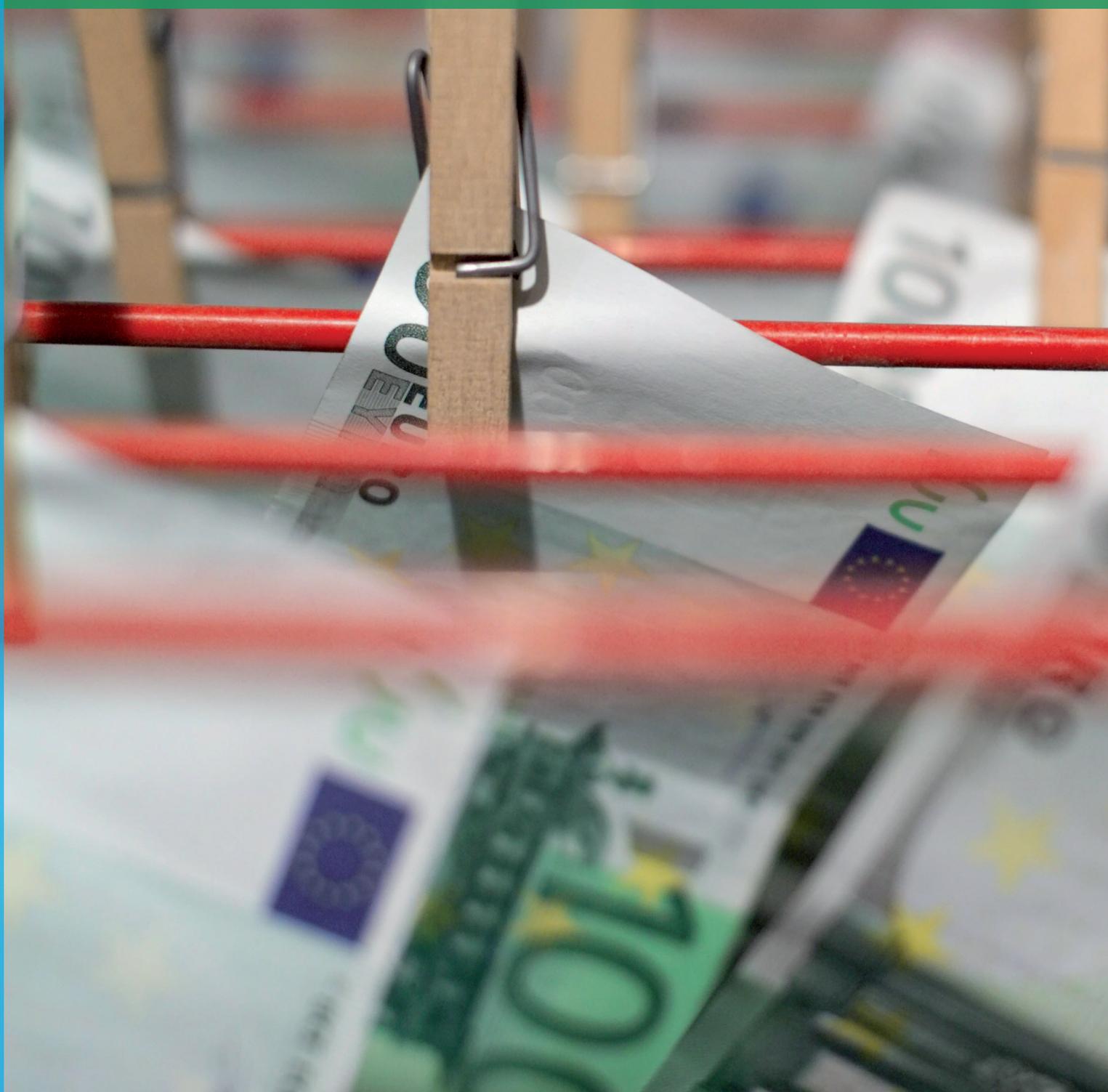




Combating money laundering: state in 2013



Combating money laundering: state in 2013

The original report *Bestrijden witwassen: stand van zaken 2013* was adopted on 25 February 2014 and presented to the Dutch House of Representatives on 6 March 2014.

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This audit in brief

Background

In 2008 we carried out an audit of the measures taken to combat money laundering and terrorist financing in the Netherlands (Court of Audit, 2008). We concluded that:

- too little was still being done to prevent money laundering;
- the probability of its being detected and punished was low;
- law enforcement agencies and the Public Prosecution Service were still making too little use of their powers to confiscate the proceeds of crime.

These results were disappointing given the many measures taken by the Minister of the Interior and Kingdom Relations, the Minister of Finance and the Minister of Justice to combat money laundering. We attributed this lack of notable results to the limited capacity and expertise of some organisations in the anti-money laundering (AML) system, deficiencies in the exchange of information between organisations in the system, and the absence of system-wide management by the responsible ministers.

In this audit we examine what developments relevant to the explanations given above have occurred since the publication of our 2008 report. Have the responsible ministers (now the Minister of Finance and the Minister of Security and Justice) improved the AML system?

Conclusions

Although we conclude that the responsible ministers have invested in strengthening capacity, expertise and information exchange, they cannot yet say to what effect. For example, they have no insight into the main money laundering risks in the Netherlands or about the results of anti-money laundering efforts, despite the availability of such data. Nor, in our view, have the ministers improved the feedback to disclosing institutions about what action the law enforcement agencies take on suspicious transactions. Indeed, if anything there is now less information available to the Financial Intelligence Unit-Netherlands (FIU-NL) about this.

The responsible ministers need insight into the money laundering risks and the results of the AML measures not only to manage the organisations involved in combating money laundering but also to render account to the House of Representatives for the use of resources and to gauge whether extra expenditure (of the kind already incurred) actually produces results. This lack of insight is a cause for concern, particularly in view of the international guidelines to which the Netherlands has committed itself. As the Netherlands is thus unable to comply with the obligation to furnish information about the effectiveness of its AML efforts, this may harm the image of the integrity of its financial markets.

Recommendations

We make the following recommendations to the Minister of Finance and the Minister of Security and Justice:

- Arrange for information to be available about the principal money laundering risks facing the Netherlands, making use of the studies already carried out and the knowledge available at the organisations involved in AML measures.
- Start gathering and analysing qualitative and quantitative data about the activities of the organisations involved in combating money laundering and collate these with the AML policy objectives. Use as reference the study by Tillaart (2012) and the

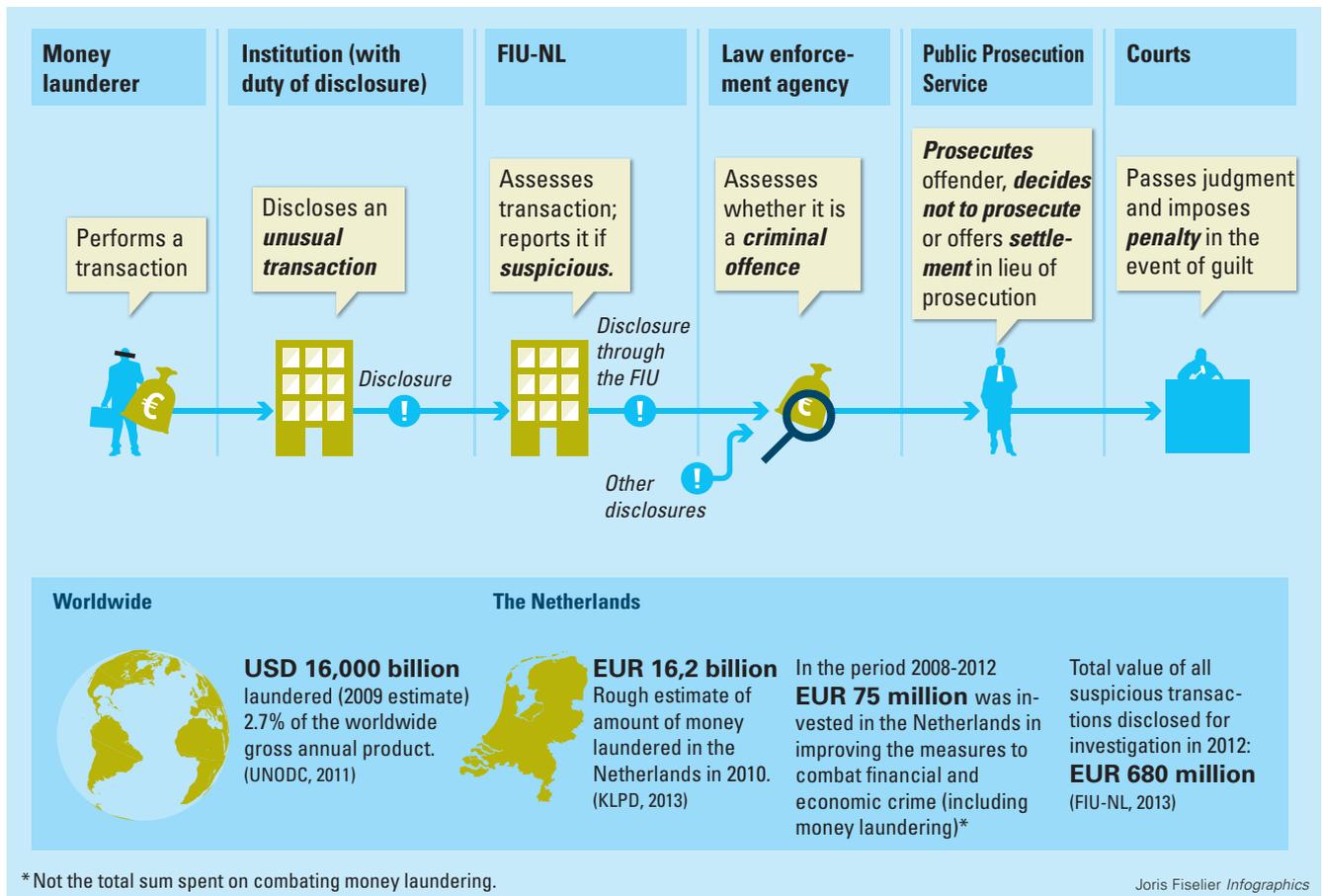
FATF's new methodology (2013). Also use them in formulating the AML policy monitor.

- Make clear in the 2015 budget what money laundering risks must be tackled and what contribution the organisations involved in AML measures must make.
- Inform the House of Representatives in the ministry's annual report or, if necessary, more frequently about the extent to which policy objectives are achieved.
- Provide more information about the effect of disclosures of unusual transactions.

Combating money laundering: how is it done and how much is at stake?

The figure below shows how the anti-money laundering system works and how much is at stake. In Annexe 1 we describe what money laundering is, the policy pursued to combat it, how AML measures are organised and the international obligations the Netherlands must fulfil.

Figure 1 AML enforcement system and key figures¹



¹ Following receipt of the responses, we supplemented our diagrams illustrating the enforcement system with an 'other disclosures' arrow. This is because criminal investigations are instituted not only as a result of reports from the FIU-NL but also other reports.

Responses

We have received responses to our audit from the Minister of Security and Justice and the Minister of Finance. The organisations that have responded are the Financial Supervision Office, the National Police, De Nederlandsche Bank, the committee of regional mayors and the Council for the Judiciary.

The respondent organisations largely endorse our conclusions and recommendations.

Their responses also address the measures that have been and are being taken to:

- gain more insight into money laundering risks;
- gain more insight into the effectiveness of AML measures;
- regularly provide the House of Representatives with information about money laundering risks and the AML measures;
- gain more insight into the effect of disclosures of unusual transactions.

However, the respondents state that our audit gives an unduly narrow picture of the activities which they and others undertake to combat money laundering.

In chapter 3 we summarise the main points from the various responses. The full texts of the responses can be consulted at our website: www.rekenkamer.nl.

Afterword

We note that the parties concerned largely endorse our conclusions and recommendations. We welcome the fact that the ministers intend to keep the House of Representatives regularly informed of the results of the AML measures. We also expect, however, to see this information included in the budget and the financial statements of the Minister of Security and Justice and the Minister of Finance. We are also concerned about whether the ministers will succeed in making the promised improvements in good time.

As our audit is a review of the main conclusions and recommendations of our 2008 report, we have disregarded preventive activities and not taken account of all developments. The developments mentioned by the ministers in their response are helpful in providing a complete picture. In view of the responses we have received, we have supplemented our diagrams of the AML system in order to better reflect the efforts of those concerned.

1 Capacity, expertise and exchange of information improved

Since 2008 the Minister of Finance and the Minister of Security and Justice have allocated resources to increasing the capacity and expertise of the anti-money laundering (AML) organisations and improving the exchange of information between them.

In Annexe 1 we define money laundering and explain the policy pursued to combat it, how AML measures are organised and the international obligations that the Netherlands must fulfil.

Improvements in supervision of institutions with a duty of disclosure

- The capacity of the Financial Supervision Office (BFT) to supervise the Money Laundering and Terrorist Financing (Prevention) Act (WWFT) has remained virtually unchanged (13 FTEs).
- In the period 2008-2012 the BFT still had no independent right to inspect notaries' files owing to the principle of client confidentiality. This problem was resolved on 1 January 2013 when the new Notaries Act came into force. Now a notary can no longer invoke client confidentiality if the BFT wishes to inspect files to assess whether the notary is complying with the duty of disclosure.
- The supervision of lawyers by the BFT is still hampered by the principle of client confidentiality. A bill is now before the House of Representatives to amend the Counsel Act so that lawyers are no longer subject to supervision by the BFT. This will have the effect of removing 16,000 lawyers from the group that is subject to the BFT's supervision (see Figure 2).

Improvements at law enforcement agencies

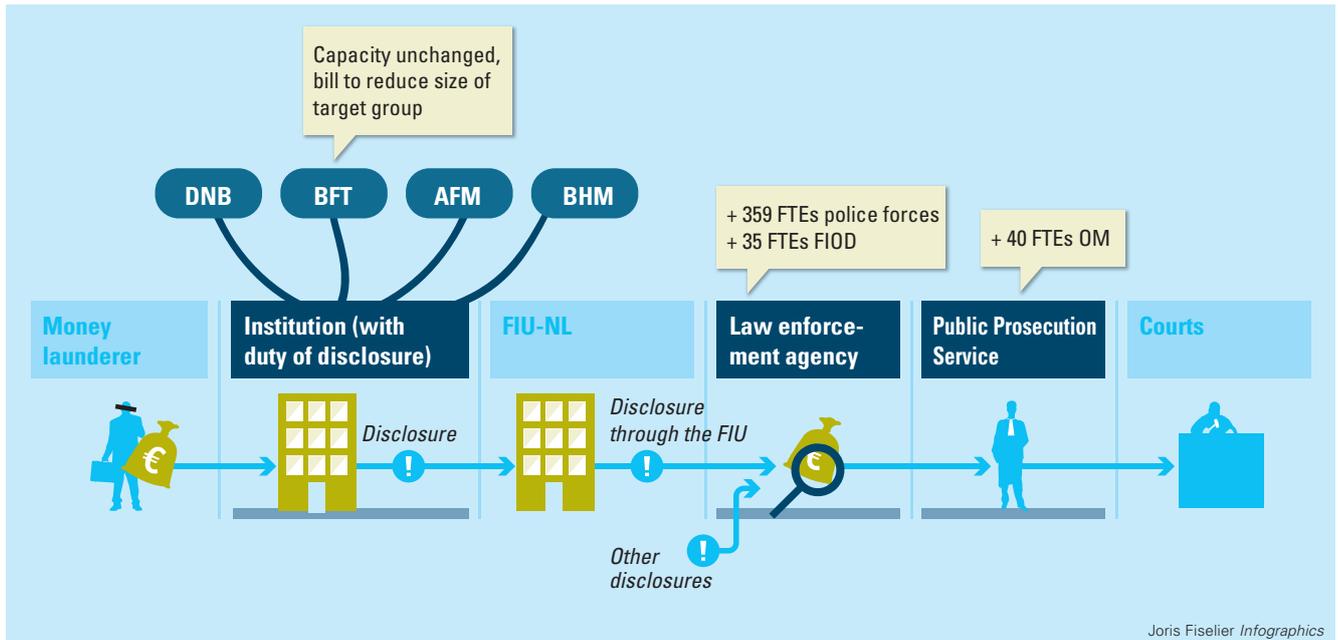
- The capacity of the police forces² for tackling financial and economic crime was increased in the period 2008-2012 by 359 FTEs (202.85 + 156, rounded up) (see Figure 2). The programme of action to tackle Financial and Economic Crime (FINEC) was allocated 202.85 FTEs and, according to the police, the system-wide criminal assets confiscation programme was good for a further 156 FTEs (for an explanation of these programmes, see Annexe 1, under the heading 'Policy objectives of combating money laundering'). This increase has helped to boost the financial and economic investigative capacity of the participating regional forces, supra-regional crime squads and the Dutch Police Services Agency and led to the establishment of money laundering teams.
- Through the FINEC programme the ministers have also invested in police training, upgrading financial expertise and ensuring that financial investigation is a standard part of police investigation procedure.
- The fourth Balkenende government allocated an extra 35 FTEs to the Fiscal Information and Investigation Service (FIOD) in 2008 for money laundering investigations (see Figure 2). As a result, the FIOD now has 100 FTEs solely for this category of investigation. It has used the 35 extra FTEs to staff an AML centre and establish two AML teams. Subsequently, the FIOD (together with the Public Prosecution Service (OM) and the National Crime Squad (DNR)) obtained funding

² On 1 January 2013 the regional police forces, supra-regional crime squads and Dutch Police Services Agency were subsumed into the National Police.

in 2012 from the criminal assets confiscation programme, which resulted in the establishment of a joint team.

- The 2012 coalition agreement of the Rutte/Asscher government includes a provision that the enforcement capacity of the Tax and Customs Administration will be bolstered by an injection of EUR 157 million, EUR 11 million of which is earmarked for combating money laundering. On this basis the FIOD is obtaining an additional 100 FTEs for specialised AML operations. An AML programme director was appointed at the FIOD on 1 January 2013.

Figure 2 Anti-money laundering enforcement system: capacity increase 2008-2012



Improvements at the Public Prosecution Service

- Since 2008 the Minister of Security and Justice has invested a total of EUR 6.4 million in FINEC-related activities, particularly in increasing staff capacity and in projects to improve standards.
- In 2011 and 2012 the Minister allocated sums of EUR 1.9 and EUR 4.1 million respectively from the system-wide criminal assets confiscation programme to the Public Prosecution Service. EUR 5.7 million was earmarked for the same purpose in 2013 and EUR 6.2 million from 2014 onwards. According to the Public Prosecution Service, this expenditure has been used to fund:
 - the establishment of confiscation teams at the public prosecutor's offices at the courts;
 - the creation of a nationwide pool of specialists;
 - expansion of the capacity of the Public Prosecution Service by 40.2 FTEs (see Figure 2).

Improvements in the exchange of information

Between 2008 and 2012 various initiatives were taken to improve the exchange of information and cooperation between supervisory authorities, the Financial Intelligence Unit-Netherlands (FIU-NL) and the law enforcement agencies. Examples are:

- The Financial Expertise Centre (FEC) is an organisation in which the Netherlands Authority for the Financial Markets (AMF), the General Intelligence and Security

Service (AIVD), the Tax and Customs Administration/FIOD, De Nederlandsche Bank, the Public Prosecution Service and the National Police work together for the purpose of monitoring and strengthening the integrity of the financial sector. The FEC's reorganisation in 2008 has helped to improve cooperation and the exchange of information within the enforcement system.

- The changes to the Police Data Decree in 2009 (Bulletin of Acts and Decrees, 2009) have improved the exchange of information between supervisory authorities and law enforcement agencies. Under changes to the Financial Supervision Act (WFT), which took effect on 1 January 2014, the financial supervisory authorities AFM and DNB are now expressly given the power to share confidential supervisory information with their FEC partners and the BFT in certain circumstances.
- To establish the relationship between money laundering and organised crime the Public Prosecution Service and the Tax and Customs Administration jointly set up the Real Estate Intelligence Centre (VIC) in 2008.³ Other organisations that participate in this nationwide collaborative body are the FIOD, the FIU-NL and the police.
- Since 2009 the FIOD has assigned four liaison officers to the FIU-NL to arrange for the exchange of information about unusual transactions for the purposes of analysis and research.
- Since the spring of 2011 the intake of money laundering cases has been arranged at national level. The organisations participating in the case intake procedure are the Public Prosecution Service, the FIU-NL, the National Crime Squad and the FIOD. The meetings are chaired by the National Public Prosecutor for money laundering cases. The intake procedure is mainly intended for the larger cases (i.e. those involving sums of over EUR 125,000).
- A joint project was set up in mid-2012 by the FIOD, the National Crime Squad, the FIU-NL, the BFT, BHM⁴ and the Public Prosecution Service to promote compliance with the rules of the Money Laundering and Terrorist Financing (Prevention) Act (WWFT) by institutions with a duty of disclosure.
- The exchange of information between the BFT and the Tax and Customs Administration was still limited by legal impediments between 2008 and 2012. However, in 2012 the BFT and the Tax and Customs Administration concluded an agreement under which the latter reports unacceptable behaviour by accountants and auditors to the BFT. As a result of the changes to the WWFT on 1 January 2013, the scope for the exchange of information between supervisory authorities has been expanded. This is useful for the BFT, for example in its cooperation with the Tax and Customs Administration/WWFT Supervision Office, as the authority supervising real estate agents.

3

The VIC has now been transformed into the Criminal and Unexplained Assets Information Centre (ICOV).

4

Since 1 January 2013 the Central Holland Tax and Customs Administration (BHM) has been known as the Tax and Customs Administration/WWFT Supervision Office.

2 More insight into results of anti-money laundering efforts possible and necessary

Although the Minister of Finance and the Minister of Security and Justice have invested in strengthening capacity, expertise and information exchange, they cannot yet say to what effect. For example, they have no insight into the main money laundering risks in the Netherlands or on the results of the AML efforts, despite the availability of such data.

Nor, in our view, have the ministers improved the feedback to disclosing institutions about what action the law enforcement agencies take on suspicious transactions. Indeed, if anything there is now less information available to the FIU-NL about this.

2.1 No insight into main money laundering risks in the Netherlands



The amount of money laundered in the Netherlands in 2010 was estimated to be EUR 16.2 billion (KLPD, 2013), but the ministers have no insight into precisely how and where the laundering occurs. Nor is it clear which of the adverse consequences of money laundering are the most problematic. To make effective use of the resources available for combating money laundering, the minister should first carry out a risk analysis to establish:

- what sectors are susceptible to money laundering or attractive to money launderers;
- what money laundering schemes are used in different sectors and how often;
- the financial scope of money laundering in each sector, broken down according to the schemes used and how this relates to the total size of the sector;
- the negative consequences of money laundering (risks) for the Netherlands in each sector.

We have examined whether the responsible ministers have a risk analysis clearly identifying the main money laundering risks in the Netherlands.

In 2010 the Minister of Finance and the Minister of Security and Justice commissioned the FEC to perform a national threat assessment (NTA) on money laundering. This threat assessment was completed in late 2012. The aim was to ascertain what methods and techniques are used in the Netherlands to launder money and which of them poses the greatest threat to the fabric of Dutch society (FEC, 2010). The threat assessment was prompted by a recommendation adopted by the Netherlands in 2010 from an FATF report (FATF, 2010) to conduct a money laundering risk assessment at national level (Ministry of Finance, 2010).

In the threat assessment the FEC studied two money laundering methods (cash flows and fictitious sales) and one sector (the environment) and concluded that vulnerabilities and risks exist in the Netherlands and will continue to exist in future. The findings were presented to the Ministry of Finance and the Ministry of Security and Justice on behalf of the FEC Council (FEC, 2012).

The police published crime pattern analyses, including a money laundering analysis, in 2008 and 2013. Based on information from law enforcement agencies and recent literature, these analyses give a nationwide picture of serious crime in various fields. In the most recent analysis the police describe current and future money laundering methods. They also consider how the scope of money laundering can be expressed in quantitative terms and examine the actual and potential consequences of money laundering in general for the financial system and the local community in the Netherlands (KLPD, 2013).

Although the national threat assessment and crime pattern analyses provide information about the money laundering risks facing the Netherlands, they say nothing about the seriousness of these risks. Nor do they provide an overview of all the money laundering methods and techniques used, the specific risks of each method or an indication of which methods pose the greatest threat to the Netherlands. In other words, they are not in keeping with the essence of a risk analysis as envisaged in our recommendation of 2008 or as advocated by the FATF in its recommendation for a national risk assessment (see Annexe 1).

2.2 More insight into anti-money laundering results possible

In the period 2008-2012 the Netherlands spent **EUR 75 million** on improving the measures to tackle financial and economic crime (including money laundering).*

* This is not the total expenditure on combating money laundering.

No insight into results, although the data do exist

In the period 2008-2012 EUR 75 million was spent on improving measures to combat financial and economic crime in the Netherlands, including money laundering.⁵ But what effect have these measures had and is it what the responsible ministers intended? These questions still cannot be answered by the ministers.

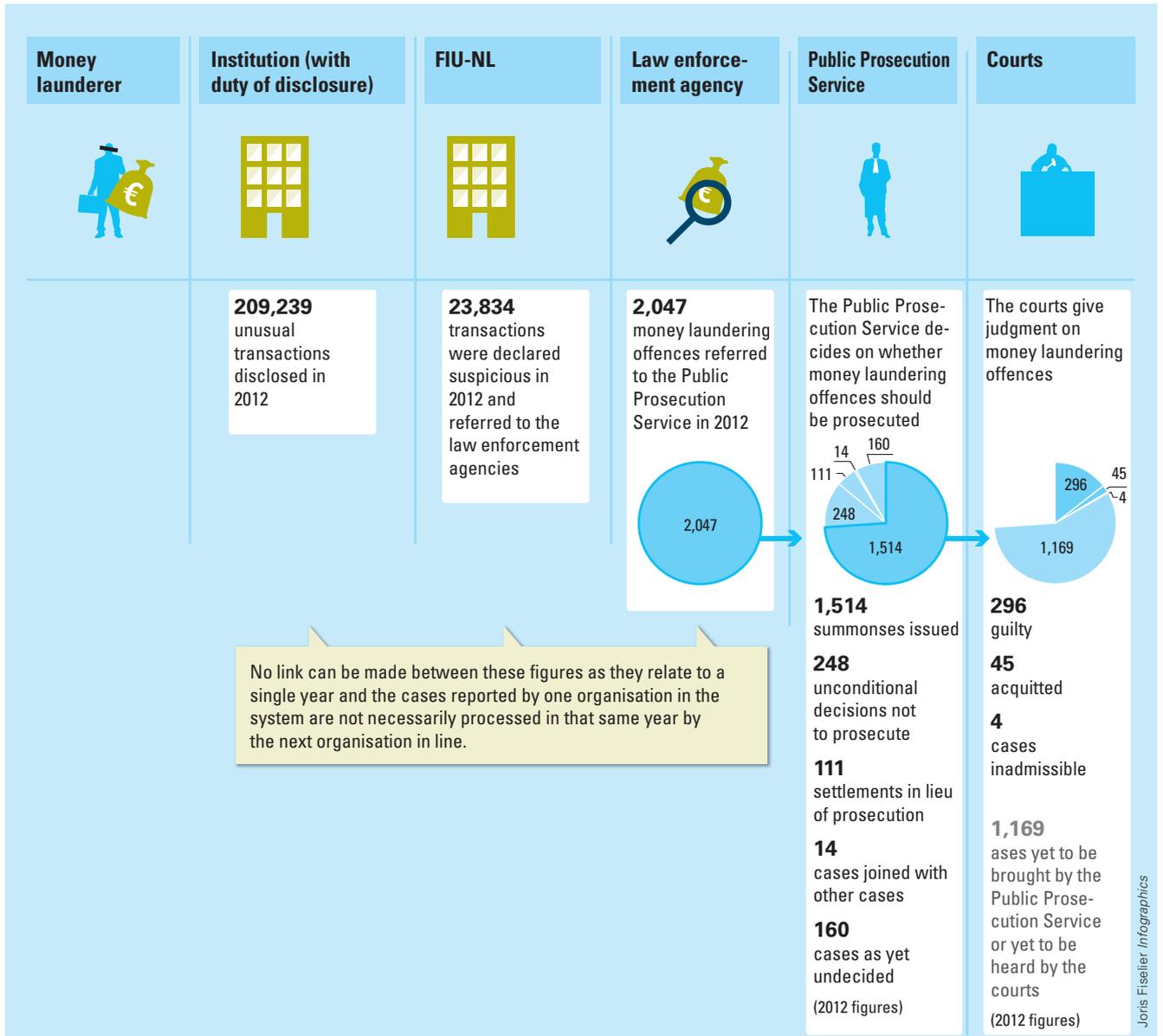
In 2008 we found that the ministers had no insight into the results of AML measures in the Netherlands. On that occasion we therefore tried to obtain this insight ourselves by gathering and collating data about the number of cases processed by the various organisations in the enforcement system at the stages of entry, handling, referral and exit. The results were disappointing in view of the many measures taken by the Minister of the Interior and Kingdom Relations, the Minister of Finance and the Minister of Justice to combat money laundering (Court of Audit, 2008).

Five years after our previous audit, the responsible ministers still have no insight into the results of the efforts to combat money laundering in the Netherlands. Just as in 2008, we have therefore gathered and analysed data on the results of the AML measures ourselves.

5

This sum was therefore over and above the ordinary expenditure on combating financial and economic crime.

Figure 3 Example of data on 2012 available at each organisation in the enforcement system⁶



Only on the basis of the data we have gathered ourselves can we show, for example, how many cases are processed (at the stages of entry, handling, referral and exit) by organisations in the enforcement system in a given year (in this case 2012). To put these numbers in a broader perspective we have compared them with previous years. This shows us, for example, that the number of money laundering offences referred to the Public Prosecution Service by the law enforcement agencies has increased in recent years (see Figure 4). The police in particular have referred more and more money laundering offences to the Public Prosecution Service. However there was a fall in the number of cases referred by the police in 2012. We do not know what caused this fall.

⁶ In view of the Council for the Judiciary's response we have indicated in this figure that the number of cases on which the courts have not yet given judgment relates to cases not yet brought by the Public Prosecution Service or cases not yet heard by the courts.

Figure 4 Number of money laundering offences referred to the Public Prosecution Service by different law enforcement agencies



It seems reasonable to assume that the increase in the number of money laundering offences referred to the Public Prosecution Service is attributable to the amounts spent on increasing the capacity and expertise of the law enforcement agencies (see chapter 1).

We have also studied the percentage of unusual transactions classified as suspicious by the FIU-NL over the years (see Figure 5). This information is interesting because it reveals changes that warrant further study. For example, an increase may indicate that the modified disclosure criteria are bearing fruit, but also that the FIU-NL is investigating more disclosures of unusual transactions or doing so more thoroughly than in the past.⁷

7

In considering the relationship between unusual transactions and suspicious transactions, it should be noted that the data cannot be compared on a one-on-one basis. The data about unusual transactions are based on the date of disclosure to the FIU-NL, whereas those on suspicious transactions are based on the date on which the FIU-NL classifies the transaction as suspicious and refers it to the law enforcement agencies. This may occur anywhere between a few days and five years after receipt of the disclosure. On average, the period that elapses between the two dates varies between 6 months and 1 year.

Figure 5 Percentage of unusual transactions classified as suspicious

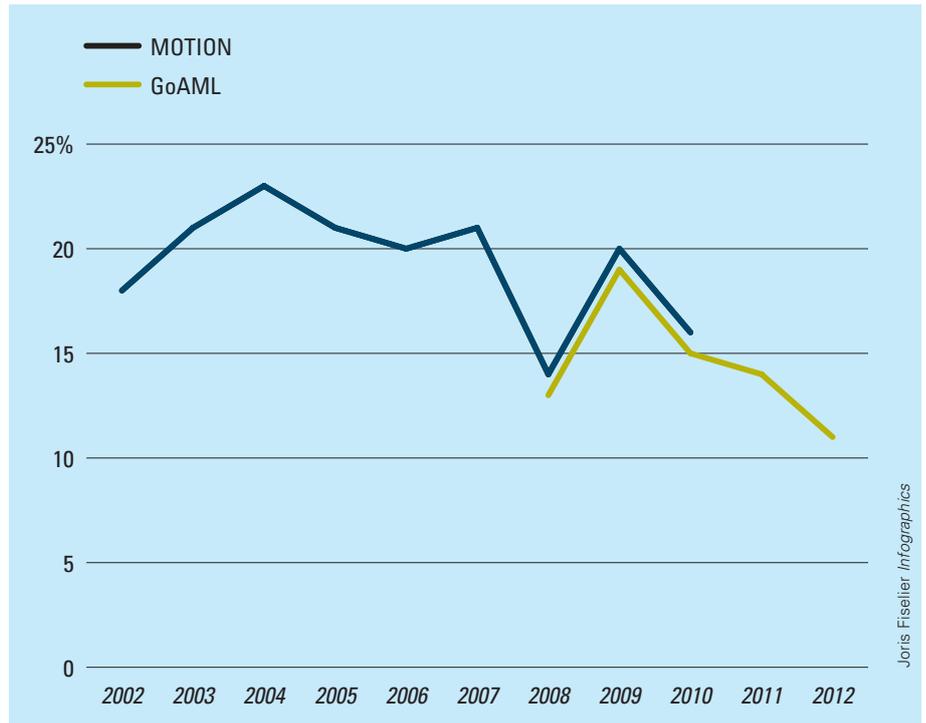


Figure 5 shows that the FIU-NL refers an increasingly small proportion of unusual transactions to the law enforcement agencies as suspicious transactions. The data used by us are also available to the ministries concerned. Those ministries could therefore have discovered these developments themselves. They could also have examined:

- why the percentage of unusual transactions classified as suspicious is falling;
- why the number of money laundering offences referred to the Public Prosecution Service by the law enforcement agencies rose until 2012 and dropped thereafter;
- how these two developments are linked.

What do the results say about the present position?

In order to gauge whether things are developing as the ministers responsible for combating money laundering intended, it is necessary to have data on AML results. Naturally, it is also necessary to know exactly what the ministers intended. However, those intentions remain unknown. There is still an absence of specific and measurable policy objectives.

In 2008 the ministers acknowledged the importance of knowing the results of the AML measures. Following publication of our report and in view of the need to gather statistical information for the mutual evaluation by the FATF, in 2010 they commissioned the Research and Documentation Centre (WODC) to develop an AML policy monitor that would enable them to periodically gauge the results of the AML measures in the enforcement system and whether the policy objectives had been achieved. The findings of the study were published in February 2013 (Tillaart et al., 2012).

The study did not produce the result desired by the ministers: it did not develop an AML policy monitor, but merely outlined four conceivable directions for follow-up steps in developing a monitor of this kind. The report's authors stated that it had not

been possible to choose performance indicators as there were no concrete and measurable policy objectives for anti-money laundering measures. They argued that without a clear indication of the goals it is also impossible to determine what indicators are relevant.

The Ministry of Finance and the Ministry of Security and Justice state that while the study was being carried out they took no steps to formulate policy objectives and indicators as they had wished to await the study's findings. They emphasise that they had certainly expected it to produce a monitor for their use. Moreover, the FATF's evaluation of the Netherlands took up capacity at both ministries. We understand that the ministers concerned are now making fresh efforts to produce an AML policy monitor.

It follows that five years after our previous audit there is still no information about the results of AML measures in the Netherlands. The AML policy monitor which was supposed to provide this knowledge has still not seen the light of day. Even without specific and measurable policy objectives the responsible ministers could have gathered and collated qualitative and quantitative data saved by the organisations in the enforcement system about their AML operations. Examples are:

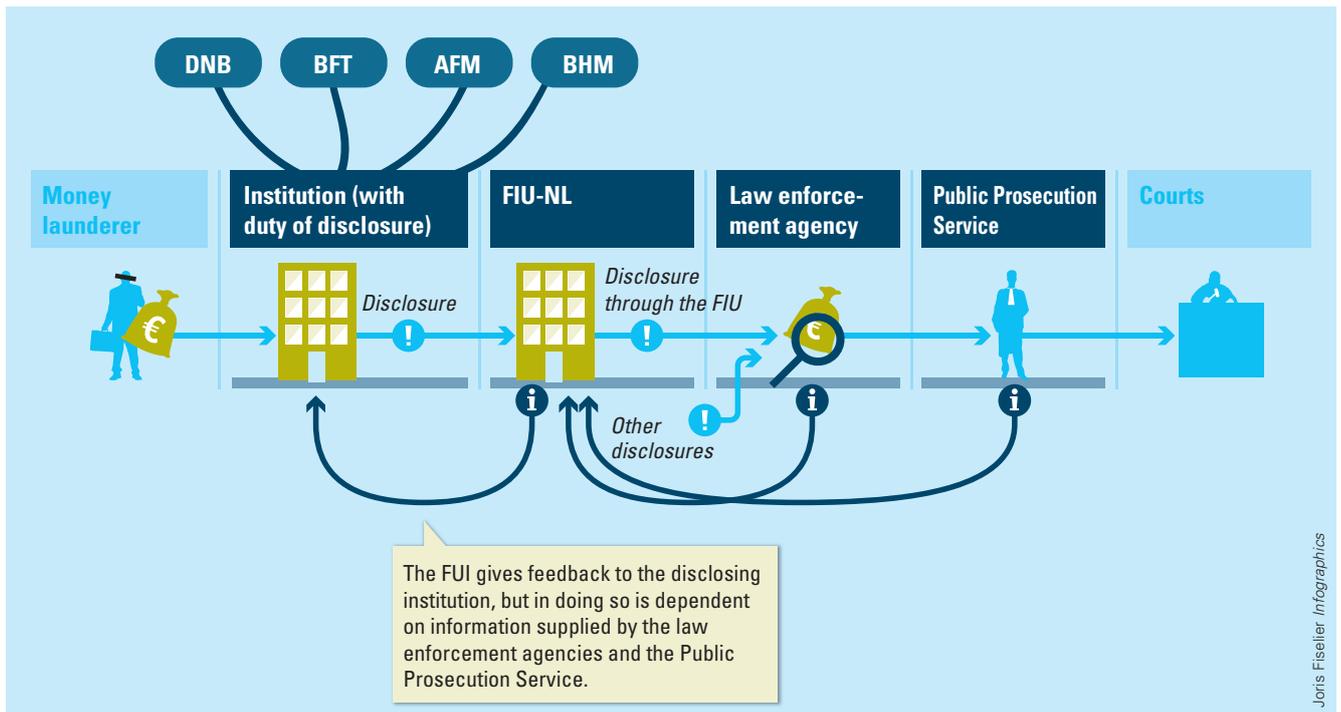
- data about the number, nature and financial scope of cases dealt with at various stages (entry, handling, referral and exit) by the different organisations in the enforcement system;
- the number and amount of the fines imposed by the supervisory authorities under the Money Laundering and Terrorist Financing (Prevention) Act (WWFT);
- the links and moments of transfer between the different organisations in the enforcement system.

Although the organisations in the enforcement system have these data available, the responsible ministers do not have them. By gathering and collating the data, the ministers could gauge the results of the various activities in the system, examine whether those results are as intended and, if necessary, make adjustments.

2.3 Less information available about the use made of disclosures

In 2008 the ministers undertook to improve the feedback to disclosing institutions about the use made by the law enforcement agencies of their disclosures of suspicious transactions. Disclosing institutions use this information to improve the quality of their disclosures. We conclude that the feedback has not improved in recent years. If anything, less information is now available to the FIU-NL about the use made of disclosures of suspicious transactions for enforcement purposes.

Figure 6 Disclosure feedback loop



When the FIU-NL furnishes information to law enforcement agencies, it agrees with them that they will provide feedback in due course about how they use this information, thereby enabling the FIU-NL in turn to provide feedback to the disclosing institution. In practice, such agreements are not always honoured. According to the FIU-NL, the law enforcement agencies give little priority to this. The FIU-NL's account managers therefore approach the law enforcement agencies to obtain feedback about how they have used disclosures about suspicious transactions. In this way the account managers monitor the use made of information supplied by the FIU-NL in response to requests by the National Public Prosecutor. The persons submitting such requests are then actively approached for feedback.

In May 2011 the FIU-NL switched to a different system (Blueview) for supplying information about suspicious transactions to the other organisations in the enforcement system. Unlike the previous system (IVT), Blueview does not enable the FIU-NL to see to what extent information about suspicious transactions is used by the police in official reports. The switch to the new IT system has therefore left the FIU-NL worse off in this respect.

The FIU-NL has stated that it is engaged in discussions with the National Police and other organisations in the enforcement system to improve the feedback loop. The intention is to conclude performance agreements about the use made of its information and about accountability for this. To date, however, there has been no improvement in the information available to the FIU-NL.

2.4 Recommendations

The responsible ministers need insight into the money laundering risks and the results of the AML measures not only to manage the organisations involved in combating money laundering but also to render account to the House of Representatives for the use of resources and to gauge whether extra expenditure (of the kind already incurred) actually produces results. This lack of insight is a cause for concern, particularly in view of the international guidelines to which the Netherlands has committed itself. As the Netherlands is thus unable to comply with the obligation to furnish information about the effectiveness of its AML efforts, this may harm the image of the integrity of its financial markets.

We make the following recommendations to the Minister of Finance and the Minister of Security and Justice:

- Arrange for information to be available about the main money laundering risks facing the Netherlands, making use of the studies already carried out and the knowledge available at the organisations involved in AML measures.
- Start gathering and analysing qualitative and quantitative data about the activities of the organisations involved in combating money laundering and collate these with the AML policy objectives. Use as reference the study by Tillaart (2012) and the FATF's new methodology (2013). Also use them in formulating the AML policy monitor.
- Make clear in the 2015 budget what money laundering risks must be tackled and what contribution the organisations involved in AML measures must make.
- Inform the House of Representatives in the ministry's annual report or, if necessary, more frequently about the extent to which policy objectives are achieved.
- Provide more information about the effect of disclosures of unusual transactions.

3 Responses and afterword by the Court of Audit

Responses

On 4 February 2014 the Minister of Security and Justice issued a response to our audit. In doing so he was also responding on behalf of the Minister of Finance. On 22 January the Financial Supervision Office announced that it endorsed the joint response. De Nederlandsche Bank responded separately to our audit on 23 January, through the intermediary of the Minister of Security and Justice; its response is annexed to the letter of the Minister of Security and Justice.⁸

The chair of the committee of regional mayors responded on 21 January 2014, the Council for the Judiciary on 27 January 2014 and the chief of the National Police on 28 January 2014.

Below we have summarised the main points from the different responses. The full texts of the responses can be consulted at our website: www.rekenkamer.nl.

Response of ministers and organisations

The parties concerned largely endorse our conclusions and recommendations. However, they state that our audit gives an unduly narrow picture of the activities which they and others undertake to combat money laundering. They consider that our diagrams depicting the enforcement system give an incomplete picture of how AML efforts work in practice. They also point out that we make no mention of their preventive activities.

Insight into main money laundering risks

The Minister of Security and Justice and the Minister of Finance consider that they do have information on the main money laundering risks, but that their information can and should be improved. For this purpose they are developing a national risk assessment (NRA) on money laundering, capable of supplying them with regular information about the main money laundering risks. They expect the first results of the NRA in 2015.

The chief of the National Police points out that the principal source of information about the main money laundering risks is actual case investigation files, and that it is therefore impossible to establish with certainty whether all money laundering methods and techniques used have been identified. Moreover, uniform criteria must be adopted to determine the seriousness of money laundering risks.

Insight into the effectiveness of AML measures

The Minister of Security and Justice and the Minister of Finance agree with us that it is important to have information about the AML activities and their results. According to them, this is necessary in order to organise AML efforts as effectively as possible. The ministers have already anticipated this by arranging for a new AML policy monitor to be developed, drawing on both the knowledge obtained from the first study into the development of a money laundering monitor and the methodology developed by the FATF for assessing the effectiveness of the AML policy. The policy monitor is expected to become available at the end of 2014. The ministers consider that our interpretation

⁸ Other annexes to the letter of the Minister of Security and Justice are the responses of two organisations which we did not expressly ask for a response (namely the FIU-NL and the Board of Procurators General).

of the available figures does not properly reflect the complexity of money laundering and the measures to combat it. In their view, further study is necessary and will form part of the AML policy monitor.

The committee of regional mayors considers that money laundering can be tackled more effectively. In their view, there must be further expenditure on AML in the years ahead as part of an overall plan for combating organised crime that poses a threat to the fabric of society. The regional mayors believe that the ministers and the competent authority must together decide on the main money laundering risks and priorities. In the context of the overall plan for tackling organised crime regionally and locally, the competent authority must then make the final decision by reference to the problems concerned. The available information about money laundering risks should therefore be passed not only to the ministers but also to the competent authority. The ministers should arrange at national level for the supervision of disclosing institutions to be improved, as well as ensuring that the necessary legislation is in place and that the organisations concerned have sufficient capacity and information.

The chief of the National Police recommends that the ministerial budget in 2015 should not be based solely on a fixed list of known money laundering risks, but should instead leave room for recognising regional differences. Moreover, he considers that further research on how enforcement action works in practice is needed to gauge the effectiveness of AML measures. This could also yield more information about the importance of the disclosure system in the overall context of combating money laundering.

Provision of information to the House of Representatives

The ministers undertake to inform the House of Representatives about the findings of the AML policy monitor and the NRA on money laundering and about what they propose to do with the findings. The policy monitor and the NRA will be implemented on a recurring basis, and in each case the findings will be reported by the ministers to the House of Representatives. A decision on the desirable frequency will be taken on the basis of the initial studies.

Information on effect of disclosures

The ministers agree that there is a lack of information about the effect of the FIU-NL's disclosures. Although measures have been taken in recent years to improve this situation, they have not produced the desired result. According to the ministers, our report puts too much emphasis on quantity, whereas both quality and quantity should be examined when assessing and/or improving the effectiveness of the disclosure system.

The ministers share our view that budget article 33 has in the past provided no information about the performance of the disclosure system. The Minister of Security and Justice has therefore amended this budget article for 2014.

Limited picture of AML measures

All the respondents state that our diagrams depicting the enforcement system give an incomplete picture of how AML efforts work in practice. The ministers state that although the diagrams do show the role of the authorities concerned, they do not adequately reflect the complexity of the AML system. Owing to the oversimplification of the interaction between authorities, our account is said to be of little value,

particularly to policymakers. In the ministers' view, the enforcement system is, in practice, less in the nature of a chain of organisations and more like a network. The various organisations involved in enforcement therefore work together in this network, rather than in a one-dimensional 'production line' as suggested in our audit. The respondents also point out that disclosures passed on by the FIU-NL are not the only source of information for initiating AML investigations. Nor, they say, have we given any consideration to preventive measures, for example in the realm of supervision. Finally, there are said to have been developments in recent years which we have not touched on in the report, but which do help to improve the ML measures. The Minister of Security and Justice refers to these developments in his response (for the full text of the response see www.rekenkamer.nl).

The Council for the Judiciary notes that the way in which we present the numbers of cases in the report could give rise to misunderstandings. It states that the cases we present as 'before the courts' are in fact cases that are being dealt with jointly by the Public Prosecution Service and the courts. This number cannot therefore be attributed solely to the courts.

Afterword

We note that the parties concerned largely endorse our conclusions and recommendations. We look forward to the moment when the NRA on money laundering and the AML policy monitor are in operation to ensure that the AML measures are organised and managed as effectively as possible. We welcome the fact that once these instruments have been introduced the ministers will keep the House of Representatives regularly informed of the results of the AML measures. We also expect, however, to see this information included in the budget and the financial statements of the Minister of Security and Justice and the Minister of Finance.

We are also concerned about whether the ministers will succeed in making the promised improvements in good time. For example, as a result of our previous report the ministers undertook to arrange for a baseline measurement and research study, to be completed before the summer of 2008, to obtain a better understanding of the performance of the law enforcement agencies and the problem of financial and economic crime (including money laundering). On the basis of the findings they were to draw up performance indicators and further allocate the extra resources that they had made available. The ministers were also to make further agreements with the supervisory authorities and law enforcement agencies about risk-based performance targets and capacity deployment. In our current audit we have been obliged to note that these undertakings have not yet been fulfilled in relation to money laundering.

As our audit is a review of the main conclusions and recommendations of our 2008 report, we have disregarded preventive activities and not taken account of all developments. The developments mentioned by the ministers are helpful in providing a complete picture. In view of the responses we have received, we have supplemented our diagrams of the AML system in order to better reflect the efforts of those concerned.

Annexe I About money laundering and anti-money laundering measures

What is money laundering?

Money laundering is the process by which illicit funds are transformed into legitimate assets in such a way as to conceal their illegal origin. Money laundering can take place in various ways, for example through the legitimate financial system. Illegally acquired funds may thus be laundered through financial institutions such as banks or financial service providers such as notaries. Money laundering therefore enables criminals to acquire a financial and economic position in the legitimate Dutch economy. Money laundering can thus blur the distinctions between the underworld and legitimate society. It also poses a risk to the integrity of the financial system and to public confidence in the operation of the financial markets. This can have adverse social and economic consequences. Moreover, organised crime, with which money laundering is inextricably linked, poses a direct threat to public order and security.

Loan-back schemes as an example of a money laundering method

Loan-back schemes are used to evade tax or disguise the origin of funds obtained from drug trafficking or other crimes. Under such schemes criminals lend themselves money they have obtained from crime. To the outside world such a transaction has the appearance of a loan agreement between two independent parties. Usually transactions of this kind involve cross-border transfers and foreign bank accounts. These elements are also included in the following example.

The proprietor of a cannabis 'coffee shop' had a much larger turnover than could be accounted for by his legal activities. The illicit part of his income became so substantial that he decided to invest in a sports centre that was being built in his municipality. He hired a lawyer to arrange a complicated loan-back scheme. The lawyer opened bank accounts in Luxembourg and Switzerland in the name of a Panamanian public company. The coffee shop proprietor himself had a bank account in Switzerland into which he regularly deposited cash sums. He also arranged for funds to be remitted to his lawyer's client trust account (a blocked account into which money belonging to third parties could be paid), after which the lawyer transferred the funds to the Swiss account in the name of the Panamanian company.

Ultimately, after many transfers between accounts, EUR 27 million was credited to the account of a Belgian public company (NV). This was a project development company set up by the lawyer to arrange the construction of the sports centre. The lawyer himself acted as managing director of the company and arranged for the accounting to be done at his own office, aiming to prevent matters from coming to light. Under the concept of the right of privileged communication lawyers can invoke the right of client confidentiality, which means that they need not answer questions in court if called to give evidence. However, by acting as the company's managing director the lawyer had abused that right. (KLPD, 2013)

Objectives of AML policy

The policy objectives of the Minister of Finance and the Minister of Security and Justice are:

- to prevent breaches of integrity at financial and other institutions;
- to prevent customers from abusing financial and other institutions to launder money;
- to investigate and prosecute crime effectively and efficiently.

One of the main principles of anti-laundering policy is that crime must not pay. The instruments that can be employed for this purpose include confiscation of the proceeds of crime and forfeiture of seized assets.

Since 2008 successive governments have given greater priority to tackling financial and economic crime, of which money laundering (like fraud) is a subcategory. The police programme of action to tackle Financial and Economic Crime (FINEC) was introduced on 1 April 2008 during the term of office of the fourth Balkenende government (Ministry of Justice, 2007). One of the aims of this programme was to enable the police to detect financial and economic crime more effectively, tackle it more frequently and adopt smarter investigation methods. It was therefore decided to expand the police teams to include specialists and to improve the confiscation results (by seizing more than the sums invested in confiscation efforts) and to enhance the cooperation between the organisations involved in combating financial and economic crime. The FINEC programme involved extra expenditure (i.e. over and above the ordinary expenditure on the police) of EUR 5.5 million in 2008, EUR 8.5 million in 2009, EUR 10 million in 2010 and EUR 13 million in 2011 and subsequent years. Since 2012 the budget for the FINEC programme has formed part of the Minister of Security and Justice's ordinary expenditure on the police.

The measures to strengthen the investigation of financial and economic crime have been continued and stepped up by the Rutte/Verhagen and Rutte/Asscher governments through a system-wide criminal assets confiscation programme (Ministry of Security and Justice, 2011). This programme is intended to strip criminals of even more assets, for example by:

- expanding the capacity of the criminal justice authorities (police, Public Prosecution Service and the courts);
- encouraging the use of innovative methods;
- improving cooperation between the different organisations inside and outside the criminal justice system.

The programme had a budget of EUR 10 million in 2011 and EUR 15 million in 2012,⁹ and its annual budget for 2013 and subsequent years is EUR 20 million. These amounts are over and above the ordinary expenditure on the criminal justice system.

Organisation of the AML system

Combating money laundering involves a number of activities: detection, investigation, prosecution and punishment. The public agencies involved in these activities together form the enforcement system.

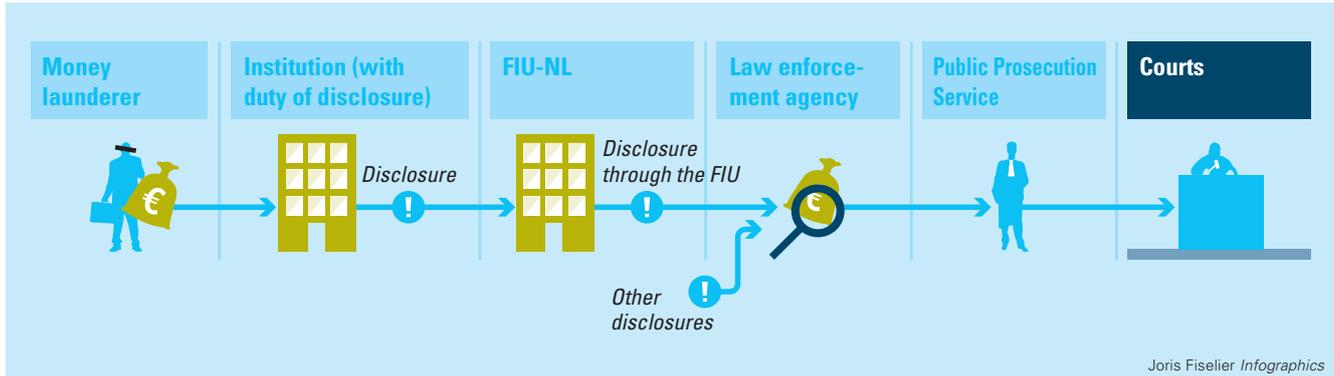
Detection

Detection plays a central role in combating money laundering. For this purpose a duty of disclosure and a duty to check identification have been introduced for certain businesses and institutions which have an increased chance of coming into contact with money launderers. Under the Money Laundering and Terrorist Financing (Prevention) Act (WWFT) these businesses and institutions must be able to identify their customers. They also have a duty to disclose to the Financial Intelligence Unit-Netherlands (FIU-NL) transactions which can be classified as unusual on the basis of indicators derived from the WWFT.

9

As the Court of Audit noted in its 2012 audit, the Minister of Security and Justice's stated aim of spending an extra EUR 10 million annually in a bid to recover three times this sum did not seem realistic. See <http://verantwoordingsonderzoek.rekenkamer.nl/2012/venj/beleidsinformatie>.

Figure 7 AML enforcement system

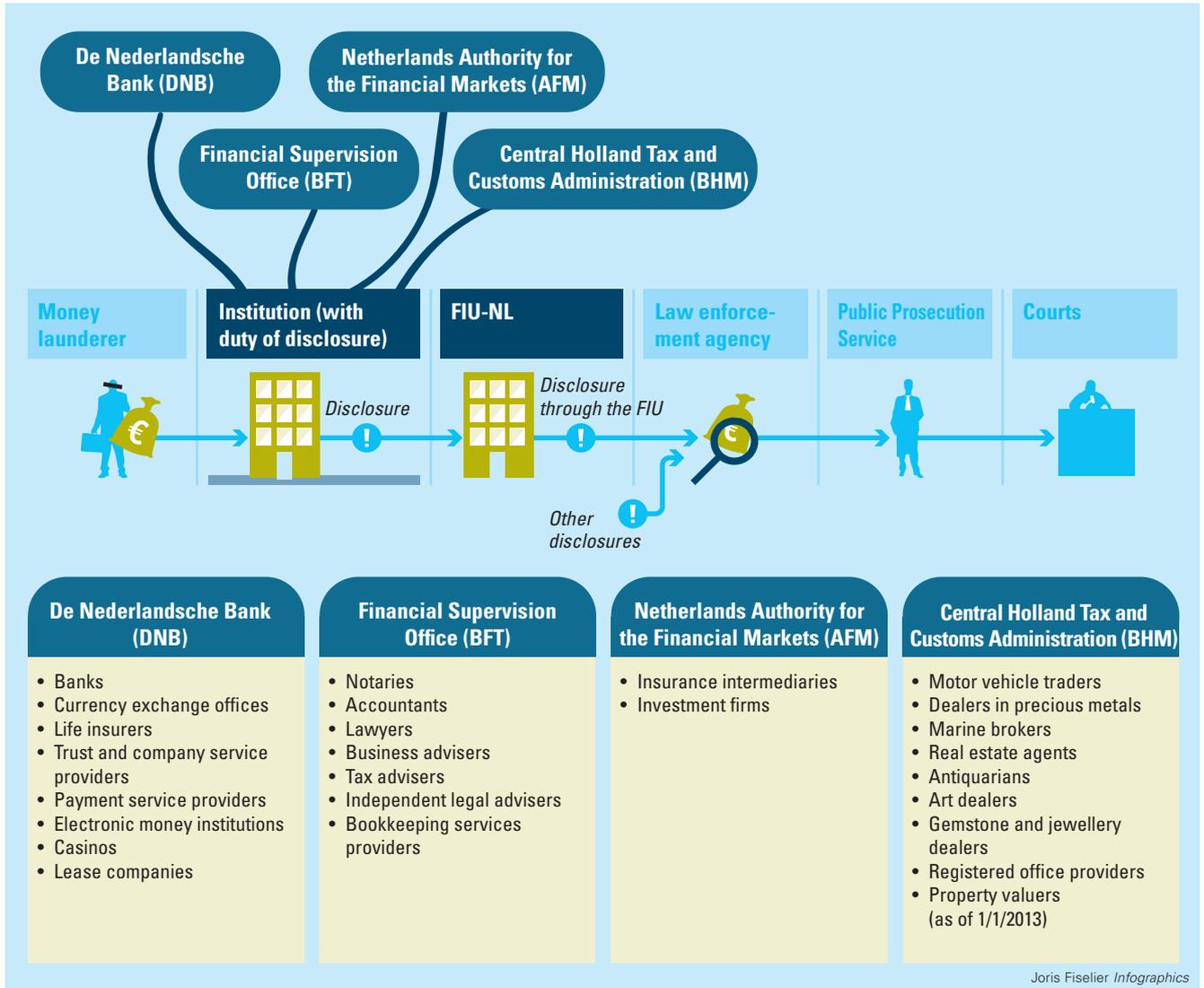


Supervision of disclosing institutions

Owing to the important role which institutions with a duty of disclosure play in the detection of money laundering, supervisory authorities have been designated to assess whether these private sector organisations comply with the duty of disclosure and the duty to check identification. The Minister of Finance and the Minister of Security and Justice are responsible for supervising disclosing institutions and have designated four supervisory authorities for this purpose. The Financial Supervision Office comes primarily under the responsibility of the Minister of Security and Justice and the other three authorities come under the responsibility of the Minister of Finance.

Figure 8 shows the categories of businesses and institutions that have a duty of disclosure and a duty to check identification.

Figure 8 Disclosing institutions and their supervisory authorities

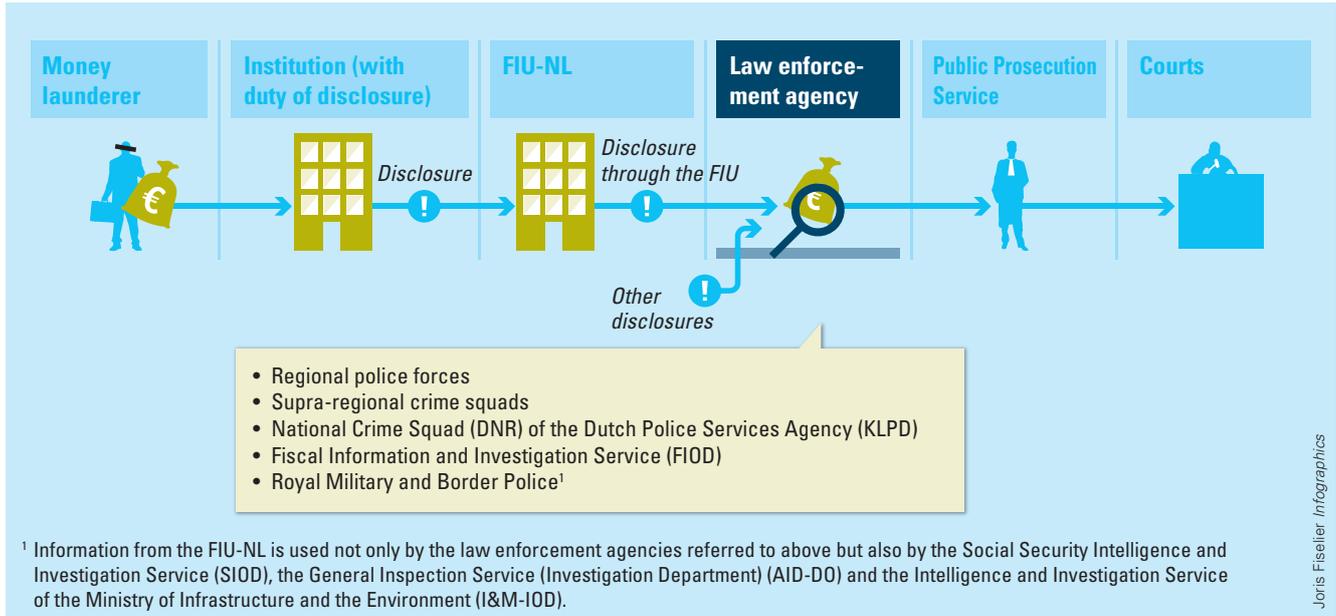


Since 1 January 2013 the Central Holland Tax and Customs Administration (BHM) has been known as the Tax and Customs Administration/WWFT Supervision Office. Supervisory authorities too may receive reports of suspicious transactions. Besides the disclosing institutions and the supervisory authorities, organisations that report money laundering cases to the FIU-NL include law enforcement and government agencies such as the tax authorities, the Royal Military and Border Police and the customs authorities.

Investigation

The FIU-NL analyses the information it receives and reports the transactions that can be classified as suspicious to the law enforcement agencies.

Figure 9 AML enforcement system: investigation

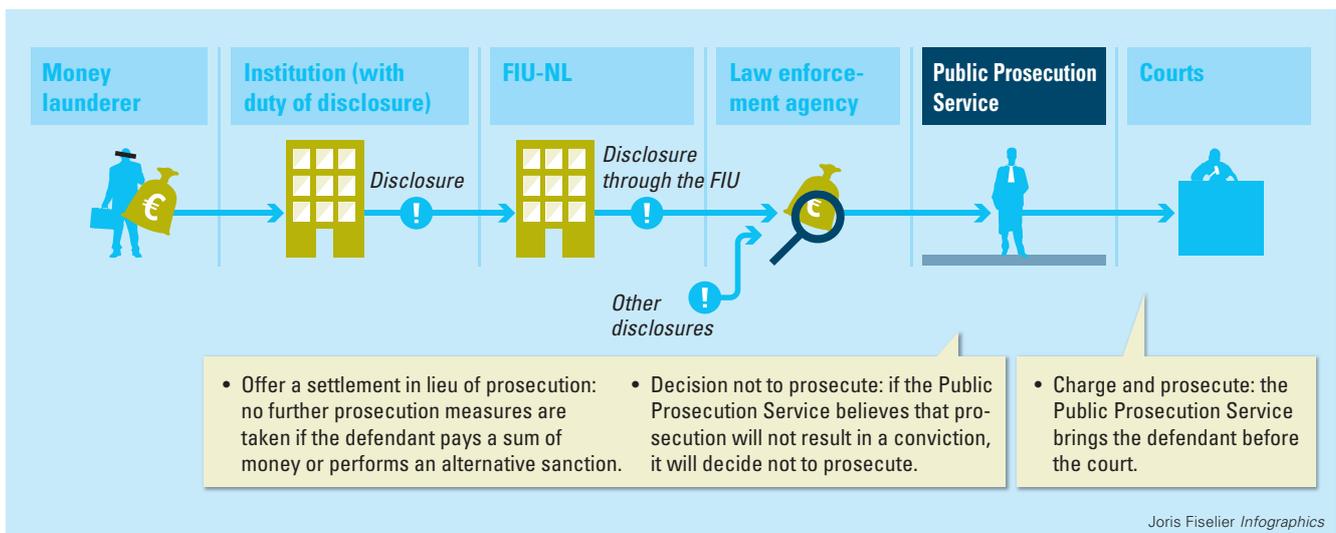


Law enforcement agencies can institute an investigation in response to information received from the FIU-NL and on the basis of their own information. If they discover criminal offences, they record them in an official report. The report is passed to the Public Prosecution Service. On 1 January 2013 the regional police forces, supra-regional crime squads and the Dutch Police Services Agency were subsumed into the National Police.

Prosecution and punishment

The next steps in combating money laundering are prosecution and punishment. The Public Prosecution Service decides what action should be taken in response to criminal offences referred to it by the law enforcement agencies.

Figure 10 AML enforcement system: Public Prosecution Service



The courts are the last link in the chain of organisations forming the enforcement system. The number of cases involving money laundering brought before the courts is dependent on the activities of the previous links in the enforcement system. If a criminal prosecution is brought, the court decides on the outcome of the case. If the court finds the defendant guilty, it may impose a custodial sentence, a community service order or a fine.

Steps in the process of combating money laundering: an example

Detection

A currency exchange office in Amsterdam was visited by a succession of customers who exchanged small denomination notes for larger ones. All the amounts exchanged were just below the disclosure threshold of EUR 15,000. The currency exchange office regarded these transactions as unusual and decided to disclose them to the FIU-NL. A network analysis by the FIU-NL revealed that in the same period two other currency exchange offices in Amsterdam had disclosed unusual transactions involving the same customers.

Investigation

The FIU-NL presented the network analysis to the financial and economic crime unit of Amsterdam-Amstelland regional police force, which decided to institute an investigation. As a result of telephone taps and surveillance, the police discovered a network that was smuggling cash to South America. The investigation culminated in the seizure of approximately EUR 2.7 million and the arrest of six suspects. From records they found for a three-month period, the police concluded that the network may have smuggled some EUR 18 million in cash abroad in a single quarter.

Prosecution and punishment

The District Court convicted the six defendants of money laundering and confiscated the money that had been seized. The penalties that were imposed varied from a fine to six years' imprisonment.

(FIU-NL, 2006).

International obligations

Many of the policy measures taken in the Netherlands to tackle money laundering and terrorist financing stem directly from various international instruments by which the Netherlands is bound. The main ones are the 40 Recommendations of the Financial Action Task Force on Money Laundering (2012) and the EU Directive on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (2005).

Recommendations of the Financial Action Task Force

The Financial Action Task Force (FATF) is a leading intergovernmental collaborative body established by countries with important financial centres to combat money laundering and terrorist financing. Its 40 Recommendations aimed at combating money laundering are periodically revised and strengthened, and serve as the basis for mutual evaluations of the member countries.

FATF Evaluation of the Netherlands

In 2010 the Netherlands was evaluated for compliance with the FATF Recommendations then in force (dating from October 2004). The FATF identified deficiencies and formulated a large number of recommendations (FATF, 2011). On 4 March 2011 the Minister of Finance and the Minister of Security and Justice notified the

House of Representatives of the results of the FATF evaluation (Ministry of Finance, 2011). The deficiencies identified by the FATF included the following:

- Under the Money Laundering and Terrorist Financing (Prevention) Act (WWFT) institutions with a duty of disclosure are obliged to report all unusual transactions and, in certain circumstances, to undertake customer due diligence. However, the WWFT does not make clear how and when customer due diligence must be undertaken.
- The FATF considered that the FIU-NL did not analyse the large volume of unusual transactions efficiently and that its governance should be arranged differently in order to better guarantee its operational independence.

In February 2013 the responsible ministers reported to the FATF on the position regarding implementation of the recommendations in the evaluation report (Ministry of Finance, 2013). According to the ministers, a considerable number of the deficiencies had been addressed. For example, an amended WWFT, which entered into force on 1 January 2013, removed uncertainties surrounding customer due diligence, and the governance of the FIU-NL was modified with retrospective effect to 1 January 2013 (Government Gazette, 2013).

Revision of FATF Recommendations

The FATF Recommendations were revised in early 2012 (FATF, 2012). Whereas the old recommendations were mainly aimed at embedding AML in policy, the new ones are designed to focus attention on the effectiveness of the AML system. For example, an important amendment is that AML measures should be based on a national risk assessment. Countries are required to assess the money laundering risks relevant to them and modify their AML measures accordingly. The effectiveness of AML efforts should be enhanced by allowing the deployment of resources to be dependent on the nature and scope of the money laundering risks.

In early 2013 the FATF adopted a new methodology enabling countries to assess compliance with the new FATF Recommendations and the effectiveness of the system for preventing and combating money laundering (FATF, 2013). The new methodology will be applied in the mutual evaluations from 2014 onwards, and was formulated with the assistance of the Netherlands.

European Union Directive

The EU has based an anti-money laundering directive on the FATF Recommendations. EU member states are obliged to transpose the directive into national legislation. It follows that the Netherlands has little scope to pursue its own AML policy. The Netherlands has incorporated the provisions of the EU anti-money laundering directive (EU, 2005) into the WWFT. At present, a Commission proposal for alignment of the money laundering directive with the new FATF Recommendations of February 2012 is under discussion (EU, 2012).

Annexe 2 Abbreviations

AFM	Netherlands Authority for the Financial Markets
AID-DO	General Inspection Service (Investigation Department)
AIVD	General Intelligence and Security Service
AML	Anti-money laundering
BFT	Financial Supervision Office
BHM	Central Holland Tax and Customs Administration
BRT	Supra-regional crime squad
CPB	Netherlands Bureau for Economic Policy Analysis
DNB	De Nederlandsche Bank (Dutch central bank)
EU	European Union
FATF	Financial Action Task Force
FEC	Financial Expertise Centre
FINEC	Financial and economic crime
FIOD	Fiscal Information and Investigation Service
FIU-NL	Financial Intelligence Unit-Netherlands
I&M-IOD	Intelligence and Investigation Service of the Ministry of Infrastructure and the Environment
ICOV	Criminal and Unexplained Assets Information Centre
IVT	Suspicious Transactions Intranet
KLPD	Dutch Police Services Agency
KMAR	Royal Military and Border Police
NR	National Risk Assessment
OM	Public Prosecution Service
SIOD	Social Security Intelligence and Investigation Service
VIC	Real Estate Intelligence Centre
WFT	Financial Supervision Act
WODC	Research and Documentation Centre
WWFT	Money Laundering and Terrorist Financing (Prevention) Act

Annexe 3 Literature

Bulletin of Acts and Decrees (2009). Decree of 3 July 2009 containing provisions on the analogous application of the Police Data Act to the processing of personal data by an agency of a public body charged with investigating criminal offences (Police Data (Special Law Enforcement Agencies) Decree). 2009: 305.

Court of Audit (2008). *Bestrijden witwassen en terrorismefinanciering* (Combating money laundering and terrorist financing). House of Representatives, 2007-2008 session, 31 477, nos. 1-2. The Hague.

CPB (2013), <http://www.cpb.nl/cijfer/kortetermijnraming-juni-2013>, consulted on 8 August 2013.

Dutch Police Services Agency (2013), *Witwassen. Criminaliteitsanalyse 2012 (Money Laundering. Crime Pattern Analysis 2012)*. Driebergen, KLPD.

EU (2005), *Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing* (OJEU L 309). Brussels: European Union.

EU (2013), *Proposal for a Directive of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing*. COM/2013/045 final, 2013/0025 (COD). Brussels: European Union.

FATF (2010). *Global Money Laundering & Terrorist Financing Threat Assessment. A view of how and why criminals and terrorists abuse finances, the effect of this abuse and the steps to mitigate these threats*. Paris, July 2010.

FATF (2011). *Mutual Evaluation Report. Anti-Money Laundering and Combating the Financing of Terrorism: The Netherlands*. Paris, 25 February 2011.

FATF (2012). *The FATF Recommendations. International standards on combating money laundering and the financing of terrorism and proliferation*. Paris, February 2012.

FATF (2013). *Methodology for assessing technical compliance with the FATF Recommendations and the effectiveness of AML/CFT systems*. Paris, February 2013.

FEC (2010). *2011 Annual Plan*. Amsterdam: Financial Expertise Centre.

FEC (2012). *2011 Annual Report*. Amsterdam: Financial Expertise Centre.

FIU-NL (2006). *Jaaroverzicht 2005 en vooruitblik 2006 Meldingen Ongebruikelijke Transacties. (2005 Annual Survey and 2006 Preview of Unusual Transaction Disclosures)*. Zoetermeer: in-house publication.

FIU-NL (2006). *Jaaroverzicht 2012 (2012 Annual Survey)*. Zoetermeer: in-house publication.

Government Gazette (2012). Agreement on cooperation between the Tax and Customs Administration and the Financial Supervision Office in combating unacceptable behaviour by accountants and auditors, no. 12056, 19 June 2012.

Government Gazette (2013). Order of the Minister of Security and Justice of 16 May 2013, no. 382509, establishing the Financial Intelligence Unit-Netherlands (FIU-Netherlands Establishment Decree 2013), no. 13691, 24 May 2013.

Ministry of Finance (2010). *Report of plenary FATF meeting in June 2010*. The Hague: Ministry of Finance.

Ministry of Finance (2011). *Report of plenary FATF meeting in February 2011*. The Hague: Ministry of Finance.

Ministry of Finance (2013). *Follow-up report submitted by the Netherlands*. The Hague: Ministry of Finance.

Ministry of Justice (2007). *Bestrijding georganiseerde criminaliteit (Combating organised crime)*. House of Representatives, 2007-2008 session, 29 911, no. 10. The Hague.

Ministry of Security and Justice (2011). *Bestrijding georganiseerde criminaliteit (Combating organised crime)*. House of Representatives, 2010-2011 session, 29 911, no. 51, The Hague.

Public Prosecution Service (2012). *Eindrapportage Intensiveringsprogramma's 2008-2011 (Policy intensification programmes. Final reports 2008-2011)*. The Hague: Public Prosecution Service.

Rutte-Asscher (2012). *Bruggen slaan (Building bridges)*. VVD-PvdA coalition agreement. The Hague.

Security and Justice Inspectorate (2012). *Follow the money. Study of financial investigations by the police in the light of the national police financial and economic crime programme*. The Hague: in-house publication.

Tillaart, J. van den, J. Stouten and G. Homburg (2012). *Naar een beleidsmonitor bestrijding witwassen (Towards an anti-money laundering policy monitor)*. Regioplan, Amsterdam.

UNODC (2011). *Estimating illicit financial flows resulting from drug trafficking and other transnational organized crimes (research report)*. Vienna: United Nations Office on Drugs and Crime.

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