized basically so there are
7 specific areas. Within our country is divided
8 in I think 9 or 12 different areas with their
9 own public prosecutor's office except for two
10 unions of the public prosecutor's office which
11 are both mentioned here which are centralized,
12 centrally organized and dealing with, well,
13 let's say national cases. So not specifically
14 originating in one of those areas but of
15 national importance or of a certain kind of
16 expertise which is financial economic crimes and
17 cross-border crimes are dealt with by the
18 national office, as is mentioned here, which is
19 at Landelijk Parket.

20 Q The National Office for Serious Fraud,
21 Environmental Crime and Asset Confiscation,
22 would they typically be responsible for all sort
23 of large money laundering prosecutions like this
24 one?

25 A Yeah. Together with the national office due to,

1 well, mostly international aspects.

2 Q Okay. And am I correct there's a specialized
3 AML or money laundering unit or team within the
4 prosecution office?

5 A Yeah. There was a team dealing with corruption,
6 there was a team dealing with environment issues
7 and there was a team dealing with AML, for
8 example, yeah.

9 Q And, I mean, are you able to comment on the
10 reasoning why -- I appreciate it's not within
11 your decision-making authority to decide how the
12 prosecution is organized, but can you comment on
13 maybe either why there would be a need for a
14 money laundering unit within the prosecution
15 service or in your view sort of what the
16 significance of having a specialized unit would
17 be.

18 A I think, well, the urge or necessity or at least
19 helpfulness of expertise is basically one of the
20 main reasons I think that it's -- if you do not
21 regularly deal with these kinds of issues, it's
22 even more difficult, so if you regularly deal
23 with, for example, anti-corruption cases or
24 anti-money laundering case it helps you better
25 understand the facts and circumstances but also

1 developments and also to forecast to a certain
2 extent trends and developments. And, well, I
3 think that is something that the Dutch
4 authorities have dealt with rather appropriately
5 the last couple of years establishing expertise
6 and specialized committed units within the
7 investigation authorities but also within the
8 prosecution authorities in order to deal with
9 these kinds of cases as efficiently and
10 effectively as possible.

11 Q Again, this may not be something that's made
12 public so you may not be able to respond to this
13 question. Do you have any sense of the size of
14 the money laundering unit within the prosecution
15 service?

16 A No. No. I think a couple of prosecutors, but I
17 don't know. I think that, well, the most
18 important capacity is of course established
19 within the investigation unit because it takes a
20 lot of capacity in order to follow up on these
21 kinds of cases. And there are a couple of
22 prosecutors committed to that area of law, so to
23 say, and to these kinds of cases, but I do not
24 know how much.

25 Q Thank you. Having discussed now some of the

1 circumstances and the facts of this case and
2 some of the different institutions and agencies
3 that are involved, I want to take a step back
4 and try to understand a little bit more about
5 the significance of this case within the
6 Netherlands. I wonder if you can again maybe as
7 someone who practises in the area just comment
8 on how significant a case this was and maybe the
9 impact that it's had on the perception of money
10 laundering in the Netherlands and sort of maybe
11 views as to how big a problem it is and how it
12 should be handled.

13 A Yeah. Actually I would say this out of court
14 settlement woke us all up so we were immediately
15 aware of the impact, the possible impact of
16 violations in this regard of non-compliance in
17 this regard and it immediately made clear for
18 everybody falling within the scope of the
19 anti-money laundering rules and regulations that
20 it is a necessity to be compliant because the
21 impact otherwise is severe and substantial. So
22 it helped, I think, the authorities enormously
23 to underline the awareness and the necessity to
24 be compliant. They do not have to explain too
25 much.

1 speaking if something goes wrong it's -- of
2 course that's not a real legal answer, but it's
3 rather easy afterwards to establish that if
4 something went wrong one of the conditions have
5 not been met apparently. That's basically the
6 line of reasoning and mostly that's rather
7 difficult to contest, actually. In money
8 laundering cases, after all I think that it
9 always centers around transactions not been
10 assessed to the full extent, not being
11 recognized in full detail. I think mostly not
12 intentionally but, for example, because a money
13 launderer uses different service providers where
14 it for those service providers is rather
15 difficult then to have the full picture ready or
16 available to understand the transaction
17 completely and in full detail. And afterwards
18 when it all turns out to be wrong and having
19 been, for example, a corrupt transaction it's
20 rather easy. And of course again that's not a
21 legal qualification, but it's rather easy to
22 establish well, then you did not know your
23 client sufficiently or appropriately or to the
24 full extent or to sufficient detail. So it's
25 rather difficult to position yourself in an

1 appropriate defence position in these kinds of
2 discussions, where on the other hand I think
3 that, to be honest, the institutions might also
4 need to speed up a bit to be compliant,
5 actually. So it's also for sure I think that,
6 well, that needed more awareness and needed more
7 efforts and commitment in order to be fully
8 compliant and to the extent possible be
9 compliant with all the AML rules and
10 regulations, but I think that are basically the
11 success factors of the Dutch enforcement where
12 the Netherlands might also be -- but you are
13 maybe better positioned to assess that than I am
14 because I'm in the middle of it, but I think we
15 like to be frontrunners, basically, in these
16 kinds of areas, so to be one of the harshest
17 countries in which violations of AML rules and
18 regulations are sincerely dealt with and not too
19 easy to step out of discussions in relation to
20 violations and non-compliance issues, et cetera.
21 So I think it's also an appreciation to really
22 commit to enforcement in this regard.

23 MR. MCCLEERY: If we can jump to page 26 of the PDF
24 please, Madam Registrar. I am sorry, page 23
25 actually. And scroll down just a little bit.

1 Thank you.

2 Q Ms. Rense, I want to just ask you about a
3 paragraph here that appears. It's a short
4 paragraph just beneath the indented paragraph in
5 italics and it begins "as a result." It says:

6 "As a result ING NL insufficiently
7 fulfilled its gatekeeper role and
8 insufficiently enabled investigative
9 authorities to take action. Also,
10 shortcomings in carrying out the FEC CDD
11 policy led to a number of clients being
12 able to use ING NL's accounts for years
13 almost undisturbed for, among other
14 things, money laundering."

15 What I want to ask you about is this reference
16 to ING's gatekeeper role. I wonder if you can
17 comment on the significance of that phrase and
18 whether that's something that has been a
19 particular focus for authorities in the
20 Netherlands that may have contributed to this
21 ING settlement agreement.

22 A Yeah. Again, that's not necessarily something I
23 really know because I'm not in the policy
24 departments of those authorities, so I do not
25 know if -- well, what the actual policy

1 decisions have been. But I think that on the
2 basis of my experience I recognize that the
3 authorities decided a couple of years ago to
4 prioritize the enforcement of AML compliance of
5 gatekeepers, basically, which are of course --
6 well, which is one of the most important
7 categories that falls under the scope of the AML
8 rules and regulations, and I think that the
9 authorities decided and assessed that especially
10 in international cases in which it's rather
11 difficult to investigate and conduct
12 internationally operating perpetrators and to
13 trace assets internationally, et cetera,
14 et cetera, to be more successful in enforcement
15 of AML rules and regulations when you aim at and
16 centre around Dutch-based gatekeepers who are in
17 the Netherlands, so who are -- who you can
18 actually contact, who you can actually
19 investigate and who you can actually prosecute
20 in the Netherlands. Also of course from a --
21 well, being convinced that if you urge the
22 gatekeepers to be compliant with AML rules and
23 regulations in the end ultimately you prevent
24 money laundering from occurring in the
25 Netherlands or at least to the extent possible,

1 yeah. So that has been a focus for the last
2 couple of years of the Dutch authorities. You
3 see in practice that if and when the authorities
4 come across a suspicious transaction, for
5 example a corruption transaction in the
6 international context, they look around that
7 transactions which service providers were
8 involved or were -- well, at least involved
9 around that transaction and by doing that, for
10 example, assess and investigate did those
11 service providers report an unusual transaction
12 and if not why not. And is that a violation of
13 the AML rules and regulations, et cetera,
14 et cetera, and from there on they decide if an
15 actual criminal investigation into the role and
16 involvement of that gatekeeper is opportune and
17 legitimate in that regard.

18 MR. McCLEERY: Madam Registrar, if we can move to
19 page 38 of the PDF, please.

20 Q And this is -- we'll just shift topics just a
21 little bit, Ms. Rense. We're back into the
22 settlement agreement here. I just want to draw
23 your attention to the beginning of article 4.1
24 which says:

25 "In the event that the Netherlands Public

1 Prosecution Service has to prosecute ING
2 following an order from the Court of
3 Appeal on account of a complaint pursuant
4 to Article 12 DCCP, this settlement
5 agreement will be deemed to be terminated,
6 without any further act being required to
7 this end."

8 I wonder if you can maybe explain to us what
9 they mean by "a complaint pursuant to article 12
10 DCCP"?

11 A Yeah. Well, a complaint pursuant to article 12
12 is basically an instrument for all the
13 interested parties, which is again a rather
14 broad term and definition, for interested
15 parties to complain with the court of appeal if
16 and when they think that a certain criminal act
17 and a certain suspect needs to be prosecuted
18 actually, for example, instead of entering into
19 an out of court settlement or instead of a
20 decision not to prosecute at all.

21 Q And am I correct that there was an article 12
22 procedure in this case?

23 A Yeah, that's correct.

24 Q And can you speak to are you aware of the how
25 that proceeded and what the outcome might have

1 been?

2 A Yeah. Yeah, the decisions of that court of
3 appeal has been published. There are two
4 decisions. So there's one decision dealing with
5 the out of court settlement and a claim to
6 prosecute ING instead of entering into an out of
7 court settlement and there is a decision of the
8 court of appeal with regard to the former CEO of
9 ING not being prosecuted under this out of court
10 settlement or in any other way, so claiming the
11 court of appeal to urge the public prosecutor's
12 office to prosecute that individual more
13 specifically on the basis of the facts and
14 circumstances. And eventually the court of
15 appeal that rendered those decisions decided
16 that the out of court settlement could be upheld
17 because, well, it considered sufficient grounds
18 for prosecution but also considered sufficient
19 grounds for entering into an out of court
20 settlement, especially in comparison to entering
21 into prosecutions before a court which was not
22 that dramatically different, so to say. Where
23 on the other hand the public prosecutor's office
24 with regard to the former CEO argued that there
25 were not, there would not have been sufficient

1 grounds to prosecute that former CEO as an
2 individual in this regard where the court of
3 appeal ultimately decided that there are
4 actually sufficient grounds to prosecute that
5 individual and therefore urged the public
6 prosecutor's office to -- well, basically
7 investigate that further and sincerely consider
8 prosecution of that individual and maybe even
9 others in relation to the facts and
10 circumstances included and subject to this
11 settlement agreement.

12 Q And given the language you've used, am I correct
13 that the position of the court of appeal is not
14 mandatory and ultimately it remains up to the
15 prosecutor to decide whether or not to
16 investigate and prosecute the CEO or other
17 individuals?

18 A Something in between. The public prosecutor
19 has -- needs to follow up on the decision of the
20 court of appeal of course, but it depends on the
21 specific wording of the decision if that, for
22 example, means that the case needs to be
23 investigated where the public prosecutor's
24 office still has the option to after that
25 investigation being conducted decided no

1 prosecution need to be initiated. Where but
2 that's on top of my head in this specific case I
3 think the court of appeal rendered the judgment
4 saying that the individual needs to be
5 prosecuted, which is a stage after investigation
6 but under Dutch law still something in between,
7 well, entering into a settlement and/or a
8 certain kind of punishment outside of a court
9 hearing, which is a possibility on the Dutch law
10 as well, and/or, well, bringing the court before
11 the court. And I think that in the end
12 ultimately the prosecution still decides how to
13 prosecute the case because that's the authority
14 of the prosecution service, but to be honest, if
15 the court of appeal is this strong in the
16 decision, I think that the public prosecution
17 service will be inclined to actually prosecute
18 the case and bring the case before the court
19 because I also think that the public prosecution
20 service wants the court to decide on the basis
21 of the facts and the circumstances and the
22 findings, having been -- yeah, this heavily
23 scrutinized, basically, because the court of
24 appeal did not agree with the arguments and the
25 opinions of the public prosecutor's service in

1 this regard.

2 Q So do we know is that former CEO being
3 prosecuted, or will he or she be prosecuted, or
4 is that not in the public knowledge?

5 A No, that's not -- I would assume that the case
6 is being investigated and thereby the
7 prosecution options are being investigated
8 currently, but that's not in the public domain.

9 Q Thank you. I want to just briefly touch on
10 another settlement agreement that we've referred
11 to now a couple of times which is the one
12 involving ABN AMRO and that settlement agreement
13 was announced very recently just within the past
14 few weeks; is that correct?

15 A I do not know if that term of two weeks is
16 correct, but I can agree it was rather recently.
17 I do not know the date on top of my head, to be
18 honest.

19 Q I don't either and I think I said "few weeks"
20 rather than "two weeks."

21 A Oh, a few weeks, yeah, that's correct.

22 Q And there are some documents that are now before
23 the Commissioner that describe that case, and at
24 least to my reading it seems quite similar to
25 the ING case. I'm wondering if you have got a

1 perspective as to whether there are any
2 significant features of the ABN AMRO case that
3 maybe differ from the ING case that might be
4 important for us to understand?

5 A No, I agree that it is rather similar. The
6 settlement amount is less, substantially less
7 but still rather substantial. I think that,
8 well, another aspect that is important is that
9 in this specific case, and it has not been
10 explicitly stated by the public prosecutor's
11 office of course, but as a result of those
12 article 12 procedures following up on the ING
13 out of court settlement I would assume the
14 public prosecutor's office more explicitly
15 considered in relation to the ABN AMRO
16 settlement basically what to do with former
17 management and current management. So how to
18 deal with the prosecution of individuals that
19 wasn't explicit as fact in this regard where it
20 wasn't in relation to the ING settlement back
21 then in 2018.

22 Q Actually, we can go to -- sorry, go ahead.

23 A Sorry for interrupting you, but that is
24 something that we notify more in general even,
25 not solely in relation to AML settlements but

1 also in relation to settlements in corruption
2 cases that the consideration what to do with
3 individuals being involved is an aspect that
4 needs consideration more explicitly of the
5 public prosecutor's service.

6 MR. McCLEERY: Madam Registrar, on that point,
7 actually, if we can go to page 141 of the PDF
8 and scroll down just a little bit. Perfect.

9 Q Actually we see here, Ms. Rense, towards the end
10 of the first paragraph of this page there's a
11 sentence beginning with "according to the NPPS."
12 It goes on:

13 "According to the NPPS --
14 And, sorry, this a press release issued by the
15 Netherlands Public Prosecution Service.

16 "According to the NPPS, with this
17 settlement ABN AMRO is taking
18 accountability for the criminal acts
19 identified by the NPPS. The criminal
20 investigation into natural persons is
21 continuing. Three natural persons have
22 now been identified as suspects
23 effectively responsible for the violation
24 of the AML/CTF Act by ABN AMRO. They are
25 former members of AMN AMRO's board of

1 directors."

2 And based on your comments from just a moment
3 ago fair to say that you would -- you don't know
4 with certainty what the public prosecution
5 service is thinking, but it seems likely, then,
6 that this passage here reflects a change in
7 strategy or approach that may have arisen as a
8 result of the article 12 procedure in the ING
9 case?

10 A Yeah. Not solely that article 12 procedure
11 because I think -- oh, sorry, decisions before
12 those decisions were there this was already a
13 topic of public discussion, political discussion
14 even, so there is, for example, a policy for the
15 NPPS describing how to deal with huge out of
16 court settlements and in that policy it is
17 already mentioned that if and when the public
18 prosecutor's service enters into an out of court
19 settlement it needs to reckon with the position
20 of individuals, certain individuals and
21 basically that policy says if there are grounds
22 to further investigate and/or prosecute
23 individuals being involved, then the public
24 prosecutor's service needs to do that. So
25 that's basically part of the considerations if

1 and under which conditions to enter into an
2 out-of-court settlement, so it -- the policy
3 change, if it is a policy change, but at least
4 explicitly it's more -- well, it's more
5 recognizable now that that policy change was
6 already triggered in the last couple of years
7 after that ING settlement and a thorough public
8 debate, so to say.

9 Q And maybe I'll again ask you to help us with
10 some of the maybe more basic principles of Dutch
11 law. I appreciate it might be a complex area,
12 but are you able to give us a brief sense of
13 what type of involvement or knowledge these
14 individuals would need to have to be
15 successfully prosecuted for these kinds of
16 offences?

17 A I think that the most important threshold that
18 needs to be met and so therefore needs to be
19 established in investigations is that to a
20 certain extent the individuals need to know and
21 need to accept the criminal acts being
22 committed. So it's not necessarily them knowing
23 of a certain criminal act being committed but
24 more in general knowing and accepting these
25 kinds of criminal acts being committed by the

1 entity and accepting that and not intervening
2 where they could have intervened is more or less
3 the basic framework which is -- well, in which
4 their involvement and their conduct and their
5 acts are assessed and is also the threshold in
6 order to decide if individuals could be further
7 prosecuted at all.

8 Q Thank you. We spoke a little bit earlier about
9 the significance of the ING case and I think you
10 described it as waking up the industry and
11 helping people understand the importance of
12 compliance with AML obligations. I appreciate
13 this is a very recent case and it may be too
14 early to talk about the impacts that it's had,
15 but I'm wondering if there's been a reaction
16 either within the Dutch public generally or
17 within the financial institutions to this
18 ABN AMRO case that has just come out and whether
19 that's sort of further woken up the industry or
20 whether there's been any reaction that you are
21 aware of to this settlement following up on the
22 ING case.

23 A Well, I think it's of course an important out of
24 court settlement as well. It's very bad weather
25 outside, so that's why I'm in the dark. Sorry

1 for that.

2 But nonetheless, it's an important out of
3 court settlement and an important case again,
4 but it's not that moment in time as I mentioned
5 in relation to the ING settlement would be my
6 first thought and guess. To be honest, and it
7 sounds a bit strange maybe, but I think we are
8 rather used to it right now that these kinds of
9 cases are very impactful and are there and that
10 we need to cope and that we are all aware that
11 we need to be compliant and that compliance is a
12 very important topic. So I do not expect this
13 out of court settlement being the same point of
14 change in time as we just discussed it in
15 relation to the ING settlement.

16 Q Thank you. We spent a fair bit of time now
17 discussing the ING case and this ABN AMRO case
18 and covered a fair bit of ground. I thought I'd
19 just before moving on to another topic see if
20 there was anything else you thought you'd like
21 to say or that we should be aware of with
22 respect to these two cases and what they might
23 tell us about the Dutch anti-money laundering
24 system.

25 A No. I think -- but that could be a topic you

1 **commission, recalled.**

2 THE REGISTRAR: Thank you, Madam Registrar.

3 Mr. McCleery.

4 MR. McCLEERY: Thank you, Mr. Commissioner.

5 **EXAMINATION BY MR. McCLEERY (continuing):**

6 Q Ms. Rense, I want to change topics now and ask
7 you a few questions about a money laundering
8 action plan that I understand was introduced in
9 2019 within the Dutch government. Of course
10 you're not a member of the Dutch parliament or
11 otherwise involved in government, so my hope is
12 that maybe you can help put some of these
13 proposals into context and help us better
14 understand the significance of them.

15 MR. McCLEERY: And, Mr. Commissioner, just for your
16 reference there's a collection of documents
17 related to this plan in the overview report that
18 was filed this morning and those documents are
19 appendices D through K of that overview report.

20 Q Ms. Rense, am I correct that in 2019 a letter
21 was sent by the Dutch minister of finance along
22 with the Dutch minister of justice and security
23 to the house of representatives essentially
24 introducing a plan to enhance anti-money
25 laundering efforts in the Netherlands?

1 A Yeah, that's correct.

2 Q And I think I've already made clear my ignorance
3 of the Dutch legal system, so I'll do the same
4 for the Dutch political system. Is that a
5 common way to introduce a proposal for new
6 legislation, or is that an unusual step for this
7 kind of a letter to be sent to introduce this
8 new plan?

9 A No, I think that's rather common. So it's a
10 joint effort of two ministries with different
11 perspective and angles but, well, jointly making
12 some efforts which they think are important and
13 necessary.

14 Q We often think of money laundering, I think, as
15 really an issue of criminality and criminal
16 justice. I wonder from your perspective the
17 involvement of the Ministry of Finance sort of
18 tells us anything about how the Dutch government
19 sees this issue of money laundering or the
20 nature of the proposals in this plan?

21 A That's an interesting question. I think it's
22 not solely considered a matter of criminal law
23 in the Netherlands. It's actually considered a
24 matter of compliance and integrity and
25 transparency, so to say, so it's also a tool

1 within the Ministry of Finance to protect the
2 integrity of the financial field within the
3 Netherlands, so from that angle the Ministry of
4 Finance would prefer to prevent any criminal
5 actions, any investigations and prosecutions
6 from happening by establishing awareness for the
7 necessity to be compliant at all and by doing
8 that preventing again criminal aspects from
9 occurring.

10 Q And this plan sort of followed closely on the
11 announcement of the ING settlement and you've
12 already spoken about how that settlement would
13 have woke up the industry and maybe Dutch
14 society more broadly to this issue. Do we know
15 if the ING settlement was part of what motivated
16 the creation of this plan?

17 A It is written down in that letter that it is one
18 of the triggers for that plan to enter into
19 existence basically, so, yeah, apparently.

20 Q And are we aware of any other motivators that
21 may have sort of inspired these ministries to
22 move forward with changes to the system?

23 A Well, I think the letter describes also some
24 more general concerns, of which ING might be an
25 example maybe, of anti-money laundering existing

1 in the EU system but in the Netherlands system
2 as well. The financial system being used for
3 criminal purposes, therefore the integrity of
4 the financial system being contaminated, so to
5 say, and also that front-running aspect as I
6 explained a bit earlier already is also
7 mentioned in that letter, the Netherlands
8 preferring to be a front runner as it comes to
9 combatting money laundering, so to say,
10 basically. So there will be different and
11 various motives and I'm not aware or I'm not
12 familiar with them -- well, unless being
13 described in this letter.

14 Q Thank you. There are a number of different
15 aspects to this plan. I don't propose to ask
16 you what the status of each of those different
17 aspects is, but given this is a fairly recent
18 plan is it fair to say that the different
19 proposals made in the plan are at various stages
20 of approval and implementation and some may be
21 farther along than others, or is that something
22 you can comment on?

23 A No, that's a correct assumption and the Ministry
24 of Finance and Justice are reporting regularly
25 to the parliament what the actual status of

1 implementation of the various measures and
2 actions is or are and I think that is varies
3 from being implemented already and being under
4 consideration still, so it depends on the actual
5 measurement, but some are already implemented
6 and others are still in the process of being
7 considered or being implemented or something
8 like that.

9 Q And am I correct the plan is essentially
10 organized around three pillars of the anti-money
11 laundering system; is that right?

12 A That's correct.

13 Q And I won't ask to you recite them, but as I
14 understand it from the documents they are
15 essentially raising barriers to money
16 laundering, increasing the effectiveness of the
17 gatekeeping function and oversight and
18 reinforcing detection and prosecution. Is that
19 consistent with your understanding?

20 A Yeah, that's also how I read it.

21 Q Fair enough. The second pillar of increasing
22 the effectiveness of the gatekeeping function,
23 do you see that as sort of an endorsement or an
24 advancement of what we spoke about earlier about
25 this focus within the Dutch anti-money

1 laundering system on gatekeepers and their role
2 in preventing money laundering?

3 A Yeah. It's definitely a focus more in general
4 of politics, government, authorities to look at
5 the gatekeepers and their role and position if
6 it comes to anti-money laundering -- well,
7 measures, rules and regulations and establishing
8 those. We already spoke about prioritization of
9 enforcement of gatekeepers allegedly violating
10 rules and regulations in that regard, but this
11 plan shows that the government is also looking
12 into how could we establish a position of those
13 gatekeepers in which they are best positioned in
14 order to really actually gatekeep or keep gate
15 or -- I don't know how you say it in English,
16 but to, well, perform that role to the extent
17 possible. For example, initiatives like
18 enabling them to cooperate to share information,
19 for example even to cooperatively and jointly
20 start transaction monitoring as a process are
21 all measures that enable the gatekeepers better
22 to conduct that role and to be an actual
23 gatekeeper in this regard. And I think that
24 basically you see a slightly or maybe more
25 explicit shift of actually enforcement by

1 gatekeepers instead of enforcement by public
2 authorities like -- well, the criminal
3 authorities and the supervisory authorities
4 conducting efforts in that regard as well.

5 MR. McCLEERY: Madam Registrar, can we go back to
6 exhibit 980, please. And if we can go to PDF
7 page 41. And if we can scroll down a little bit
8 further so we can see the entirety of that.
9 Perfect.

10 Q Ms. Rense, this is the English translation we've
11 had prepared of the letter to the house of
12 representatives. I want to just draw your
13 attention to about two-thirds of the way down,
14 the second paragraph under the heading "Reason"
15 with the sentence that begins with "furthermore,
16 research shows." It carries on and says:

17 "Furthermore, research shows that
18 approximately 16 billion euros is
19 laundered in the Netherlands annually.
20 They are mainly the proceeds of drug crime
21 and fraud, about half of which come from
22 abroad."

23 I think we've touched on this topic earlier on,
24 but this notion that half of the money laundered
25 in the Netherlands comes from outside of the

1 country, do you see that as sort of connected to
2 this strategy of focusing on gatekeepers and
3 sort of in the sense that it's much more
4 difficult for the authorities of a country like
5 the Netherlands to address the actual criminals
6 doing the money laundering if they're perhaps
7 based outside of the Netherlands or if the money
8 is coming from outside of the Netherlands?

9 A I think so. Again, I do not know of course, but
10 I think that this is, yeah, is showing us the
11 difficulty to actually combat international
12 money laundering and -- well, and forcing
13 anti-money laundering rules and regulations
14 within the gatekeeper's control, basically, is a
15 solution to that difficulty.

16 Q Thank you. I want to just touch on a few of the
17 specific measures. As I mentioned, there's
18 quite a few of them so I don't propose to go
19 through each one and some of them I think have
20 little relevance to the circumstances in
21 British Columbia. But I do want to touch on a
22 few of them.

23 MR. McCLEERY: I wonder, Madam Registrar, if we can
24 go to the first one I want to touch on is
25 beneficial ownership registries for companies

1 and for trusts. And if we can go to page 54 of
2 the document, please, Madam Registrar. If we
3 can scroll down just a little bit to show the
4 bottom of the texts of the page. Perfect.

5 Q And we have here there's an overarching heading
6 "Preventing Misuse of Legal Entities and
7 Constructs" and then a subheading "Public UBO
8 Register for Companies and Other Legal
9 Entities." I'll just read the first little bit
10 of that. It says:

11 "From the start of 2020, the UBO register
12 will come into effect. It is a public
13 register that registers ultimate
14 beneficial owners ('UBO') of companies and
15 other legal entities. This register is
16 part of the Commercial Register of the
17 Chamber of Commerce. The registry is an
18 important measure to ensure transparency
19 with who is pulling the strings at legal
20 entities. The registry can thereby
21 contribute in various ways to the
22 prevention or detection of money
23 laundering."

24 And carries on from there. We can go ahead to
25 the next page, please, Madam Registrar, and

1 under the heading "Public UBO Register For
2 Trusts and Similar Legal Constructs" it says:

3 "In addition to the UBO register for
4 corporations, we will also introduce a UBO
5 register for trusts and similar
6 constructs. Also, this register
7 implements the modified Fourth Anti-Money
8 Laundering Directive. The European
9 directive requires this register to be
10 realized by March 10, 2020.

11 Also, legal constructs such as trusts
12 can be used to conceal acquired criminal
13 assets. The purpose of establishing a
14 trust is generally to have assets of the
15 settlor managed by a trustee and to
16 distribute those assets to designated
17 beneficiaries. As with legal entities,
18 transparency about UBOs can help prevent
19 these constructs from being used for
20 purposes such as money laundering."

21 You mentioned a moment ago that sort of the
22 focus of this plan, at least in part, of making
23 it easier for gatekeepers to perform their
24 function and I'm wondering if you see these
25 measures of creating beneficial ownership

1 registries for companies in trust, do you see
2 that having a role in assisting gatekeepers and
3 performing their know your customer and know
4 your client obligations and generally better
5 complying with AML obligations?

6 A Yeah, for sure that UBO register will help the
7 gatekeepers to establish and to identify and
8 verify the UBO of their respective clients
9 where, to be honest, this is a rather -- well,
10 escalating discussion, so to say. Introducing
11 the UBO register is an obligation under the EU
12 directive and the Netherlands is already too
13 late in implementing that register. So it's a
14 difficult topic from a privacy perspective, from
15 a transparency perspective and I think that in
16 our line of reasoning the rationale is that the
17 UBO register is there in order for entities to
18 be transparent about their legal structure and
19 their UBOs where it is of course of help to the
20 gatekeepers, but where, on the other hand,
21 government and authorities already underlined
22 that the gatekeepers cannot rely solely on the
23 UBO register. So they can use it but cannot
24 rely on that. So they still need to identify
25 and verify the UBO to the extent possible and

1 required under the AML rules and regulations.

2 So on the one hand it is of help. On the
3 other hand gatekeepers say well, hey, we cannot
4 rely on it, so what is the use of it? And even
5 more gatekeepers have the obligation to report
6 back to the register if they come across some
7 incorrectnesses in that register. So if the
8 gatekeepers find that the UBO is somebody else
9 than registered in the UBO register, they are
10 obliged under that new law to notify the
11 register that they have some other information
12 in that regard. So it's a difficult topic. In
13 the end ultimately it announces transparency in
14 relation to legal entities and that it will
15 definitely do and on the other hand it will help
16 gatekeepers of course in gathering information
17 in order to identify and verify UBOs.

18 Q You mentioned there's an obligation for
19 companies to report if they come across
20 information in the UBO that's incorrect. Are
21 you aware of whether government itself will be
22 doing any -- taking any steps to verify the
23 information in the UBO or is it just accepting
24 what is reported?

25 A Yeah, it's a rather new instrument, so I am not

1 familiar yet with the actual practices and
2 practising of that register, but as far as I
3 know there is an obligation for the institutions
4 falling under the scope of -- well, the *WWFT* to
5 report back if they come across some
6 incorrectnesses in the registration being made
7 by the entity itself because it's an obligation
8 of the entity itself to register its UBOs. And
9 it's not a governmental obligation, and I think
10 it's neither supervised by the authorities or
11 the government either, so I don't think so but
12 we will have to wait and see to a certain extent
13 as well, I think.

14 Q The plan does not include a beneficial ownership
15 registry for land or real estate. The
16 Commissioner has heard some evidence about that
17 kind of a measure in other jurisdictions. Are
18 you aware of any discussion or consideration in
19 the Netherlands about creating a beneficial
20 ownership registry for land or real estate?

21 A No. And I'm not that familiar with that area,
22 to be honest. I think that notaries are more
23 familiar with about real estate and registers of
24 real estate, but my understanding would be that
25 the register that registers real estate does not

1 necessarily register the UBO but the owner of
2 the property, and by doing that and combining
3 the UBO register and the more general commercial
4 register of all the entities, all the legal
5 entities in the Netherlands might help also to
6 find out who the UBO of a real estate is because
7 combining all those registers will help you
8 understand what the structure of a legal entity
9 is, if the entity is part of a group, for
10 example, and who the UBO of that legal entity
11 will be. As far as it concerns of course legal
12 entities that fall under the scope of that
13 obligation to register because that on the top
14 of my head only applies to Dutch legal entities
15 or legal entities situated in the Netherlands
16 but not all legal entities, I think, so not
17 foreign legal entities. I'm inclined to assume.
18 I'm not fully sure if that is correct.

19 MR. McCLEERY: Thank you. Let's move ahead, then,
20 and discuss another measure in this plan. If we
21 can go to page 57 of the PDF, please, Madam
22 Registrar. If we can go to the bottom of the
23 page, please.

24 Q And this is a section of the plan that proposes
25 a limit on cash transactions of 3,000 euros.

1 I'm just read from the very last paragraph,
2 which says:

3 "In view of the above, we are going to
4 introduce a ban of cash payments above an
5 amount of 3,000 euros. In addition, we
6 continue to examine this limit
7 periodically, particularly if the cash
8 limit is reduced in surrounding countries.
9 The reporting limit for cash payments,
10 which now applies to cash payments of an
11 amount of 10,000 euros or more for buyers
12 or sellers of goods acting in a
13 professional or business capacity, will be
14 abolished. This means that for this
15 reporting group the current obligations
16 under the *WWFT* are replaced by a
17 prohibition."

18 I want to first just ask you about the reference
19 to the current reporting requirements for cash
20 payments of 10,000 euros or more. Can you maybe
21 just briefly describe what that reference refers
22 to.

23 A Yeah, well it's slightly different than a
24 reporting obligation for payments above
25 10,000 euros because the framework works like

1 this. If you deal, if you handle trade in goods
2 in relation of which payments are made of more
3 than 10,000 euros, that means that you fall
4 under the scope of the *WWFT*, so payments of an
5 amount above 10,000 euros means that the AML
6 rules and regulations are applicable to your
7 business, whatever the goods you trade in. So
8 the cash payments establishes the threshold of
9 the anti-money laundering rules and regulations
10 becoming applicable to your business. That is
11 basically the first step or the first rule or
12 principle. And secondly there are two
13 categories of businesses within that category of
14 the traders in goods in relation to which
15 payments of above the 10,000 euros threshold are
16 being made which are the traders in luxury
17 goods. So, for example, jewels or cars or
18 yachts or something like that. And the category
19 of more general goods, and the first category
20 has a reporting obligation of all payments
21 above -- I think on top of my head 20,000 euros.
22 Whatever the qualification of that payment, if
23 that payment is suspicious or not, there is, s
24 we call it, an objective indicator to notify to
25 report that payment together with -- well, as I

1 already mentioned the payments that qualify as
2 unusual payments and -- sorry, unusual
3 transactions, and unusual transactions is again
4 a very broad defined term on the Dutch law. It
5 basically means any transaction with any
6 relation or signal of a relation with money
7 laundering, so it's rather broad. You do not
8 have to know that a transaction is related to
9 money laundering, but any suspicion or any
10 signal even of a relation with money
11 laundering -- again money laundering is a broad
12 term as well -- is sufficient in order to make
13 that transaction an unusual transaction under
14 Dutch law. So that's for the category of the
15 luxurious traders or the traders in luxurious
16 goods, so to say. Where on the other hand there
17 is the category of traders in general goods who
18 receive or pay amounts above 10,000 euros and
19 for them it means that they have to report
20 transactions if these transactions are qualified
21 as unusual transactions by them. So not all
22 transactions above 10- or 20,000 euros but only
23 the unusual transactions. I think that the most
24 important implication of falling within the
25 scope of the AML rules and regulations as such

1 as category of traders is that you have to
2 comply with all the rules and regulations within
3 that AML framework so that also means that you
4 have to conduct CDD to know your customer, to
5 monitor transactions and ultimately to report
6 transactions, but that's just the result of your
7 framework being in place. And I think
8 especially within this category of businesses it
9 happens that the business does not know at all
10 that the AML rules and regulations framework
11 applies at all, so they are not aware even of
12 that framework being applicable for them so it
13 happens that they conduct their business without
14 being compliant with these AML rules and
15 regulations sometimes without even being aware.

16 Q So if I understand correctly, then, this
17 category of traders of general goods is such a
18 broad one that, you know, they may not be aware
19 that by accepting cash payments of 10,000 euros
20 that they've brought themselves within the AML
21 compliance regime; is that fair?

22 A Indeed.

23 Q Turning, then, to this new proposed limit on
24 cash transactions that would basically prohibit
25 cash transactions of 3,000 euros or more, do you

1 foresee that being a -- simplifying that
2 compliance problem for some of these dealers?

3 A Yeah, I think so. I think that could also be
4 one of the drivers for the government to
5 consider that prohibition. There will be other
6 drivers as well, for example as is mentioned
7 right here that, well, if other countries
8 prohibit acceptance of these payments, well, the
9 payers will come to the Netherlands in order to
10 make those payments, so that is a driver as
11 well, I assume. But I think that making this
12 less complex for the businesses that are
13 included in those categories you just discussed
14 could be one of the drivers as well. In my
15 experience and in my practice it's rather
16 difficult and complex for these categories of
17 clients to be compliant at all. Of course
18 financial institutions are well aware of all the
19 rules and regulations they have to comply with.
20 They are well educated; they are well trained.
21 Most of the times they are the ones who know how
22 to guide to be compliant at all. Where these
23 kinds of businesses aren't, aren't even aware
24 sometimes, so a prohibition to accept these
25 amounts will help them I think to be compliant.

1 And I know also from some of my clients that
2 they say well, hey, it's much more easier for me
3 to tell a client just that I'm not allowed to
4 accept a certain payment than establish
5 compliance with all those complex rules and
6 regulations in an international world in which
7 my international clients do not at all accept or
8 understand these rules and regulations.

9 Q I wonder if there's been any discussion related
10 to this proposal in the Netherlands about the
11 risk that it might exclude some people from the
12 legitimate economy if perhaps they don't have
13 access to regular banking services. Is there a
14 concern that it might perhaps require people to
15 move to the underground economy or things like
16 that?

17 A Yeah. For sure. I do not think necessarily
18 specifically in relation to this prohibition.
19 So I think also that the response of the
20 authorities and government in relation to this
21 prohibition will be no, that isn't a risk
22 because if you are able to pay in cash, you are
23 also able to pay via a financial institution;
24 just make your cash payment with the financial
25 institutions and they will take care of the

1 payment by transfer. So I think that's actually
2 what the government wants the cash owners to do,
3 so that's actually their goal. Where on the
4 other hand announcing AML rules and regulations
5 and strict enforcement in that regard leads to
6 de-risking of, for example, again financial
7 institutions and categories of clients that are
8 not welcome anymore within the financial
9 institutions or at least the Dutch or the
10 EU-based financial institutions which is
11 becoming more and more of a problem, I think,
12 and is a recognized risk and difficulty we have
13 now to deal with, how to deal with the
14 de-risking strategy of all those institutions
15 falling within the scope of the AML rules and
16 regulations, which we fully appreciate of
17 course. Because, well, again look at the ING
18 and the AMN AMRO settlement. We fully
19 appreciate of course that they want to avoid any
20 risk to the extent possible, but on the other
21 hand it leads to businesses and persons not
22 being able to -- well, enter into that financial
23 system anymore maybe and that could increase
24 risks of AML on the other hand. So we have to
25 balance the system in the right way in order to

1 include everybody to be able to monitor AML to
2 the extent possible and so efficient and
3 effectively as possible.

4 Q Thank you. Maybe we'll move, then, to another
5 proposal and a plan that may be more directly
6 engages that issue.

7 MR. McCLEERY: If we can go to page 65, please.

8 Madam Registrar.

9 Q And this is a part of the proposal that
10 addresses the potential creation of a blacklist
11 of clients for financial institutions and I'll
12 just look at the second paragraph on this
13 page beginning with the word "finally." It
14 says:

15 "Finally we assess the creation of a
16 blacklist of individuals where there is
17 (more than reasonable suspicion of) money
18 laundering as an important tool for the
19 effectiveness of the gatekeeper role.
20 This should prevent clients from abusing
21 the financial system by using different
22 institutions. If a bank terminates a
23 business relationship with a client
24 because of money laundering risks, it
25 cannot notify another bank. With such

1 high risks, it is important that a bank
2 entering a new relationship is aware of
3 the information. Criminals often have a
4 good story ready or a new legal entity or
5 construct in place, which can make it
6 difficult for banks to bring previously
7 identified money laundering risks in
8 client screening to the surface in
9 advance. There is a legal possibility for
10 the creation of such a blacklist. Under
11 the *GDPR Implementation Act*, the Dutch
12 Data Protection Authority may grant a
13 licence for this purpose."

14 Essentially, if I understand correctly, this
15 essentially would permit banks to warn one
16 another once they've de-risked a client so that
17 that client won't -- other banks can consider
18 that information in deciding whether to accept
19 that client. Is that your understanding of this
20 proposal?

21 A Yeah. I agree.

22 Q And does that --

23 A I do not know what the actual status quo of
24 this, well, suggested measurement is and if it,
25 well, inclines to be successful or in the end

1 ultimately might be turned down, for example,
2 for privacy reasons. I think that this is one
3 of the measures that our authority on privacy
4 issues is dealing with and advising on. And I
5 think there will be -- well, there will be more
6 discussions about this, again also from the
7 de-risking perspective and, well, we are now
8 discussing the right to enter into the financial
9 system for everybody. So yeah, again you have
10 to balance the different measures and the
11 different angles and the different perspective
12 in this regard.

13 Q Thank you. And this and I think a number of
14 other proposals in this plan raise this issue of
15 information sharing and the value of information
16 sharing to anti-money laundering measures both
17 sort of among priority institutions and between
18 the public and private sectors, and that's
19 something I think Commissioner has heard
20 evidence about from different jurisdictions.
21 I'm wondering if there's a particular approach
22 in the Netherlands towards how to balance those
23 privacy considerations with the value of
24 information sharing, or maybe, as you just
25 alluded to, that's something that's still very

1 much under discussion and consideration?

2 A Yeah, yeah, the latter. Yeah.

3 MR. McCLEERY: All right. Then maybe we can move
4 ahead to page 71, please, Madam Registrar. And
5 this is moving into the final pillar of the plan
6 which focuses on detection and prosecution.
7 Actually, sorry, we'll move ahead to page 72,
8 Madam Registrar. If we can move down just a
9 little bit more.

10 Q Just a very quick question. Under the heading
11 "Additional Capacity For FIOD, FIU-the
12 Netherlands and OM." The paragraph reads:

13 "In addition to improving the access to
14 information of the investigative
15 authorities, we are strengthening the
16 investigation and prosecution of money
17 laundering with additional budget, and the
18 Public Prosecutor's Office, together with
19 the police, FIOD and FIU-the Netherlands,
20 has set up a national program to combat
21 money laundering."

22 It goes on to about some additional resources
23 for prosecution and law enforcement. We have
24 discussed already some of the successes that the
25 anti-money laundering system has had in the

1 forms of the ING and ABN AMRO cases and we've
2 talked some of the different institutions that
3 are involved in those efforts. And I'm
4 wondering if there's been, if there's, you know,
5 based on the public discussion is there a sense
6 that those agencies and institutions despite
7 those successes are still underfunded?

8 A That I don't know. No. I think that these
9 kinds of plans and joint efforts, especially
10 when the Ministry of Finance is involved because
11 that's the budget holder, so to say, approving
12 all the budgets of the other ministries helps to
13 find the capacity in the budget, but it's also
14 politics and there is a new -- well, elections
15 just passed in March of this year. So I think I
16 would assume, let's say it like that because I
17 do not know, but I think it's always under
18 discussion to a certain extent and it's always
19 again balancing efforts and claiming successes
20 in order to find more budget and capacity. So I
21 don't know, but I think that at least this is a
22 topic that is still prioritized and, well,
23 transparency and integrity of the financial
24 system and also the professional service
25 providers is a topic of interest, I think, that

1 will not -- well, let's say go away. So from
2 that angle I think that it will be supported to
3 the extent necessary in order to combat money
4 laundering and corruption and these kinds of
5 topics.

6 Q Before I move away from this plan just some
7 final questions. I wonder if -- you know, I've
8 taken you to a few components of this plan that
9 sort of stood out to me. I wonder if there's
10 anything else in this plan that you view as
11 particularly significant that you think is worth
12 the Commissioner being aware of.

13 A No, no. I think we discussed the most important
14 topics in the plan and again the effort and
15 commitment of central government as well to
16 combat money laundering is obvious.

17 Q Thank you. Maybe just to conclude, then, I
18 think I'll maybe ask you to reflect a little bit
19 on some of the lessons that can be learned from
20 the Dutch experience in this area. One of the
21 goals of this commission of course is to
22 identify how we in British Columbia can more
23 effectively address the issue of money
24 laundering in our part of the world, looking at
25 other jurisdictions like Netherlands to see what

1 lessons can be learned from what's happening
2 elsewhere. And obviously appreciating you're
3 not in a position to tell us what would work
4 best in British Columbia, it would be
5 interesting to hear your reflections on what
6 lessons can be learned from the Dutch experience
7 over the past 25 years about what works and what
8 doesn't or some of the risks or challenges that
9 might come with some of the approaches that
10 we've discussed over the last couple of hours.

11 A Yeah. To be honest, in my opinion the current
12 framework and the current efforts and commitment
13 in order to actually implement that framework to
14 create awareness to be compliant with the
15 framework and to enforce that framework is
16 rather sufficient at the moment. I would not
17 say that there is no money laundering at all in
18 the Netherlands anymore because there is and
19 there will be. There will always be, I think.
20 But nonetheless I think that the gatekeepers are
21 very aware of the necessity to be compliant, to
22 do its utmost to be compliant, to implement all
23 the rules and regulations and to prevent
24 impactful enforcement measures from happening.
25 I think that with regard to that balance between

1 establishing a sufficient framework on the one
2 hand and enforcing that framework on the one
3 hand and on the other hand -- well, the
4 counterproductive aspect thereof, be it
5 de-risking or privacy issues or that we now tend
6 to maybe the balance weighs a bit too much to
7 the side of the counterproductive aspect, so --
8 and that will be my professional involvement in
9 this regard. As well of course I'm a defence
10 lawyer so I'm always on that other side of this
11 discussion, but in my point of view and that's
12 what I already raised previously, please let's
13 cherish what we established and where we have
14 come also and not announce measurements and
15 rules and regulations over and over again
16 because it's very complex. It's not easy to
17 guide gatekeepers how to be compliant, and I
18 think that now we are in a position in which
19 it's helpful to strengthen gatekeepers as well
20 in -- well, they are doing their job, they are
21 aware, they are doing their utmost and help them
22 in order to be as best positioned as possible
23 but always -- but also do not ask them to do
24 things that are not realistic to do because we
25 cannot -- a gatekeeper cannot always prevent

1 money laundering from happening, I think. Be
2 cooperative, help the authorities to investigate
3 money laundering, but keep it manageable and
4 prevent de-risking from happening, for example.
5 Prevent blacklists of individuals who cannot
6 enter into the financial system at all,
7 et cetera, et cetera. So yeah, basically my
8 point of view is keep the balance as well and be
9 aware of the necessity to keep that balance.

10 MR. McCLEERY: Thank you, very much, Ms. Rense, those
11 are my questions for you. We'll have a few
12 questions from some of the lawyer for the
13 participants in our process. Mr. Commissioner,
14 that concludes my examination of Ms. Rense.

15 THE COMMISSIONER: Thank you, Mr. McCleery. I'll
16 then call on Ms. Addario-Berry on behalf of the
17 province, who has been allocated ten minutes.

18 MS. ADDARIO-BERRY: Thank you, Mr. Commissioner.

19 **EXAMINATION BY MS. ADDARIO-BERRY:**

20 Q Ms. Rense, can you hear me and see me okay?

21 A Yeah.

22 MS. ADDARIO-BERRY: Okay. Now, before I ask Madam
23 Registrar to pull up the first document which
24 would I like to ask you about this is a
25 memorandum which you've prepared for the

1 commission in March 2021 and I would just like
2 to verify with commission counsel whether this
3 is okay to display on the livestream given that
4 there's some contact information on this
5 document.

6 MR. McCLEERY: I'm going to suggest out of an
7 abundance of caution we not livestream this
8 document. It wasn't prepared with the intention
9 of it being made part of the public record, so
10 just with that in mind I'll suggest we not
11 livestream the document.

12 MS. ADDARIO-BERRY: Thank you.

13 THE COMMISSIONER: I'm make that direction then.

14 MS. ADDARIO-BERRY:

15 Q Ms. Rense, I see at the top of this document it
16 states this is a draft memorandum. Just To
17 confirm that this is the final version which has
18 been provided to the commission?

19 A That's correct.

20 Q Okay.

21 MS. ADDARIO-BERRY: Madam Registrar, could we scroll
22 down to the second page, please.

23 Q Under the heading of -- I'm sorry, under the
24 "Basis for Dutch AML Rules" there's a discussion
25 of the principles-based and the risk-based rules

1 and I just wanted to ask you, Ms. Rense, is it
2 fair to say that as the anti-money laundering
3 rules have evolved in the Netherlands they have
4 transitioned towards being more risk-based as
5 well as principle-based? Is that a fair
6 summary?

7 A I think so. I wasn't there at the beginning in
8 the early 90s when they were introduced so I'm
9 not that familiar with the original rules, but I
10 think they have always been principle-based but
11 has developed to, well, even more
12 principle-based and risk-based, and by that
13 basically implying for the institutions that
14 fall within the scope of those AML rules and
15 regulations that it's their responsibility to
16 make that risk assessment and to -- well, apply
17 the rules that need to be applied in order to be
18 fully compliant.

19 Q And how are the expectations regarding the
20 results which are expected communicated to
21 regulated institutions?

22 A In that legal framework, so the actual
23 applicable rules and regulations specify the
24 results that need to be met, but that could be
25 something like as general like you have to

1 identify and verify your client and then
2 mentioning some aspects of your client that need
3 to be well known or need to be identified and
4 verified but not necessarily describing that
5 resulting full detail and what thresholds to be
6 met. So it's always based upon a certain
7 result, a certain goal that needs to be met and
8 needs to be aimed for.

9 Q Thank you, that's helpful.

10 MS. ADDARIO-BERRY: And we can take that document
11 down now, Madam Registrar.

12 Q The next document that I'd like to turn to is
13 the investigation guardian criminal
14 investigation into AMN AMRO Bank. It's on the
15 cover page it says "Statement of Facts and
16 Conclusions of the Netherlands Public
17 Prosecution Service." And if we could please
18 turn to page 6 of the PDF. Thank you.

19 Under the heading of "Legal Framework" and
20 beginning around the middle of the page there's
21 a quote here which describes the starting point
22 of the AML/CTF Act as described in article 2a.
23 It states:

24 "In order to prevent money laundering and
25 terrorist financing, an institution will

1 conduct client due diligence and report
2 unusual transactions that have taken place
3 or are intended. In doing so, an
4 institution shall pay particular attention
5 to unusual patterns of transactions and to
6 transactions which, by their nature,
7 present a higher risk of money laundering
8 or terrorist financing."

9 Ms. Rense, would you agree that the appropriate
10 measures that are to be adopted in accordance
11 with this legislation will depend naturally on
12 the risks that's associated with the
13 institution?

14 A Yeah, yeah. I think I agree, but we are
15 familiar with, well, more detailed rules and
16 regulations and these explain that it depends on
17 the risk in relation to the institution, more
18 specifically the business of the institution,
19 the clients of the institution, the projects of
20 the institution, the products of the
21 institution. So it boils down to specific
22 aspects of the business of the institution and
23 we always mention clients transactions, projects
24 and products that are basically the main aspects
25 you take into consideration, depending on the

1 business of course.

2 Q Okay. So would it be fair to say that if the
3 risk is assessed as high, the due diligence
4 measures should also be heightened accordingly?

5 A Yeah, yeah. That's exactly the principle.
6 Again the principle of the risk-based -- well,
7 approach that the AML rules and regulations are
8 looking for. So a risk assessment which
9 qualifies as low, medium or high and depending
10 on that qualification you need to establish
11 measurements in order to mitigate this and
12 indeed low risks need less measurements where
13 high risk needs more measurements, basically.
14 Yeah. And sometimes even a denial of services
15 or transactions or products at all. So the risk
16 could be that high that the institution needs
17 to, well, deny any relationship with the certain
18 client.

19 Q Thank you. And I think this goes without saying
20 based on your response, but that is consistent
21 with the general framework of a risk-based and
22 principle-based AML approach in the Netherlands.
23 That's not specific to any given institution?

24 A No. This article 2a is basically the article in
25 which the *WWFT* describes more in general what

1 the aim of the -- well, that specific law is.
2 And it also describes more implicitly but it
3 also more implicitly describes the main
4 obligations in this regard which is conduct
5 client due diligence, one, two, reporting
6 unusual transactions and three, particular
7 attention to unusual patterns of transactions
8 and to transactions which by their nature
9 present a high risk of money laundering means
10 transaction monitoring, so these are the three
11 of the main underlying principles and goals of
12 the *WWFT*.

13 Q Thank you. And lower on the page just towards
14 the bottom there's a list of key obligations of
15 the AML/CTF Act and included on the list are
16 carrying out thorough client due diligence based
17 on a risk assessment and adequately recording
18 the results of the risk assessment in order to
19 be made available to the regulators upon
20 request. Would you agree that providing results
21 of risk assessments to regulators and service
22 providers as well as keeping regulators and
23 service providers apprised of any information
24 which could potentially inform anti-money
25 laundering measures is an integral part of an

1 effective anti-money laundering strategy?

2 A Well, I'm not an expert in establishing a fact
3 of frameworks but I think this framework works,
4 yeah.

5 Q Okay.

6 MS. ADDARIO-BERRY: Madam Justice, could we please
7 continue down this same PDF to page 13.

8 Q Under the heading 3.5 "Role of Cash Use in Risk
9 Assessment and Risk Classification." It states:
10 "It is generally known that crime involves
11 the use of cash and cash is used to
12 launder criminal lawyer proceeds. The
13 advantage of cash is that it can be spent,
14 transferred and transported anonymously
15 without leaving traces. Cash use
16 therefore carries high integrity risk."

17 Ms. Rense, would you agree that one of the
18 central reasons that cash has such a high
19 integrity risk is that it's anonymous and hard
20 to trace and so even if you know your customer
21 you may not be able to determine the source of
22 the funds?

23 A Well, to be honest that's also part of a very
24 intensive legal debate and we are now
25 discussing, as we call it, more general

1 phenomenon being addressed by the authorities
2 and sometimes being addressed by international
3 authorities like the FATF as well as being
4 exemplary, so to say, of risks of money
5 laundering. And to be honest, from my point of
6 view, my profession, I'm not always inclined to
7 agree with that angle. So I'm not an expert on
8 it. I'm not the one assessing which phenomenons
9 signal anti-money laundering risks -- money
10 laundering risks I must say, but I think, well,
11 of course cash about be used more in criminal
12 areas than payments by transfer. That will be
13 true, I think, where on the other hand I think
14 it's a bit too easy to say that the use of cash
15 is always a signal or must always be considered
16 a signal of, well, something illegal in relation
17 to money laundering or something like that. But
18 that's part of my profession to build a defence
19 in that area as well and to consider other
20 perspectives as well and to consider other
21 perspectives as well, so I'm maybe not the best
22 one to ask this question to.

23 Q I take your point.

24 MS. ADDARIO-BERRY: Madam Registrar, can we turn now
25 to page 23 of this PDF.

1 Q And my last question for you, Ms. Rense, is
2 related to the topic of banks, and I appreciate
3 that this document you're not the author of the
4 document, but there's a term here at the top
5 that says "systemic bank." Can you tell us what
6 is a systemic bank?

7 A I'm not that familiar with that term either, but
8 well more generally speaking, so not necessarily
9 legally because I think that it will be a legal
10 concept being defined in regulatory laws or
11 something like that. But more generally
12 speaking we talk about systemic banks if banks
13 are important and one of the most important
14 banks in the Netherlands financial system. So
15 if they are relevant and a relevant part of our
16 financial system as a whole. That's I think,
17 but again I'm not an expert in that, but I think
18 that's basically the concept we are talking
19 about if we talk about systemic bank.

20 Q Okay. And in this section ABN AMRO is described
21 as sharing responsibility for the reliability of
22 our financial system and can and should make an
23 important contribution to the integrity of that
24 system. Would you agree that state-owned
25 financial institutions and regulators generally

1 share this type of responsibility and should
2 contribute to the integrity of the financial
3 system through appropriate due diligence and
4 risk-based anti-money laundering policies?

5 A Well, again I do not have an opinion on that
6 specifically, but I think that the Dutch Public
7 Prosecutor's Service would say this in relation
8 to every financial institution in the
9 Netherlands. Also not state-owned financial
10 institution or a smaller financial institution.
11 I think a phrase like this will be in any out of
12 court settlement with any financial institution
13 and maybe even any gatekeeper.

14 MS. ADDARIO-BERRY: Thank you for joining us today.

15 Mr. Commissioner, those are all my questions.

16 THE COMMISSIONER: Thank you, Ms. Addario-Berry.

17 Mr. Duong on behalf of the BC Lottery

18 Corporation has been allocated five minutes.

19 **EXAMINATION BY MR. DUONG:**

20 Q Good morning, Ms. Rense. Can you hear me?

21 A Sure.

22 Q Thank you again for appearing to provide
23 information on the Netherlands experience. I
24 just had a single group of questions and it
25 arose out of a fairly brief point you made, but

1 I wanted to sort of drill down a bit on it. You
2 mentioned in your experience your practice as a
3 corporate/criminal lawyer in respect of the AML
4 space you represent clients who are also accused
5 of breaking rules and regulations or accused of
6 being running afoul of them?

7 A Yeah.

8 Q One thing I remember you mentioning and I
9 thought maybe I could ask you to expand on that
10 a bit more. I am trying to find it here in my
11 notes, actually. Was this idea that with
12 hindsight sometimes it's pretty easy to point at
13 an institution and to say that, you know, they
14 didn't mitigate risk or could have done more
15 when in reality at the time they were doing the
16 best they could with the information they had.
17 Could you expand on that a little bit more in
18 terms of your experience seeing that play out in
19 the Netherlands.

20 A Just thinking out loud if I have some example
21 maybe I can share, which is of course difficult
22 in criminal law practice. Well, more in general
23 maybe but that is something I explained already
24 also previously when we discussed this topic.
25 But I think that let's assume the Dutch

1 authorities come across a corruption transaction
2 and they have conducted intensive detailed
3 criminal investigations into an international
4 corruption transaction. Let's say from one
5 country in the European Union to a company in
6 Asia or something like that. And the transfer
7 of money passed through the Netherlands. If and
8 when established that the transaction is a
9 corrupt transaction with that hindsight bias, so
10 to say, it's rather easy, I think, to look at
11 the gatekeepers around that transaction, for
12 example a financial institution in the
13 Netherlands, and look at well, is that
14 transaction being reported by that gatekeeper,
15 how did the gatekeeper conduct its client due
16 diligence, how was the UBO identified and
17 verified? And let's assume that the UBO being
18 identified and verified by that gatekeeper is
19 not the actual UBO as the findings and the
20 thorough and detailed investigation into the
21 corrupt transaction turned out showed. There is
22 another UBO there. And I think -- but again
23 that's on the basis of my experience and a lot
24 of cases I came across that if you know
25 afterwards that there is another UBO in place

1 there's always some signal or maybe or almost
2 always some signal or some minor detail that
3 could have shown that UBO being there where the
4 gatekeeper did not recognize it or did not --
5 was not alert on the basis of that signal. And
6 again I think that the authorities are inclined,
7 and I fully appreciate it of course from their
8 role and position of combatting money
9 laundering, but that they are inclined to on the
10 basis of their hindsight knowledge state well,
11 hey, we now know that Mr. X is the UBO of that
12 entity; why didn't you see that; why didn't you
13 identify that UBO; why didn't you verify the
14 identification of the UBO you mentioned to the
15 extent possible and necessary? And yeah, I
16 think it's again with hindsight bias always
17 rather easy and at least possible to pinpoint at
18 some flaws in the process being conducted where
19 of course someone as a defence lawyer stating
20 over and over again that you need to take into
21 account the facts and circumstances upfront and
22 on the basis of that assess if all the measures
23 has been conducted sufficiently.

24 MR. DUONG: Thank you. Ms. Rense. That's all I had.

25 THE COMMISSIONER: Thank you, Mr. Duong. I'll turn

1 now to Mr. Chin on behalf of the British
2 Columbia Civil Liberties Association, who has
3 been allocated ten minutes.

4 **EXAMINATION BY MR. CHIN:**

5 Q Yeah. Hi, Ms. Rense. I'm appearing on behalf
6 of the BC Civil Liberties Association and I'm an
7 articling student with the association. I'm
8 just wondering if you could hear and see me.

9 A Yeah.

10 Q All right. Thank you. So earlier today you
11 raised the topic of de-risking, and I'm going to
12 focus most of my questions or all of my
13 questions on that issue. And you state in your
14 memorandum -- we don't have to pull that up, but
15 you state that de-risking is also seen in the
16 Netherlands. I'm wondering if you could comment
17 whether or not you've seen this in your
18 practice?

19 A Yeah. Not with particulars but more general
20 yeah, I've seen that.

21 MR. CHIN: Okay. Thank you. I'd like to pull up a
22 document, Madam Registrar, that I circulated.
23 It's called "Understanding Bank De-Risking and
24 Its Effects on Financial Inclusion" by the
25 Global Center on Cooperative Security. Thank

1 penalties have all helped create a system
2 in which risk avoidance has replaced risk
3 management."

4 Would you agree that these concerns,
5 particularly increasing fears over rising costs
6 and penalties, may lead financial institutions
7 to offload or de-risk their clients as opposed
8 to managing them?

9 A Of course -- sorry, again, in this area I'm not
10 actually an expert of course. I can only talk
11 about what I think that I see and experience in
12 my current practice. And I think I recognize
13 what is written down here where I would be
14 inclined to say that even a more general concern
15 of not being compliant and all the implications
16 thereof and all the consequences thereof might
17 urge or force, for example, financial
18 institutions to consider de-risking. So these
19 aspects of low profitability, rising compliance
20 costs, et cetera, are relevant, but I think that
21 also the general notion of, well, avoiding any
22 difficulties in this regard which is I think
23 appreciated on the basis of these kinds of
24 settlement we just discussed which are huge,
25 which have a huge financial impact, a

1 reputational impact, et cetera, et cetera, is
2 something that is -- well, that institutions
3 want to avoid and one mitigative risk to do that
4 is de-risking.

5 Q Thank you. I'd like to move on to page 22 of
6 this PDF. Yeah, and appreciating that again we
7 are speaking in generalities a little bit here,
8 I'd like to highlight the opening paragraph on
9 this page that states that:

10 "Rural, low-income and minority
11 communities, such as women and youth, are
12 disproportionately affected by lack of
13 access to the formal financial sector."

14 So I'm wondering if you would agree that one
15 consequence of de-risking would be to thereof
16 reduce access to the financial or access to
17 banking in the formal financial sector for these
18 vulnerable populations?

19 A Again, please do not consider me an expert on
20 this topic, but I would be inclined not
21 necessarily to recognize women and youth in this
22 regard especially, but, well, first of all
23 criminals of course, which is the goal of the
24 AML rules and regulations, and some, let's say,
25 individuals or businesses that are related to

1 aspects that signal relations to anti-money
2 laundering. So, for example, what we just
3 discussed are cash payments signalling money
4 laundering. That is a bit too easy for me to
5 agree with. I do not agree with that because I
6 think it's more nuanced than that. Where on the
7 other hand I think that de-risking tendencies
8 imply that, well, some financial institutions
9 might consider not accepting cash payments
10 anymore because that implies certain risks which
11 they prefer to prevent at all not necessarily
12 taking into account distinguishing legitimate
13 business from illegitimate business, et cetera,
14 et cetera. So that's more my line of thinking,
15 but again I'm not an expert in this.

16 Q Okay. Thank you.

17 MR. CHIN: Madam Registrar, if we could go to page 31
18 of this PDF. Just scroll, please. Yes. Thank
19 you.

20 Q So, yeah, my last question related to this
21 document specifically occurs in the second
22 paragraph above the recommendation. In this
23 paragraph it starts with the word "de-risking."

24 "De-risking has significant economic,
25 humanitarian and security implications,

1 and in many ways may undermine the goal of
2 reducing risk in the global financial
3 system."

4 And so just to speak in general terms again
5 would you agree that de-risking may undermine
6 the goal of reducing risk in the global
7 financial system?

8 A I would be inclined to say it could be, and
9 that's why I stressed at the end of my testimony
10 or the first phase of the testimony that it's
11 important to balance the different angles and
12 perspectives in order to, yeah, keep the balance
13 basically, prevent money laundering on the one
14 hand and on the other hand also include
15 everybody who needs to be included in that
16 financial system still.

17 Q Thank you.

18 MR. CHIN: Madam Registrar, if you could please take
19 this document down. And I'd like to refer to
20 the second document that I circulated. It is
21 called "The European Banking Authority's Report
22 on Money Laundering and Terrorist Financing
23 Risks Affecting the EU's Financial Sector."

24 Yes. Thank you.

25 Q Ms. Rense, are you familiar with this document?

1 clearing services through the
2 correspondent banking relationships report
3 that they have sought, as an alternative,
4 correspondent relationships with
5 institutions located outside the EU and
6 therefore outside of the scope of EU
7 supervision."

8 So while this sentence specifically refers to
9 banks would you agree that de-risking may also
10 force other groups, such as charities,
11 low-income individuals, FinTEC companies and
12 certain not for profit organizations, to seek
13 alternative financial services outside of the
14 EU?

15 A I don't know. Hopefully not would be my best
16 answer. So hopefully we balance again the
17 different angles and perspectives in order to
18 enable them to enter the financial system as
19 well.

20 Q Okay. Thank you. And I would just like to
21 refer to the last sentence on this paragraph.
22 It states that:

23 "The European Banking Authority thus
24 considers that de-risking continues to
25 pose important money laundering and

1 terrorist financing risks."

2 I'm wondering if you would agree with this
3 statement, that it continues to pose a risk?

4 A I think that ultimately that is a risk of
5 de-risking, so de-risking increasing the risk of
6 money laundering and terrorist financing risks
7 is I think true. But to be honest, I did not
8 see that result of de-risking in my practice at
9 this moment in time. So I think that we are now
10 in the phase of the development that we are
11 fully aware of the necessity to comply with AML
12 rules and regulations, that enforcement is
13 serious and therefore you really need to comply
14 and that there's some tendency to de-risk maybe,
15 but I did not come across actual, well,
16 anti-money laundering or money laundering risks
17 and terrorist financing risks already as a
18 result of de-risking in itself, or not
19 necessarily that much. But I could imagine that
20 this could be the result.

21 MR. CHIN: Okay. Thank you. Those are my questions.

22 THE COMMISSIONER: Thank you, Mr. Chin. I'll turn
23 now to Mr. Rauch-Davis on behalf of the
24 Transparency International Coalition, who has
25 been allocated 10 minutes.

1 **EXAMINATION BY MR. RAUCH-DAVIS:**

2 Q Thank you. Ms. Rense, can you hear me okay?

3 A Yeah.

4 Q Great. So I as I understand the EU system the
5 AML directives, and I think we're on the
6 modified fourth now, that sets the minimum
7 standards that members of the EU must meet in
8 their AML regimes; right?

9 A Yeah.

10 Q So it's open to a member state to go above and
11 beyond those standards but that's the baseline
12 threshold?

13 A That's basically it, yeah.

14 Q And so my friend took you to part of the
15 materials that spoke of beneficial ownership and
16 my understanding is that most recent directive
17 now calls for each member to create a publicly
18 available registry for corporate beneficial
19 ownership information?

20 A Yeah.

21 Q Do you know what information is available to the
22 public under the AML directive?

23 A That's a good question. I'm not sure under the
24 AML directive. Under Dutch law I'm not even
25 completely sure, but what I know for sure is

1 that not everything is available for the public.

2 Q Right, not everything.

3 A Not even the register is necessarily available
4 for the public, so you need to have a certain
5 qualification in order to be able to enter into
6 that registration.

7 Q Are you aware that month and year of birth are
8 publicly available?

9 A No, I don't know the specifics or the details,
10 sorry.

11 Q Don't know. Sure. What about sanctions? Do
12 you know what type of sanctions will apply to
13 offences under the Dutch legislation?

14 A If you do not -- if you do enter that register
15 inappropriately or if you do not register the
16 UBO correctly?

17 Q Both. My understanding is that there's a range
18 of sanctions depending on the aspect of the
19 offence. Whether it's if on the trivial side
20 and there's administrative penalties, and if it
21 meets the, like, a threshold of fraud or something
22 like that then it can result in criminal
23 sanctions. Is that a correct understanding?

24 A To be honest, it could well be. I think that
25 more in general the system is as I already

1 discussed previously that basically there is
2 administrative law enforcement which ranges from
3 redress measures up until penalty measures,
4 including -- well, punishment by penalties as
5 well into criminal and law enforcement with
6 options to impose more severe penalties and
7 other punishment. So that's basically more in
8 general the system. I do not know in relation
9 to the UBO register more specifically on top of
10 my head.

11 Q So that's your understanding of the AML system,
12 or ...

13 A M'mm-hmm.

14 Q That there's sufficient flexibility in sanctions
15 across the board whether that's on the false
16 reporting and other offences under the AML
17 directive?

18 A Yeah, there are a lot of options for the
19 authorities to enforce, yeah.

20 Q Thank you. I think I have your evidence on
21 that. The other aspect of the most recent AML
22 directive was setting up a beneficial ownership
23 registry for trusts which is going to be
24 separate from the corporate registry. Is that
25 your understanding as well?

1 A Yeah, but that's again a very specific and more
2 specialized topic, the trusts and all the
3 regulatory laws in that regard, so yeah, I know
4 that but I do not know what the specific
5 conditions, regulatory conditions for trusts and
6 that register are, to be honest.

7 Q Sure. I wonder if we might be able to bring up
8 some of the materials, and I'll see if this
9 assists.

10 MR. RAUCH-DAVIS: Madam Registrar, I'm looking at the
11 overview report, in particular page 55 of the
12 PDF. Yes. That's great.

13 Q Ms. Rense, under the heading "Public UBO Register
14 For Trusts and Similar Legal Constructs." I
15 should say this is part of the money laundering
16 action plan. This was one of the annexes to
17 that letter, and this is under the first barrier
18 of the raising -- or the first pillar "raising
19 barriers." Do you recognize this document?

20 A Yeah.

21 Q Yeah, I believe my friend took you through --

22 A I do.

23 Q -- part of it. So under this heading the fourth
24 full paragraph is the one I'm interested in. It
25 says:

1 "Under the Directive --"

2 That's the AML directive, the EU AML directive.

3 "-- the register must be accessible ..."

4 And then it sets out a list of entities that the
5 trust register is accessible to. So I take it
6 you would agree that the trust register under
7 the directive is set up to be restricted to some
8 extent as compared to the corporate register
9 which is public access.

10 A I don't know. I read what you're saying so this
11 say that the register is not accessible to
12 everybody, but I thought that the other
13 register, the UBO register in general isn't
14 accessible for the public either.

15 Q Okay.

16 A So I do not know exactly what the differences
17 are and if there are differences at all.

18 MR. RAUCH-DAVIS: Fair enough. I think those are all
19 my questions. Thank you very much.

20 THE COMMISSIONER: Thank you, Mr. Rauch-Davis.

21 Anything arising, Mr. Chin?

22 MR. CHIN: Nothing arising. Thank you.

23 THE COMMISSIONER: Mr. Duong?

24 MR. DUONG: Nothing arising, Mr. Commissioner.

25 THE COMMISSIONER: Ms. Addario-Berry?

1 MS. ADDARIO-BERRY: Nothing arising. Thank you.

2 THE COMMISSIONER: Mr. McCleery?

3 MR. McCLEERY: Nothing arising. Thank you,

4 Mr. Commissioner.

5 THE COMMISSIONER: Thank you very much, Ms. Rense,

6 for taking the time to share your experience and

7 expertise and insights with us into the Dutch

8 AML system. It's always very useful for us to

9 hear from other jurisdictions as to how they're

10 tackling the problem of money laundering because

11 it helps to cast light on the strengths and

12 weaknesses of our own system, and I think will

13 ultimately contribute to our final report. So

14 I'm grateful to you for the time you've taken.

15 You're now excused from further testimony. And

16 we will adjourn, Mr. McCleery, to 7:00 a.m.

17 tomorrow morning, as I gather we have another

18 representative from the Netherlands who will be

19 testifying before us.

20 MR. McCLEERY: Yes, that's correct, Mr. Commissioner.

21 THE COMMISSIONER: Thank you.

22 THE REGISTRAR: The hearing is now adjourned until

23 May 14, 2021 at 7:00 a.m. Thank you.

24 **(WITNESS EXCUSED)**

25 **(PROCEEDINGS ADJOURNED AT 10:25 A.M. TO MAY 14, 2021)**