



# Evaluation of the Legal Entities (Supervision) Act

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## - SUMMARY -

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# Summary

## Evaluation of the Legal Entities (Supervision) Act (Wcr)

The Dutch Legal Entities (Supervision) Act (*Wet controle op rechtspersonen, Wcr*) came into force on 1 July 2011. The purpose of the law is to prevent and combat the abuse of legal entities by means of continuous supervision. Supervision concerns legal entities (such as PLCs, LTDs, cooperatives, associations, and foundations), and persons and companies that have connections with these legal entities. Foreign legal entities with a head or branch office in the Netherlands also fall under the supervision. In this study, a plan and a process evaluation have been conducted to assess the extent to which the design of the Wcr contributes to its objectives, how the act is executed, and what are the opportunities to improve the way the Wcr is currently executed.

## Outlines of the Wcr

The implementation of the Wcr is vested with the TRACK department of the Judicial Agency for Testing, Integrity and Screening (Justis), which is the screening authority of the Ministry of Justice and Security (*JenV*). The act grants TRACK the authority to process and provide data. This enables the enforcing and investigative authorities to investigate, combat, and prevent abuse of legal entities under other laws. The Wcr is part of a broader approach to combat financial economic crime in particular. The executive TRACK service itself does not have powers of (criminal) investigation.

Supervision starts with an automated screening based on alterations in the Dutch Commercial Register (*Handelsregister*) of the Chamber of Commerce (*KvK*) and uses data from various sources to determine whether there is an increased risk of abuse of the legal entity. If the analysis indicates an increased risk, a risk report is supplied to the supervisory, enforcing, and investigative authorities responsible for combating the observed risk of abuse of the legal entity. In addition to the continuous screening of legal entities, the act also provides the opportunity to carry out 'risk reports upon request'. This means that authorised organisations may retrieve additional information about legal entities and their networks for investigation or enforcement purposes. In addition to risk reports, so-called network diagrams are supplied: these are schematic descriptions of the network of a legal entity, relevant relationships with natural persons and/or legal entities, a description of the nature of these connections and relevant bankruptcies and rescissions. The circle of organisations that are entitled to request and receive risk reports and network diagrams, is delineated in the Legal Entities (Supervision) Decree (*Besluit controle op rechtspersonen, Bcr*). It is also stated in the Bcr which data may be processed.

## The policy logic of the Wcr

The key measures of the act are the continuous automated screening of legal entities and the screenings supplied at the request of investigative authorities. In order to make sure that data processing meets the needs and working methods of the receiving authorities as much as possible, periodical consultations are held with various recipients. In addition, risk profiles are used to determine increased risks to certain types of abuse as well as possible.

## The potential goal achievement of the Wcr

Within the implementation system of the Wcr, continuous automated supervision of legal entities only starts after an alteration regarding a legal entity has occurred in the Commercial Register. This means that legal entities that are not registered in the Commercial Register or do not make alterations, whether correctly or incorrectly, remain outside the scope of supervision. Alterations in other registers (e.g., the Judicial Documentation, *Justitiële Documentatie*) are used on behalf of the risk analyses, however, they are not the starting point of the continuous automated supervision. They only lead to risk analyses within the framework of the Wcr if an enforcing or investigative authority demands a risk report upon request. Actual prevention and combating of abuse of legal entities depends on the use that is being made of the risk reports and network diagrams by the recipients. This partly depends on their capacity and priorities. Therefore, the goal achievement of the Wcr does not only depend on the quality of the execution of the measures by TRACK, but also on other circumstances and factors: the willingness to register with the Commercial Register, the willingness to make alterations to the Commercial Register, the awareness at enforcing and investigative authorities to demand risk reports at request concerning legal entities that are suspected of abuse, whereas no alterations were made in the Commercial Register, and the capacity and priorities at the receiving authorities to make use of risk reports.

### The execution of the Wcr by TRACK

In 2019, 268 risk reports and 939 network diagrams were supplied. The number of supplied products has been stable over the last few years. There have been shifts within the product categories, for example, as a result of arrangements with recipients concerning customisation and an increasing demand for more complex and detailed network diagrams.

On behalf of the automated supervision, TRACK includes data from four sources on a daily basis: the Commercial Register, the Judicial Documentation, the Municipal Personal Records Database (*GBA*) and the Central Insolvency Register (CIR). This happens completely automatically by means of the RADAR system. The data are compared with risk profiles: combinations of characteristics that indicate increased risks of various types of abuse. In addition to a general risk profile, currently there are seven risk profiles for specific types of abuse. The reports concerning legal entities to which an increased risk seems to apply, are considered as Interim Risk Reports (*Tussentijdse Risicomelding, TRM*). They are further investigated by TRACK analysts with the aid of data from a large number of sources. This more detailed analysis may result in determining an increased risk of abuse. This information is passed on to the enforcing and investigative authority that is responsible for enforcement of the abuse. The risk reports at request are analysed in a similar way. For network diagrams – that are supplied to a broader circle of recipients – fewer information sources are used than for risk reports: the Commercial Register, files of the Guarantee Scheme Bankruptcy Administrators (*Garantstellingsregeling Curatoren, GSR*), *GBA* data and the CIR.

### Recipients: familiarity, satisfaction, and use

In general, recipients are satisfied with the quality of risk reports and network drawings. Central contact persons of potential receiving authorities are familiar with the TRACK products. They observe that other employees in their organisations are less familiar with the products. According to the recipients, the main added value of the TRACK products is that it entails an improvement of the information position for enforcing and investigative activities, particularly improved insight into the activities, the scope, the branches, and relationships within networks of legal entities and, connected with this, natural persons. The study did not succeed in determining the actual use of the TRACK products by the recipients and the corresponding results (in terms of combating or preventing abuse). Recipients themselves do not have a clear image of this either. Recipients characterise TRACK information as part of the entirety of data that contribute to the results of investigations or enforcement inspections. Specific mention was made of the value of information from a source the enforcing and investigative authorities have no access to themselves, improved insight into the networks and branches of legal entities, the confirmation that the investigation is set up correctly, and sometimes also saving on their own capacity.

Several recipients take part in a certain type of periodical consultation at executive or management level, whereas other recipients do not take part in such consultations.

### Costs and tariffs

At the moment, recipients do not pay for the risk reports and network diagrams. With an eye to a stable type of financing, the study pays attention to the costs of TRACK products and the possibility to charge recipients for using them. As has been established in previous research, the willingness of recipients to pay for TRACK products is limited. In the study, alternative types of cost-effectiveness have been investigated in relation to other forms of data exchange that aim to combat abuse. Most of these forms of data exchange do not charge tariffs per product but make use of other types of cost allocation, such as subscriptions (with differentiated tariffs) and reimbursements by (system) responsible departments.

### Bottlenecks

The main bottlenecks in the execution of the Wcr, as mentioned in the interviews, are:

#### Concerning the process:

- the lack of access to data sources on behalf of permanent supervision of foreign legal entities;
- the timeliness of supplying risk reports and network drawings, in particular concerning products at request;
- the lack of familiarity with TRACK products within the organisations that could receive and use these products.

#### Concerning the products and use

- the fact that supervision is limited to legal entities, which means that increased risks of comparable abuse by entrepreneurs and companies without legal entity remain out of the picture;
- the clear arrangement and practical value of the network diagram for users/recipients with less experience.

#### Concerning consultations with recipients

- the lack of structured and periodical consultations with recipients between TRACK and part of the recipients about the contents and use of products.

Bottlenecks that have not been mentioned in the interviews, but that emerged from the analysis of the findings are:

#### Concerning the systematics of the act

- alterations in the Commercial Register as the chosen starting point of the risk reports, which means that legal entities that are not registered or that do not make alterations to the Commercial Register, remain out of sight of the automated supervision;
- alterations in the Commercial Register as the chosen starting point implies that possibly relevant alterations in other registers (including the Judicial Documentation) can be used for the analysis of risks, but are not the starting point for automated supervision. Using data from different sources on behalf of supervision under the Wcr remains separated from the automated supervision and is therefore completely dependent on other organisations (other than TRACK).

#### Concerning goal achievement

- The purpose of the Wcr is to prevent and combat the abuse of legal entities. The purpose has not been quantified in the act, nor in the explanatory memorandum (*MvT*). In the study, it has not been possible to determine the exact contribution of the risk reports and network diagrams to preventing and combating abuse of legal entities and how large this contribution is. This means that the goal achievement cannot be measured properly, and neither can it be measured whether the Wcr makes a larger (or smaller) contribution to combating legal entities than other measures, such as the preventive check that existed before the Wcr act was introduced.

#### Opportunities for improvement

Recipients of TRACK products see opportunities for improvement in the information content of risk reports. This may mean that *more* information is supplied (e.g., about foreign legal entities), but also that *less* information is entered (e.g., because the recipient already has access to the information by means of their own registrations). Moreover, there is a need for faster delivery of data. With respect to complex network diagrams, especially less experienced users are in need of versions, additions or variants that provide a better and faster overview. Some of the recipients that are currently only entitled to receive network diagrams, are of the opinion that they should belong to the circle of recipients that receive risk reports and that this would benefit them.

TRACK sees opportunities for improvement in access to a number of data sources that are currently still unavailable. In addition, Justis regards the consultations with recipients as a suitable instrument to make agreements on the type and content of TRACK products, with an eye to optimal opportunities for use.

#### Conclusion

The measures of the law are put into practice as intended, and the recipients say they use the information to strengthen their information position, and as part of a large number of other measures, actions, and data to combat and prevent abuse of legal entities.

From the interviews it may be inferred that improving the information position is likely to contribute to the quality of the execution and the results of the enforcing and investigative activities of recipients, and that the Wcr thereby contributes to the fight against abuse of legal entities, including financial economic crime. The *extent* to which this is the case, and whether this contribution is large or small could not be determined.

With regard to the process, both bottlenecks and opportunities for improvement can be indicated. Provided they are successfully implemented, the improvements are likely to result in reducing the bottlenecks identified by TRACK and the recipients. This can improve the execution efficiency of both TRACK

and the recipients. It can also contribute to strengthening the information position of recipients. The improvements can, however, not repair a number of weaknesses in the systematics of the law, e.g., the fact that (possibly fraudulent) legal entities that are not registered in the Commerce Register or do not make alterations remain outside the supervision; and the fact that other sources that may also provide relevant signs or more information are ignored. Another weakness is the fact that fraudulent entrepreneurs without legal entity also remain out of the picture; especially as this offers them opportunities to back out of the automated supervision. A fundamental problem is that the size of the contribution of the Wcr to the fight against abuse of legal entities remains unclear.

Viewed in this light, the Wcr is an addition to the broader field of legislation, measures and organisations that aim to combat financial economic crime – even though as yet it is not possible to indicate the size of this addition and whether it outweighs the costs of the execution.



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