

Investigation Claim

The criminal investigation into Dieseko Group B.V.

Statement of Facts and Conclusions
Netherlands Public Prosecution Service

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

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Part I: Statement of facts

1 Introduction

1.1. Purpose and contents

This statement of facts outlines the motivation and findings of the criminal investigation into Dieseko Group B.V. (hereinafter: Dieseko) by the Team Precursors, Strategic Goods and Sanctions (hereinafter: Team POSS) under the authority of the Netherlands Public Prosecution Service (hereinafter: NPPS).

1.2 Description of the affected legal entity

Dieseko is a Dutch manufacturing company based in Sliedrecht. Its business activities comprise the sourcing, production and sale of contracting equipment, in particular piling machines, around the world. It employs approximately 200 people. Dieseko has branches in the Netherlands, the United States, Australia, Poland and China and works with more than 50 dealers worldwide.

1.3 Grounds for the criminal investigation

On 1 September 2017, newspaper De Gelderlander published an article on the alleged involvement of Dutch companies in the construction of the Crimean Bridge. This news prompted Team POSS and the NPPS to launch criminal investigations into - as a minimum - the companies referred to in the article. Subsequently, media reports also appeared about Dieseko's involvement in the construction of the Crimean Bridge. As a result, the public prosecutor decided to investigate Dieseko.

During this investigation, several people were interviewed and the records and emails of Dieseko employees were examined. The investigation period covers the years 2015 and 2016.

1.4 The construction of the Crimean Bridge

The Crimean Bridge is a train and vehicle bridge between Russia and Crimea. A total of 595 columns were erected for the construction of this bridge. In most cases, the columns were partly vibrated into the ground using a vibratory hammer, after which the last part was driven into the ground using a hydraulic pile driver. The columns were filled with reinforced concrete.

The bridge runs from the city of Taman in Russia (columns 1-103) via the island of Tuzla (columns 104-222) across the Kerch Strait (columns 223-287) to the Kerch peninsula in Crimea (columns 287-307). The border between Russia and Crimea lies between the city of Taman and the island of Tuzla (columns 83-103).

2 Investigative findings

2.1 Introduction

The criminal investigation revealed that Dieseko sold pile drivers and related parts for the construction of the Crimean Bridge in the period from March 2015 to August 2016. It was also confirmed that Dieseko provided technical assistance for the products supplied during the period from 29 August 2015 to 2 September 2016.

The goods were sold to a Finnish company, who then supplied/forwarded the goods to one of the Russian main contractors for the construction of the Crimean Bridge (hereinafter: the Russian main contractor).

2.2 Summary of investigative findings

2.2.1 Delivery of goods

During the period from March 2015 to August 2016, Dieseko delivered one pile driver, four impact hammers, twelve aggregates, seven vibratory blocks and twelve pipe clamps¹ to a Finnish company for the construction of the Crimean Bridge. These deliveries are evidenced by invoices, sales orders, internal orders, order confirmations, sales forms and waybills, among others.

An interview report and statements revealed that Dieseko knew the goods were delivered for the construction of the Crimean bridge.

2.2.2 Technical assistance

The criminal investigation revealed that Dieseko provided technical assistance for the supplied piling machines and parts used in the construction of the Crimean Bridge during the period from 29 August 2015 to 2 September 2016.

Dieseko's records and statements showed that work was carried out by Dieseko mechanics on site, including work to commission the goods delivered, warranty and repair work and providing training to employees of the Russian main contractor.

¹ These goods qualify as pile driving machines with CN code 8430 as specified in European Union Council Regulation (EU) No 692/2014 of 23 June 2014.

Part II: Conclusions of the Netherlands Public Prosecution Service

3. Criminal offences

3.1 Criminal offences

Based on the investigative findings of Team POSS, the NPPS concludes that Dieseko is guilty of the following offences:

1) Supplying goods for use in Crimea

Supplying one pile driver, four impact hammers, twelve aggregates, seven vibratory hammers and twelve pipe clamps for the construction of the Crimean Bridge during the period from 11 March 2015 to 18 August 2016 in the Netherlands, Russia, Crimea and Ukraine, punishable by Article 2ter(1) of Council Regulation (EU) No 692/2014 of 23 June 2014 (hereinafter: the Regulation).

2) Providing technical assistance for (delivered) goods for use in Crimea

Providing technical assistance in connection with the use of the pile driver, impact hammers, generators, vibratory drivers and pipe clamps for the construction of the Crimean Bridge during the period from 29 August 2015 to 2 September 2016 in the Netherlands, Russia, Crimea and Ukraine, punishable under Article 2ter(2)(a) of the Regulation.

3) Providing technical assistance directly related to infrastructure in Crimea

Providing technical assistance directly related to infrastructure in Crimea in the period from 29 August 2015 to 2 September 2016 in the Netherlands, Russia, Crimea and Ukraine, punishable under Article 2quater(1) of the Regulation.

Violation of the Regulation is punishable under Article 1 under 1° of the Economic Offences Act via Article 1 of the Crimea and Sebastopol Inclusion Sanctions Regulation 2014 and Articles 2 and 3 of the Sanctions Act 1977.

3.2 Attribution of offences to legal entity

The NPPS notes that all the offences listed under 3.1 can be attributed to Dieseko. The criminal acts and omissions were committed within and for the benefit of the legal entity. Dieseko was responsible for proper compliance with the sanctions rules and did not exercise sufficient care to prevent violations of the sanctions rules. The criminal conduct was accepted by Dieseko and is therefore attributable to the company.

4. Serious nature of the facts

4.1 Introduction

Based on the findings of Team POSS, the NPPS concludes that Dieseko was guilty of violations of sanctions laws and regulations over a period of one and a half years due to its involvement in the construction of the Crimean Bridge. The NPPS finds this highly reprehensible for several reasons.

4.2 Internationally operating company

Dieseko is an internationally operating company with specialist knowledge of vibro technology and piling and drilling equipment. Dieseko profiles itself as a leading developer and manufacturer of innovative foundation equipment. Dieseko could be expected to be familiar with and comply with (international) laws and regulations, including European sanctions imposed after Russia's annexation of Crimea in 2014.

4.3 Severity of sanction violations

International sanctions are imposed on countries, organisations, companies and individuals if a threat to international peace and security arises.

In June 2014, the European Union imposed sanctions following Russia's annexation of Crimea and Sebastopol. In the regulation, the European Union condemns this illegal annexation.

Under these sanctions, the sale of goods and provision of technical assistance and services to individuals and companies in Crimea or for use in Crimea has since been prohibited in certain cases.

Dieseko's actions undermine the purpose and effectiveness of the international system of sanctions. Non-compliance with sanctions resulted in the construction of the Crimean Bridge (in part) through the use of Dutch knowledge and expertise.

5 Considerations for offering a settlement

5.1 Legal framework

Criminal cases can be settled in several ways. One option is for the prosecutor to offer the accused a settlement to avoid criminal prosecution. To this end, the public prosecutor may impose one or more conditions, as defined in Article 74(2) of the Criminal Code. If these conditions are met, the right to criminal prosecution lapses. A settlement is therefore a legal option used to settle criminal cases out of court.

In this case, given the amount of the settlement offer, it is defined as a high settlement. Such a settlement is subject to the 'Designation Order for High Settlements (*Aanwijzing hoge transacties*) (hereinafter: Designation Order).² Pursuant to the Designation Order, the general principle is that a settlement will only be offered for offences that have formed a matter of public concern if a highly justifiable reason is established.

Firstly, the actual conduct forming the basis for the high settlement must be publicly acknowledged by the defendant.

When deciding whether to settle a criminal case with a high settlement, the Designation Order stipulates that the following elements must be taken into account:

- the defendant's role in revealing the criminal offences;
- the defendant's demeanour throughout the process and the manner in which the defendant cooperated with the investigation;
- measures taken or agreed to be taken by the defendant (of their own accord) to prevent new criminal conduct.

5.2 Statement of reasons

The NPPS believes that a high settlement in the criminal investigation Claim is an appropriate settlement for the following reasons:

1. Dieseko cooperated in the monitoring and criminal investigation throughout the investigation period and provided requested relevant information to Team POSS and the NPPS;
2. Recovery and compliance measures to prevent (re)committing of offences have been taken by Dieseko;
3. Dieseko acknowledged the facts;
4. Dieseko paid the unlawfully obtained gains to the State;
5. Dieseko has not previously been convicted for criminal offences.

5.2.1 Cooperation during investigation

As of the initial visit by Team POSS in 2017, Dieseko cooperated with the criminal investigation. This cooperation consisted of collecting and providing documents requested by Team POSS and making (former) employees available to make statements to Team POSS.

² Aanwijzing hoge transacties (2020A005), <https://wetten.overheid.nl/BWBR0044047/2020-09-04>.

5.2.2 Remediation and compliance measures

From autumn 2016, Dieseko ceased transactions, on its own initiative, and almost a year before the aforementioned publication in Dagblad de Gelderlander, with or for the benefit of the Russian main contractor. Since the Russian invasion of Ukraine in 2022, Dieseko has ceased all trade with Russia. Furthermore, Dieseko reviewed and updated its sanction compliance structure.

5.2.3 Acknowledgement of facts

Dieseko acknowledges the facts as reflected in Part I, and expressed their regret.

6 Settlement agreement

6.1 Fine and unlawfully obtained gains

Dieseko paid a total of € 1,780,000 to the State as part of this settlement. This amount consists of a fine of € 180,000 and the deprivation of unlawfully obtained gains of € 1,600,000.

6.1.1 Fine

Given the facts and circumstances, the NPPS considers a fine of € 180,000 appropriate. In determining the fine amount, the NPPS took into account the number of offences, the fact that both goods and services were provided, the years elapsed since the offences, the severity of the offences and the period over which the offences were committed.

The NPPS has based its calculations on the applicability of the 5th penalty category, as stipulated by law at the time of the offences, to all identified offences.³

When calculating a fine, the NPPS assesses whether and, if so, to what extent the accused cooperated with the investigation. The level of cooperation is assessed according to several aspects, including the scope, quantity, quality and timing of cooperation under the circumstances. An important aspect is whether the defence cooperated proactively or reactively. Also relevant is the extent to which Team POSS and the NPPS are able to verify this information based on the documents and information provided.

Dieseko cooperated fully with the investigation by Team POSS (see section 5.2.1). This cooperation resulted in a reduction of the fine.

³ This amounted to a fine of (rounded) € 80,000.

6.1.2 Unlawfully obtained gains

Through the deliveries and technical assistance, gains of € 1,600,000 were obtained by Dieseko, according to the NPPS. As a component of the settlement, the NPPS therefore claimed a total of € 1,600,000 in unlawfully obtained gains.

6.2 Publication of settlement agreement

The settlement agreement between the NPPS and Dieseko has been published in its entirety on the website of the NPPS.