

Summary

Dutch National Risk Assessment on Money Laundering 2019

Background

Dutch policy to prevent and combat money laundering is based on the recommendations of the Financial Action Task Force (FATF) and European Union (EU) directives and regulations. The FATF – an intergovernmental body set up by the G7 in 1989 – focuses on global prevention and combat of money laundering, terrorist financing and other related threats to the integrity of the international financial system. Members of the FATF, including the Netherlands, are committed to implement the FATF recommendations aimed at taking preventive and repressive measures by 'reporting institutions'¹⁷⁶ and to implement measures to improve national legal and regulatory systems and international cooperation in this field. In addition, the FATF supervises the correct functioning and effectiveness of those (legal) rules. The majority of the FATF's recommendations has been adopted into the (amendments of the) fourth EU Anti-Money Laundering Directive, applicable to all EU Member States. Article 7 of this directive obliges EU Member States to implement a risk-based policy against money laundering and terrorist financing and to establish a National Risk Assessment (NRA). In 2017 the Research and Documentation Centre (WODC) carried out the first NRA on money laundering and on terrorist financing for the European part of the Netherlands. A year later, the WODC also conducted an NRA on both topics for the Caribbean Netherlands: the islands Bonaire, Sint Eustatius and Saba.

A second NRA for the European Netherlands on money laundering has been carried out by the WODC, with the aim of identifying the greatest risks in the field of money laundering. These are money laundering risks with the greatest residual potential impact. To this end, the money laundering threats with the greatest potential impact have been identified, an estimate has been made of the impact these threats can have and the 'resilience'¹⁷⁷ of the policy instruments aimed at preventing and combating money laundering has been determined. The residual potential impact is the impact that threats still have following the application of policy instruments to prevent or mitigate the potential impact of the threats. This means the objective of the second NRA is slightly broader than the objective of the first NRA, which was limited to separately estimating the potential impact of the identified risks and the resilience. Other differences with the first NRA are that this second NRA provides more insight into the nature and 'mechanisms'¹⁷⁸ of the identified risks and that a first step has been taken to use quantitative data. In accordance with the first NRA, this NRA also describes some lessons learned, which can be taken into account

¹⁷⁶ In the Netherlands, the Money Laundering and Terrorist Financing Prevention Act (Wwft) requires many institutions to report unusual transactions to the Financial Intelligence Unit (FIU) Netherlands.

¹⁷⁷ Resilience is the ability of the policy instruments to prevent threats or mitigate the impact of threats, whereby the higher the resilience, the better the threats are mitigated. It concerns the content/scope as well as the implementation of the policy instruments.

¹⁷⁸ The mechanisms relate to the process of a risk, the way a certain risk precisely works.

carrying out the following NRAs. The second NRA on terrorist financing (for the European part of the Netherlands) has been conducted by the WODC at the same time as this NRA.

What is money laundering?

Legal and economic approach

A legal and economic approach can be distinguished in money laundering. The legal approach to money laundering is based on Articles 420bis, ter and quater in the Dutch Penal Code. These articles describe the circumstances in which someone is guilty of money laundering. From a legal perspective, money laundering is when somebody hides or conceals the true nature, source, place where it was found, disposition or movement of an object; or concealing or disguising who the legal owner is or who is in possession of the object; despite knowing that or being in a position in which they should reasonably suspect that the object in question was either directly or indirectly obtained as a result of any offence. 'Object' stands for all goods and property rights. In addition, it is possible to prosecute for 'simplified' money laundering in case of 'deliberate/intentional' money laundering as well as 'culpable' money laundering (articles 420bis.1 and 420quater.1 respectively). 'Simplified' money laundering, the mere acquisition or possession of an object immediately from one's own criminal conduct is sufficient. The 'concealing or disguising' criterion, the active act, is not applicable in case of 'simplified' money laundering.

For the NRA, the economic approach, that describes the process, is applied. The economic approach focuses on how money of criminal origin is returned to the legal money circuit and used economically, so that the origin of the money is concealed. In addition, in the NRA the so-called 'consumptive' money laundering, the spending of criminally obtained funds on the basic necessities of life, has been included.

The money laundering process

The money laundering process according to the economic approach can be divided into three phases, which are not always fully completed and which do not always follow each other chronologically. The FATF distinguishes the following phases:

- *Placement*. In this phase, a criminal places money to be laundered into the financial system, which gives it a cashless character. Crime such as drug trafficking often involves mostly large amounts of cash that a criminal wants to place in the financial system. In other forms of crime, the money may already be in the financial system, for example in the case of tax fraud.
- *Layering*. In this phase – which can take place both during and after the placement phase – a criminal conceals his/her identity and/or the origin of the criminal money in order to minimize the chance of being caught. Layering methods can be relatively simple but also very complex in nature.
- *Integration*. In this last phase, a criminal integrates the criminally obtained money – whether or not concealed – into the financial system, for example through spending on his own subsistence or investments in large-value products or real estate.

Research methodology

As in the first Dutch NRA on money laundering of 2017, the applied research approach is structured on the basis of the ISO 31000 framework for risk management. In short, the research methodology used involves the following:

- A context analysis has been conducted in which the specific, relatively fixed characteristics of the Netherlands that may influence the prevalence of money laundering are outlined. A literature study was carried out for this context analysis.
- A literature study was also carried out for an inventory of threats in the field of money laundering. The so-called FANO survey was then carried out, in which expert organizations¹⁷⁹ were asked to indicate on a long list of money laundering threats whether they are aware of facts/cases of the threats and to what extent they consider the prevalence of the threats plausible or not, based on the information available at their organization.
- In a first expert meeting, experts subsequently identified the money laundering threats with the greatest potential impact. In the phase after this first expert meeting in-depth interviews with experts were held, which focused on the nature and mechanisms of the identified largest money laundering threats. In a second expert meeting, experts assessed the potential impact of the further specified fifteen largest money laundering threats using a Multi Criteria Analysis.
- In a third expert meeting, experts assessed the resilience of the available policy instruments to prevent and combat the fifteen largest money laundering threats. Prior to the third expert meeting, a survey among experts provided insight into the policy instruments available for the prevention and combating of money laundering.
- By balancing the estimated potential impact of the largest money laundering threats against the estimated resilience, insight has been obtained into the largest money laundering risks in the Netherlands, ranked by their residual potential impact.
- In the final phase of the study, validating interviews with six key experts were conducted with the main aim of examining to what extent they recognize the ranking of the identified money laundering risks and how these risks can be further mitigated.
- In addition to the above mainly qualitative research methods, in collaboration with Justis, the screening authority of the Ministry of Justice and Security, a limited quantitative data analysis was carried out for one of the money laundering risks.

A lesson learned in the first NRA was that the second NRA (and subsequent NRAs) should focus more on substantiating and providing in-depth insight in the largest money laundering threats identified by experts. In the NRA that has now been carried out, more attention has been paid to this in various ways: by setting up the FANO survey, a larger number of expert meetings (three instead of two) with more time for a plenary discussion of money laundering threats, a large number of in-depth interviews with experts, including case descriptions in the report and conducting a survey among experts on the policy instruments for the prevention and combating of money laundering.

¹⁷⁹ Expert organizations concern the following types of organizations: supervisory authorities under the Money Laundering and Terrorist Financing Prevention Act (Wwft); government agencies or government-affiliated organizations that play a role in the prevention and/or combating of money laundering; and private entities under Wwft supervision and sector/umbrella organizations of those private entities.

Another lesson learned from the first NRA on money laundering is that a quantitative data analysis should be conducted in the second NRA. The intention was, as a first step, to conduct a quantitative data analysis in the NRA for the risks 'money laundering via legal entities', 'money laundering via ABC transactions' and 'money laundering via loan back constructions'. To this end, cooperation was initially sought with iCOV (Information Exchange on Criminal and Unexplainable Wealth) which has access to a large number of data sources.¹⁸⁰ Unfortunately, the necessary declarations of consent from the various data source holders were not completed within the time frame of the study. When this became clear, contact was made with Justis and a quantitative data analysis was carried out via Justis for the risk of 'money laundering via legal entities' based on data from the Commercial Register of the Chamber of Commerce, which was assumed in advance to contribute to a further explanation of the risk. The analysis carried out demonstrated that on the basis of such a data analysis without linkage to other data sources, such as data on suspicious declared transactions by the Financial Intelligence Unit – Netherlands and other criminal or fiscal information, no direct relationship with money laundering can be determined. The analyses only provide limited insight into a number of 'unusual situations'.

If including additional data sources in a subsequent NRA will be possible, it is unlikely that this analysis will provide insight into the prevalence of the money laundering risk in question. After all, a direct relationship with money laundering cannot be determined without further criminal investigation. Another complicating factor in implementing a more data-based NRA is the wide variety in the nature of the money laundering risks and the required data sources. The NRA is an overall analysis of all risks. The different data sources must therefore be analyzed in relation to each other. This requires meeting quality requirements in terms of completeness, reliability, validity and mutual compatibility of data sources. At present there is insufficient knowledge to what extent this can be met. It is recommended to carry out a separate exploratory study so that it can be examined how in a subsequent NRA the separately available relevant data sources can be made compatible and suitable and can become available for a meaningful data analysis.

What makes the Netherlands vulnerable to money laundering?

For this second NRA, a context analysis has been carried out that examines the characteristics of the Netherlands that may relate to the prevalence of money laundering in our country. The geographical, demographic, socio-cultural, economic and criminological characteristics of the Netherlands were examined. The Netherlands is characterized by an open, trade-oriented economy, a large and internationally oriented financial sector and a fiscal attractiveness for large foreign companies. The country is one of the most competitive economies in the world, has one of the largest airports and ports in the world and is one of the world largest exporters. The Dutch economy is characterized as a service economy. All these characteristics make the Netherlands attractive for criminals to launder their illegally obtained money. The Netherlands can also be characterized – in comparison with

¹⁸⁰ Via iCOV data from, among others, the Tax and Customs Administration, the National Police, the Public Prosecution Service, the Dutch Fiscal Intelligence and Investigation Service, the National Police Internal Investigations Department, FIU - the Netherlands, the Chamber of Commerce, the Netherlands' Cadastre, Land Registry and Mapping Agency and the Dutch Central Bank can be accessed.

other European countries – as a low cash intensive country and a high degree of digitalization. These factors can influence the money laundering methods used by criminals. A socio-cultural factor that is characteristic of the Netherlands is the culture of tolerance, in which tolerance with regard to (soft)drugs in particular can contribute to the prevalence of drug crime and money laundering. Based on the culture of the so-called 'Polder Model', Dutch organizations usually seek alignment and cooperation with other organizations. The Netherlands is therefore distinguished from many other countries by the relatively high prevalence and large variety of partnerships that have been established to prevent and combat money laundering. This concerns both public-public and public-private partnerships.

Money laundering threats with the greatest potential impact

The fifteen money laundering threats with – according to money laundering experts – the greatest potential impact are shown categorized in table S1. The level of the potential impact of the threats has been determined by means of an MCA. Experts used the following six criteria to make quantitative estimates that ultimately determined the level of the potential impact: 'deterioration of financial system stability', 'undermining of authority and legal order', 'encroachment of the regular economy', 'disruption of social order', 'infringement of the image of the Netherlands abroad', and 'reduction of subjective/objective security'. The money laundering threat that experts say has the greatest potential impact is 'money laundering via cashless transactions with licensed banks'. 'Money laundering via the physical movement of cash' has the lowest potential impact. Most money laundering threats have a potential impact with an impact level of 50 to 59 on a 0 to 100 scale.

Table S1 The fifteen largest money laundering threats

Threats	Potential impact level (scale from 0-100)
Money laundering via cashless transactions with licensed banks	60 to 69
Money laundering via constructions at trust offices	
Money laundering via offshore companies	
Money laundering via legal entities	
Money laundering via services/goods of (large value) traders	
Money laundering via trade based constructions with services	
Money laundering via the use of intermediaries	50 to 59
Money laundering via investment institutions/companies	
Money laundering via trade based constructions with goods	
Money laundering via ABC transactions	
Money laundering via loan back constructions	
Money laundering via falsification of company turnover	
Money laundering via crypto currencies	
Money laundering via underground banking, including unlicensed payment service providers	40 to 49
Money laundering via the physical movement of cash	

One of the identified fifteen largest money laundering threats has a 'future' character: money laundering via investment institutions/companies. Experts believe that this threat is already occurring, but cannot yet indicate how and on what scale. There appears to be hardly any knowledge and/or information about this money laundering method. Therefore, this NRA does not contain a case description of

money laundering via investment institutions/companies. In a validating interview it was noted that the greatest risk is expected to lie with unlicensed and/or foreign-based investment institutions/companies.

A multitude of methods can be used to launder criminal money, whether or not in combination with each other. Money laundering methods can take place in the different phases of the money laundering process (placement, layering and integration phase). In this second NRA, for each identified money laundering threat, the nature and mechanisms of the threat have been addressed, in most cases these are clarified using case descriptions. Some of the identified threats concern money laundering methods that are quite simple in nature, others are methods of a very complex nature. Some identified money laundering threats can be part of other threats, and many of the identified threats can be deployed in combination.

With regard to predicate offences, a recent study into the nature and size of criminal spending shows that drugs and financial fraud together account for more than 90% of the money laundering needs of criminals in the Netherlands. In that study, the size of fraud is estimated to be about three times higher than of drug crime. The in-depth interviews and expert meetings that took place as part of the NRA have not shown that certain money laundering methods can be related in particular to specific types of crime. It has, however, been mentioned that drug crime has a greater use of cash compared to financial fraud, which influences the need (or lack of it) to place the criminal money in the financial system, which in turn has consequences for the types of money laundering methods that a criminal uses.

Resilience of policy instruments

The available policy instruments for the prevention and combating of money laundering include all relevant instruments arising from international and national laws and regulations, municipal ordinances and regulations, sectoral and sector-oriented regulations, and regulations at organizational level. However, in this NRA the term 'policy instrument' is interpreted more broadly than just laws and regulations. According to experts, guidelines, guidances and policy plans of organizations that play a role in the prevention and/or combat of money laundering can also be seen as policy instruments. Partnerships between organizations with a role in the prevention and/or combat of money laundering are also seen by experts as a policy instrument. Table S2 provides an overview of the policy instruments that were available in 2019 to prevent and combat money laundering.

Money laundering experts have estimated the mitigating effect of the total package of existing policy instruments on the potential impact of the fifteen largest money laundering threats. In their assessment of the resilience of the policy instruments, experts took into account the policy instruments that existed at that time. This means that in their assessment they have not taken into account laws and regulations and other policy instruments that have been or will be introduced since the start of 2020. The results of the expert meeting are shown categorized in table S3.

Table S2 Policy instruments prevention and combat of money laundering

International laws and regulations	National laws and regulations	Other policy instruments
FATF-recommendations	Money Laundering and Terrorist Financing Prevention Act	National partnerships
EU Anti-Money Laundering Directive	Financial Supervision Act	International partnerships
EU Regulation on Controls of Cash	Dutch Penal Code	Sectoral and sector-oriented regulations and terms and conditions
Wire Transfer Regulation 2	Code of Criminal Procedure	Guidelines, guidances and policy plans
	Trust and Company Service Providers (Supervision) Act 2018	
	Public Administration Probity Screening Act	
	Legal Entities Supervision Act	
	Commercial Register Act 2007	
	Tax legislation	
	Economic Offences Act	
	Right to report Tax and Customs Administration 2003	

Resilience scores above 60% for one money laundering threat, namely for 'money laundering via cashless transactions with licensed banks'. This means that, according to experts, the total available policy instruments counteract this money laundering threat by more than 60%. Other threats in which the available policy instruments, according to experts, have a relatively high resilience are 'money laundering via constructions at trust offices' and 'money laundering via investment institutions/companies'. An important note here is that the experts have estimated the resilience to these threats as high because they based their judgement on *licensed* institutions incorporated *in the Netherlands*. The resilience to money laundering through constructions with *foreign* offshore companies is much lower. Validating interviews confirmed that the resilience to *foreign* and/or *unlicensed* institutions/companies is relatively low.

Table S3 Resilience total package of policy instruments per money laundering threat

Threats	Resilience level (scale from 0-100)
Money laundering via cashless transactions with licensed banks	60 to 69
Money laundering via constructions at trust offices	50 to 59
Money laundering via investment institutions/companies	
Money laundering via falsification of company turnover	
Money laundering via legal entities	
Money laundering via ABC transactions	40 to 49
Money laundering via the use of intermediaries	
Money laundering via loan back constructions	
Money laundering via services/goods of (large value) traders	
Money laundering via trade based constructions with goods	30 to 39
Money laundering via offshore companies	
Money laundering via the physical movement of cash	
Money laundering via trade based constructions with services	20 to 29
Money laundering via crypto currencies	
Money laundering via underground banking, including unlicensed payment service providers	10 to 19

Although the available instruments have a clearly mitigating effect on the fifteen largest money laundering threats that are central to this NRA, these threats can still have a greater or lesser impact. The extent to which the so-called AIU principle, already introduced in the first NRA, applies to money laundering threats, affects the resilience of the policy instruments. Most money laundering methods have one or more of the following three components: Anonymity (the method conceals the identity of the money laundering criminal), International (the method has an international character and is used via or from abroad) and Unregulated (the method relates to or is used in an unregulated sector). The more the AIU elements apply to money laundering threats, the lower the resilience of the policy instruments for the prevention and combating of the threats. With such threats the money laundering criminal's chance of being caught is therefore relatively low.

Effective prevention and combating of money laundering threats with a strong international component requires close cooperation and exchange of information at international level between supervisory, investigative and law enforcing authorities, something that is often difficult to realize in practice, partly due to different money laundering definitions, law enforcement practices and different legal systems. The available policy instruments are, according to experts, only limitedly equipped to effectively counter money laundering threats at (financial) institutions and service providers operating without a license, for example in underground banking. Finally, relatively low resilience is found for methods that increase the anonymity of transactions, such as money laundering via crypto currencies, underground banking and the physical movement of cash.

Largest money laundering risks in the Netherlands

By balancing the estimated potential impact of the largest money laundering threats against the estimated resilience, insight has been obtained into the largest money laundering risks in the Netherlands, ranked by their residual potential impact (RPI).

Table S4 Residual Potential Impact (RPI) of the fifteen largest money laundering risks

Risks	RPI score (scale from 0-100)
Money laundering via crypto currencies	
Money laundering via trade based constructions with services	
Money laundering via underground banking, including unlicensed payment service providers	36 to 40
Money laundering via offshore companies	
Money laundering via services/goods of (large value) traders	
Money laundering via trade based constructions with goods	
Money laundering via legal entities	31 to 35
Money laundering via the use of intermediaries	
Money laundering via ABC transactions	
Money laundering via loan back constructions	
Money laundering via the physical movement of cash	26 to 30
Money laundering via constructions at trust offices	
Money laundering via falsification of company turnover	
Money laundering via investment institutions/companies	
Money laundering via cashless transactions with licensed banks	21 to 25

Five of the fifteen money laundering risks are in the highest category with an RPI score of 36 to 40 on a scale that can theoretically run up to 100. 'Money laundering via cashless transactions with licensed banks' has the lowest RPI score, which is the result of the relatively highly estimated resilience concerning this risk. It can be concluded that the impact that money laundering threats can have, is considerably mitigated by the available policy instruments.