

Monitor anti-witwasbeleid 2014 - 2016

Eindrapportage

Opdrachtgever: Wetenschappelijk Onderzoek- en Documentatiecentrum

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Executive summary

The 2014-2016 *monitor on anti-money laundering policy* in the Netherlands is geared towards assessing the activities and impacts of activities undertaken as part of the Netherlands' anti-money laundering policy throughout the years 2014, 2015, and 2016. The monitor's findings are intended to feed into the policymaking initiatives to fight money laundering and prevent exploitation of the country's financial system for the purpose of laundering dirty money.

Research objectives

The 2014-2016 *anti-money laundering policy monitor* provides insights into the following:

- Activities undertaken in the prevention of and fight against money laundering during the period 2014-2016;
- To what extent the activities are fed by a money laundering risk assessment;
- The results of the anti-money laundering activities in the period 2014-2016;
- A comparison of the activities and results with the period spanning 2010-2013;
- The degree to which the activities (and their results) align with the goals stipulated by the Financial Action Task Force on Money Laundering (FATF);
- The degree to which currently available data aligns with FATF data suggestions;
- Recommendations relating to the improvement of the anti-money laundering policies.

The research conducted in the context of this monitor consisted of a comprehensive literature review (of both Dutch and international) literature and policy documents, the collection and analysis of publicly available quantitative data, and interviews with a large number of relevant stakeholders from within Dutch policymaking and anti-money laundering circles.

The monitor's fundamental unit of measurement is derived from an analysis of actors within the anti-money laundering enforcement network in the Netherlands, including: various supervisory agencies, the Financial Intelligence Unit (FIU-Nederland), the National Police, the Dutch Fiscal Information and Investigation Service (FIOD), the Anti Money Laundering Centre (AMLC), the Prosecutors Office and Judiciary, the Central Judicial Debt Collection Agency (CJIB), national customs agencies, and the Ministries of Justice and Security (J&V) and Finance.

Financial Action Task Force (FATF): from technical compliance towards effect measurement

One of the objectives of this study is to investigate to what extent the activities and results of the anti-money laundering policies in the Netherlands comply with the objectives formulated by the FATF. The FATF increasingly emphasises in its mutual evaluations the *effects* of implemented anti-money laundering policies, in addition to the 'technical compliance' of participating countries. This broader FATF approach is presented in the FATF 'Methodology for assessing technical compliance with the FATF recommendations and the effectiveness of AML/CFT systems' (published in 2013) and the 'FATF guidance - AML/CFT-related data and statistics' (published in 2015). In its methodology for assessing the effectiveness of AML/CFT policies, the FATF differentiates between 'high-level objectives', 'intermediate outcomes' and 'immediate outcomes'.

Anti-money laundering policy objectives and legal provisions

The Netherlands' anti-money laundering policy is geared towards achieving two interrelated goals: (i) the prevention and fight against crime (including asset confiscation), and (ii) the protection of the integrity of the financial sector. The fight against money-laundering is also (indirectly) addressed through the country's policies regarding the prevention of criminality in general and the policies and

practices aimed at bolstering of financial integrity in general. Anti-money laundering policy in the Netherlands does not, in other words, stand on its own.

The anti-money laundering legal framework in the Netherlands was strengthened over the course of the past few years. Several of the provisions contained within the Money Laundering and Terrorism Financing (Prevention) Act (Wwft) were amended on January 1, 2013. The Netherlands is in the process of implementing the fourth anti-money laundering directive (adopted by the European Parliament on 20 May 2015). The Dutch Penal Code has also been fine-tuned to allow for more effective prosecution of crimes relating to money laundering. As of January 1, 2015, the penalties associated with several types of money laundering activities have been significantly raised. Most notably, the penalty for participating in the act of habitual money laundering have been amended. Whereas (prior to the 2015 amendments), previously, only *individuals* could be prosecuted for participating in habitual money laundering, the updated Penal Code now also allows for the prosecution of companies.

Other laws which are of relevance within the context of tackling money laundering in the Netherlands include (among others) the Law on financial oversight (Wft), the Law on oversight of accounting organisations (Wta), the Law on oversight of trust offices (Wtt), and the Law on the furthering of integrity assessments (Wet Bibob).

The approach of the Ministry of Justice & Security and the Ministry of Finance to tackling the problem of money laundering is strengthened by a series of financial programs, such as the Programme on Financial and Economic Crime (started in 2008 and ended in 2012), a programme aimed at reinforcing the confiscation of criminal assets (started in 2013), and the Ministries' expanded financial support for the FIOD. The fight against money laundering is also part of the 2015-2018 security strategy ('Veiligheidsagenda') of the National Police, with money laundering being recognised as one of the 'horizontal' themes.

Organisation of anti-money laundering policies and activities

Anti-money laundering policies and activities in the Netherlands are characterised by an increasing cooperation and coordination between competent authorities and with private sector actors. Cooperation and coordination occurs both on an ad-hoc basis, and through several formalised cooperation arrangements, such as the Signaaloverleg Witwassen, the Stuur en Weegploeg, the Niet Melders Overleg (NMO), the Infobox Crimineel en Overklaarbaar Vermogen (ICOV), the financial expertise centre (FEC) and the Regional Information and Expertise Centres. One of the core objectives of these joint efforts is to prevent and fight money laundering in an integrated manner, through criminal law, administrative law and fiscal law.

Unusual and suspicious transactions

The number of institutions that have reported 'unusual transactions' in the period spanning 2014 to 2016 has increased 24%, relative to the period spanning 2010 to 2013 (Table 0.1). The number of unusual transaction reports relating to money transfers increased with 69%, while the number of unusual transaction reports *not* relating to money transfers increased has doubled. The number of 'suspicious transactions' increased by 61%.

Table 0.1 Results FIU-the Netherlands: comparison 2014-2016 with 2010-2013

	2010-2013 average per year	2014-2016 average per year	Increase
Reporting institutions	982	1.213	24%
Unusual transactions: money transfers	168.847	285.135	69%
Unusual transactions: excluding money transfers	25.033	50.455	102%
Unusual transactions: total	193.880	335.586	73%
Suspicious transactions: money transfers	21.714	34.640	60%
Suspicious transactions: excluding money transfers	3.973	6.651	67%
Suspicious transactions: total	25.687	41.291	61%

Sources: Tables 10.1, 10.2, 10.3.

An increase in the number of reported 'unusual transactions' is typically viewed as a positive indicator for compliance with the FATF recommendations. However such an increase may also be the result of changes in legislation (such as an expansion of institutions that are under the obligation to report to FIU-the Netherlands), a generally weakened customer due diligence (which could be a sign of decreasing FATF compliance), or a proliferation in underlying criminality (predicate offences and money laundering), or an increase in the risk-averse behaviour of reporting institutions (more reporting to prevent accusations of non-compliance).

Criminal law approach

The number of money-laundering related prosecutions have decreased slightly compared to the years 2010-2012 ('influx' in Table 0.2). The Dutch judiciary issued fewer subpoenas and imposed fewer sentences during the period spanning than it did in the period spanning 2010-2013. Because there is no robust data available through which to gauge degree to which organisations have adapted their internal processes to address the phenomenon of money laundering, it is (currently) impossible to draw conclusions regarding the effectiveness of the government's current push foster cooperation between the public and private sectors.

Table 0.2 Comparison results Public Prosecution for the periods 2011-2013 and 2014-2016

	2010-2013 Average per year	2014-2016 Average per year	Change
Influx (number of cases)	2.028	1.858	-8%
Subpoena (number of cases)	1.337	1.242	-7%
Unconditional dismissal	291	461	58%
Transaction settlements	127	183	44%
Outflow (total)	1.830	1.951 ¹	7%

Sources: Figure 12.3 and Table 12.5

The number of final judgements in anti-money laundering cases was, in the period 2014-2016, lower than in the period 2010-2013 (Table 0.3). Main reasons are a decrease in the number of convictions and an increase in the number of acquittals.

¹ De doorlooptijd van een zaak bij het OM duurt vaak langer dan een jaar. Hierdoor stroomt een zaak vaak in het ene jaar binnen en stroomt diezelfde zaak uit in een ander jaar. Als gevolg hiervan kan het aantal zaken dat instroomt lager zijn dan het aantal zaken dat uitstroomt. Immers het gaat niet om dezelfde zaken.

Table 0.3 Comparison final judgements anti-money laundering cases for the periods 2010-2013 and 2014-2016

	2010-2013 Average per year	2014-2016 Average per year	Change
Convictions	953	849	-11%
Acquittal	160	177	11%
Public Prosecution is not admissible	28	32	14%
Other	38	49	30%
Total	1.179	1.108	-6%

Sources: Table 13.1

Administrative and fiscal law approach

There is no centrally collected data available on the results of administrative and fiscal measures in the prevention and repression of money laundering, while orchestrating a more integrated approach is an explicit objectives in the fight against money laundering of cooperation arrangements between competent authorities active. Due to this lack of data, it is (currently) not possible to draw conclusions regarding the overall effectiveness of anti-money laundering policies and activities..

Asset confiscation

One of the main objectives of the Netherlands' anti-money laundering policy is to deprive criminals of their assets. This objective is pursued through the judicial asset confiscation and through fiscal measures. The volume of judicial confiscated assets has increased steadily since 2010, towards € 416 million (with a minimum norm of € 100 million). However, it must be noted that total confiscation values remain contingent on the identification of singular large cases.

Prevention

The findings presented within this monitor indicate that supervisors have intensified the tasks stipulated by the Wwft. This can be attributed partially to the fact that new supervisors have been appointed for specific target groups (Ksa and Nova). More importantly, supervisors have gained in experience over time, which enables them to be engaged in more targeted, effective and efficient supervision activities. This notwithstanding, it should be noted that the data on supervision activities and supervision results are compiled by the supervisors themselves, cannot be compared, and do not (almost by definition) incorporate the quality of work completed. This makes it impossible to *objectively* confirm to what degree the effects and effectiveness of supervisors' activities has improved.

Final remarks

As part of the 4th round of mutual evaluations, the FATF intends to not only evaluate 'technical compliance' of participating countries, but also looks into the effects and effectiveness of anti-money laundering policies and practices. However FATF data suggestions place an undue emphasis on judicial and readily available data (such as numbers of STRs, police investigations or prosecutions).

Anti-money laundering policies are aimed at both the prevention and fight against money laundering, including the confiscation of criminal assets. In addition anti-money laundering policies and activities also contribute to the fight against criminality in general (FIU-information is used as intelligence and evidence in criminal investigations and prosecutions). The impacts shall be taken into account when assessing the effects of anti-money laundering policies. Finally, national anti-

money laundering policies may also have cross-border effects, though shifts in money laundering to and from third countries.

Quantification of the more indirect effects is problematic. However with regards to more measuring more direct effects om anti-money laundering policies, it would be advisable to develop data on administrative and fiscal measures in the prevention and repression of money laundering, in particular as this will do justice to the application of an integrated approach towards money laundering in the Netherlands.

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