



FINANCIAL ACTION TASK FORCE

Mutual Evaluation Executive Summary

Anti-Money Laundering and Combating the
Financing of Terrorism

The Netherlands

25 February 2011

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MUTUAL EVALUATION OF THE NETHERLANDS:
EXECUTIVE SUMMARY

Background information

1. **This report summarizes the anti-money laundering and counter-terrorist financing measures (AML/CFT) that were in place in the Netherlands at the time of the on-site visit (June 28–July 13 2010) and immediately thereafter.** It describes and analyses these measures and offers recommendations on how to strengthen certain aspects of the system. It also assesses the Netherlands's level of compliance with the *40+9 Recommendations* of the Financial Action Task Force (FATF) (see the attached table on the *Ratings of Compliance with the FATF Recommendations*).

Key Findings

2. **Indicators suggest that the Netherlands is susceptible to ML, including because of its large financial center, openness to trade and the size of criminal proceeds.** The 16th economy in the world by nominal GDP, it ranks 7th in terms of the systemic importance of its financial sector. It has an excellent communications network, convenient transportation infrastructure, and Rotterdam is one of the world's busiest ports. Estimates indicate that substantial proceeds of crime are generated in the country, mostly stemming from fraud (including tax fraud) and illicit narcotics. Presently the proceeds of domestic crime are estimated at approximately €14 billion, or 1.8 percent of the GDP. Work done by academics suggests a similar amount of proceeds originating from foreign countries and laundered in The Netherlands. The authorities have developed novel and advanced research investigating the links between business and crime.

3. **There is a terrorism and TF risk but it appears limited based on available information.** The country has experience dealing with a variety of terrorist organizations, at present the main threat seems to come from international Islamists extremists, but the risk is currently deemed to be limited.

4. **The Netherlands have criminalized ML fully in line with the requirements under the Vienna and Palermo Conventions.** The Criminal Code does not provide for an autonomous offense of "terrorism financing" but criminalizes such conduct based on the offense of "preparation to commit a serious crime" and "participation in a terrorist organization".

5. **The Netherlands have a long-standing FIU which is one the founding members of the Egmont Group and enjoys high trust for its professionalism, both domestically and internationally.** The delays in the completion of its reorganization as FIU-Netherlands have eroded its operational independence and affected its effectiveness.

6. **Financial investigations have been pursued through aggressive and effective approaches, as shown by the relatively high number of prosecutions for ML or ML and other offences.** However, it has not been demonstrated that the analytical work of the FIU has significantly contributed to investigations and prosecutions of ML cases.

7. **The Netherlands have a long-standing system of preventive measures and while the legal framework is modern and comprehensive for both financial and non-financial institutions, it falls short of the international standard in some areas, such as in the case of the verification of beneficial owners and simplified due diligence.**

8. **Supervision of AML/CFT obligations is based on broadly comprehensive powers and is well regarded by most sections of the regulated financial sector but some gaps in the legal framework need to be filled.**

9. **The AML/CFT Law has to be amended to improve the reporting regime, including by requiring that suspicious transactions are reported promptly.** Measures should be taken to ensure quality reporting by all financial and non-financial institutions. In light of the risks identified in relation to corporate lawyers' activities, authorities are recommended to address legal issues preventing effective implementation of preventive measures and supervision.

10. **The Criminal Procedure Code (CPC) should be revised to enable the Netherlands to grant any foreign country assistance in searching and seizing evidence in ML cases, and to make ML an extraditable offense, regardless of the predicate offense involved.** Statistics should be maintained in a number of important areas to demonstrate that the AML/CFT legal framework is implemented effectively.

Legal Systems and Related Institutional Measures

11. **The Netherlands have criminalized ML fully in line with the requirements under the Vienna and Palermo Conventions.** The Dutch ML provisions cover all FATF designated predicate offenses, extend to any type of property as defined in the FATF standard and also apply to persons who commit the predicate offense. Appropriate ancillary offenses are provided for. Although a significant number of investigations, prosecutions and convictions has been carried out, due to the lack of information on the types of predicate offenses involved it could not be determined that the ML provisions are applied in a fully effective manner.

12. **The Dutch legal system does not provide for an autonomous offense of “terrorism financing” but criminalizes such conduct based on the offenses of “preparation to commit a serious crime” and “participation in a terrorist organization”.** A number of serious shortcomings have been identified in this regard.¹ Most notably, the current legal framework criminalizes the “collection” of funds to commit a terrorist act only if the perpetrator has acquired or actual possession of the funds; the criminal provisions do not sufficiently apply to the financing of conduct covered by the offenses set forth in the nine Conventions and Protocols listed in the Annex to the FT Convention; and the financing of an individual terrorist is criminalized only in relation to persons designated under UNSCR 1267 or 1373, or the EC or Dutch Sanctions Regulations. In discussions with a number of different law enforcement authorities it was indicated that the absence of an autonomous FT offense has a negative impact on the effective investigation of terrorism financing activities.

13. **The Netherlands have in place a strong and comprehensive legal framework for the seizing and confiscation of proceeds of crime, the application of which has yielded some positive results.** However, in the absence of complete and more detailed statistics it was not possible for the assessors to determine that the seizing and confiscation measures are applied in a fully effective manner with respect to ML, FT and predicate offenses.

¹ A clear ministerial commitment to pursue the criminalization of terrorist financing (TF) in line with FATF Special Recommendation II (SR II) has been communicated by the Dutch authorities.

14. **The Netherlands have a strong and comprehensive framework in place to implement its obligations under UN Security Council Resolutions 1267 and 1373 and in a number of cases have effectively applied this framework to freeze the funds and assets of designated terrorists and terrorist organizations.** The most important financial sectors are effectively supervised for compliance with their obligations under the EC and Sanctions Regulations. Only a few technical deficiencies were identified. Concerns remain as to whether in practice the authorities make use of the possibility to circumvent the time delay on European level and freeze without delay the funds and assets of individuals, entities and organizations designated under UN Resolutions 1267 and 1373.

15. **The Netherlands have a long standing financial intelligence unit (FIU) responsible for receiving, analyzing and disseminating information concerning ML or FT, which enjoys the trust of the financial community and law enforcement authorities (LEAs) alike.** The FIU, first established in 1994, underwent a restructuring process in 2006, but the legal framework governing the FIU is not yet fully complete. Moreover, the completion of the reorganization of the FIU has been delayed, which has hampered its effectiveness and eroded the operational independence. A new governance model was agreed in September 2010, but it is rather complex and should be streamlined by reducing the number of institutions to which the FIU is accountable and simplifying the reporting lines.

16. **The FIU has the potential for producing high-quality financial analysis but it should reconsider the manner in which financial information is disseminated to LEAs, and place more emphasis on a case-by-case dissemination.** The number of ML criminal investigations that is triggered by disseminated financial information could not be confirmed, but appears to be rather low. Analysis of financial information would also benefit from greater prioritization and pursuit of a red flag-based approach. The authorities should also ensure that the FIU has timely and full access to all the information that is necessary to properly undertake its functions.

17. **Financial investigations have been pursued through aggressive and effective approaches, as demonstrated by the relatively high number of prosecutions for ML or ML and other offences.** The Dutch authorities encourage LEAs to prosecute ML and deprive offenders of the proceeds of crime for each case, even when the proceeds are low. LEAs have most powers necessary to carry out their investigations and are generally effective. The only caveat is the scope of legal privilege, which hinders the ability for law enforcement authorities to locate and trace assets and property, and may also negatively impact mutual legal assistance, freezing, seizure and confiscation.

Preventive Measures—Financial Institutions

18. **The Netherlands have a long-standing legal framework concerning AML/CFT preventive measures, which dates back to 1993.** The latest Money Laundering and Terrorist Financing Prevention Act (WWFT), adopted in 2008, establishes CDD, record keeping and reporting requirements for a broad range of financial institutions and DNFBPs. The scope of the WWFT covers all financial activities covered by the FATF definition of “financial institutions”.

19. **The legal framework for CDD is generally adequate; however a number of provisions are problematic.** These include: issues with the definition of the beneficial owner which, inter alia, does not include the person that can exercise ultimate effective control over a legal arrangement; the very broad exemptions allowed for specified low-risk customers; the treatment of all the EU/European Economic Area (EEA) members states and jurisdictions as well as certain other countries as a single risk category when determining certain low risk scenarios; the transitional regime envisaged by the WWFT in the case of existing customers, which relies on a de jure presumption of compliance with the CDD requirements and the limited scope and enforceability of countermeasures in the case of countries that do not or insufficiently apply the FATF Recommendations. Of particular concern is the requirement to verify the

identity of the beneficial owner, which, along with the obligation to understand the ownership and control structure of the customer, is only applicable in high risk scenarios. Furthermore, there is no obligation for financial institutions to determine whether a beneficial owner of a customer is a politically exposed person.

20. **The Dutch system of preventive measures emphasizes the risk-based approach, complemented by a principles-based approach.** The latter relies on the financial institutions' capacity and expertise to implement a particular obligation envisaged by the law, without prescribing in detail how the relevant obligation should be met, and it is aimed at providing financial institutions with the possibility to develop an individualized approach to CDD.

21. **The principles-based approach should be better supported with guidance for financial institutions.** Implementation of the principles-based approach was in some cases uneven, particularly in challenging areas such as identifying and verifying the identity of the beneficial owner of legal persons and PEP accounts. Despite limited guidance, the level of implementation of CDD measures is good overall, with larger, multinational banks best placed to meet the higher standard set out in the WWFT, and smaller, newly formed banks finding it challenging to do so.

22. **Although most elements of the STR reporting requirements are in place, the reporting regime has one minor legal shortcoming and raises effectiveness concerns.** The 14-day period to report after a transaction has been established suspicious is not consistent with the standard's call for prompt reporting and raises an effectiveness issue in relation to the recovery of criminal assets. Reporting by insurance agents, life insurance companies and bureau de change is particularly low, which raises concerns regarding the effectiveness of the reporting regime. Both the protection for reporting and the prohibition from tipping off also present shortcomings.

23. **The requirements for internal controls in the financial sector are found in the Act on Financial Supervision (Wft) and cover most of what is required by the standard but leave some gaps.** Although the assessors accept that the Wft can be interpreted as imposing an obligation on financial enterprises to have internal controls that implement the WWFT obligations, the legal position would be more robust if this obligation were made explicit, as it is in the Wgt Regulation. Even so, the internal control requirement does not apply to all categories of financial enterprise. The WWFT and Wgt requirements relating to employee training are limited and should be broadened. The obligations relating to the role and seniority of compliance officers also need strengthening. Record-keeping requirements in the tax law (AWR) and Civil Code (BW) are comprehensive.

24. **The WWFT obliges institutions to apply Dutch standards on customer due diligence to branches and subsidiaries in foreign countries** but the requirement does not extend beyond CDD to other AML/CFT measures and does not apply to branches and subsidiaries in EU Member States.

25. **The supervisors generally have the powers and resources they require to ensure effective implementation of AML/CFT obligations but the supervisory approach may not be equally effective in all sectors.** The Netherlands operates a "twin peaks" supervisory system, with the Dutch Central Bank (DNB) responsible for prudential supervision and the Authority for the Financial Markets (AFM) responsible for conduct of business. Both have responsibility for enforcing AML/CFT measures. Some institutions such as money transfer offices and small banks have found the DNB to be most helpful and effective. In other areas, such as insurance and the securities sector, there are some doubts about effectiveness, arising from the experience of specific institutions and the statements by the supervisors. Guidance to financial enterprises needs to be brought up to date and broadened to include monitoring obligations as well as CDD. There is scope for strengthening the training given as a matter of routine to supervisory staff. These weaknesses should be addressed but, nevertheless, the maturity and sophistication

of the Netherlands' risk-based supervisory approach is largely effective in implementing the AML/CFT obligations.

Preventive Measures—Designated Non-Financial Businesses and Professions

26. **The preventive measures for DNFBPs mirror those for financial institutions, except for trust and company service providers (TCSPs) where they are more comprehensive.** The authorities have clearly put a lot of resources and political commitment in relation to DNFBPs and the regime in place is relatively comprehensive. The legal framework for TCSPs has only minor shortcomings and appears effectively implemented, but their STR reporting level is low in relation to both the importance of financial flows and risks. Regarding other DNFBPs, there are a few shortcomings in the scope of the customer due diligence requirements for real estate agents, lawyers and notaries. The reporting system appears quite effective for notaries and accountants, and recent positive developments have been noted regarding real estate agents. However, reporting by precious metals dealers and lawyers is still very low, while significant risks are acknowledged by the authorities for the latter. In relation to supervision, the main shortcoming is that secrecy issues prevent the exercise of supervision of lawyers by the designated supervisor. Effectiveness issues have been identified in relation to the monitoring of precious metals dealers and accountants, but are likely to be addressed by the recent implementation of a risk-based supervisory framework.

Legal Persons and Arrangements & Non-Profit Organizations

27. **The Netherlands have a number of measures in place that contribute to the availability of beneficial ownership information in relation to legal entities and arrangements.** Amongst these measures are the obligation to register legal entities with the Chamber of Commerce, to involve licensed and thus supervised notaries and trust service providers in the establishment and/or management of certain legal entities, as well as the obligation under Dutch tax law to file annual returns. However, some gaps remain in relation to information on the ultimate beneficial owners of legal persons and legal arrangements and as such information may thus not be available, accessible and/or up-to-date in all cases.

28. **At the time of the assessment, Dutch law still permitted the issuance and free transfer of bearer shares.** A dematerialization process has been put in place but will not be completed and thus fully effective until 2013. Based on estimates provided by the authorities, it seems that bearer shares are no longer widely used in the Netherlands.

29. **The measures in place in the Netherlands in relation to NPOs ensure a high level of transparency.** Information available with respect to NPOs is generally comprehensive, in particular with respect to NPOs within the Central Bureau for Fundraising (CBF) seal mechanism.² Information sharing and cooperation mechanisms between competent authorities are in place but do not comprise the CBF, which is a private organization. This poses a limitation in that the CBF maintains detailed information on a significant share of the sector.

National and International Co-operation

30. **The Netherlands has no overarching law dealing with Mutual Legal Assistance but cooperates internationally based on the provisions of the Criminal Procedure Code.** The authorities may provide a wide range of assistance in relation to ML and FT cases and the granting of such assistance is not subject to any unduly restrictive or unreasonable conditions. In relation to a large number of countries, however, assistance in searching and seizing of evidence can, with few exceptions, be provided

² NPOs, to enhance their credibility and improve their fund raising opportunities, may apply to the CBF for a “seal of approval,” which subjects such NPOs to a relatively close supervision by the CBF.

only in ML cases involving corruption or transnational organized crime but not any other types of predicate offenses. In cases where dual criminality is required, the shortcomings identified in relation to the provisions criminalizing terrorist financing limit the Netherlands ability to provide MLA. Furthermore, the scope of legal privilege may unduly hinder the possibility for law enforcement authorities to access information and documents held by notaries, lawyers and tax accountants, including upon foreign request. Due to the lack of relevant statistics, the Netherlands did not establish that they effectively seize and confiscate funds based on foreign requests.

31. **ML is an extraditable offense in relation to Council of Europe Member States and countries with which the Netherlands has entered into a bilateral or multilateral extradition treaty.** In relation to all other countries, only ML cases involving transnational organized crime or corruption but not any other types of crimes are extraditable offenses. FT is an extraditable offense but based on the dual criminality requirement, the shortcomings identified under Special Recommendation II may limit the Netherlands' ability to extradite in certain FT cases.