



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' 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 USD14 billion, or 1.8 percent of the GDP. In addition, work done by academics suggests a significant amount of criminal proceeds originating from foreign countries flows into The Netherlands for laundering. 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.

Table 1. Ratings of Compliance with FATF Recommendations

Forty Recommendations	Rating	Summary of factors underlying rating
Legal systems		
1. ML offense	LC	<ul style="list-style-type: none"> Although it is clear that a significant number of investigations, prosecutions, and convictions have been obtained, incomplete statistics in some important areas and the lack of information on the types of predicate offenses to which the ML provisions are being applied make it impossible to determine that the ML provisions are applied in a fully effective manner.
2. ML offense—mental element and corporate liability	LC	<ul style="list-style-type: none"> Due to the assessors' lack of access to statistics on the exact amount of fines and the duration of prison sentences imposed in ML cases, it is not possible to establish that the sanctions regime is fully effective. Although it is clear that a significant number of investigations, prosecutions, and convictions have been obtained, incomplete statistics in some important areas and the lack of information on the types of predicate offenses to which the ML provisions are being applied make it impossible to determine that the ML provisions are applied in a fully effective manner.
3. Confiscation and provisional measures	LC	<ul style="list-style-type: none"> The scope of legal privilege hinders appropriate access to information and documents held by lawyers and other legal professionals. While the application of the confiscation framework seems to yield some results, in the absence of more comprehensive statistics the assessors are not in a position to conclude that the provisions are applied in a fully effective manner.
Preventive measures		
4. Secrecy laws consistent with the Recommendations	C	<ul style="list-style-type: none"> This recommendation is fully observed.
5. Customer due diligence	PC	<ul style="list-style-type: none"> There is no direct obligation in the WWFT or related legislation requiring financial institutions to determine whether the customer is acting on behalf of another person. For foreign legal persons “not based in the Netherlands,” there is no indication that documents used to verify the identity of a legal entity should be from an “independent” source. The WWFT does not obligate financial institutions to verify that a person purporting to act on behalf of the legal entity is so authorized. There is no requirement to obtain a “foreign legal person’s” address and legal form or to obtain provisions regulating the power to bind the legal person or arrangements. The definition of the beneficial owner falls short of the FATF standard as it only refers to legal persons and trusts, and not, more broadly, to the natural person(s) who ultimately owns or controls

Forty Recommendations	Rating	Summary of factors underlying rating
		<p>“a customer.” The definition does not refer to the person that can exercise ultimate effective control over a legal arrangement.</p> <ul style="list-style-type: none"> • The requirement to verify the identity of the beneficial owner and to understand the ownership and control structure of the customer are subject to a risk-based approach and are only applicable in high-risk scenarios. • Rather than identifying circumstances in which simplified CDD can be conducted, Article 6 WWFT provides a list of customers/scenarios exempt from the CDD requirements stipulated by Article 3(1) (the obligation to undertake customer due diligence, which, as the authorities confirmed, includes the measures detailed in paragraph 2), Article 3 (3) (a)(b)(d) and (4) and Article 4 (1). • There are no obligations for financial institutions to ensure that data and information obtained under the CDD process, such as the client risk profile and contact information, are kept up-to-date. • No enforceable obligation to consider filing a suspicious transaction report in the case of failure to satisfactorily complete CDD/terminate business relationship. • There are no provisions in the WWFT obligating financial institutions to apply CDD to existing customers. Transitional provision exists that consider by default the customers identified under the previous AML/CFT regime as identified under the WWFT. • Effectiveness issues in the implementation of preventive measures, regarding: the identification and verification of the beneficial owner.
6. Politically exposed persons	PC	<ul style="list-style-type: none"> • There is no requirement for institutions to ascertain source of wealth and to identify the beneficial owner when the source of wealth is a PEP. • The PEP-related requirements do not apply to non-Dutch PEPs resident in the Netherlands. • The obligation for financial institutions to have risk based procedure to determine whether a customer is a PEP, does not extend to the case of the beneficial owner. • There is no requirement to obtain senior management approval to continue business relationship when a customer/beneficial owner becomes a PEP or is found to be a PEP during the course of an already established business relationship. • The notion of close associate in the Explanatory Memorandum is limited to those who are “publicly known”.
7. Correspondent banking	LC	<ul style="list-style-type: none"> • Enhanced due diligence does not apply to correspondent relationships involving financial institutions headquartered in an EU Member State. • No enforceable requirements in the case of “payable-through accounts.”
8. New technologies & non	LC	<ul style="list-style-type: none"> • The option envisaged by Article 8, para 2 c)

Forty Recommendations	Rating	Summary of factors underlying rating
face-to-face business		<p>of the WWFT may not ensure effective CDD procedures in the case of non face-to-face transactions.</p> <ul style="list-style-type: none"> • No specific obligation to prevent the misuse of new technology.
9. Third parties and introducers	NC	<ul style="list-style-type: none"> • No direct obligation for financial institutions to: <ul style="list-style-type: none"> ◦ immediately receive necessary customer information and; ◦ satisfy themselves that copies of CDD documents and data will be available without delay. • No obligation for financial institutions to satisfy themselves that the third party is regulated or supervised. Presumption that all EU and EEA countries adequately apply the FATF recommendations. • No enforceable requirement that ultimate responsibility for CDD should remain within the FI relying on the third party.
10. Record-keeping	LC	<ul style="list-style-type: none"> • The ambiguity caused by the contradiction between general record-retention requirements of seven years and specific requirements relating to financial entities that are of five years or less. • The record-keeping provisions do not explicitly require that records of transactions should be sufficient to permit reconstruction of transactions sufficient for a prosecution; • The authorities have no power to extend the retention period if necessary in particular cases.
11. Unusual transactions	LC	<ul style="list-style-type: none"> • Some elements of the obligation are implicit and do not apply to all financial institutions. • No enforceable requirement for financial institutions to examine as far as possible the background and purpose of unusual transactions and to keep the findings in writing.
12. DNFBP–R.5, 6, 8–11	PC	<ul style="list-style-type: none"> • All DNFBPs (except TCSPs) • The shortcomings identified under Recommendation 5 and 10 in section 3 also apply • All DNFBPs • The shortcomings identified under Recommendation 6, 8, 9 and 11 in section 3 also apply. Effectiveness issues. • Real estate agents • CDD required only on one party to the transaction is covered, not both the buyer and the seller. • Lawyers and Notaries • Exemption of CDD requirements in relation to the first meeting with the client. • TCSPs • No requirements for providing a registered office; business address for a company, a partnership or any other legal person or arrangements, when this service is provided on a standalone basis. • No requirements in relation to the identification of the customer other than the beneficial owner, and

Forty Recommendations	Rating	Summary of factors underlying rating
		<p>enhanced due diligence.</p> <ul style="list-style-type: none"> No indication to when the retention period should start for records of customer information (if different from the beneficial owner) and business correspondence.
13. Suspicious transaction reporting	LC	<ul style="list-style-type: none"> The 14-day period to report after a transaction 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. Reporting by insurance agents, life insurance companies and bureaux de change is particularly low, which raises concerns regarding the effectiveness of the reporting regime.
14. Protection & no tipping-off	PC	<ul style="list-style-type: none"> Protection from criminal liability for STR reporting applies in the absence of good faith. Protection from civil liability for STR reporting is subject to inappropriate conditions. Tipping-off prohibition does not apply to directors, officers, and employees. Tipping-off prohibition does not apply to information in the process of being reported.
15. Internal controls, compliance & audit	PC	<ul style="list-style-type: none"> The internal control requirements are mostly to be found in the Wft rather than the WWFT. The coverage of the Wft is not the same as that of the WWFT and 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 entity as described above. There is no requirement relating to the seniority or access to managers of the head of the compliance function. The detailed requirements in the Wft for compliance functions, relating to their access to resources and documents, their reporting requirements and other matters do not apply to banks with no investment functions and there are no comparable requirements in the Wgt. The requirements for employee training on AML/CFT in the WWFT are limited to the obligation that employees be instructed in the provisions of the WWFT and trained to recognize unusual transactions. The broad and general provisions in the Wft regarding the provision of information to employees and to business units are not accompanied by any guidance that makes it clear that training should cover internal policies, procedures and controls, new developments and current ML and TF techniques, methods and trends, as well as all aspects of AML/CFT laws and obligations, including, in particular requirements on CDD and reporting.

Forty Recommendations	Rating	Summary of factors underlying rating
16. DNFBP–R.13–15 & 21	PC	<p>All DNFBPs The shortcomings identified under Recommendation 13, 14, and 21 in section 3 also apply to DNFBPs.</p> <p>All DNFBPs (except TCSPs):</p> <ul style="list-style-type: none"> • No requirement of internal policies, procedures and controls (except lawyers). • No requirement to establish an appropriate ongoing employee training. • No obligation of an independent audit function to test compliance with the procedures, policies, and controls. <p>Real estate agents</p> <ul style="list-style-type: none"> • Reporting requirement only in relation to one party to the transaction, not both the buyer and the seller. <p>Lawyers</p> <ul style="list-style-type: none"> • Inadequate awareness of potential ML vulnerabilities contributing to underreporting. <p>TCSPs</p> <ul style="list-style-type: none"> • No reporting requirements for providing a registered office; business address for a company, a partnership or any other legal person or arrangements, when this service is provided on a standalone basis. • Inadequate awareness of potential ML vulnerabilities contributing to underreporting.
17. Sanctions	LC	<ul style="list-style-type: none"> • Punitive sanctions are available which, for the most part are capable of being used in an effective, proportionate and dissuasive manner but there is limited use of such sanctions in practice. • In respect of their impact on the largest institutions, administrative fines remain modest and may, in some instance, be insufficiently effective or dissuasive.
18. Shell banks	C	<ul style="list-style-type: none"> • This recommendation is fully observed.
19. Other forms of reporting	C	<ul style="list-style-type: none"> • This recommendation is fully observed.
20. Other NFBP & secure transaction techniques	C	<ul style="list-style-type: none"> • This recommendation is fully observed.
21. Special attention for higher risk countries	PC	<ul style="list-style-type: none"> • No specific enforceable obligation for financial institutions to give special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations. • No requirement for financial institutions to examine as far as possible the background and purpose of unusual transactions. • The existing countermeasures are limited in scope.

Forty Recommendations	Rating	Summary of factors underlying rating
22. Foreign branches & subsidiaries	PC	<ul style="list-style-type: none"> • There are no provisions requiring the institutions subject to the WWFT to apply Dutch standards to branches and subsidiaries in member states of the EU (or EEA). • The requirement to apply Dutch standards applies only to CDD and not to all appropriate AML/CFT measures. • There is no requirement that institutions subject to the Act should pay particular attention to the principle that foreign branches and subsidiaries apply Dutch standards in countries which do not or which insufficiently apply FATF Recommendations. • The WWFT does not require an institution subject to the Act to apply higher host country standards if they exist.
23. Regulation, supervision and monitoring	LC	<ul style="list-style-type: none"> • There are doubts about the effectiveness of supervision for independent insurance businesses (although the DNB has been addressing this since 2008); and • The approach of the AFM gave particular concern that they were not ensuring that institutions in the relatively minor part of the financial services business within their jurisdiction were effectively implementing their AML/CFT obligations.
24. DNFBP—regulation, supervision and monitoring	PC	<ul style="list-style-type: none"> • Secrecy issues prevent the exercise of supervision of lawyers by the designated supervisor. • Effectiveness of the measures in place regarding internet casinos illegally operating from the Netherlands could not be fully established • Effectiveness issues in relation to the monitoring of precious metals dealers, lawyers and accountants.
25. Guidelines & Feedback	PC¹	<ul style="list-style-type: none"> • Guidance issued to financial institutions is at too high a level of generality to ensure that implementation of AML/CFT defenses is adequate and there is a need for more detailed guidance on the nature of AML/CFT risks in the Netherlands, the importance of establishing a profile and monitoring, and the training and screening of staff. • Guidance is, in some respects, out of date, incomplete, and inaccurate. • Feedback to reporting institutions from the FIU is not regarded as sufficient by those institutions. • Specific feedback is not regarded as sufficient by reporting institutions.
Institutional and other measures		
26. The FIU	PC	<ul style="list-style-type: none"> • The FIU-NL has been a project organization for almost five years, and the Netherlands have undertaken steps towards the final merger between MOT and BLOM only after the onsite visit. The legal framework for the FIU-NL is not yet fully complete. • Instances in which access to data does not allow the FIU to properly undertake its functions. • Shortcomings in the secure protection of data. • Governance issues affecting the operational independence of the FIU.

Forty Recommendations	Rating	Summary of factors underlying rating
		<ul style="list-style-type: none"> • Effectiveness issues concerning: <ul style="list-style-type: none"> ○ operational analysis (lack of prioritization techniques in a context characterized by large amounts of reports); ○ dissemination of financial information to law enforcement (the role of the “STRs” in triggering ML investigations and prosecutions, as well as in ongoing cases, is very minimal; authorities cannot establish how many of the STRs contribute to the opening of ML/FT criminal investigations; access to STR-information is available to law enforcement for investigation of any type of crime, not just ML/FT).
27. Law enforcement authorities	C	<ul style="list-style-type: none"> • This recommendation is fully observed.
28. Powers of competent authorities	LC	<ul style="list-style-type: none"> • Scope of legal privilege hinders the ability for law enforcement authorities to locate and trace assets and property. • Absence of statistics on investigations does not enable to fully assess effectiveness.
29. Supervisors	LC	<ul style="list-style-type: none"> • The observations on the administrative sanctions noted in the rating for R.17 are equally relevant here.
30. Resources, integrity, and training	LC	<ul style="list-style-type: none"> • Staff training is not required on an annual basis and there are insufficient data on the nature of training received by supervisory staff. • Level of training of some police officers and ability to deal with complex cases critically assessed by members of the judiciary.
31. National co-operation	LC	<ul style="list-style-type: none"> • Coordination mechanisms not all used effectively.
32. Statistics	LC	<ul style="list-style-type: none"> • Statistics on inspections and enforcement not comprehensive (From section 7.1.) Accurate and complete statistics are not maintained on: <ol style="list-style-type: none"> (1) the number and types of predicate offenses committed in the Netherlands; (2) the number of investigations conducted for ML and FT, including information on how these cases were initiated and the types of crime these cases relate to, the number of investigations terminated and the reasons for the termination, and the number of cases pending; (3) types of predicate offenses involved in ML prosecutions and convictions; (4) the number of ML and TF investigations in which assets were seized and the amounts seized in each case; (5) the total amounts requested to be seized and eventually realized in each case should be maintained; (6) the number of MLA requests received and granted in ML and TF cases in relation to the seizing and confiscation of assets and the total number of assets seized and confiscated based on foreign request; (7) the number of extradition request received in ML and TF cases and the numbers of cases rejected and granted as well as the time required to complete

Forty Recommendations	Rating	Summary of factors underlying rating
33. Legal persons–beneficial owners	PC	extradition proceedings. <ul style="list-style-type: none"> Information on the ultimate beneficial owners of Dutch legal persons is not accessible and/or up-to-date in all cases. The measures that have been put in place to ensure that bearer shares issued by Dutch NVs are not abused for ML or FT purposes are not yet fully effective.
34. Legal arrangements – beneficial owners	PC	<ul style="list-style-type: none"> For trusts administered by licensed Dutch FIs or DNFBPs, the definition of the “beneficial owners” as contained in the WWFT does not extend to “the natural person(s) who ultimately owns or controls a legal arrangement. Scope of legal privilege hinders the possibility for law enforcement authorities to access beneficial ownership information regarding trusts held by lawyers, accountants and notaries. For trusts not administered by Dutch FIs or DNFBPs, the annual updating requirement for beneficial ownership information as required under the Law on Income Tax is not sufficient to ensure that timely, accurate and complete beneficial ownership information is available in all cases.
International Cooperation		
35. Conventions	PC	<ul style="list-style-type: none"> The Netherlands have not ratified and implemented some provisions of the Palermo and Vienna Conventions. The Netherlands have ratified but have not fully implemented the CFT Convention as outlined in the various sections of the report.
36. Mutual legal assistance (MLA)	PC	<ul style="list-style-type: none"> In relation to a large number of countries, the Dutch authorities may provide assistance in searching and seizing of evidence only in ML cases involving transnational organized crime or corruption but not any other types of predicate offenses. Although the statistics do not imply that there are significant difficulties in practice, the shortcomings identified under Special Recommendation II may limit the Netherlands ability to provide MLA. Scope of legal privilege hinders the possibility for law enforcement authorities to access information and documents held by notaries, lawyers and accountants.
37. Dual criminality	LC	<ul style="list-style-type: none"> For non-Council of Europe members and countries with which the Netherlands has not signed a multilateral or bilateral extradition treaty with the dual criminality as applied by Article 552o (3) of the CPC is not fully in line with the international standard in that it is not sufficient for conduct to be criminalized under both Dutch law and the law of the requesting country but with some exceptions also requires for conduct to qualify as an extraditable offense. In relation to non-Council of Europe members and countries with which the Netherlands have not signed a multilateral or bilateral extradition treaty,

Forty Recommendations	Rating	Summary of factors underlying rating
		the dual criminality as applied in the Netherlands is not in line with the international standard in that it is not sufficient for conduct to be criminalized under both Dutch law and the law of the requesting country but also requires for conduct to fall under an offense listed in Article 51a of the Extradition Act. (From section 6.4.3).
38. MLA on confiscation and freezing	PC	<ul style="list-style-type: none"> Although the statistics do not imply that there are significant difficulties in practice, the shortcomings identified under Special Recommendation II may limit the Netherlands ability to provide MLA. Scope of legal privilege hinders the possibility for law enforcement authorities to access information and documents held by notaries, lawyers and accountants. It was not established that the Netherlands effectively seizes and confiscates funds based on foreign request.
39. Extradition	PC	<ul style="list-style-type: none"> In relation to non-Council of Europe members and countries with which the Netherlands have not signed a multilateral or bilateral extradition treaty, ML offenses involving transnational organized crime or corruption are extraditable offenses under Dutch law. There is no obligation by Dutch authorities to prosecute a suspect domestically in cases where an extradition request is denied purely on the basis of nationality. Statistics were not sufficiently detailed to determine that the extradition proceedings in the Netherlands are dealt with efficiently and in a timely manner.
40. Other forms of co-operation	LC	<ul style="list-style-type: none"> The broad scope of legal professional secrecy introduces an unduly restrictive condition to exchange of information. Lack of statistics to assess the effectiveness of international cooperation by law enforcement agencies.

Nine Special Recommendations	Rating	Summary of factors underlying rating
SR.I Implement UN instruments	PC	<ul style="list-style-type: none"> The Netherlands have ratified but not fully implemented the CFT Convention as outlined in the various sections of this report. Minor shortcomings remain in respect of the implementation of UNSCR 1267 and 1373.
SR.II Criminalize terrorist financing	PC	<ul style="list-style-type: none"> The “collection” of funds to commit a terrorist act is only criminalized if the perpetrator has acquired or actually possessed the funds. Article 46 of the Penal Code does not sufficiently criminalize the financing of conduct covered by the offenses set forth in the nine Conventions and Protocols listed in the Annex to the TF Convention. The criminalization of financing of an individual terrorist is only limited to the case in which the financed person has been designated under the

Nine Special Recommendations		Rating	Summary of factors underlying rating
			UN, EC, or Dutch Sanctions Regulations. <ul style="list-style-type: none"> • Attempt to finance a specific terrorist act is not criminalized. • The absence of an autonomous TF offense has a negative impact on the effective investigation and prosecution of terrorism financing activities.
SR.III	Freeze and confiscate terrorist assets	LC	<ul style="list-style-type: none"> • There is insufficient guidance for persons and entities other than FIs that may be holding targeted funds or assets regarding the freezing obligations stemming from the international standard, including the obligation to check client files and databases against those lists. • FIs other than banks are not always sufficiently supervised for compliance with the EC and Sanctions Regulations. • The freezing obligations under EC Regulation 881/2001 do not expressly extend to funds and assets that are owned or controlled “indirectly” by a designated individual, entity, or organization. • Concerns remain as to whether funds and assets are frozen without delay in all instances.
SR.IV	Suspicious transaction reporting	LC	<ul style="list-style-type: none"> • Technical deficiency in the WWFT definition of TF limits the reporting obligation. Reporting of funds related to those who finance terrorism is not required. • The 14-day period to report after a transaction has been established suspicious does not comply with the requirement of prompt reporting.
SR.V	International cooperation	PC	<ul style="list-style-type: none"> • Although the statistics do not imply that there are significant difficulties in practice, the shortcomings identified under Special Recommendation II may limit the Netherlands ability to seize and confiscate property upon foreign request. • Statistics were not sufficiently detailed to determine that the extradition proceedings in the Netherlands are dealt with efficiently and in a timely manner. • In TF cases, the shortcomings identified under Special Recommendation II may limit the Netherlands ability to seize and confiscate property upon foreign request. • Scope of legal privilege hinders the possibility for law enforcement authorities to access information and documents held by notaries, lawyers and accountants. • Shortcomings identified under Special Recommendation II have a limiting effect on the Netherlands ability to provide information in TF investigations (From section 6.5.2.)
SR.VI	AML/CFT requirements for money/value transfer services	LC	<ul style="list-style-type: none"> • The application of the FATF Recommendations to money transfer offices and bureau de change suffers from the same deficiencies as identified in relation to the rest of the financial sector (see sections 3.1 to 3.10 of this report).
SR.VII	Wire transfer rules	C	<ul style="list-style-type: none"> • This recommendation is fully observed.

Nine Special Recommendations	Rating	Summary of factors underlying rating
SR.VIII Nonprofit organizations	LC	<ul style="list-style-type: none"> • For NPOs outside the CBF seal mechanism no outreach initiatives to enhance NPO's awareness about the risks of terrorist abuse and the mechanism available to mitigate such risks have been conducted. • No coordination and information exchange mechanisms involving the CBF are in place.
SR.IX Cross-Border Declaration & Disclosure	LC	<ul style="list-style-type: none"> • No requirements in the case of shipment of currency through containerized cargo or in the case of mailing of currency or bearer negotiable instruments by a natural or legal person. • Quality of the data made accessible to the FIU affects the effective use of such information by the FIU. • Sanctions are not always effective.

¹ This is a composite rating, taking account of other comments relating to Recommendation 25, e.g., in Section