

# Summary

## *Research question*

In the Netherlands combating money laundering has been for many years an important policy objective. It is one of the national priorities for the police, determined in 2011, and it is emphasized in the policy agreement of the current government coalition.

In the last 10 years much research has been carried out into the report system of unusual and suspicious financial transactions, for example by the Netherlands National Audit Office (2008). The Audit Office criticized the government for its lack of insight into the actual combat against money laundering. After an update of its research in 2014, the Audit Office more or less repeated these conclusion. The researchers pointed out that policymakers have an insufficient insight in the *effectiveness* of the process of combating money laundering.

Partly due to the advice given by the Audit Office, the ministries of Safety and Justice and Finance took the initiative to develop a monitor anti-money laundering policy. This monitor should describe the activities and performance of the actors involved in combating money laundering, so that the policymakers will be more capable to direct and coordinate anti-money laundering policy.

The design of this policy monitor has been commissioned by the Scientific Research- and Documentation Centre of the ministry of Safety and Justice to the research bureau *Decide*.<sup>1</sup>

The main goals of the *Decide* research are:

1. Gathering insight into the activities of the actors that take part in combating money laundering and in the information flow between them.
2. Gathering insight into the effectiveness of the Dutch anti-money laundering activities by measuring it against the criteria for an effective anti-money laundering policy of the Financial Action Task Force (FATF).
3. The development of a start version of a monitor anti-money laundering policy.

## *The monitor as a growth model*

This research contributes to the establishment of (performance-) indicators of the AML activities that are achievable, measurable and adequate. First of all through the inventory and interpretation of the AML activities and information flows between the actors involved. Secondly by measuring these activities against the FATF criteria for an effective AML policy. In the next version of the monitor the performance indicators can be specified further which will improve the functionality of the AML monitor.

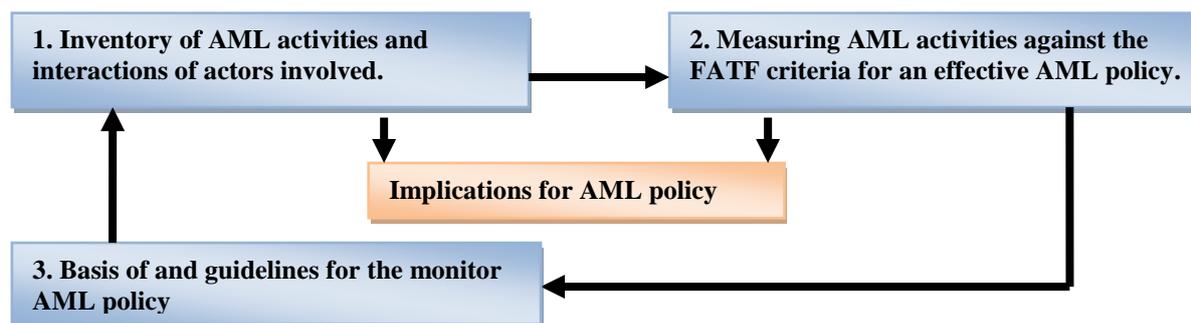
In diagram S.1 the development of the AML policy monitor is sketched as a cyclic growth model. The implications for policy are to be derived from either the inventory of AML activities as the measuring of these against the FATF criteria.

This report can be considered as the start version of the monitor. Due to the explorative nature of this first inventory of AML activities, this version inevitably is incomplete in some aspects.

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<sup>1</sup> *Decide* is a research bureau, connected to the Rijksuniversiteit Groningen, and part of the dutch group.

**Diagram S.1: sketch of the cyclic growth model of the monitor AML policy**



### *Research design*

For the inventory of the AML activities various sources of information have been used: desk research, interviews with 35 employees of organizations involved in combating AML and quantitative data on the prosecution of money-laundering and the reporting of unusual and suspicious financial transactions. The questionnaire for the interviews also contained a number of questions based on the FATF criteria for an effective AML policy. Furthermore, where available, internal data on AML activities were collected from the respondents of the interviews. Table S.1 contains an overview of the quantitative data gathered.

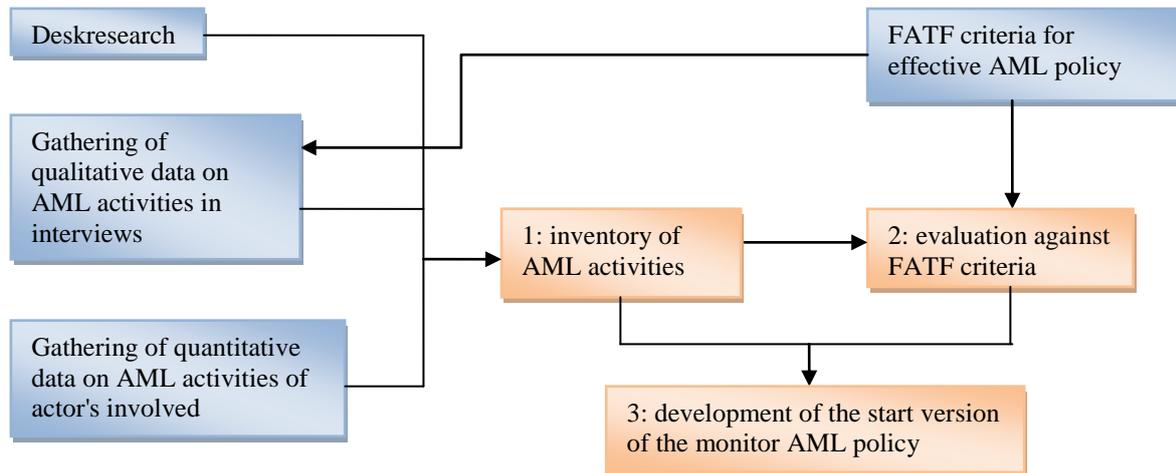
**Table S.1: overview of the *quantitative* data gathered**

Organisation	Quantitative data gathered
<b>Financial Intelligence Unit-Nederland</b>	Figures on unusual and suspicious financial transactions and other key figures, period 2010-2013.
<b>Autoriteit Financiële Markten (AFM), De Nederlandsche Bank (DNB), Bureau Toezicht WWFT (BTW), Bureau Financieel Toezicht (BFT)</b>	Figures on inspections of institutions for compliance with AML requirements and imposed sanctions, period 2010-2013.
<b>Anti Money Laundering Centre</b>	Figures on the selection process of money laundering offences in the so-called 'Signaal- en Selectie overleg', period 2009 - mid-2014.
<b>Infobox Crimineel en Onverklaarbaar Vermogen</b>	Key figures of activities relevant for combating money laundering, 2013
<b>Customs</b>	Key figures of activities relevant for combating money laundering, period 2010-2013
<b>Regional units of the National Police</b>	Key figures on investigations into money laundering, period 2010-2013
<b>Public Prosecution Service</b>	Figures of the Public Prosecutor Service on the prosecution of money laundering offences, period 2010-2013
<b>The National Public Prosecutor's office for serious fraud and environmental crime and asset confiscation.</b>	Figures on confiscations related to money laundering offences, period 2010-2013
<b>National Public Prosecutor's office</b>	Key figures of activities relevant for combating money laundering, period 2010-2013
<b>Financieel Expertise Centrum</b>	Some relevant figures (2013)
<b>Netherlands National Audit Office</b>	All quantitative results of the research it carried out into the report system of unusual en suspicious transactions (2013)
<b>Financial Intelligence Unit.NET</b>	Key figures of activities relevant for combating money laundering, period 2010-2013.

In the second part of the research the AML activities have been measured against the FATF criteria for an effective AML policy.

After that, the start version of the monitor has been developed. Diagram S.2 shows the relations between data collection (blue) and research objectives (orange).

**Diagram S.2: relation between data gathering (blue) en research objectives (orange).**



## Results

### Combating money laundering

Combating money laundering in the Netherlands is effected by seven main processes. See diagram S.3. The arrows represent information flows. The prosecution of money laundering consists of processes 1, 2 and 3. Regional police investigators and special investigation services - the Fiscal Information and Investigation Service (FIOD) and The Dutch Police's International Crime Team (DLR) - play a central role in investigating and tracing money laundering offences (2). Financial intelligence is collected from many different sources (1). Persons suspected of money laundering are prosecuted by the Public Prosecution Service (PPS) and subsequently are sanctioned or appear before a criminal court (3).

The fifth process comprises the way Financial Institutions en *Designated Non-Financial Business Professions* (DNFBP's) comply with AML requirements, based on Anti-Money Laundering and Counter-Terrorist Financing Act (WWFT) (5).

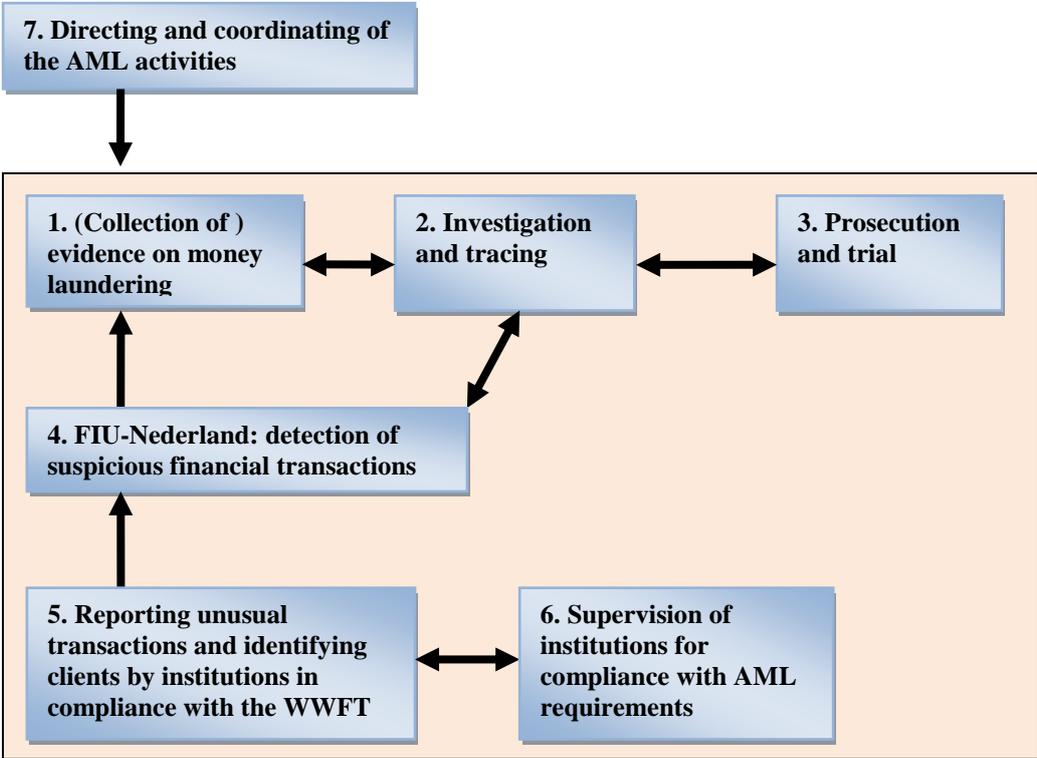
These institutions are obliged to report unusual financial transactions to the Financial Intelligence Unit Nederland (FIU Nederland). The FIU-Nederland analyses these unusual transactions and detects suspicious transactions, which are passed on to the police and special investigation services (4).

The detection and reporting of suspicious transactions contributes to evidence on money laundering (1) and supports current investigations of the police and special investigation services (2).

There are four supervisors that supervise and monitor the different groups of institutions for compliance with the AML requirements: de Nederlandsche Bank (DNB), Autoriteit Financiële Markten (AFM), het Bureau Financieel Toezicht (BFT), en het Bureau Toezicht WWFT (BTW) (6).

The seventh process finally refers to the directing and coordinating function: how and by whom priorities are formulated and how are the AML activities of the organisations involved, directed and coordinated (7).

**Diagram S.3: overview of the main processes in combating money laundering and the information flows between.**



In the first part of this research the research has been focussed on the Dutch actors in the investigation and prosecution processes (1,2,3), the supervisors for compliance with AML requirements (6) and the FIU-Nederland (4). Furthermore forms and aspects of cooperation, directing and coordinating have been inventoried (7).

The fifth process -the way institutions comply with the AML requirements (5)- was outside the scope of this research. Some key-figures on this process have been collected from the supervisors en the FIU-Nederland.

**Directing and coordinating function (7)**

The Ministers of Safety and Justice and of Finance are responsible for the *central* directing, targeting and coordinating function in combating money laundering. Combating money laundering in general has been stated by the Minister of Safety and Justice as one of the national priorities in the fight against crime. However, no specific AML policy targets and performance criteria haven been formulated, neither on a national level, nor for the separate organisations involved in AML policy. As far as specific priorities have been stated in combating money laundering, this is done by individual special investigating services and by a few regional units of the National Police.

Up to now, no study has been conducted into the most important money laundering risks for the Netherlands. In 2016 the ministries mentioned earlier will carry out a National Risk

Assessment money laundering. Furthermore they initiated the monitor AML policy before us that will make an inventory of activities and performance from time to time.

With two policy programmes ('FinEc' and 'Afpakken') the effort and capacity for investigating and tracing of money laundering offences has been enlarged in recent years. Defining objectives for the amount of assets to be confiscated has had a similar effect.

Furthermore the AML investigating capacity of the FIOD and DLR has been enlarged in the period 2010-2013. In 2013 the Anti Money Laundering Centre (AMLC) was founded with the ambition to create a knowledge centre in which the services involved in AML policy share experiences and cooperate.

The cooperation and coordination between services involved in investigating, tracing, prosecution en supervision of AML requirements are mainly organized at a local and regional level. There are ten cooperation associations between organizations and services in combating money laundering.

The National Public Prosecutor's Service has appointed a National Public Prosecutor for money laundering (LOvJ); she plays an important role in the coordination of investigating, tracing and prosecuting money laundering.

### **(Collecting) evidence of money laundering (1)**

The investigators of the regional police units and the special investigating services FIOD and DLR collect financial intelligence and other relevant information from many different sources. Apart from by-catches of other investigations the most important sources are: Basic Police Care, tax authorities, the FIU-Nederland, municipal services, Customs, Royal Netherlands Marechaussee (KMAR), criminal intelligence service (TCI), foreign criminal investigation services and the Centraal Justitieel Incassobureau (CJIB) (Central Fine Collection Agency).

In addition there are services that collect and enrich information that is passed on to investigating units; these are the AMLC, the FIU-Nederland and the infobox Crimineel en Onverklaarbaar Vermogen (iCOV). The Financial Intelligence Unit.NET and the Egmont group facilitate sharing information between the FIU's in and outside Europe.

### **Investigating and tracing (2)**

The investigators of the regional police, FIOD, DLR, the FIU-Nederland, Customs and the Royal Netherlands Marechaussee collect evidence regarding (possible) money laundering. FIOD, DLR and the regional police investigation services focus on different aspects of money laundering. FIOD investigates tax and fraud related money laundering. DLR focuses on international forms of organized crime. The way FIOD and DLR combat money laundering is largely complementary. On some aspects, for example the fight against financial facilitators of criminals, the two services work together in the so-called Signaal en Selectie overleg, where it is decided which cases are investigated.

The investigating teams of the 10 regional police units fight against economic and financial crime in general of which money laundering is one aspect. With respect to combating money laundering the police units of Amsterdam and Rotterdam and DLR share as priorities underground banking and financial facilitators.

In combating money laundering regional police units confine themselves mostly to 'low-hanging fruit', such as confiscating criminal money as a by-catch or large sums of cash which are found on arrested criminals. Three of the five police units examined state that lack of capacity often prevents them from investigating complex money laundering practices.

FIOD, DLR and the regional police investigation services cooperate with different offices within the Public Prosecution Service, respectively the National Public Prosecutor's office for

serious fraud and environmental crime and asset confiscation, the National Public Prosecutor's office and the ten district courts.

The number of investigations concerning money laundering practices of FIOD, DLR and the regional police units together, has almost been doubled during the period 2010-2013. The policy programmes 'FinEc' and 'Afpakken' have contributed substantially to this development. Furthermore, the police and the Public Prosecutor Service state that in large criminal investigations investigators systematically look at financial aspects and possible money laundering practices.

### **Prosecution and trial (3)**

In practice the district courts don't consider prosecution of money laundering as an end in itself but rather as a means in the fight against financial and economic crime; unlike the two National Public Prosecutor's offices for which combating money laundering is an explicit priority. For the district courts it depends on the evidence and the most productive strategy, which crimes are prosecuted and brought to trial. Anyhow, the AML articles in the Dutch penal code are effective means to confiscate cash money from criminals and are frequently used in this way. The targets for the amount of confiscated assets, which are set each year by the Minister of Safety and Justice, also stimulate the use of the AML articles mentioned. The Public Prosecution Service (PPS) registers suspicions of money laundering in its central database (7941 during the period 2010-2013). The reliability of this database could be better, due to incompleteness and dirty information.

The 10 regional police units deliver together about two-thirds of the suspects, FIOD and DLR each about 10%.

An estimated 56% of the persons suspected of money laundering are summoned by the PPS and an estimated 66% of the summoned suspects were found guilty by the court.<sup>2</sup>

During the period 2010-2013 more than halve of the assets *seized* by the state was (also) based on the suspicion of money laundering. This also applied to the *confiscated* assets in the years 2012 and 2013. So, combating money laundering contributes significantly to the amount of assets seized and confiscated.

From 2008 on the targets for confiscations have been increased year after year. During the period 2008-2014 these targets have been achieved each year. For the year of 2018 the target has been set at €115,6 million.

The earlier mentioned policy programme 'Afpakken', launched at 2011, has the explicit objective to confiscate more proceeds of crime.

### **Reporting unusual transactions and identifying clients (5)**

By the Anti-Money Laundering and Counter-Terrorist Financing Act (WWFT) a large number of financial institutions and *Designated Non-Financial Business Professions* (DNFBP's) are obliged to identify and verify their customers and to report unusual transactions to the Financial Intelligence Unit Nederland (FIU-Nederland).

In this research no data were collected on the actual compliance of the institutions with the requirements mentioned. However, secondary information about the behaviour of institutions has been gathered from the FIU-Nederland and the supervisors. The figures from the supervisors show that the number of breaches of AML requirements is substantially, in the order of 50% of the inspected institutions.

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<sup>2</sup> We speak of estimates because the calculations are exclusively based on cases in which money laundering was the only suspicion. In many cases there are also other suspicions.

On the basis of figures of the supervisors and the number of unusual transactions reported to the FIU-Nederland, it can be concluded that during the period 2010-2013, on average, 1% of the institutions<sup>3</sup> actually reported unusual transactions.<sup>4</sup> It is not clear whether this percentage indicates a high degree of non-compliance or that many institutions rarely encounter unusual transactions.

The fact that a limited part of the institutions report unusual transactions and furthermore that supervisors notice many breaches of AML requirements, could indicate that not all (groups of) institutions or DNFBP's fully comply to the AML requirements.

### **Supervising for compliance with AML requirements (6)**

DNB, AFM, BTW and BFT supervise financial institutions and DNFBP's for compliance with the AML requirements. They inform the institutions and DNFBP's with guidelines on the internet and send information on special money laundering risks to institutions in sectors that are well organized. BTW and BFT organize information meetings for the respective branch organisations and business professions.

The supervisors study the money laundering risks in the sectors they supervise. However, they have no insight into the frequency of unusual transactions that actually take place or can be expected in the sectors, particularly those of the small financial institutions, business professions and traders.<sup>5</sup>

Every year the supervisors inspect a number of institutions and business professionals for compliance of AML requirements. In these inspections the special risks within the respective sectors are taken into account.

BTW, BFT and DNB increased the number of inspections during the period 2010-2013. In this period the average number of inspections, relative to the total number of institutions or DNFBP's that are supervised by each supervisor is for BTW: 1.9%, for BFT: 0.14%, for DNB 7% and for AFM 0.02%. BFT and AFM 'score' relatively low compared to the other supervisors.

### **The Financial Intelligence Unit Nederland (4)**

By the WWFT financial institutions and DNFBP's are obliged to report unusual transactions to the FIU-Nederland. The latter analyses unusual transactions and detects suspicious transactions. Defining an unusual transaction suspicious can have several reasons: the subjects in the transaction could match subjects the police is investigating or subjects in the records of the Public Prosecution Service or it could result from research of the FIU-Nederland itself.

The suspicious transactions are reported to the regional police units and the special investigating services FIOD and DLR. The FIU-Nederland also provides information -if available- on specific subjects requested by police and the special investigating services.

Other important tasks of the FIU-Nederland are informing institutions and DNFBP's on their AML requirements, analysing patterns of transactions based on the large amount of unusual transactions and providing information to other law enforcement authorities and foreign FIU's.

In the period 2009-2013 about 200,000 unusual transactions were reported each year to the FIU-Nederland. In 2011-2013 about 23,000 transactions were defined suspicious each year. The system of reporting and passing information on unusual and suspicious transactions has its limitations. First of all, only part of the criminal money is brought into the financial system

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<sup>3</sup> Please note that the 1% concerns the reporting behaviour *on the institution or office level*, not the reporting of *all unusual transactions*.

<sup>4</sup> This is on average. Institutions supervised by DNB and some groups supervised by BFT report substantially more often.

<sup>5</sup> What we do know of course is the actual number of *reported* unusual transactions.

through (unusual) transactions. Furthermore, not all unusual transactions are reported to the FIU-Nederland, partly because some deliberately facilitate money laundering. Finally, unusual transactions between subjects who not appear in the criminal records, will -in general- not be declared suspicious.

Not all suspicious transactions passed on to police and special investigating services are investigated. A suspicious transaction in itself creates not enough grounds for a legal suspicion. As a result, suspicious transactions passed on by the FIU-Nederland, without a link to criminal records, seldom are taken as a starting-point for investigations into money laundering.

### *Effectiveness*

The Dutch anti-money laundering activities have been measured against the criteria for an effective anti-money laundering policy of the FATF. Most FATF criteria directly relate to the earlier presented seven main processes in combating money laundering.

The check against the FATF criteria had certain limitations. The inventory and description of the Dutch AML activities was necessary as a first step in building the monitor. The eight FATF criteria (called 'immediate outcomes' by FATF<sup>6</sup>, with 42 core issues to be considered) for an effective AML policy, could not be taken beforehand as a framework for the collection of data. As a result, the Dutch AML policy could not be measured against all criteria and core issues.

For this reason the researchers didn't draw any conclusions regarding the compliance of the Dutch AML policy with the FATF criteria. However, answers could be given to the question whether the collected data *either support or do not support the conclusion of compliance* with the FATF criteria.

With respect to the following two criteria (FATF immediate outcomes) some of the collected data support the conclusion of compliance and some do not:

- *Money laundering and terrorist financing risks are understood and, where appropriate, actions coordinated domestically to combat money laundering (1).*<sup>7</sup>
- *Supervisors appropriately supervise, monitor and regulate financial institutions and DNFBP's for compliance with AML requirements commensurate with their risks (3).*

With respect to the immediate outcome:

- *Financial institutions and DNFBP's adequately apply AML/CFT preventive measures commensurate with their risks, and report suspicious transactions (4),*

only secondary data were collected from the supervisors and the FIU-Nederland. These do not support the conclusion of compliance with this criterion.

With respect to three FATF immediate outcomes the collected data do support the conclusion of compliance. These are:

- *Financial intelligence and all other relevant information are appropriately used by competent authorities for money laundering and terrorist financing investigations (6).*
- *Money laundering offences and activities are investigated and offenders are prosecuted and subject to effective, proportionate and dissuasive sanctions (7).*

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<sup>6</sup> Immediate outcomes refer to the key goals which an effective AML system should achieve. *Methodology for assessing technical compliance with the FATF recommendations and the effectiveness of AML/CFT systems.* February 2013. Paris: FATF/OECD, pp.14.

<sup>7</sup> The numbers refer to the FATF methodology.

- *Proceeds and instrumentalities of crime are confiscated (8).*

An exception regarding the sixth immediate outcome is the observation that many of suspicious transactions are not investigated when passed on to investigators.

Finally, no conclusions could be drawn on the next two criteria, because no data were collected on these subjects:

- *International cooperation delivers appropriate information, financial intelligence, and evidence, and facilitates action against criminals and their assets (2).*
- *Legal persons and arrangements are prevented from misuse for money laundering or terrorist financing, and information on their beneficial ownership is available to competent authorities without impediments (5).*

### ***Basis and guidelines for the monitor AML policy***

The intention of this study was to develop a start version of a monitor AML policy. The inventory of AML activities and the measuring against the FATF criteria for an effective AML policy resulted in the specification of 62 information elements the monitor should include. It also has been indicated which organisations are most capable to collect and deliver the data.

In the next version of the monitor more performance indicators of the different AML processes should be elaborated. These can be based on the now specified information elements. The check against the FATF criteria for an effective AML policy can then become more comprehensive.