

Anti-money laundering system of the Netherlands evaluated by the Financial Action Task Force

Recently the Financial Action Task Force ("**FATF**") has published the report of the mutual evaluation of the Netherlands assessing its level of compliance with the FATF requirements for anti-money laundering and combating the financing of terrorism. It describes and analyses these measures and provides recommendations on how to strengthen certain aspects of the system.

In this brief the main conclusions of the FATF relevant for financial institutions are listed, including the reaction of the Dutch government regarding this evaluation.

In general the legal framework in the Netherlands regarding money laundering is in line with international requirements. The criminalization of money laundering is also considered up to standard and the level of enforcement is considered high. Commentary has been made regarding the lack of a separate criminalization of the crime of financing terrorism. The Dutch Government has decided to adjust the Dutch Criminal Code accordingly.

The organization and working methods of the Dutch Financial Intelligence Unit ("**FIU**") is also criticized on its effectiveness. The Dutch government is studying on need and possibilities for improvements.

Still some aspects of the system for prevention and detection of money laundering and its implementation within the financial institutions could be improved, as described below. New regulations to address some of these issues are being prepared, though no details are currently available.

Compliance

- The *Wet op het financieel toezicht* ("**Wft**") can be interpreted as imposing an obligation on financial institutions to have internal controls that implement the *Wet ter voorkoming van witwassen en financiering van terrorisme* ("**Wwft**") obligations, but the legal position would be more robust if this obligation was made explicit, as it is in the *Wet geldtransactiekantoren* ("**Wgt**").
- Most internal control requirements are to be found in the Wft rather than the Wwft. The coverage of the Wft is not the same as that of the Wwft. Some of the requirements in the Wft (including the requirements for internal controls, internal audit and compliance functions) do not apply to certain categories of regulated financial entities.
- There is no requirement relating to seniority or access to managers for the head of the compliance function.
- The requirements for employee training in the Wwft lack guidance including that such training should also cover internal policies and procedures, new developments and current money laundering and terrorism financing techniques, methods and trends, and requirements on Customer Due Diligence and reporting.
- The principles-based approach in Dutch regulations should be better supported with guidance for financial institutions.

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Suspicious transaction reports

Although most elements of the Suspicious Transaction Reports ("STR") requirements are in place, a few concerns are mentioned.

- The 14-day period to report a transaction after it has been established suspicious does not comply with the requirement of prompt reporting and raises an effectiveness issue in relation to the recovery of criminal assets.
- The protection from criminal and civil liability for STR reporting also applies in the absence of good faith and is subject to inappropriate conditions.
- Reporting by insurance agents, life insurance companies and bureau de change is particularly low, which raises concerns regarding the effectiveness of the reporting regime.
- The tipping-off prohibition is only applicable to the financial institution and not to directors, officers and employees, nor is it applicable during the process of reporting.
- There is no legal requirement to examine, as far as possible, the background and purpose of unusual transactions and to keep the findings in writing.
- The FIU should place more emphasis in its analysis of STR's on a case-by-case dissemination and the analysis of financial information would benefit from greater prioritization and use of red flags. Also the number of criminal investigations that is triggered by information disseminated by the FIU to law enforcement authorities appears to be rather low.
- Feedback to reporting institutions from the FIU is not regarded as sufficient by those institutions.

Customer due diligence

The legal framework for Customer Due Diligence ("CDD") and level of implementation is generally adequate. However a number of provisions are considered problematic by the FATF.

- The definition of the beneficial owner does not include the person that can exercise ultimate effective control over a legal arrangement nor does it include the obligation to determine whether a beneficial owner of a customer is a Politically Exposed Person ("PEP").
- The PEP related requirements do not apply to non-Dutch PEPs resident in the Netherlands.
- The obligation for financial institutions to have a risk-based procedure to determine whether a customer is a PEP, does not extend to the beneficial owner.
- The requirement to verify the identity of the beneficial owner is only applicable in high-risk scenarios.
- The very broad exemptions allowed for specified low-risk customers and the treatment of all the European Union and European Economic Area members states and jurisdictions as well as certain other countries as a single risk category when determining certain low risk scenarios, raise concerns.
- With regard to third parties and introducers, there is no direct obligation for financial institutions to immediately receive necessary customer information and to satisfy themselves that copies of CDD documents and data will be available without delay.
- There is also no obligation to satisfy themselves that the third party is regulated or supervised nor is there an enforceable requirement that ultimate responsibility for CDD should remain within the financial institution relying on the third party. ■

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