

Summary

National Risk Assessment on Money Laundering

Background

Dutch policy to prevent and combat money laundering is based on the recommendations of the Financial Action Task Force (FATF) and EU directives and regulations. The FATF - an intergovernmental body set up by the G7 in 1989 - focuses on global prevention of money laundering, terrorist financing and other related threats to the integrity of the international financial system. Members of the FATF, including the Netherlands, have committed themselves to implement the forty FATF recommendations to prevent and combat money laundering, terrorist financing and the financing of proliferation and to implement measures to improve national legal and regulatory systems and international cooperation in this field. The majority of the FATF's recommendations has been adopted into the fourth EU Anti-Money Laundering Directive, applicable to all EU member states. In short, 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)*.

The Ministry of Finance and the Ministry of Security and Justice¹⁵² have commissioned the Research and Documentation Centre (WODC) to carry out the first NRA. The goal of this NRA is to identify the ten most significant risks relating to money laundering in terms of their potential impact and to assess the 'resilience' of the policy instruments designed to prevent and combat money laundering. Resilience entails the functioning of policy instruments (including legislation), whereby the following is applicable: the greater the resilience, the more the risks are combatted. This initial NRA also describes a number of lessons learned that could be taken into account in the process of subsequent NRAs.

The WODC also conducted a NRA on terrorist financing at the same time as this NRA. For this purpose, the same research methodology was used and largely the same expert organisations were consulted.

What is money laundering?

Money laundering can be defined in both legal and economic terms. From a legal perspective, money laundering is when somebody hides or conceals the true nature, origin, place where it was found, disposal or relocation of an object; or hides or conceals 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 crime. From an economic perspective, the process focuses on how money obtained from criminal activity is introduced into the legal financial system with a view to conceal the

¹⁵² Since the Rutte III cabinet took office, on 26 October 2017, the Ministry of Security and Justice has been renamed Ministry of Justice and Security. Because the NRA was completed before the installation of the new cabinet, we refer to this ministry with the old name.

criminal origin of the money. In general, the process of money laundering can be divided into three stages:

- Placement: criminal funds are introduced into the financial system.
- Concealment: the origin of the criminal funds is concealed.
- Integration: the criminal funds are invested in legal projects, objects or goods.

Money laundering is always preceded by some form of crime, such as drug trafficking, human trafficking, theft or social/tax fraud. Many different channels are used to launder the proceeds of crime, such as banks, providers of payment services and real estate. Within these channels, many different methods are applied that are connected to the aforementioned money laundering stages.

Research methodology

The research methodology used for this initial NRA is qualitative in nature and predominantly based on experts' opinions and estimates. In short, the research methodology involves the following:

- A context analysis that depicts specific circumstances in the Netherlands that are believed to be of influence in regard to the prevalence of money laundering. For the purposes of this context analysis, a literature study was conducted.
- In order to identify threats relating to money laundering, the following activities were conducted:
 - An extensive literature study (examining six foreign NRAs, the European Supranational Risk Assessment, the National Threat Assessment for Organised Crime 2017-2021 and other relevant reports).
 - An e-mail questionnaire was sent to representatives of supervisory, investigative and law enforcement authorities in the area of money laundering, as well as umbrella or sector organisations of entities that are obliged to report unusual transactions. In this report, such organisations are referred to as 'expert organisations'¹⁵³.
 - Interviews were held with academics and representatives of expert organisations.
- An initial expert meeting was conducted in which representatives of expert organisations identified the money laundering risks which they perceive as having the most significant potential impact. They also estimated the potential impact of these risks.
- After the expert meeting, an e-mail questionnaire was sent to the participants to inquire which data reflect the prevalence of the ten identified risks. In the questionnaire, the experts were also asked if these data were available to third parties and which other – now unavailable – data exist that reflect the prevalence of the ten identified risks.
- In a second expert meeting, representatives of expert organisations assessed the resilience of the available policy instruments designed to prevent or combat the ten risks.
- In the final stage of the research, a series of validation interviews were conducted with key experts with the primary purpose of examining to what extent they recognise the identified risks and whether any significant risks have been overlooked.

¹⁵³ These include a substantial number of organisations such as the Public Prosecution Service, the National Police, the Financial Intelligence Unit - the Netherlands, The Dutch Central Bank and the Dutch Authority for the Financial Markets.

What makes the Netherlands vulnerable to money laundering?

According to various studies, the Netherlands is vulnerable to money laundering due to its open, commerce-oriented economy, its vast and internationally oriented financial sector and the scale of criminal income from fraud (including tax fraud) and drug-related crime. These are the conclusions issued by the FATF in its Mutual Evaluation Report of the Netherlands of 2011. These results were confirmed by research and publications by other institutes, including publications recently released in 2017. In addition, the results of the Transcrime project IARM¹⁵⁴ show that the Dutch gambling, catering, and art and entertainment sectors are vulnerable to money laundering due to the involvement of organised crime, the occurrence of fraudulent activity, the widespread use of cash in these sectors and lack of clarity regarding ultimate beneficial owners. This latter aspect was also mentioned in a recent report by Transparency International Netherlands, in which the Netherlands is considered lagging behind with regard to the central registration of ultimate beneficial owners.

However, the Netherlands also has characteristics that make it less vulnerable to money laundering in comparison to other countries. For example, the extent of organised crime in the Netherlands is relatively small and there are very few black markets for smuggled goods.

Risks relating to money laundering

The representatives of expert organisations selected ten most significant risks in terms of potential impact from a longlist of threats related to money laundering. This longlist has been whittled down by experts using a two-step process resulting in the ten risks in terms of the most significant potential impact. They then estimated the potential impact of these risks over two rounds by means of a multi-criteria analysis.

Table S.1 The ten main money-laundering-related risks according to the experts

Risk	Potential risk level (on a scale of 0-100)
Money laundering via financial institutions (especially banks)	71-75
Money laundering via payment-service providers	
Money laundering via trust offices	61-70
Money laundering via offshore firms	
Money laundering to conceal the actual value	
Trade-based money laundering	
Money laundering via fiscal driven/complex corporate structures	
Money laundering via virtual currencies	55-60
Money laundering via the relocation of cash funds to/from the Netherlands (via underground banking or otherwise)	
Money laundering via national and international investment structures for value transfer	

The estimated potential impact of the ten most significant risks related to money laundering are displayed as a range (see Table S.1). A range was used as the maximum and the minimum risk levels of the risks were not substantially far apart,

¹⁵⁴ The full name of the Transcrime project is: "Identifying and Assessing the Risk of Money Laundering in Europe".

a number of risk levels were relatively close to one another and not all estimates by the experts were or could be entirely substantiated. Money laundering via financial institutions was assessed as having the highest potential impact. Experts attributed the highest potential risk level to bank services since they risk being abused due to the vast amounts of money involved in their operations.

During the expert meeting, the attention focused on money laundering risks that the participants believe to exist *at this current moment*. During both the expert meeting and the in-depth interviews, only limited information was obtained regarding possible 'future risks'. One possible future risk that was mentioned relates to the 'new economy', reflecting global technological changes in fields as telecom and the internet. The introduction of new technologies, products and services creates new opportunities for criminals to launder their illicit income. One of the ten risks identified during the expert meetings – money laundering via virtual currencies – is 'future-oriented' in nature. As the experts have as yet barely encountered this risk in their everyday professional practice, the substantiation of this risk leaves something to be desired. At the same time it was considered that despite the considerable fluctuations in value of several virtual currency denominations such as bitcoin, ethereum and monero in the last year, the overall trend is a vast and steady value increase of 'crypto currencies'. Virtual currencies were identified as a possible future risk mainly because of the attention generated by this sharp increase in value and the (as yet) limited resilience of the instruments to mitigate the risks.

Resilience of policy instruments

The available policy instruments targeting the prevention and/or combat of money laundering include the relevant instruments stemming from local, national and international legislation, sector-oriented regulations, and regulations within organisations. The intention of this NRA was not to create a complete list of these policy instruments: the research focused on the policy instruments mentioned by the representatives of the expert organisations during the second expert meeting.

With regard to national legislation, the Money Laundering and Terrorist Financing Prevention Act is an important instrument in preventing money laundering. The Act imposes a number of obligations on financial institutions and designated non-financial businesses and professions (the DNFBPs) such as obligations to undertake customer due diligence measures (obligatory identification of the customer and the ultimate beneficial owner) that need to be enhanced if there are higher risks of money laundering, and to report unusual transactions of customers to the Financial Intelligence Unit –the Netherlands. Other national laws and regulations relevant for combatting money laundering include the Act on financial supervision (regulating the financial sector in the Netherlands), the Dutch Penal Code, the Trust Offices Supervision Act (regulating the integrity of trust offices), Dutch tax law, the Public Administration Probity Screening Act (Bibob Act) and the Commercial Register Act 2007.

There is also specific European legislation to combat money laundering. Primarily, there is the fourth EU Anti-Money Laundering Directive, which is currently being transposed into national law. There is also the EC Regulation on controls of cash entering or leaving the Community, which obliges all natural persons who enter or leave the EU in possession of EUR 10,000 or more in cash to report this to the authorities. Furthermore, the revised Wire Transfer Regulation obliges all payment-

service providers and intermediary payment-service providers to record information not only about the sender, but also the recipient.

The sector also has a number of self-regulatory measures to prevent and combat money laundering, such as the general banking terms and conditions that describe the rules of conduct between banks and their customers. Furthermore, banks affiliated with the Dutch Banking Association and the Dutch Finance Houses' Association can record the names of clients who committed money laundering in their collective fraud-prevention system (the External Referral Application).

The experts who were consulted during this study indicated that in principle, they are positive about the instruments at their disposal. According to them no important elements are missing. However, this does not mean that they believe the available policy instruments can entirely eliminate the risks relating to money laundering. During a second expert meeting, the experts were invited to consider to what degree the identified risks would be eliminated by the application of the policy instruments. They estimated that the instruments would reduce the money laundering risks identified in this NRA by around one-third (see Table S.2).

Table S.2 Average resilience of the entire range of policy instruments per risk

Risk	Type of risk	Resilience (on a scale of 0-100%)
Money laundering via financial institutions (especially banks)	Money-laundering channel	41-50%
Money laundering via payment-service providers	Money-laundering channel	
Money laundering via trust sector	Money-laundering channel	
Money laundering via fiscally driven/complex corporate structures	Money-laundering method	31-40%
Money laundering via national and international investment structures for value transfer	Money-laundering method	
Money laundering via relocation of cash funds to/from the Netherlands (via underground banking or otherwise)	Money-laundering method	
Money laundering to conceal the actual value	Money-laundering method	21-30%
Money laundering via offshore firms	Money-laundering method	
Trade-based money laundering	Money-laundering method	
Money laundering via virtual currencies	Money-laundering method	11-20%
Average resilience		32%

The resilience of the policy instruments is relatively highest for the risk of 'money laundering via financial institutions (especially banks)' and 'money laundering via payment-service providers' since these sectors are regulated, and (prohibited) anonymous transactions, according to experts, are addressed effectively in the Netherlands. At the same time the experts noted that the available policy instruments to prevent and/or combat money laundering have its limitations in an international environment, for example in trade-based money laundering and money laundering via offshore firms. For the combat of money laundering in an international/cross border context international collaboration and data sharing between supervisory, investigative and enforcement bodies is key. However, such international collaboration appears difficult to realise in practice because of different definitions of money laundering and different judicial systems. The experts also believe the available policy instruments are insufficient to effectively mitigate money laun-

dering risks involving unlicensed financial institutions and service providers, for example, unlicensed payment-service providers or underground banking. Furthermore, there is a relatively low level of resilience against unregulated methods allowing anonymous transactions, such as money laundering via virtual currencies and underground banking. The nature and methodology of virtual currencies is still evolving, hence, the risks have not yet been fully crystallised. For this type of risk, the experts believe that the existing policy instruments offer only limited resilience.

In conclusion

The initial NRA gave insight in the ten risks that experts believe to have the most significant potential impact and in the resilience of the policy instruments available for the prevention and/or combat of money laundering. As mentioned earlier, the research methodology used for this initial NRA is qualitative in nature and is predominantly based on experts' opinions and estimates. During subsequent NRAs, efforts could be made to ensure the research methodology is more data-oriented, as this will reduce dependency on possibly subjective expert opinions and mitigate the risks involved in this. Quantitative data could be incorporated into expert meetings as much as possible in order to help 'synchronise' the experts' frames of reference. Also, the longlist of threats should – to the greatest extent possible – be based on available data that indicate the prevalence and potential impact of these threats. Finally, greater substantiation could be given for the identification of the ten risks, preferably backed up with data.

During the expert meetings for this first NRA, there was not sufficient time to substantiate all expert opinions or to elaborate case studies. As a result, certain parts of this NRA are more general in nature. In the next NRA, attention could be paid to deepen the insight in the risks relating to money laundering and the resilience of the policy instruments.