

## Summary

### From an unsuspecting source

As of February 1st, 1994, financial institutions are required by law to report unusual transactions to the Office for the Disclosure of Unusual Transactions (MOT). Two years later a first evaluation on this subject has taken place. Today, as a result of international agreements and the fight against terrorism, the attention to oppose the practice of money laundering has intensified. On the other hand, on behalf of the evaluation of the project on the Financial Investigation of Crime and the relatively small number of investigations that have taken place on the account of or with the help of suspicious transaction information, the Question has risen whether all these developments have led to necessary changes in policy on the so called 'MOT-chain'. Nevertheless it is obvious that there is a huge gap between the amount of unusual, and even the amount of suspicious transactions, on the one hand, and the use of this information in criminal investigations on the other.

In connection with the definition of the problem, the next four research Questions were conducted:

- 1 Which bottlenecks appear while processing unusual and suspicious transactions?
- 2 Which bottlenecks appear in the investigation and prosecution of money laundering practices by the organizations of the MOT-chain?
- 3 Where and how could the effectiveness of the organizations within the chain be improved?
- 4 Where and how could the effectiveness of the MOT-chain as a whole be improved?

As a result of international agreements the system has been established and will remain in function. Because of this no earlier research has been conducted according to the view: 'we can not lose it anyway.' It is striking that the MOT-chain, better called the chain unusual transactions, still has so many characteristics of pioneering, after ten years of legislation and two preceding years of voluntarily reporting. Especially the organizations that get their right to exist from the processing and use of transaction information have brought the chain to what it is now. The expectations of the ability of these organizations to influence the chain, have been too high. After ten years of the law MOT it is rather striking that so little obvious subjects have been investigated. The judging of reports is constricted to the micro level. The possibilities that the large amount of reports provide to fundamentally gain knowledge of money flows and money laundering are insufficiently explored.

A lot of information is being registered, and the MOT neatly brings about a Yearly report in which all the rises and falls are being given, but the Question that remains unanswered is what importance should be attached to them.

**332** *Uit onverdachte bron*

Ten years of legislation has made the Netherlands little wiser when it comes to insights in money flows en money laundering. The attention has been placed too much on generating investigation inquiries and too little on the gaining of knowledge of preventive and pro-active action.

The obligation to report transactions will soon be altered. This adaptation from rule-based to risk-based comes too early and is initiated by wrong motives. The number of reports is mainly reviewed with the thought that every transaction in itself should be tested for use in an investigation inquiry. It is not clear what the preferred contribution to the safety should be from the use of transaction information and the organizations involved. Expectations do not stem from and can not be tested to a policy, which makes the obligation to report and the system a goal in itself. The view is diverted from investigation and prevention of crime. The interests of the users have become more and more important. Exchange of thought about the structure and operation of the report system is too much legally orientated and too little judicial.

There is much regulation concerning judging transactions as unusual. However, it is not clear when a transaction is suspicious. Suspected failures in the operation of the chain and the organizations within, are too much placed on the MOT and BLOM (the bureau for the police-support of the national public prosecutor on MOT). Being purely executing organizations, the MOT and BLOM are unable to compensate the Questions that appear elsewhere in the chain and also unable to compensate a lack of policy. There is too little attention to policy organized around the themes money laundering or transaction information. Organizations which depend on that policy, such as the MOT and BLOM, are left too much by themselves.

The chain unusual transactions is viewed by the term 'chain' as an output process. However, this is not true for transaction information. In fact, there is no such thing as a 'chain unusual transactions', and that is not necessarily a problem. The chain view however, is rigid, which inevitably leads to frustration, since the view of by themselves the processes in the chain does not match reality. The wish to let something that looks like a chain, work like a chain, leads in the case of processing and using transaction information to wrong diagnoses and interventions.

Whatever control there is, it concerns mostly the first part of the chain and its regulation by legislation. No one is legitimized to take the role of power. To create one is also useless, since it has become clear that it is not wise to use an instrumental perspective as a base for control. In addition, it is impossible to give instruments priority, which is only possible with themes in this case such as money laundering. Even if one demands priority for one or another kind of offence, this is not a guarantee for success. At the end

there always has to be a centre of power that is able to make necessary but precarious choices. Inside what is called the chain, it lacks such a centre. Through the years the participants of the MOT-counsel have become closer. This leads to a small distance between government and service providers. This leaves little space for choices that are of judicial importance but also of low support among service providers, so that the level of compromise in decision making is high.

Money laundering receives just like fraud low priority in the districts. The perception of seriousness of laundering among the police however, is higher. The HARM-approach, set up during the conversion to euro, illustrates the conditions that receive the cooperation of districts in the tackle of money laundering. The conversion to the euro and the possibility to convict laundering as a single crime have had (partly temporary) positive effects on either the use of transaction information, as the combined use and distribution of this information. In the policy choices of districts scores the independent approach of money laundering low in comparison to Questions of quality of life such as violence, thievery, and the problems with continuous perpetrators. Especially the FIOD-ECD has a more specific task that is closer related to financial investigation and the fight against money laundering. A development towards specialization of district tasks as a result of low capacity or priority is a logical consequence in itself.

As a result of the 'chain view' are the results of processing and use of transaction information mainly compared with the amount of official reports concerning money laundering. This is, however, not a right indicator, since research has proven that transaction information was not available in most cases, and, if available, it remained unclear whether it was used or not. The precise registration of the contribution of transaction information is not possible or desirable. The costs and benefits do not match.

The research reveals that several improvements can be made in the process and cooperation with regard to the processing and use of transaction information. However, this will not lead to a substantial rise of output from money laundering cases at the police side. With the Intranet Suspicious Transactions the throughput of suspicious transactions to the police has strongly increased. Within the police however, is the admission to this information is difficult and the use remains low. Optimization is possible in the entire chain, but none will lead to a fundamental change in the succession of transaction information in terms of the amount of investigations on money laundering.

The research material provided enough information to develop a conceptual model that turns the recommendations into a framework of its own. The fundamental starting points that were used to put the model together are the

**334** *Uit onverdachte bron*

most important conclusions of this study. This model is not a structure, but could become one with the help of the conceptual thinking. This would however go past the goal of this study.

Instead of placing the organizations in a chain, they are visualized as a prevention and investigation store that is made of several floors (a warehouse) and a broad supply of products that are linked to transaction information. The floors of the warehouse contain the functions concerning the prevention and investigation of crime in relation to guaranteeing the integrity of the financial structure, or better the products of those functions. Functions of the following organizations will be put together: MOT, BLOM, Dutch-FIU-desk, BOOM, KFR and FEC. Functions of operational management are no part of the conceptual model and functions are not bound to people that belong to a certain floor.

The most important element of the conceptual model is the backbone. This is the connection between the functions (floors) and feeds them information. The core is made of the buffer with unusual transactions, encircled by several information flows that close in like a shell. Within these flows the processing of the buffer takes place and the storing of information and knowledge that stems from and goes to the floors. The walls work like a membrane. Everything is allowed in, but not everything is allowed out. The permeability of the membrane is restricted by the goal the information will be used for and the regulations.

The clients of the process organization are reporters, investigation organizations (police districts, KLPD, KMar, FIOD-ECD, AID, SIOD, VROM-IOD), controllers, the OM (offices of public prosecutors at all levels), FIU's, and CJIB. According to their status, clients can receive information and participate in the functions and processes. At the floors, products and services are being developed with transaction information as resource. The floors represent the different departments where products are located. Everything that can be produced from transaction information in combination with other information will be produced, as long as there exists a market for it or an order is placed. The assortment of the warehouse contains products on which the various functions and responsible managers are being assessed.

The model uses unambiguous authority over all functions within the process organization. A choice for the OM as central factor within law enforcement is rather logical, also because it is already responsible for information in other police databases. The ministerial departments of Justice and Finance are the principals of the process organization by the OM. The model provides for a single headed management of the process organization and the functions included. For the material functioning of the model, it is not important who is responsible for control.

There is a risk that the diagnoses or the model become subject to a legally tinted debate, as distinctive for the past few years. Or that it will be dominated by conflicting interests concerning position and control, in which the effectiveness of prevention and investigation plays no part. In addition to the integrated material model, we would like to add a process recommendation. Try to design an alternative setup of the processing and the use of transaction information first materially in such a way, as possibly successful in view of the goal. After that, test this new structure to rules, regulations and normative notions about allowed and not allowed. Starting with this discussion diminishes the change of ever reaching the material functioning.

