



BEHIND THE SCENES

BENEFICIAL OWNERSHIP TRANSPARENCY IN THE NETHERLANDS

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Every effort has been made to verify the accuracy of the information contained in this report. All information was believed to be correct as of February 2017. Nevertheless, TI-NL cannot accept responsibility for the consequences of its use for other purposes or in other contexts. The recommendations herein reflect the opinions of TI-NL and should not be construed as being the opinions of the people quoted, cited or interviewed, unless explicitly stated.

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GLOSSARY

AMLD4	4 th Anti-Money Laundering Directive of the European Parliament and Council
AFM	Netherlands' Authority for Financial Markets (<i>Autoriteit Financiële Markten</i>)
AML	Anti-Money Laundering
CDD	Customer Due Diligence
DNB	The Dutch Central Bank (<i>De Nederlandsche Bank</i>)
DNFBP	Designated Non-Financial Businesses and Profession
FATF	Financial Action Task Force
FATCA	United States Foreign Account Tax Compliance Act
FI	Financial Institution
FIOD	Fiscal Information and Investigation Service (<i>Fiscale Inlichtingen- en Opsporingsdienst</i>)
FIU	Financial Intelligence Unit
MLA	Mutual Legal Assistance
NRA	National Risk Assessment
OM	Dutch Public Prosecutor's Office (<i>Openbaar Ministerie</i>)
PEP	Politically Exposed Person
UBO	Ultimate Beneficial Owner or Ultimate Beneficial Ownership as may be the case
WFT	Financial Supervision Act (<i>Wet financieel toezicht</i>)
WODC	Scientific Research and Documentation Centre (<i>Wetenschappelijk onderzoek- en documentatiecentrum</i>)
WTT	Act on the Supervision of Trust Service Providers (<i>Wet toezicht trustkantoren</i>)
WWFT	Money Laundering and Terrorist Financing Prevention Act (<i>Wet ter voorkoming van witwassen en financieren van terrorisme</i>)

INTRODUCTION

Global schemes of money laundering and tax avoidance via complex legal, fiscal and company constructions have existed for many decades. However, when the biggest data leak in history – the Panama Papers – was revealed in April 2016, it became clear to the world the extent to which these shady activities had been taking place and are presently ongoing. Importantly, the larger public is also starting to understand that it is not only criminals who use legal constructions and arrangements to launder immense amounts of illegally obtained funds and other criminal means. It is also the rich and powerful – the star football players and politicians, the dictators and democratically elected leaders – who consciously choose to neglect their civic and legal duty to pay taxes by employing creative tricks offered by questionable advisors.

One of the essential tricks employed is to obscure and anonymize the identity of the natural person who pulls the strings behind the scenes, the so-called ultimate beneficial owner (UBO).¹ UBO transparency is essential for ensuring that the proceeds of corruption are not hidden and laundered through anonymous shell companies, trusts and other legal structures. Moreover, it is essential to ensure that the same instruments and complex arrangements are not used to actively mislead authorities around the world for the purpose of tax avoidance. Even though the revelations of the Panama Papers raised significant awareness to these issues, the problems identified in this report are not new. A 2011 study by the Stolen Asset Recovery Initiative (StAR) found that more than 70% of a group of 200 corrupt politicians used anonymous companies and trusts to obscure their identities.² It has been pointed out since the publication of the Panama Papers that many of the aforementioned activities are not illegal as such. However, if not illegal, why choose to hide behind anonymised and complicated nominee structures and shell companies?

These practices result in immense losses of tax revenue for authorities, while honest tax payers must pick up the bill. The wrongdoers are assisted by financial and legal service providers, such as the Panamanian Mossack Fonseca, which are more focused on generating revenue than on respecting globally accepted standards of CDD measures and business integrity. Nevertheless, most service providers show a sincere interest in fulfilling their gatekeeping role in the financial system. A recent survey by the professional services firm EY revealed that 91% of respondents believe that it is important to know who the UBO is of the entities with which they do business.³ Not knowing who the natural person behind a customer is can carry serious risks for service providers, including regulatory censure, financial penalties, and reputational damage. However, as this report will demonstrate, these practitioners often encounter fundamental difficulties due to a global standard that has not yet reached the mutual level of compliance with international standards of UBO transparency that it should have.

While there is an ever-growing international awareness of the importance of UBO transparency, including at the Organisation for Economic Co-operation and Development (OECD), the Financial Action Task Force (FATF), G8, G20, and at the EU level, more analysis is needed to understand the challenges and identify best practices for different national contexts. This is especially important as new risks and concerns have arisen regarding the performance of key actors responsible for the identification and verification of the UBO, as will be discussed in this report. Here, national parliaments should play a role by investigating in a democratic way their own country's shortcomings in the area of anti-money laundering (AML). While national counterparts, including the Dutch parliament, are lagging behind, the European Parliament's Committee of Inquiry into Money Laundering, Tax Avoidance, and Tax Evasion (PANA) set a good example at the beginning of 2017, starting its fact-finding investigation by questioning representatives of the 'butlers of money laundering': banks, law offices and accountancy firms.

1 A UBO is the natural person who ultimately owns, controls or manages a legal entity, including those persons who pull the strings behind complex legal and fiscal structures, make key decisions and reap the benefits. Often, UBOs choose to remain anonymous by concealing their identity via complex legal and fiscal structures, including foreign shell companies and legal structures enhancing privacy, such as trusts.

2 The World Bank, *The Puppet Masters: How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About it* (Washington DC: the World Bank/ UNODC/Stolen Asset Recovery Initiative, 24 October 2011), <https://star.worldbank.org/star/publication/puppet-masters> (accessed 9 February 2017).

3 EY, *14th Global Fraud Survey 2016* (EY, 2016), p.6, [http://www.ey.com/Publication/vwLUAssets/ey-global-fraud-survey-2016/\\$FILE/ey-global-fraud-survey-final.pdf](http://www.ey.com/Publication/vwLUAssets/ey-global-fraud-survey-2016/$FILE/ey-global-fraud-survey-final.pdf), (accessed 9 February 2017).

4 Transparency International Netherlands (TI-NL), *Europees Parlement ondervraagt witwasbutlers* (Amsterdam: TI-NL, 31 January 2017), <https://www.transparency.nl/nieuws/2017/01/europees-parlement-ondervraagt-witwasbutlers/> (accessed 9 February 2017).

PURPOSE AND CONTENT

This project is funded by the European Commission and co-funded with the resources of Transparency International Netherlands (TI-NL). It is carried out in the context of the transposition of the Fourth Anti-Money Laundering Directive (AMLD4), which was enacted in 2015 and is currently being amended in the wake of the revelations of the Panama Papers and the resulting public debates.

With this report, TI-NL contributes to a further analysis of UBO transparency. It will assess (i) the current and future regulation regarding transparency of the ownership structures of companies and other legal entities in the Netherlands⁵ and (ii) the regulations' effectiveness in practice.

Regularly assessing the Dutch AML framework and its effectiveness is important because of the position of the Netherlands as one of the most important global financial hubs and service centres. The Netherlands hosts 12,000 special financial institutions (SFIs).⁶ The Tax Justice Network has estimated that Dutch SFIs are used by foreign companies to channel 4,000 billion euros through the Netherlands on a yearly basis. Additionally, 91 of the 100 largest multinationals have Dutch SFIs.⁷ The Netherlands is vulnerable to money laundering due to its outsized role as regards international financial flows and its relatively sizable financial sector, with a total banking assets to GDP ratio of 379% in 2014.⁸ This vulnerability calls for a strong and effective AML system, including regarding UBO transparency. This report evaluates the current state, future plans and effectiveness in this area.

The first part consists of a technical evaluation, which focuses on an assessment of the current and future Dutch legislative framework regarding UBO transparency (as of page 8). Following this technical assessment, the second part analyses the effectiveness of the analysed legislation in practice (as of page 18). The G20 High Level Principles on Beneficial Ownership Transparency⁹ and the commonly known approach followed by the FATF recommendations¹⁰ serve as the basis for the analyses.¹¹

The effectiveness evaluation is followed by three case studies (as of page 33), which will illustrate how a selection of the identified shortcomings have materialised in practice in the past few years. While the first two cases examine the role of financial service providers and trust service providers respectively, the third case is about a new development in this area: the use and abuse of bitcoins and related AML and UBO risks.

Based on the foregoing, the report ends with a list of the most important recommendations based on the lessons learned during the evaluations and case studies (see page 40).

This report shows that the Netherlands has a good understanding of general AML risks and a strong legal framework regarding AML duties for professionals operating in the market, including UBO identification and verification. The legal framework regarding regulatory supervision and related work by competent authorities is also well-developed, despite certain criticisms regarding its effectiveness. Nevertheless, when it comes to specific UBO-related issues, the Netherlands' overall current score in the technical evaluation is weak and the overall rating in the effectiveness evaluation is low-to-average. This shows that the Netherlands lags behind in international comparison concerning several points of attention that are essential for UBO transparency.

The somewhat disappointing results can, in summary, be explained by the following five factors:

- (i) UBO transparency has not been given enough special attention in law, policies or practice yet, resulting in UBO information and access thereto being fragmented and incidental;
- (ii) at the date of writing, there is no UBO register and no central shareholders' register yet, and the future plans for such registers are partially flawed;
- (iii) the Dutch understanding and identification of specific current and future UBO-related risks is unsatisfactory, which can be illustrated by the fact that the Dutch government has never conducted an integral national risk assessment (NRA) regarding money laundering risks related to legal persons and arrangements, and that the plans for the first NRA have certain shortcomings;
- (iv) it is a reality that foreign trusts have connections to the Netherlands, e.g. trustees or beneficiaries reside in or trust assets are located in the Netherlands. Nevertheless, the Dutch government has hitherto refused to consider including registration of foreign trusts in the legislative amendments that are supposed to implement AMLD4; and
- (v) Dutch corporate law allows for the existence of bearer shares and Dutch trust service providers may act as nominee directors for Dutch subsidiaries of foreign clients.

The future score shows that quite a significant improvement can be expected, which is due to the upcoming implementations of AMLD4, including the introduction of a UBO register, as well as the introduction of a central shareholders' register. In addition, the Dutch Scientific Research and Documentation Centre (WODC) plans to publish the first NRA in 2017. It remains to be seen whether these expected developments actually result in much-needed improvements regarding an integral understanding of UBO transparency issues, related legislation and, importantly, effective implementation and compliance with such regulatory framework in practice.

The results of this report and the recommendations that it makes should be considered by Dutch, European and international lawmakers when shaping the current and upcoming legislative developments. This report is published at a time when the first-ever integral NRA is being conducted and can contribute to its risk analysis regarding AML and UBO related issues.

5 The Kingdom of the Netherlands consists of the Netherlands itself and three Caribbean islands, namely Aruba, Curacao and St Maarten. With the dissolution of the Netherlands Antilles in 2010, the three islands of Bonaire, St Eustatius and Saba became special municipalities of the Netherlands. Curacao and Sint Maarten are responsible for their own national government and legislation. Dutch legislation will gradually come to replace Antillean law on Bonaire, St Eustatius and Saba. See for more information the website of the Government of the Netherlands regarding the new constitutional order: <https://www.government.nl/topics/caribbean-parts-of-the-kingdom/contents/new-constitutional-order> (accessed 14 February 2017).

6 Special Financial Institutions are "Dutch companies or institutions, whose shares are directly or indirectly held by non-residents and are mainly dealing with receiving funds from non-residents and channelling them to non-residents". IMF, *Special purpose entities and holding companies* (Washington DC: IMF, 2005). www.imf.org/external/pubs/ft/bop/2005/05-53.pdf (accessed 9 February 2017).

7 Tax Justice Network, *Financial Secrecy Index: Narrative report on Netherlands* (Chesham: Tax Justice Network, 2015). www.financialsecrecyindex.com/PDF/Netherlands.pdf (accessed 9 February 2017).

8 See Helgi Analytics Library: www.helgilibrary.com/indicators/bank-assets-as-of-gdp (accessed 9 February 2017).

9 Stolen Asset Recovery Initiative (StAR), *G20 High-Level Principles on Beneficial Ownership Transparency* (StAR, 2014). http://star.worldbank.org/star/sites/star/files/g20_high-level_principles_beneficial_ownership_transparency.pdf (accessed 9 February 2017).

10 Financial Action Task Force (FATF), *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation* (Paris: FATF, February 2012), <http://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html> (accessed 9 February 2017).

11 Please refer to the part Methodology and Interviews at the end of the report for more details regarding the used methodology.

TECHNICAL EVALUATION

The technical evaluation below assesses the current and future Dutch legislative framework regarding beneficial ownership based on international standards regarding UBO transparency. It uses an international methodology based on the High-Level Principles on Beneficial Ownership that were agreed upon by the members of the G20¹² and which were inspired by the recommendations of the inter-governmental organisation FATF.¹³ The FATF urges organisations to increase attention and awareness, as well as risk analysis regarding opaque vehicles and structures and to ensure that accurate ownership information is available to authorities.

On a scale of one (very weak) to five (very strong), the scores presented below are the result of a technical evaluation questionnaire, which is attached to this report as an annex (page 45). The questionnaire was completed based on desk-based research conducted by TI-NL and the results of consultations with (legal) professionals as well as representatives from competent authorities. Please refer to the part on Methodology and Interviews below for more detailed information, e.g. regarding the methodology behind the allocated score percentages (as of page 42).

Table 1 shows the overall scores of the current and expected future compliance of the Dutch legislative framework with internationally accepted UBO transparency standards. Despite many positive developments in recent years concerning an increased general understanding and regulation of AML risks, the scores indicate that the Netherlands lags behind in international comparison, specifically regarding UBO transparency. Concerning the analysis of future plans below, it is important to note that not all legislative plans discussed in this report are finalized at the date of writing. Hence, the actual future scores based on prospective laws might deviate from the future scores below.

	CURRENT	FUTURE
OVERALL SCORE	39% Weak	62% Strong

Table 1: Overall adequacy of Dutch UBO transparency framework.

G20 PRINCIPLE 1: DEFINITION OF BENEFICIAL OWNERSHIP

Score 63% (strong) **Current State Strong** **Future Plans Strong**

Despite certain flaws, the Netherlands' compliance with G20 Principle 1 regarding the definition of beneficial ownership is strong.

- The applicable Dutch legislation includes a clear definition of UBO. The Dutch Money Laundering and Terrorist Financing Prevention Act (Wwft) stipulates that a UBO is the natural person who:
 - holds a share of more than 25% in the issued capital of a client;
 - can exercise more than 25% of the voting rights at a client's general meeting of shareholders;
 - can exercise actual control over a client;
 - is the beneficiary of 25% or more of the assets of a customer or trust; or
 - has special control of 25% or more of the assets of a customer, unless the customer is a company subject to disclosure requirements as referred to in EU Directive 2004/109/EC (transparency directive) or disclosure requirements of an international organisation that are equivalent to that directive.¹⁴
- The term 'client' covers both natural and legal persons, with whom a financial institution (FI) or a designated non-financial business and/or profession (DNFBP) enter into a business relationship or on whose behalf a legal transaction is conducted. Also, FIs and DNFBPs must verify whether a client is acting on behalf of another person.¹⁵
- The term 'client' covers persons acting as a trustee of a trust. If the client is a trustee or another party to a trust from a foreign jurisdiction, a specific client due diligence requirement applies, which includes identifying the UBO of the trust.¹⁶

12 StAR, G20 High-Level Principles on Beneficial Ownership Transparency.

13 FATF, International Standards of Combating Money Laundering and the Financing of Terrorism & Proliferation.

14 Article 1(1)(f) Anti-Money Laundering and Anti-Terrorist Financing Act (Wwft).

15 Article 3(2)(f) Wwft.

16 Article 3(3) Wwft.

Despite compliance with G20 Principle 1 being relatively strong, the score on UBO definition does not exceed 63%. This is explained by the Wwft stipulating the 25% shareholding threshold indicated above. Such a threshold can easily be exploited by persons looking to stay under the radar. For example, for more than four shareholders, the 25% threshold does not apply. Consequently, in its directive amending AMLD4, the European Commission proposed in July 2016 to lower this threshold to 10% with regard to entities which present a specific risk of being used for money laundering and tax evasion.¹⁷ In the future, a general lowering of the threshold to 10% to be applied to all companies, not only high-risk ones, would be desirable. The FATCA also employs this threshold.¹⁸

Future Score 63% (strong)

The aforementioned lowering of the threshold is not reflected in future legislative developments in the Netherlands, resulting in no improvement regarding compliance with G20 Principle 1.

- The Dutch legislature followed up on AMLD4 and introduced an amendment to the Wwft partly implementing AMLD4. However, the Dutch legislative plans to implement AMLD4 for now only refer to the general UBO definition: *Ultimate beneficial owner: any natural person(s) who, to be determined by administrative regulation (algemene maatregel van bestuur), ultimately owns or controls the customer and/or the natural person(s) on whose behalf a transaction or activity is being conducted.*¹⁹

It is uncertain and remains to be seen how the Dutch legislature will define the UBO term further by administrative regulation.

G20 PRINCIPLE 2: IDENTIFYING AND MITIGATING RISK

Score 29% (weak) **Current State Weak** **Future Plans Strong**

The Netherlands currently shows a surprisingly weak compliance with G20 Principle 2 regarding the identification and mitigation of risks in the framework of UBO transparency. This low score is explained by one major shortcoming in Dutch compliance with this Principle.

- The methodology used for the analysis of this report attaches great importance to questions relating to the existence a centralised, effective and regularly conducted NRA.
- The Dutch government has never conducted an NRA that includes an integrated assessment of the money laundering risks related to legal persons and arrangements.

Future Score 79% (strong)

There have been plans to conduct and publish an integrated NRA since 2015 but this has been postponed several times.²⁰

- At the date of writing, public information regarding the plans for the NRA is limited to a summary of the methodology that will be used.²¹ Publication of the first NRA is envisaged for 2017.²²
- Based on the published methodology summary, it seems that the study will include consultations with external stakeholders, although it is unknown which and what kind of external stakeholders will be consulted. The results will be made fully available and transparent.

17 European Commission, Proposal for the Amendment of the Fourth Anti-Money Laundering Directive 2015/849 (AMLD4), (Strasbourg: European Commission, 5 July 2016), http://ec.europa.eu/justice/criminal/document/files/aml-directive_en.pdf (accessed 9 February 2017).

18 Foreign Account Tax Compliance Act (FATCA), <https://www.irs.gov/businesses/corporations/foreign-account-tax-compliance-act-fatca> (accessed 9 February 2017).

19 Article 1 Draft bill implementation AMLD4 (Concept wetsvoorstel implementatiewet vierde anti-witwasrichtlijn), <https://www.internetconsultatie.nl/implementatiewetvierdeantiwitwasrichtlijn> (accessed 9 February 2017).

20 Dutch Ministry of Security and Justice, Letter of Parliament to Money-Laundering Report (Bestuurlijke reactie op het rapport over bestrijding witwassen), (The Hague: 4 February 2014), p. 5, <http://www.rekenkamer.nl/zoekresultaten?sortreversed=true&sortfield=score&freetext=478752&zoek-submit=> (accessed 9 February 2017) and Dutch House of Representatives, Parliamentary Papers, 2014-2015, 31 477, nr. 8, p. 2 <https://zoek.officielebekendmakingen.nl/dossier/31477/kst-31477-8?resultIndex=17&sorttype=1&sortorder=4> (accessed 9 February 2017).

21 WODC, Verkenning Methoden en Data National Risk Assessment Witwassen en Terrorismefinanciering (The Hague: WODC, December 2016), <https://www.wodc.nl/onderzoeksdatabase/2689a-verkenning-methoden-en-data-national-risk-assessment-witwassen-en-terrorisme-financiering.aspx> (accessed 9 February 2017).

22 Dutch House of Representatives, Parliamentary Papers, 2016-2017, 31 477, no. 18, p. 11, <https://zoek.officielebekendmakingen.nl/dossier/31477/kst-31477-18?resultIndex=2&sorttype=1&sortorder=4> (accessed 9 February 2017).

Despite the introduction of the NRA, even the future score illustrates certain shortcomings. These are to be found in the methodology of this first NRA. For more details, please refer to the discussion regarding Outcome 1 below (page 19).

G20 PRINCIPLE 3: ACQUIRING ACCURATE BENEFICIAL OWNERSHIP INFORMATION

Score 20% (very weak)

Current State
Very weak

Future Plans
Strong

Dutch compliance with G20 Principle 3 regarding the acquisition of accurate UBO information is very weak. This has everything to do with the fact that the Dutch legal system currently does not treat UBO as a category of information as such. The following factors play a role:

- Applicable Dutch law does not yet require companies to maintain or disclose UBO information as such.
- Shareholders are not obliged to submit UBO information as such, or changes thereto, to the company.
- Instead, the Netherlands has a company register administered by the Chamber of Commerce. Among other information, this company register only includes information on a company's shareholding when the company has a sole shareholder.
- The shareholders' register, which Dutch law requires companies to maintain, is of an internal nature and not publicly accessible.
- Contrary to a corresponding shareholders' duty, Dutch law does not require UBOs to inform the company regarding changes in share ownership.

These circumstances result in the current lack of maintenance of UBO information. Consequently, the ways of acquiring this information are fragmented and incidental, explaining the very weak score.

Future Score 75% (strong)

The very low current score is expected to improve in the future. This can be concluded based on the legislative plans and proposals regarding the Dutch implementation of AMLD4:

- At the date of writing, a legislative proposal regarding a UBO register has only been outlined by the Dutch government in the form of a letter to the Dutch House of Representatives.²³ An actual draft bill has not yet been made public.
- Also, at the date of writing, plans for a central shareholders' register were published in the form of a draft bill that was sent to the Dutch House of Representatives in early 2017.

It is important to note that, at the date of writing, it is not yet clear how the registers will eventually look like as the proposal and draft bill respectively are still in the middle of the legislative process. This future score, as well as other future scores that include the future introductions of the two registers must be read in this context.

However, judging from the legislative plans, it seems that the future registers will address some, but not all, of the main concerns that are reflected in the low score. For a summary of the plans for the UBO and shareholders' register, see the next paragraph regarding G20 Principle 4 on access to UBO information.

G20 PRINCIPLE 4: ACCESS TO BENEFICIAL OWNERSHIP INFORMATION

Score 28% (weak)

Current State
Weak

Future Plans
Strong

Compliance with G20 Principle 4 regarding access to UBO information by the Netherlands is currently weak.

As stated above, UBO information as such is not yet a category within the Dutch framework. The absence of a UBO register entails the following shortcomings that explain this weak score:

- At the date of writing, UBO information is incidental and is gathered mostly within the framework of CDD procedures executed by FIs and DNFBPs, as well as via their reporting obligations to financial regulatory agencies.
- Companies and other legal entities are not yet specifically obliged to gather and maintain UBO information as such. This will change with the introduction of the future UBO register.

²³ Dutch House of Representatives, Parliamentary Papers, 2015-2016, 31 477, no. 10, <https://zoek.officielebekendmakingen.nl/dossier/31477/kst-31477-10?resultIndex=15&sorttype=1&sortorder=4> (accessed 9 February 2017).

- There are currently no specifications regarding authorized access to UBO information (e.g. the timeframe of such access).
- The existing company register is available online and is generally accessible to the public. Nevertheless, the information included is limited (e.g. shareholder information is limited to sole shareholdings and does not include UBO information). Also, accessing the information is subject to registration and a nominal fee, and there are some legal access obstacles including firm privacy guarantees.

For a more detailed discussion of the current effectiveness of Dutch legislation regarding access to UBO information, see below under Outcome 3 (page 25).

Future Score 69% (strong)

On the basis of the current legislative plans for the UBO register and the shareholders' register outlined below, it seems that the introductions of the UBO register and central shareholders' register will help improve the score in the future.²⁴

Outlined legislative plans for a UBO register based on the letter by the Minister to parliament:

- Concerns Dutch private limited companies (*besloten vennootschappen met beperkte aansprakelijkheid*), public limited companies (*naamloze vennootschappen*) with registered shares, foundations (*stichtingen*), associations (*verenigingen*) and partnerships (*personenvennootschappen*).
- Linked to the UBO definition provided above, including shareholding threshold of 25% plus one share.
- Public, openly-accessible register probably administered by the Dutch Chamber of Commerce (*kamer van koophandel*), which also administers the existing company register.
- Limited access to UBO information (name, month and year of birth, nationality, country of residence and nature and extent of economic interest of the UBO) in the form of extracts (PDFs) for everyone against a small fee and upon registration; no open data format.
- Full access to UBO information (also date of birth, address, citizen service number, information regarding the verification of the UBO, documents pertaining to the reasons for classification of the person as a UBO and the nature and extent of economic interest of the UBO) for certain competent authorities and the Financial Intelligence Unit (FIU).
- Entities will be obliged to gather UBO information proactively, register UBO information, and update information when changes occur; no specification regarding potential penalties for failure of reporting accurate information.
- Obligated entities mentioned in the Wwft and supervisory and investigative authorities will also have a duty to report when they detect inaccuracies during the fulfilment of their CDD measures and tasks.

Draft bill for a centralized shareholders' register:

- Concerns Dutch private limited companies (*besloten vennootschappen met beperkte aansprakelijkheid*) and public limited companies (*naamloze vennootschappen*) with registered shares (i.e. companies not listed on a stock exchange).
- Replaces hard-copy shareholders' registers maintained by companies for internal purposes.
- Closed, non-public digital register with access limited to: tax authorities, notaries and certain competent authorities and regulated FIs and DNFBPs, the latter of which latter have not yet been designated in the draft bill.
- Will include information about registered shares, holders of registered shares, usufructuaries (*vruchtgebruikers*) and pledgees (*pandhouders*) of registered shares.
- Will include all shareholders of private limited companies and public limited companies with registered shares, including shareholding under the threshold of 25%.
- Information to be supplied and updated by notaries on the basis of notarial deeds to the administering authority Royal Association of Civil-law Notaries.

²⁴ Outlines for the UBO register can be found here: Ministry of Finance, Letter to Parliament regarding outlines of UBO register, <https://www.rijksoverheid.nl/documenten/kamerstukken/2016/02/10/kamerbrief-over-de-contouren-van-het-ubo-register> (accessed 9 February 2017). The draft bill for the central shareholders' register can be found here: Dutch House of Representatives, Parliamentary Papers II, 2016-2017, 34661, no. 2, <https://zoek.officielebekendmakingen.nl/dossier/34661/kst-34661-2> (accessed 9 February 2017).

However, uncertainties and potential future flaws remain, explaining the future score of 69% (strong), which still leaves room for improvement.

- For example, the outlined rules regarding a future UBO register do not include a mandate for the administering authority to verify and double-check UBO information submitted by entities.
- Also, as argued above when discussing the definition of UBO (page 8), the 25% threshold for beneficial ownership should be lowered to 10% to be applied to all companies. This would decrease the chance that ill-intentioned persons will abuse the threshold to stay under the radar.

For a more detailed discussion of the preliminary points of criticism regarding the future registers, see Outcome 3 below (page 25).

G20 PRINCIPLE 5: TRUSTS

Score 25% (weak)

Current State
Weak

Future Plans
Weak

Compliance with G20 Principle 5 regarding trusts is weak.

This low score is based on the misconception by the Dutch legislature that UBO information of trusts does not need to be addressed in Dutch AML legislation because the concept as such is unknown to the Dutch legal system. Indeed, a trust as known in common law jurisdictions does not exist under Dutch law (i.e. it cannot be incorporated in the Netherlands). However, trusts constituted under foreign legal regimes may have parties to the trust that are residents in the Netherlands, may be administered in the Netherlands and may have assets located in the Netherlands. In its proposals for an amendment of AMLD4, the European Commission proposes a requirement of UBO registration of the trustee in the Member State where such trustee is administered, instead of the Member State in which the trust was established.²⁵ The Dutch reaction to this proposal was limited in the sense that the government reiterated its position that Dutch law does not include a requirement to register trusts because the concept of a trust is not known in Dutch law.²⁶

This results in the following shortcomings in Dutch legislation regarding trusts:

- As far as the implementation of AMLD4 is concerned, the Dutch legislature neglects the reality that trusts and parties to a trust have connections to the Netherlands and, as such, are already subject to CDD measures by financial and legal service providers according to the Wwft.²⁷
- Dutch law does not require trustees or any other party to a foreign trust that is active in the Netherlands to maintain UBO information about the trust.
- There is no legal obligation for trustees of foreign trusts somehow active in the Netherlands to proactively disclose to FIs and DNFBPs information about the parties to the trust.
- It is the responsibility of FIs and DNFBPs to proactively request such information from the trustee in the framework of their CDD.²⁸

The above leads to practical problems regarding the effective access to and the maintenance of the UBO information of trust clients. For a more detailed discussion of these issues, please see Outcome 3 below.

Future Score 25% (weak)

The government stated that it will evaluate the Dutch situation as regards the registration of trusts in the coming period.²⁹ More information as to what this evaluation will entail has not been made public at the time of writing. Hence, an improvement of the weak score regarding G20 Principle 5 is not to be expected soon.

²⁵ European Commission, Proposal for the Amendment of AMLD4, pp. 18 and 34.

²⁶ Dutch Ministry of Foreign Affairs, Note 3: Amendment AMLD4 and Company Law Directive (*Wijziging vierde anti-witwasrichtlijn en de richtlijn vennootschapsrecht*), (The Hague: 9 September 2016), p. 6, <https://www.rijksoverheid.nl/documenten/publicaties/2016/09/09/fiche-3-wijziging-vierde-anti-witwasrichtlijn-en-de-richtlijn-vennootschapsrecht> (accessed 9 February 2017).

²⁷ Article 3(3) Wwft.

²⁸ Ibid.

²⁹ European Commission, Proposal for the Amendment of AMLD4.

G20 PRINCIPLE 6: COMPETENT AUTHORITIES' ACCESS TO TRUST INFORMATION

Score 20% (very weak)

Current State
Very weak

Future Plans
Very weak

This particularly low score relates to the situation as outlined above under Principle 5 on Trusts (page 12). There is no register that collects information about trusts. The Dutch government does not seem to recognise the need to regulate trusts and their activities in the Netherlands and register them. This means that:

- UBO information about trusts is currently incidental and not centralised;
- Dutch law currently does not stipulate how either the competent authorities, or the public can request or access such information. This includes UBO information held by trustees; and
- competent authorities currently have to access UBO information on trusts via the regular information requests within the framework of their supervisory or investigative powers.

Future Score 20% (very weak)

As mentioned above, it is not certain whether the Dutch government is willing to change its position concerning registration of trusts that are somehow linked to the Netherlands. This point of view is based on the fact that trusts do not exist as a legal concept in the Netherlands. It is unclear whether the Dutch government will be willing to change its position. Thus, the future score remains unchanged (20%, very weak).

Going forward, the European Commission's position is that trusts should be registered in the Member State where the trustee is administered, which could be the Netherlands as well. One step further, the most desirable solution would involve the required registration of trusts in the Member State with which the trust has a connection. This would include trusts with trustees residing in the Netherlands, as well as trusts with (i) a Dutch resident settlor, (ii) a Dutch resident beneficiary, or (iii) assets located in the Netherlands, even if the trustee is not based in the Netherlands.

G20 PRINCIPLE 7: DUTIES OF FINANCIAL INSTITUTIONS & OTHER BUSINESSES AND PROFESSIONS

Score 65% (strong)

Current State
Strong

Future Plans
Strong

The Netherlands' compliance with G20 Principle 7 regarding the duties of FIs and other businesses and professions is strong. The legislation relating to this topic is well-developed and sophisticated:

- All entities that the Wwft applies to, including FIs and DNFBPs, are under strict requirements to have procedures in place to identify the UBO when establishing a business relationship with a client or conducting an incidental transaction for a client of at least 15,000 euros, or two or more transactions that are linked to one another and represent a combined value of at least 15,000 euros.
- The Wwft includes an extensive list of entities to which these requirements apply, including but not limited to FIs and service providers, such as banks, exchange offices, life insurance providers, investment companies and trust service providers (*trustkantoren*), as well as DNFBPs, including but not limited to accountants, lawyers and notaries (regarding certain activities when operating as intermediaries in real estate transactions, administering money, e.g. by way of a lawyer's account, etc.), casinos and gambling services.³⁰ The requirement to identify UBOs apply to dealers in goods, including precious metals, stones, and luxury goods, when a cash transaction exceeds 15,000 euros.
- An entity is not allowed to establish a business relationship or perform a transaction if the identity of the UBO cannot be established or verified. Moreover, respective entities must enhance their CDD measures in case the relationship involves a politically exposed person (PEP) and report suspicious transactions to the designated authorities.

³⁰ Article 1(a) Wwft.

Future Score 74% (strong)

The following proposed changes establish a somewhat higher score:

- The future introduction of a UBO and a central shareholders' register will facilitate the identification of domestic UBOs and will serve as an important source of information in the framework of CDD measures. The introductions of such registries will, as a result, improve the current score.
- The Wwft is being amended as a result of AMLD4. One of the amendments concerns a lowering of the threshold regarding cash transactions performed by dealers in goods, including precious metals, stones, and luxury goods from 15,000 euros to 10,000 euros.

Despite this generally well-developed and sophisticated system, past experience indicates that certain FIs and DNFBOs do not always follow the rules and neglect their role as gatekeepers in the financial system. Rules and regulations are only as good as the effective compliance therewith. Please refer to Case Study #1 below for a discussion of these issues in practice (page 33).

G20 PRINCIPLE 8: DOMESTIC AND INTERNATIONAL COOPERATION

Score 61% (average)

Current State
Average

Future Plans
Strong

The score on G20 Principle 8 concerning domestic and international cooperation is average. This can be explained by the following factors:

- Domestic cooperation by competent authorities is regulated by various laws and regulations that are complex and entail several obstacles regarding the exchange of data, including UBO information.
- As discussed above, there is no central database on legal ownership and UBOs that allow domestic or foreign authorities to consult information on legal ownership and ultimate control. As long as this is the case, UBO information is shared on an incidental basis along the avenues that the current law stipulates.
- Also, despite the legal powers and exchange mechanisms at the disposal of competent authorities, the exchange of (personal) information is relatively difficult in the Netherlands, as Dutch law imposes a number of restrictions on the legality of such an exchange.
- International cooperation on the exchange of information is mostly regulated by mutual assistance agreements and are subject to the same restrictions regarding the provision of (personal) data.

Please refer to Outcome 5 below for a more detailed discussion on the topic of cooperation (page 30).

Future Score 71% (strong)

The improved score is explained by the introduction of the UBO register, which will allow both domestic and international authorities to access UBO information on Dutch entities from the register without having to engage in complex and restrictive cooperation and exchange mechanisms.

Also, a European directive as regards exchange of and access to anti-money-laundering information by tax authorities was adopted in December 2016. On the basis of this directive, Member States will be required to provide access to tax authorities to certain sorts of tax information as listed in AMLD4, including UBO information³¹. Depending on the ultimate implementation, this development is likely to increase international cooperation concerning tax matters, including UBO information.

³¹ European Council Directive 2016/2258 of 6 December 2016 amending Directive 2011/16/EU as regards access to anti-money-laundering information by tax authorities.

G20 PRINCIPLE 9: TAX AUTHORITIES

Score 42% (average)

Current State
Average

Future Plans
Strong

Compliance with G20 Principle 9 on tax authorities regarding UBO information is currently average in the Netherlands.

- Similar to the explanation of the scores regarding the access to and sharing of UBO information, this score can be explained by the strict conditions that govern such information access and sharing.
- Internationally, the Netherlands exchanges tax information based on bilateral and multilateral arrangements. Examples include tax agreements based on the models provided by the OECD and the United Nations, tax information exchange agreements, for which there is also an OECD model, and the Convention on Mutual Administrative Assistance in Tax Matters, as well as certain European directives and the US American Foreign Account Tax Compliance Act.

Please refer to Outcome 5 below for a more detailed discussion of the current framework regarding the effectiveness of current tax information exchange systems, including UBO information (page 30).

Future Score 83% (very strong)

Judging by the relevant legislative plans, the score on G20 Principle 9 will improve to a very strong one. This is explained by the following factors.

- The introduction of a UBO register will greatly facilitate the tax authorities' access to and sharing of such information. The current legislative plans for the UBO register include full access for the tax authorities. Depending on the exact structure of the register, which at the date of writing is still unknown, this development might minimise restrictions to a significant extent.
- The above-mentioned directive regarding exchange of and access to anti-money laundering information is also likely to increase future international access and exchange of UBO information, again, depending on the ultimate implementation in national regulations.
- Within the framework of the Mutual Administrative Assistance in Tax Matters, the Netherlands has committed to exchanging tax information automatically with other jurisdictions under the Common Reporting Standard of the OECD as of September 2017.
- However, complex international legal arrangements with companies and bank accounts in various foreign jurisdictions will remain an issue in the future, especially regarding jurisdictions with which the Netherlands does not have a tax agreement, such as Panama.

G20 PRINCIPLE 10: BEARER SHARES AND NOMINEES

Score 38% (weak)

Current State
Weak

Future Plans
Strong

The Netherlands overall score on G20 Principle 10 is weak. As discussed below, while the existence of bearer shares in the Netherlands is surprising in international comparison, the Dutch legal framework does not know the concept of 'nominees' as such.

Bearer shares

Firstly, as regards bearer shares, there is much room for improvement. This is explained by the following aspects.

- While there has been an international development towards eliminating bearer shares³², Dutch corporate law still allows the use of bearer shares (*aandelen aan toonder*) for public limited liability companies (*naamloze vennootschappen*), as long as they are fully paid up.³³ Even though bearer shares are not known in the Netherlands as being abused for money laundering purposes, this type of share should be abolished. In its 2014 report entitled 'Transparency and

³² See for example J. Krupsky, Kenneth, *Proposed Elimination of All 'Bearer' Bonds* (Washington DC: BNA Bloomberg, 21 December 2009), <https://www.bna.com/proposed-elimination-bearer-n2147484351/> (accessed 14 February 2017).

³³ In 2011, a limited dematerialisation of bearer shares was implemented, which resulted in those shares being digitally administered by an intermediary and registered, see Official Gazette (*Staatsblad*), 2010 771. While this became a legal duty for listed companies, holders of bearer shares in non-listed companies were allowed to have such shares digitally administered and registered on a voluntary basis.

Beneficial Ownership', the FATF listed bearer shares as an instrument to obscure beneficial ownership information.³⁴ Even though abuse of bearer shares for purposes of money laundering or similar illegal activities are not common so far in the Netherlands, the Dutch government agrees with the FATF and other organisations that these risks exist and call for a modernisation of the relevant laws.³⁵

- As regards public limited liability companies that are not listed on a stock exchange, the shares can be sold and transferred freely. There are no special transfer requirements, such as a notarial deed. Thus, owners of these shares are not registered by name and may remain anonymous if they so wish. The prescription-free transfer possibility entails a risk for all kinds of abuse, ranging from tax evasion to money laundering.

The availability of bearer shares is inconsistent with UBO transparency because the owner of a bearer share is anyone holding the physical paper at a certain time. This also makes it practically impossible to register bearer share holders in the future UBO register.

Nominees

Secondly, Dutch corporate law does not know the concepts of nominee directors and nominee shareholders as such. However, comparable concepts that can be put in place for the purpose of company structuring can be problematic.

- Dutch trust service providers (*trustkantoren*)³⁶ provide a range of facilitating services to companies, for example by acting as a nominee director and providing a company address for a Dutch subsidiary of a foreign company. There are around 150 trust service providers in the Netherlands, which together administer and service around 24,000 companies.³⁷ Trust service providers need a license to operate, which can be revoked if the supervising authority detects wrongdoing.³⁸
- Currently, nominee directors employed by trust service providers are not required to fulfil any legal standards of suitability. This has resulted in problematic arrangements, such as when trust service providers employ an unqualified straw man and register this person as a director of a foreign company administered by that trust service provider.³⁹ Also, the financial supervisory authority Dutch Central Bank (DNB) reported a number of trust service providers to the public prosecutor's office (OM) following an investigation into their role in the Panama Papers.⁴⁰ It is unclear how many trust service providers were reported to the OM and what the nature of the suspicions is. Please also refer to Case Study #2 below for a more detailed discussion of the problematic arrangements in which Dutch trust service providers are sometimes involved (page 35).

Future Score 63% (strong)

Because of the aforementioned risks, a debate has existed in the Netherlands regarding the abolition of bearer shares for public limited liability companies are not listed on a stock exchange.⁴¹

- In December 2016, the government announced that it will introduce a draft law in 2017 regarding limited steps to modernise the relevant parts of Dutch company law. The ministry's proposal includes an obligation to have all bearer shares administered by an intermediary and register them. Until administration and registration is accomplished, the holder of such shares will not be able to execute the rights attached to the shares.⁴² The draft law has not been published at the date of writing but promises an improvement of the score to a strong one.

34 FATF, *Transparency and Beneficial Ownership* (Paris; FATF, October 2014), p.6, <http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf> (accessed 9 February 2017).

35 Dutch Ministry of Security and Justice, Letter to Parliament Regarding Progress Modernisation Company Law (*Voortgang modernisering ondernemingsrecht*), 9 December 2016, pp 25-29.

36 Note that Dutch trust service providers are not the same as a common law trust, a legal concept that is not known in the Dutch legal system.

37 Het Financieele Dagblad (FD), *Toezichthouder uit harde kritiek op trustsector* (FD, 23 March 2016), <https://fd.nl/economie-politiek/1144722/dnb-luidt-noodklok-over-trustsector> (accessed 9 February 2017).

38 See for a more detailed description of trust services: the Dutch Central Bank (DNB), *What is a trust service?* (DNB, 9 October 2012), <http://www.toezicht.dnb.nl/en/2/51-226561.jsp> (accessed 9 February 2017).

39 NRC Handelsblad (NRC), *Goudvis in een bak piranha's* (NRC, 9 December 2016), <https://www.nrc.nl/nieuws/2016/12/09/goudvis-in-een-bak-piranhas-5722475-a1535902> (accessed 9 February 2017).

40 FD, *DNB doet aangifte bij OM tegen trustkantoren naar aanleiding van Panama Papers* (FD, 25 January 2017), <https://fd.nl/ondernemen/1184451/dnb-doet-aangifte-bij-om-tegen-trustkantoren-naar-aanleiding-van-panama-papers> (accessed 9 February 2017).

41 See Vrije Universiteit Amsterdam (VU), *Wie is de aandeelhouder?* (Deventer: Kluwer, 2011), p. 7 and 60-61 http://www.rechten.vu.nl/nl/Images/ZIFO_deel_3_Wie_is_de_aandeelhouder_tcm247-407970.pdf (accessed 9 February 2017). More recently, on 3 October 2016, a stakeholder seminar took place regarding the identification of holders of bearer shares in non-listed companies with representatives from companies, law firms, notarial organisations, civil society organizations, an intermediary, and Euroclear.

42 Dutch Ministry of Security and Justice, Letter to Parliament Regarding Progress Modernisation Company Law (*Voortgang modernisering ondernemingsrecht*), 9 December 2016, pp 28-29.

- However, there are no concrete plans to abolish these shares yet, neither for public limited liability companies that are listed nor for those that are unlisted.
- Going forward, bearer shares should be abolished. Until they are phased out, bearer shares should be dematerialised by converting them into registered shares and holding them in a central register hosted by a public authority, similar to what the government announced in December 2016. After a reasonable period, any unregistered bearer shares should become void and invalid after a due date. The plans by the ministry do not include such steps yet.

The Dutch legislature published legislative plans for an amendment of the law regulating Dutch trust service providers.⁴³ The most prominent changes will be:

- a mandatory two-headed daily management, excluding the possibility of a single director and thus introducing some checks and balances;
- the adoption of the same norms on business integrity for directors, as in the Act on Supervision of Financial Services (Wft); and
- the ability for supervisory authorities to prohibit the offering of trust services to certain types of high-risk structures.

This expected positive development will tighten the regulation of Dutch trust service providers. This is laudable but does not lead to an improvement of the overall weak score on G20 Principle 10, because the regulated use of nominees in the Netherlands was already considered in the current score. Due to the currently unchanged position regarding bearer shares, the future score on G20 Principle 10 does not improve and remains weak.

43 Draft Act on the Supervision of Trust service providers 2018 (*concept wetsvoorstel Wft 2018*), April 2016, <https://www.internetconsultatie.nl/wettoezichttrustkantoren2018> (accessed 9 February 2017).

EFFECTIVENESS EVALUATION

The technical evaluation above concerned an analysis of the strength of the current legislative framework regarding UBO transparency and related future plans.

The following chapter evaluates the effectiveness of that legislation in practice. It looks at five selected outcomes expected to be achieved by the legislative and institutional framework relating to UBO transparency. This analysis is based on desk research conducted by TI-NL, consultations with experts in the field of money laundering risk analysis and UBO transparency, discussions with representatives of ministries and supervisory and law enforcement authorities, as well as interviews with professionals who operate in the financial services market, including at Dutch banks, law firms, and accountancy firms.

Reflecting on this input, the analysis below examines the most important examples of good practices and identified gaps regarding the current effectiveness of the Dutch legislation on UBO transparency. This is done by weighing the good practices and identified gaps against the five selected expected outcomes. These expected outcomes were defined by FATF for its country-mutual evaluation reports and influenced by the G20 High Level Principles on UBO Transparency.

How effectively each of the expected outcomes is achieved by the Netherlands will be indicated by one of the following ratings: high level of effectiveness, substantial level of effectiveness, moderate level of effectiveness and low level of effectiveness. Because the following chapter examines the effectiveness of the legal framework analysed above, these ratings are linked to but do not necessarily correspond to the scores given in the above technical evaluation. Please refer to the part on Methodology and Interviews below for more detailed information, e.g. regarding the selection of the expected outcomes (as of page 42).

The overall low-to-average rating below shows that there is room for improvement regarding an effective implementation of and compliance with the general AML regulatory framework and specific UBO-related risks and issues in the Netherlands.

OUTCOME 1 BASED ON G20 PRINCIPLE 2 (UNDERSTANDING RISKS)

Expected outcome: *The country properly identifies, assesses and understands the risks associated with different types of legal persons and arrangements, from both a domestic and international perspective, and coordinates domestically to put in place actions to mitigate these risks. This includes the involvement of competent authorities and other relevant authorities; using a wide range of reliable information sources; using the assessment(s) of risks as a basis for developing and prioritising policies and activities on transparency and beneficial ownership of legal persons and arrangements; communicating and implementing those policies and activities in a coordinated way across appropriate channels; sharing the outcomes of the risk assessment with financial institutions and DNFbps; and identifying high risk sectors, for which enhanced due diligence measures are considered.*

Result: **Moderate** level of effectiveness

BEST PRACTICES

1. General understanding and effectiveness of AML issues is high

The Netherlands has a relatively good understanding of the main risks regarding money laundering, both on a political level and at FIs and DNFbps. This understanding is largely based on a relatively effective implementation of international recommendations, including from the G20 and the FATF, and a related development towards stricter compliance by FIs and DNFbps.

- After the first FATF evaluation, the Dutch government took robust measures to address the shortcomings identified by the FATF. The government summed up the measures taken in three categories: activities, including legal changes, capacity building, and projects; developments at the supervisory level; and research to gain insight into AML risks.⁴⁴
- In October 2015, the WODC published the first Policy Monitor Anti-Money Laundering, which monitored the effectiveness of the Dutch AML policy during the years 2010 to 2013.⁴⁵ Here, the WODC leaned heavily on the FATF effectiveness criteria. The Policy Monitor described the activities and performance of involved players in combating money laundering. It should not be confused with a NRA, which is expected to be published for the first time in 2017 and for which the Policy Monitor will serve as an important source.
- Generally, attention to, awareness for, and understanding of AML issues is perceived to be relatively sophisticated at FIs and DNFbps. This also applies to UBO-related issues. Especially DNB and the tax authorities have developed a particularly sophisticated understanding in this area. At FIs and DNFbps, UBO-related issues are mostly part of the general compliance and client on-boarding process and do not receive attention as a separate topic, despite awareness being generally high. Having said that, internationally operating Dutch FIs are very strict regarding UBO-related risks. UBO identification and verification is currently seen as crucial due to both regulatory and reputational risks.⁴⁶ In the past, this risk aversion was commonly based on a general unwillingness to do business with questionable parties due to the inherent risk of loss of reputation. Presently, this general feeling has turned into an obligatory objective test that must be passed before any client engagement is effectuated.

2. Related work of the supervisory authorities is on a similarly high level

Parallel to and influenced by the increased level of attention and awareness on the political and practical level, the Dutch supervisory authorities, most notably DNB, have intensified their supervision in the past years. DNB recently stated that it applauded the revelations of the Panama Papers, as the leak gave DNB new data and information on the basis of which investigations were opened.⁴⁷ Despite certain points of criticism regarding DNB's attitude towards obliged entities (see below under identified gaps), the supervisors' work related to legal persons and arrangements, including UBO-related topics, is well perceived in the market.

- An example of this intensification is DNB's recent focus on its supervision of the trust services sector, not to be confused with common-law trusts. The Dutch government realises that there is a risk that trust service providers (*trustkantoren*)

⁴⁴ Dutch Ministry of Security and Justice, Letter of Parliament to Money-Laundering Report (*Bestuurlijke reactie op het rapport over bestrijding witwassen*), Attachment A, pp. 1-4.

⁴⁵ Scientific Research and Documentation Centre (WODC), *De bestrijding van witwassen: beschrijving van effectiviteit 2010-2013* (The Hague: WODC, October 2015), <https://www.wodc.nl/onderzoeksdatabase/inzicht-effectiviteit-van-het-anti-witwasbeleid.aspx> (accessed 9 February 2017).

⁴⁶ EY, 14th *Global Fraud Survey 2016*.

⁴⁷ FD, *'Het is altijd de vraag: is het niet kunnen, of is het niet willen?'*, interview with Willemieke van Gorkum, integrity director at DNB (FD, 25 January 2017), <https://fd.nl/ondernemen/1184447/het-is-altijd-de-vraag-is-het-niet-kunnen-of-is-het-niet-willen> (accessed 14 February 2017).

may be abused to facilitate a customer's money laundering practices.⁴⁸ The revelations of the Panama Papers show that Dutch trust service providers continue to be involved in arrangements that are risky or have led to the violation of laws. Oftentimes, the UBO behind clients served by Dutch trust service providers remains unknown. In late January 2017, DNB announced that it reported various cases of wrongdoing by trust service providers to the OM, while it provided no further information.⁴⁹ See Case Study #2 below for a more detailed discussion of the related risks (page 35).

- During this intensified supervision, the supervisory bodies identified several other shortcomings and risks in enforcement of AML obligations by FIs and DNFBPs. They also demonstrated a willingness to sanction shortcomings.⁵⁰ Moreover, they are structurally consulted by the relevant ministries in the framework of new policy developments and plans for new legislation.

3. Handbooks and guidance papers are available and generally well developed

The Netherlands takes a risk-based approach to preventing AML-related crime. It is the responsibility of the FIs and DNFBPs to ascertain whether their own policies and procedures are strong enough to prevent abuse. To assist them in this internal process, several handbooks and guidance papers are publicly available.

- Consultations and interviews with experts and practitioners showed that, at larger firms and institutions, material published by the FATF and G20 is widely used and perceived as helpful.
- The Dutch Ministry of Finance issued general guidance for all relevant FIs and DNFBPs based on the FATF recommendations from 2011.⁵¹
- Supervisory authorities DNB and AFM, each from their own perspective and target audience, address specific risks in their guidance materials, with the aim of assisting reporting entities with the implementation of relevant legislation.⁵²
- Other institutions issued similar guidance papers, such as the Netherlands Bar Association,⁵³ the Royal Netherlands Institute of Chartered Accountants,⁵⁴ as well as several guidelines published by the FIU for civil law notaries,⁵⁵ dealers in goods with high value,⁵⁶ real estate agents/appraisers,⁵⁷ trust services,⁵⁸ pawnshops,⁵⁹ accountants/tax advisors,⁶⁰ and salespersons.⁶¹ It is questionable whether this fragmented, partially overlapping approach is very effective.

48 Government of the Netherlands, *Overview regarding permits for trust service providers (Vergunning voor trustkantoren)*, <https://www.rijksoverheid.nl/onderwerpen/financieel-sector/inhoud/misbruik-in-financieel-sector-tegengaan/vergunning-voor-trustkantoren> (accessed 9 February 2017).

49 FD, *DNB doet aangifte bij OM tegen trustkantoren naar aanleiding van Panama Papers* and Trouw, *DNB doet aangifte tegen trustkantoren* (Trouw, 25 January 2017), <http://www.trouw.nl/tr/nl/39681/nbs/article/detail/4452939/2017/01/25/DNB-doet-aangifte-tegen-trustkantoren.dhtml> (accessed 9 February 2017).

50 Dutch House of Representatives, *Parliamentary Papers, 2015-2016, 31 477, nr. 11, p. 2*, <https://zoek.officielebekendmakingen.nl/dossier/31477/kst-31477-11?resultIndex=13&sorttype=1&sortorder=4> (accessed 9 February 2017).

51 Government of the Netherlands, *Guidance Paper Wwft and Sanctions Act (Sw)*, January 2014, <https://www.rijksoverheid.nl/documenten/richtlijnen/2011/02/21/algemene-leidraad-wet-ter-voorkoming-van-witwassen-en-financieren-van-terrorisme-wwft-en-sanctiewet-sw> (accessed 9 February 2017).

52 Netherlands' Authority for Financial Markets (AFM), *Wet ter voorkoming van witwassen en financieren van terrorisme (Wwft)*, <https://www.afm.nl/nl-nl/professionals/onderwerpen/wwft-wet> (accessed 9 February 2017), and DNB, *Wet ter voorkoming van witwassen en financieren van terrorisme (Wwft)*, <http://www.toezicht.dnb.nl/4/6/50-204770.jsp> (accessed 9 February 2017).

53 Netherlands' Bar Association (*Orde van advocaten*), *Guidance Paper (Handleiding Wwft voor advocaten)*, (The Hague: December 2016), [https://www.advocatenorde.nl/9143/20130305%20handleiding%20Wwft%20voor%20advocaten%20\(versie%20maart%202013\).pdf.html](https://www.advocatenorde.nl/9143/20130305%20handleiding%20Wwft%20voor%20advocaten%20(versie%20maart%202013).pdf.html) (accessed 9 February 2017).

54 Netherlands' Institute of Chartered Accountants (*Nederlandse Beroepsorganisatie van Accountants*), *Guidance Paper (NBA-handreiking 2014: Richtsnoeren voor interpretatie van de Wwft)*, (NBA, June 2014), https://www.nba.nl/Documents/Praktijkhandreikingen/NBA-handreiking%201124%20Richtsnoeren_WWFT_juni_2014.pdf (accessed 9 February 2017).

55 Financial Intelligence Unit the Netherlands (FIU), *Guidance Paper (Specifieke leidraad naleving Wwft voor notarissen)*, (FIU, 17 Juli 2014), https://www.fiu-nederland.nl/sites/www.fiu-nederland.nl/files/documenten/specifieke_leidraad_naleving_wwft_voor_notarissen_17_juli_2014_0.pdf (accessed 9 February 2017).

56 FIU, *Guidance Paper (Leidraad Wwft: Richtlijnen voor Bemiddelaars inzake koop en verkoop van voertuigen, schepen, kunstvoorwerpen, antiquiteiten, edelstenen, edele metalen, sieraden of juwelen)*, (FIU, March 2016), https://www.fiu-nederland.nl/sites/www.fiu-nederland.nl/files/documenten/leidraad_wwft_2016_-_bemiddelaars_definitief.pdf (accessed February 2017).

57 FIU, *Guidance paper (Leidraad Wwft: Richtlijnen voor makelaars in en taxateurs van onroerende zaken)*, (FIU, June 2016), https://www.fiu-nederland.nl/sites/www.fiu-nederland.nl/files/documenten/leidraad_makelaars_in_en_taxateurs_versie_juni_2016.pdf (accessed 9 February 2017).

58 FIU, *Guidance Paper (Leidraad Wwft: Richtlijnen voor Domicilieverleners)*, (FIU, August 2016), https://www.fiu-nederland.nl/sites/www.fiu-nederland.nl/files/documenten/leidraad_wwft_2016_-_domicilieverlening.pdf (accessed 9 February 2017).

59 FIU, *Guidance Paper (Leidraad Wwft: Richtlijnen voor Pandhuizen)*, (FIU, March 2016), https://www.fiu-nederland.nl/sites/www.fiu-nederland.nl/files/documenten/leidraad_wwft_2016_-_pandhuizen.pdf (accessed 9 February 2017).

60 FIU, *Specific Guidance Paper (Specifieke leidraad naleving Wwft voor accountants, belastingadviseurs, administratiekantoren en alle overige instellingen)*, https://www.fiu-nederland.nl/sites/www.fiu-nederland.nl/files/documenten/specifieke_leidraad_naleving_wwft_voor_accountants_en_belastingadviseurs_0.pdf (accessed 9 February 2017).

61 FIU, *Guidance Paper (Leidraad Wwft: Richtlijnen voor Verkoopers van goederen)*, (FIU, March 2016), https://www.fiu-nederland.nl/sites/www.fiu-nederland.nl/files/documenten/leidraad_wwft_2016_-_verkoopers_van_goederen_definitief.pdf (accessed 9 February 2017).

The Minister of Security and Justice indicated that even though a decentralized direction is effective, there is a need for more centralised guidance as well.⁶² Some of these guidelines identify high-risk scenarios and provide guidelines for dealing with these risks. For instance, DNB sums up several indicators for FIs to establish the risk category (low, normal, or high), such as country/geographical risks, product/service risks, client risks, and third party risks.⁶³ Going forward, all specific guidelines should clearly address relevant high-risk scenarios and give clear guidance on how to deal with them.

IDENTIFIED GAPS

1. Lack of insight into and understanding of specific areas of current and future AML and UBO-related risks

Despite the generally high level of attention for AML risks, positive policy developments, and many laudable steps in the right direction, there seems to be a general lack of insight and understanding of specific areas of current and future AML and UBO-related risks in the Netherlands. It seems that such current and future risks have not yet entered the agendas of all decision-makers.

- The aforementioned Policy Monitor was meant to serve as a baseline measurement, for future reference, including for the first NRA. It does not address high-risk sectors and related risks, nor does it address specific issues such as UBO-related topics.
- In 2014, the Dutch Court of Auditors published a report concerning the state of affairs of the Dutch AML efforts in the period spanning 2010 and 2013. Contrary to the Policy Monitor, the report points out specific areas of concern and criticism. In general, the Court of Auditors concluded that even though the Dutch government invested in capacity, knowledge and the exchange of information, there is a lack of insight into the main risks and the results of the enforcement of AML policies, despite the data being available.⁶⁴ The researchers also pointed out that policymakers have insufficient insight into the effectiveness of the process of combating money laundering.
- In response to this report in early 2014, the Minister of Security and Justice recognised some of the conclusions and agreed that further research is indeed necessary. However, he did not accept the conclusion that there is a lack of insight into the main risks and the results of the enforcement of AML policies.⁶⁵ According to the Minister, the Court of Auditors underestimated the complexity of the fight against money laundering.⁶⁶
- Understanding specific areas of current and future AML and UBO-related risks has not effectively reached all members of Dutch parliament. In reaction to the revelations of the Panama Papers, including specific UBO-related issues, a group of parliamentarians called for a parliamentary inquiry into the role of Dutch companies and financial institutions, especially around money laundering and tax avoidance. After months of political discussion,⁶⁷ the corresponding motion narrowly passed in October 2016. The first hearing is not expected to take place before March 2017, when the general elections will take place. Thus, the investigation will probably start a year after the revelations of the Panama Papers. The Dutch financial sector is particularly vulnerable regarding AML risks due to its relatively large size. Despite this, large circles of voters' representatives seem to be unwilling to confront and investigate the potentially problematic role of the Dutch financial sector as illustrated by the Panama Papers.⁶⁸

62 Dutch House of Representatives, *Parliamentary Papers, 2015-2016, 31 477, no. 11, p. 4*.

63 DNB, *Guidance Paper (Leidraad Wwft en Sw)*, (DNB, April 2015), pp. 8-10, <http://www.toezicht.dnb.nl/binaries/50-212353.pdf> (accessed 9 February 2017).

64 Court of Auditors (*Algemene Rekenkamer*), *Bestrijden witwassen: stand van zaken 2013* (Court of Auditors, March 2014), p. 3, <http://www.rekenkamer.nl/dsresource?objectId=2429&type=org>, (accessed 9 February 2017).

65 Dutch Ministry of Security and Justice, *Letter of Parliament to Money-Laundering Report (Bestuurlijke reactie op het rapport over bestrijding witwassen)*, p. 3.

66 Ibid, pp. 3-4.

67 NRC, *Mini-enquête naar Panama Papers pas na de verkiezingen* (NRC, 30 November 2016), <https://www.nrc.nl/nieuws/2016/11/30/mini-enquete-naar-panama-papers-pas-na-de-verkiezingen-a1534335> (accessed 9 February 2017).

68 As mentioned in the introduction, the Netherlands has a comparatively large financial sector with a total banking assets to GDP ratio of 379% in 2014. The country also has an outsized role regarding international financial flows, resulting in increased vulnerability regarding AML risks. The potentially problematic role that Dutch service providers play in global AML schemes has been reported about following the revelations of the Panama Papers, see e.g. Trouw, *Nederlandse hulp bij opzetten dubieuze constructies* (Trouw, 6 April 2016), <http://www.trouw.nl/tr/nl/38754/Panama-Papers/article/detail/4276439/2016/04/06/Nederlandse-hulp-bij-opzetten-dubieuze-constructies.dhtml> (accessed 14 February 2017) and Nederlandse Omroep Stichting (NOS), *Ook ABN Amro duikt op in de Panama Papers* (NOS, 11 April 2016), <http://nos.nl/nieuwsuur/artikel/2098539-ook-abn-amro-duikt-op-in-de-panama-papers.html> (accessed 14 February 2017).

2. Lack of a national risk assessment

Despite the efforts undertaken by the Dutch government to monitor and analyse AML policies and efforts, the lack of a centralized and coherent NRA is a major gap in the understanding of AML risks in the Netherlands.

- As mentioned before, there were plans to publish an integrated NRA, but that publication has been postponed.⁶⁹ Hence, the Netherlands has not yet published an integrated NRA of AML risks related to legal persons and arrangements. Research is currently being conducted and the first NRA is expected to be published in 2017.⁷⁰
- According to the government research agency WODC, which is in charge of this first NRA, the execution of an NRA will be based primarily on the guidance of the FATF. The WODC announced that the results will be fully transparent. This should contribute to the NRAs objectivity and goal to base future editions of the NRA on this first assessment. Relevant stakeholders and experts will be consulted, even though the WODC has not yet mentioned any specific parties. It will follow a scientific, non-political approach.⁷¹ This means that the first NRA will include a context analysis and a risk identification, including a probability analysis. However, the NRA is expected to have the following shortcomings:
 - It will not include a risk evaluation, as, according to the WODC, that would mean an analysis of political decision making, which does not fit within the scientific approach chosen by the WODC.
 - It will not consider potential future risk scenarios, which is a goal for a future edition of the NRA. Moreover, the number of risks that will be analysed will be limited to five threats only. It also remains to be seen whether current and future risks that have not been addressed before, such as the abuse of bitcoins for anonymous money laundering (see Case Study #3 below, page 37), will be addressed in the first edition at all.
 - The NRA will not address consequences of AML because the WODC deems there will not be sufficient empirical basis to do so.⁷²

These expected shortcomings contribute to a lack of understanding of AML risks in the Netherlands.

3. Experts and practitioners flag some important shortcomings regarding an effective understanding of AML risks

From consulting experts and professionals who operate in the Dutch financial market and related fields, the following issues are pointed out as gaps in the current understanding of risks related to legal persons and arrangements:

- There is a significant difference regarding the understanding of related risks and the practical implementation of internal procedures and policies between internationally operating FIs and mostly domestic FIs and DFNFBPs. This discrepancy results in a gap between theory and practice. Smaller institutions are often aware of the risks but have less sophisticated policies in place to tackle them.
- As regards UBO-related matters, the specific understanding in the Netherlands is still perceived to be low, as UBO has not been a special topic of discussion so far. Input from experts and practitioners in the field of financial and legal services indicate that while the general understanding of money laundering risks and related policies to tackle these is well-developed, specific understanding of UBO-related issues has not reached the same level of understanding. For supervisory and investigatory work, there is no specific focus on UBO issues. Instead, UBO issues may play one of many roles in general investigations. Similarly, from the practitioners' viewpoint, UBO-related issues are generally part of a larger compliance framework. Special attention to UBO is only given when specific high-risk clients or high-risk regions call for it. Even though this fits within the Dutch risk-based approach, more attention to specific UBO issues is needed, for example by financial service providers and trust service providers (see case studies below, as of page 33).
- Engagement with supervisors and government institutions is rather distant and perceived to be of a highly strict and one-way nature. Also, despite the aforementioned well-developed guidance, there is a sense of disappointment in the market regarding a perceived lack of more practical guidance from the authorities. Practitioners in the market feel like the supervisors too often hide behind the risk-based approach and delegate too much of the responsibility to the private sector as regards analysing the risks and implementing lessons learned from such analyses. This 'do it yourself' duty results in a perceived lack of cooperation. The guidance that is provided is regarded as a broad and loose framework by some, while FIs and DFNFBPs have to invest many resources into developing their own AML system. Also, some perceive the handbooks and guidance papers as limited to pointing out the risks but do not give enough concrete suggestions on how to practically tackle these risks.

69 Dutch Ministry of Security and Justice, Letter of Parliament to Money-Laundering Report (*Bestuurlijke reactie op het rapport over bestrijding witwassen*), p. 5, and Dutch House of Representatives 2014-2015, 31 477, nr. 8, p. 2.

70 Dutch House of Representatives, Parliamentary Papers, 2016-2017, 31 477, nr. 18, p. 11.

71 WODC, *Verkenning Methoden en Data National Risk Assessment Witwassen en Terrorismedinanciering* (The Hague: WODC, December 2016), <https://www.wodc.nl/onderzoeksdatabase/2689a-verkenning-methoden-en-data-national-risk-assessment-witwassen-en-terrorismedinanciering.aspx> (accessed 9 February 2017).

72 Ibid.

OUTCOME 2 BASED ON G20 PRINCIPLES 3 & 5 (LEGAL PERSONS AND ARRANGEMENTS MAINTAIN ADEQUATE, ACCURATE AND CURRENT BENEFICIAL OWNERSHIP INFORMATION)

Expected outcome: Legal persons and arrangements incorporated/arranged in the country maintain accurate, current, and adequate information on beneficial ownership within the jurisdiction. Companies request information from shareholders to ensure that the information is accurate and up-to-date, and shareholders inform changes to beneficial ownership. Foreign trusts being administered or serviced and foreign companies holding assets or carrying out other activities in the jurisdiction also maintain such information.

Result: **Low** Level of Effectiveness

BEST PRACTICES

1. Companies must keep an up-to-date record of information regarding their shareholders

Companies incorporated under Dutch law must record and keep up-to-date information on shareholders in the following ways.

- Dutch private limited companies (*besloten vennootschappen met beperkte aansprakelijkheid*) and public limited companies (*naamloze vennootschappen*) with registered shares are required to keep an internal shareholders' register. This register is theoretically kept by the company, in practice often by its notary. It is not public or registered as such with the Chamber of Commerce. The shareholders' register is essentially intended as an internal tool for the company and not as part of the public record. Dutch law only requires certain information to be made public via the company register kept by the Chamber of Commerce. This includes but is not limited to the registration of the company's incorporation and any subsequent deed of amendment, such as the company's statutes.
- The company's board is required to populate the shareholders' register with the information required by law. This includes information regarding shareholders, holders of depositary receipts, rights of usufruct and pledges of the company. It does not include information about UBO as such.
- The shareholders' register gives the company insight into the rights of shareholders and other stakeholders in the company and serves as a guideline for internal administration. It is not publicly accessible. Only shareholders, as well as usufructuaries, pledgees and certificate holders with meeting rights have access to the register.
- In addition to the company itself, its notary uses the shareholders' register during the drafting of share transfer deeds, shares issuance, amendments to articles of association, etc. The shareholders' register comes into existence when the notary passes the necessary deeds for the establishment of the company. Upon incorporation, any deeds passed, including transfers of shares, need to be registered in this internal shareholders' register.

2. UBO information of domestic clients held by large FIs and DFNFBPs is generally accurate, current, and adequate

Large and internationally operating Dutch institutions generally go to great lengths to ensure that their clients' UBO information is adequate, accurate, and updated frequently.

- Within the framework of a growing awareness of money laundering risks, regular client checks and updates have become institutionalised and more frequent in recent years. Also, compliance systems often include ad-hoc checks regarding high-risk clients and sectors, for example in response to a reported incident. In addition to strict on-boarding CDD measures, regular and objective checks are by now part of most large institutions' structural compliance framework. These strict procedures result in the general perception that the UBO information maintained by large banks, accountancy firms, and law offices is, by and large, adequate, accurate, and up to date.
- Experts and practitioners largely agree that the above holds true for domestic clients with simple structures. This is due to the relative ease of obtaining UBO information from clients that have an exclusively domestic structure without any mother or subsidiary companies in foreign jurisdictions. For these Dutch clients, FIs and DFNFBPs often do not have to look much further than the company register and the shareholders' register, which most clients will readily provide for perusal when establishing a new relationship with an institution. These two fundamental sources greatly facilitate the identification and verification of the UBO of Dutch legal structures. Additionally, changes in shareholding, which may result in changes regarding UBO, are generally documented by way of the regular checks and updates mentioned above.

IDENTIFIED GAPS

1. *The shareholders' register is an internal instrument and is often outdated*

Despite the aforementioned perceived advantages of the internal shareholders' register that companies are required to maintain, the shortcomings mentioned below illustrate current gaps regarding the proper maintenance of UBO information by Dutch companies:

- The shareholders' register is generally seen as an effective tool for the company's purposes. However, the system of a hard copy shareholders' register, where changes in shareholding are recorded by handwritten entries, is outdated. Moreover, experience shows that, as mentioned previously, shareholders' registers are often outdated and that shareholders and other beneficiaries do not always provide the company with sufficient information. It is also not unheard-of that a shareholders' register gets lost and cannot be found when necessary.
- Moreover, the company register administered by the Chamber of Commerce only includes shareholders' information when a company has a single shareholder. As soon as there is more than one shareholder, this information is not included in the public company register. Also, share transfer deeds and the issuance of new shares are not registered in the company register. Only key data from deeds required by law must be registered, such as a change of a single shareholder or a change in the issued and paid-up capital. Also, the issuance of certificates and the transfer of certificates with meeting rights do not require a deed of transfer and are not registered in the company register.
- Despite occasional concurrence, shareholders' information and UBO information are not the same. The maintenance of information regarding ownership of companies and/or shareholders arises from the obligation to keep a shareholders' register. This obligation focuses on shareholding, and not on beneficial ownership. Hence, beneficial ownership information kept by companies and legal arrangements is incidental and not centralised at this point.

2. *Smaller-sized FIs and DNFBNPs maintain less adequate, accurate, and current UBO information*

Similar to the issue raised above regarding the understanding and effective implementation of AML rules and regulations, the size of the FI/DFNBP also plays a role with respect to the UBO information that Dutch institutions maintain about their clients. Smaller-sized obliged entities generally maintain less adequate, accurate, and current UBO information. This is due to smaller firms and companies being confronted with UBO-related issues less frequently and investing resources into professionalizing and modernizing their compliance structures. Despite clear guidelines regarding the identification and verification of the UBO by supervisory authorities and trade organisations, for instance, a gap between theory and practice too often results in the recorded UBO information being inaccurate, incomplete, or not current.

3. *UBO information maintained by FIs and DFNBNPs regarding foreign clients is significantly less adequate, accurate, and current*

Due to practical and legal obstacles that Dutch institutions encounter when trying to obtain UBO information from foreign clients, the corresponding information that these institutions maintain tends to be significantly less adequate, accurate, and current in comparison to domestic clients without an intricate international concern structure.

This is because, depending on the type of client and the jurisdiction concerned, institutions must rely on information provided by the client or on untrustworthy public sources. This holds especially true for foreign trusts and clients from jurisdictions with less trustworthy sources of company information. For a more detailed discussion of these difficulties, see the next section on the effectiveness of accessing UBO information (page 25).

OUTCOME 3 BASED ON G20 PRINCIPLES 4 & 6 (ACCESS TO BENEFICIAL OWNERSHIP INFORMATION ON LEGAL PERSONS AND ARRANGEMENTS)

Expected outcome : *Competent authorities (i.e. law enforcement and prosecutorial authorities, supervisory authorities, tax authorities, and financial intelligence units) have timely access to adequate, accurate, and current information regarding the beneficial ownership of legal persons and arrangements, both domestic and foreign; financial institutions and DNFBNPs have access to beneficial ownership information when carrying out CDD; other interested parties, such as journalists, have access to beneficial ownership information on legal persons when they have a legitimate interest; beneficial ownership information on legal persons is available to the public.*

Result: **Low** Level of Effectiveness

BEST PRACTICES

1. *Competent authorities have adequate access to UBO information held by Dutch entities*

Despite the current lack of centralised UBO and shareholders' registers, competent authorities have adequate access to UBO information held by Dutch entities when necessary within the framework of their legal tasks and powers. Lacking a central shareholders' register and a UBO register, Dutch competent authorities rely on (i) publicly available sources of information, such as the company register and the internet; (ii) information shared via systems and agreements of cooperation with other authorities; and (iii) direct legal requests from companies, FIs and DFNBNPs.

- Supervisors and law enforcement authorities frequently consult the public company register when trying to access the UBO information of a domestic entity. In combination with other publicly available sources and its own database of intelligence information, these sources often serve as a starting point when a domestic investigation or supervision requires attention regarding the UBO behind an entity.
- Competent authorities also access UBO information as part of information exchange requests effectuated via the domestic exchange system maintained by the Financial Expertise Centre (FEC) and agreements between individual authorities. For more details regarding the exchange of information between competent authorities, please see Outcome 5 below (page 30).
- When investigating or supervising a certain entity, competent authorities have adequate powers and investigative techniques to access UBO information held by a Dutch entity. This access is regulated by several general laws and certain corresponding specific laws.⁷³ This legal framework gives the relevant authorities the right to request information, including UBO information regarding. These authorities include the supervisory authorities, the OM, the police, the Fiscal Information and Investigation Service (FIOD), the tax authority, and the (FIU). Access is generally limited by the general principle that specific requested information is necessary for the execution of the requesting authority's legal task. Also, in a situation in which an authority requests information, personal data may only be shared by an entity if there is a legal obligation to do so.⁷⁴ This includes UBO information. Within this legal framework, law enforcement agencies and supervisory authorities reported that access to UBO information held by domestic authorities is generally a relatively smooth process.
- Regarding UBO information held by foreign entities, the rules and regulations of the country where such an entity is incorporated generally regulates the access of Dutch competent authorities. These exchanges of information occur through MLAs and agreements regarding tax information exchange.

2. *FIs and DNFBNPs have adequate access to UBO information held by domestic clients*

Dutch law requires FIs and DFNBNPs to identify and verify the identity of their clients' UBO. They are expected to do so based on independent and reliable documents. UBO verification and identification is seen to be a relatively efficient procedure when the CDD concerns a domestic client.

- As regards clients or transactions with a low risk, UBO information is mostly sought by requesting the client to declare the identity of the UBO, for example by means of a passport scan, and by asking the client to sign a declaration to

⁷³ General laws on financial supervision (*Wet financieel toezicht*), general administrative law (*Algemeen wet bestuursrecht*), anti-money laundering and terrorist financing (*Wet ter voorkoming van witwassen en het financieren van terrorisme*), and trust offices (*Wet toezicht trustkantoren*) is, depending on the relevant authority, interlinked with specific laws in the areas of taxation (*Wet inzake Rijksbelastingen*), investigative powers (*Wet bijzondere opsporingsdiensten*), police data (*Wet politiegegevens*), and criminal procedure (*Wetboek van strafvordering*).

⁷⁴ Based on the provisions contained in the Personal Data Protection Act (*Wet bescherming persoonsgegevens*).

verify that identity. Other ways to access UBO information regarding low-risk situations include internet research and requesting information from cooperation networks, such as the Financial Expertise Centre (FEC).

- Concerning clients or transactions with a higher risk, Dutch law requires entities to conduct more thorough research. Here, common sources of UBO information include public registers, such as the Dutch company register of the Chamber of Commerce. The extracts that can be requested from the company register include the identity of the sole shareholder (if applicable); an official certificate of registration; a list of (historical) records of a company, such as former names, addresses, dates of establishment, and in most cases directors and powers of attorney; and information about the legal person, company and location(s). Other parties with an interest in UBO information, such as journalists and certain civil society organizations, also frequently use extracts provided by the company register.
- Another source of UBO information that entities frequently rely on is a Dutch company's shareholders' register. As discussed above, this is an internal register maintained by the company and generally not publicly available. Companies are therefore not under any legal obligation to allow perusal. In practice, however, this is often readily permitted. See Outcome 2 above for more detailed information regarding the Dutch concept of this internal shareholders' register (see page 23).

IDENTIFIED GAPS

1. Lack of central shareholders' register and UBO register; doubts regarding the effectiveness of future registers

As mentioned above in discussion of G20 Principle 4 (page 10), the Netherlands does not yet have a central shareholders' and UBO register. Also, Dutch law does not currently require entities to maintain UBO information as such. Thus, competent authorities, companies, FIs and DFNBPs requiring UBO information have to employ a variety of fragmented sources to be able to access and collect such information. Depending on the circumstances of each case, this can lead to such parties obtaining untrustworthy, inadequate, inaccurate, and outdated information. There are legislative proposals for both a central shareholders' register and a UBO register, as outlined above under Principle 4 (page 10). These proposals demonstrate many positive steps in the right direction. However, it remains to be seen how effective these legislative developments will be. At the date of writing, the most important preliminary points of criticism regarding the legislative plans for the registers include the following:

- The draft law regarding a future central shareholders' register stipulates the introduction of a closed, non-public register. According to the draft law, access is limited to tax authorities, notaries, and certain competent authorities and regulated FIs and DFNBPs. The latter two categories have not yet been designated in the draft bill. The closed nature of the register excludes access to the general public and, more specifically, to other parties that have a legitimate interest regarding access to shareholders' information, such as journalists and civil society organisations.
- The legislative plans regarding the future UBO register indicate that this register will be public. All interested parties will have access to the most essential information regarding a Dutch company's UBO. However, the following points of criticism deserve attention:
 - The legislative proposal distinguishes between certain competent authorities and the public regarding the extent of access to the future UBO register. The public will have limited access to UBO information (name, month and year of birth, nationality, country of residence, and the nature and extent of economic interest of the UBO). Access is only possible upon registration and upon payment of a nominal fee. Also, the information to be acquired from the UBO register will be in the form of extracts (PDFs) instead of open data format.
 - The responsibility to provide UBO information to the authority administering the register lies with the entities themselves. It is their duty to supply adequate, accurate and current information. The plans do not include a penalty for failure to report accurate UBO information. As seen above, companies are, for different reasons, not always able to do this effectively. A Dutch company with a complicated and multi-layered shareholding structure in foreign jurisdictions, for example including a trust, will encounter serious practical issues when obliged to provide UBO information to the register. While the UBO will have an implicit duty to cooperate with the supplying entity, it is unknown how such duty will be enforced.
 - For situations like these, the legislative plans include the possibility of a so-called 'pseudo UBO'. In other words, the company will be able to register an alternative natural person, such as a de facto manager of the company, as the UBO. This could open the possibility to list a proxy or nominee director instead of the actual UBO.
 - There is no designated authority to check the UBO information provided by the entities. The responsibility partly lies with the supplying entities themselves. If they notice an inadequacy or outdated entry in the register, they must report it to the administering authority. Also, the legislative plans include an obligation for obliged entities, such as FIs and certain unnamed supervisory and investigative authorities to report incorrect UBO information that they encounter in the register. It is unclear how this checking system will work in practice. Given that the envisaged system is based on self-declaration, this raises doubts with regard to the effectiveness of the UBO register.

- The UBO register will only include information that corresponds to the definition of UBO used in Dutch law. Currently, this definition uses a 25% threshold for beneficial ownership. Experts and representatives of law enforcement agencies assume that this threshold will be used by ill-intentioned persons to stay outside of the UBO register. The central shareholders' register discussed above is supposed to counter this shortcoming. However, the issue remains that not all parties concerned have access to that register. Thus, as argued above, the threshold for the future register should be lowered in the new law to 10% for all entities to make abuse of the threshold less likely.

2. Obtaining UBO information from foreign companies and trusts is significantly more difficult

Professionals from law firms, accountancy firms, and banks agree that there is a significant discrepancy between domestic and foreign clients as regards the degree of difficulty to obtain adequate, accurate, and current UBO information from prospective and existing clients.

- As regards clients from a foreign jurisdiction, obliged entities often have no other choice but to rely on the UBO information provided by the client or by a foreign authority, law office, or notary (e.g. by way of an assurance certificate). Most often this is the case in jurisdictions where the company register is either non-existent, unreliable, or does not include the necessary information. In such problematic cases, the institutions cannot interpedently double-check and/or verify the received UBO information. It is also not uncommon that foreign clients will refuse to provide more detailed information, for example for reasons of confidentiality and/or privacy. Institutions are then under pressure to decide whether to assume the correctness of the received information or to decline the client, and potential future business.
- The above holds true especially for foreign trusts. An example of such a situation would be a party to a foreign trust (e.g. a beneficiary) seeking tax advice from a Dutch FI. One of the main cited reasons to set up a trust is that it is not a company with corresponding public obligations, but a mere contractual agreement between the parties to the trust. Often, the privacy of the parties to the trust is an important factor in deciding whether to set up a trust. When establishing a client relationship with a party to a trust, FIs usually have to limit their CDD to the analysis of the underlying agreement: the trust deed. In most cases, the trust deed is the only documentation that can serve as a source of UBO information. However, it is not in all cases possible to identify and verify the UBO solely based on the trust deed. It is possible that the parties to the trust have mutual agreements outside of the trust deed, which the parties to the trust are often not willing to provide to an FI within the framework of a CDD for reasons of privacy. Obligated entities encounter various practical problems, for example when requesting extra information from the client or a (legal) advisor to the client to verify the UBO information. It may occur that such a request is denied because the contractual provisions underlying the trust do not allow for disclosure of potential underlying arrangements to third parties.

3. Similarly, access by competent authorities to UBO information held by foreign entities is often ineffective

Competent authorities find it considerably more difficult to access UBO information held by foreign entities. They do not have the same powers on which they can rely in their home jurisdiction and therefore depend on smooth cooperation from foreign authorities. Law enforcement agencies encounter the following issues when executing an international investigation during which they need to access UBO information held abroad.

- Access can be difficult and slow due to complex, non-transparent, and unclear local legislation and regulations. Differences in local prioritisation of work can also be problematic. This can lead to requests of information not being replied to for relatively long periods of time.
- When UBO information can be accessed, the information is often incomplete, especially when the investigated individual or company has something to hide or when UBO information is held by parties that are under a duty of confidentiality.

OUTCOME 4 BASED ON G20 PRINCIPLE 7 (FINANCIAL INSTITUTIONS AND DNFbps TO IDENTIFY AND VERIFY BENEFICIAL OWNERSHIP OF THEIR CUSTOMERS)

Expected outcome: Financial institutions and DNFbps, including trust and company service providers, accurately identify and take reasonable measures to verify the beneficial ownership of their customers in accordance with CDD requirements. These obligations are supervised and effective, and proportionate and dissuasive sanctions apply to non-compliance.

Result: **Substantial** Level of Effectiveness

BEST PRACTICES

1. Dutch law stipulates well-developed and sophisticated rules regarding CDD procedures

FIs and DNFbps, as well as trust service providers, are under a legal obligation to identify the UBO of each client. To do so, Dutch law requires entities to conduct CDD, including UBO identification and verification.

- As a first step, obliged entities are expected to request information on the UBO from the client itself. The entity should then take risk-based and adequate measures to verify the information received from the client. Entities are expected to do so based on trustworthy sources. Relevant Dutch law follows a risk-based approach. However, this does not mean that entities have a choice whether or not to verify the identity of the UBO. Verification must take place in all cases. However, the choice of adequate measures depends on the circumstances of the case and the type of client. The result should be that the entity possesses enough information to be convinced that it has established the identity of the client's UBO. The entity is also under an obligation to check whether the UBO is a PEP.
- Obligated entities are also expected to have risk-based and adequate measures in place to understand the ownership and control structure of the customer. This should include measures that allow for verification of the legal status of clients other than natural persons, where possible by obtaining evidence of such legal status. The entity should know and understand the legal structure that the client is a part of, especially when this is a complex structure. In such a case, extra measures and resources should be taken to understand such a complicated structure. Obligated entities are also expected to question the reason for such a complex structure and to understand those reasons, if necessary by seeking external advice.

2. Supervision and sanctioning is generally seen as effective

The supervisory authorities monitor obligations regarding identification and verification of UBO as part of their general tasks. This supervision has intensified in the past and is seen as generally effective.

- The best practices mentioned above are prescribed by guidance papers and handbooks published by the Ministry of Finance, as well as supervisory authorities and trade organizations. These sources are widely used by the respective obliged entities to design their own risk-based policies and procedures. The same supervisory authorities are also in charge of monitoring compliance with these CDD requirements. An important part of the monitoring process is to examine whether the institutions have adequate administrative and internal control mechanisms. The organisation of an entity must enable the proper (i) conducting of CDD measures and (ii) identifying of unusual transactions, as well as reporting those to the FIU. In addition, it is the task of the supervisory bodies to ensure that the entities actually implement the CDD measures and report unusual transactions.
- Compliance with the legal requirements governing CDD measures, including identification and verification of UBO information, and control of such compliance has become stricter in recent years. The intensification includes increased sanctioning and on-site visits conducted by supervisors at the offices of obliged entities, such as banks and money transfer offices. According to the FIU, these on-site visits have contributed to better behaviour regarding the reporting of unusual transactions by obliged entities.⁷⁵ Investigations and on-site visits often occur without notice and FIs and DNFbps are aware of the stringent approach of the supervisory authorities.
- Entities that do not comply with the CDD obligations, including UBO identification and verification, run the risk of being sanctioned. Sanctions include instructions to correct the identified situation, an administrative fine, or even the withdrawal of the institution's license. Also, supervisory authorities may report the identified situation to the OM for criminal investigation. Most cases result in a fine or penalty. However, the nature and seriousness of the offense, recidivism, or the need for an investigation with more serious investigatory rights can be reasons for criminal prosecution. The entities themselves and their (de facto) managers as representatives of the entity can be prosecuted in this framework. In

⁷⁵ FIU, Annual Report FIU-Netherlands 2014, (*Jaaroverzicht FIU-Nederland 2014*), (FIU, May 2015), p. 20, https://www.fiu-nederland.nl/sites/www.fiu-nederland.nl/files/documenten/jaaroverzicht_2014.pdf (accessed 9 February 2017).

practice, criminal investigations are not unheard of. An example occurred in January 2017 when DNB reported several trust service providers to the OM as a result of an investigation into their role in the framework of allegations that arose from the revelations of the Panama Papers, including UBO-related issues.⁷⁶

IDENTIFIED GAPS

1. UBO Identification and verification regarding foreign clients, especially trusts, can be problematic

As mentioned above when discussing general access to UBO information (page 25), the effectiveness of the Dutch AML system is significantly lower when it comes to foreign clients of obliged entities, such as FIs. This also applies to UBO identification and verification. The following is a summary of the main challenges that practitioners encounter.

- Public sources of company information may be either non-existent or untrustworthy.
- When public sources are either non-existent, inaccessible or untrustworthy, entities must rely solely on information provided by the client without being able to cross-check and verify such information. As discussed above, this is especially difficult regarding foreign trusts.
- Cooperation with foreign authorities and company registers can prove problematic and tedious. Here, timeliness and accuracy of provided information are seen as the main challenges.
- For institutions wanting to carry out a proper CDD, the foregoing means that it is much harder to apply a strict objective test to the UBO identification and verification procedure. When personal meetings with prospective clients are impossible due to geographical distance and phone conversations do not provide the necessary reassurance regarding a prospective client's situation, institutions are forced to increasingly rely on soft tests, employing one's 'gut feeling', and intelligence from professional networks. If any doubt remains, the client cannot be accepted.

2. Lack of sanctioning of entities other than banks regarding violation of EU sanctions

Dutch FIs other than banks, including accountants, lawyers, legal service providers and notaries were not sufficiently supervised by Dutch authorities for compliance with national, European and international sanctions regimes. In its second follow-up report 'Mutual Evaluation of the Netherlands' published in 2014, the FATF stated that this deficiency was not addressed in the Dutch follow-up to the FATF recommendations.⁷⁷ According to the report, DNB is aware of this shortcoming and is making improvements to the corresponding monitoring system, including outreach activities and on-site visits.⁷⁸

3. Lack of publicly available data regarding the supervision of FIs and DNFbps

In its 2015 guidance on AML statistics, the FATF stressed the importance of publicly available AML statistics to assess a country's effectiveness.⁷⁹ Despite certain efforts by the FIU, Dutch (supervisory) authorities do not publish a satisfactory amount of statistics regarding the supervision of the financial sector, specifically regarding AML efforts.

- While information concerning on-site visits of supervisors is publicly available⁸⁰, public sources on AML-related statistics in the Netherlands do not include information on the numbers of off-site (i.e. desk-based) monitoring or analysis, regulatory breaches identified, sanctions and other remedial actions applied, and the total value of financial penalties.⁸¹ A lack of these statistics thwarts the assessment of the quality and effectiveness of AML policies in practice. Also, sanctions, including those regarding identification and verification of UBOs, are mostly not communicated to the public.
- It would improve the general effectiveness of the AML system, as well as the behaviour of FIs and DNFbps, if a penalty for AML failings, such as a lack of identification and/or verification of the UBO, and the reasoning for the penalty, would be published. This way, other obliged entities will have an incentive and information, on the basis of which they can improve their own systems. Competent Dutch authorities should publish aggregate data on sanctions, such as the total value and number of penalties, together with background information on the penalties, which can anonymise the parties involved if needed.⁸² This information should be published on a yearly basis.

⁷⁶ TI-NL, *DNB doet aangifte tegen trustkantoren uit Panama Papers* (Amsterdam: TI-NL, 26 January 2017), <https://www.transparency.nl/nieuws/2017/01/dnb-aangifte-trustkantoren-panama-papers/> (accessed 9 February 2017).

⁷⁷ See FATF, *Mutual Evaluation of the Netherlands: Second Follow-up Report* (Paris: FATF, February 2014), p. 27, www.fatfgafi.org/media/fatf/documents/reports/mer/FUR-Netherlands-2014.pdf (accessed 9 February 2017).

⁷⁸ Ibid, p. 27.

⁷⁹ FATF, *FATF Guidance: AML/CTF-related data and statistics* (Paris: FATF, October 2015), <http://www.fatf-gafi.org/media/fatf/documents/reports/AML-CFT-related-data-and-statistics.pdf> (accessed 9 February 2017).

⁸⁰ FIU, Annual Report FIU-Netherlands 2014 (*Jaaroverzicht FIU-Nederland 2014*).

⁸¹ Transparency International, *Top Secret – Countries Keep Financial Crime Fighting Data to Themselves* (Berlin: Transparency International, 15 February 2017), pp. 11, 12 and 26-28, <https://www.transparency.org/whatwedo/publication/7664> (accessed 15 February 2017).

⁸² Ibid, pp. 5 and 6.

OUTCOME 5 BASED ON G20 PRINCIPLE 8 (INTERNATIONAL AND DOMESTIC COOPERATION)

Expected outcome: National authorities cooperate and share information on beneficial ownership of legal persons and arrangements domestically and with their counterparts internationally. The information shared is the most detailed available and is submitted in a timely fashion.

Result: **Moderate** Level of Effectiveness

BEST PRACTICES

1. Domestic cooperation between national authorities is complex but well-developed

National authorities have intensified cooperation in recent years. There are several avenues worth mentioning that are employed by the authorities to simplify domestic cooperation and make it more efficient.

- An example of a recent cooperation project between various Dutch authorities active in the field of AML on a national level is the non-reporting (*niet-melders*) project of the OM, in cooperation with other relevant agencies such as FIOD and FIU. The project focuses on non-reporting of unusual transactions and aims at improving the reporting obligations of FIs and DNFBPs.⁸³
- The FIU is generally seen as an important player in the Dutch AML framework as regards domestic cooperation and information sharing. The FIU oversees the receipt and handling of reports of unusual transactions from FIs and DNFBPs and forwards reports of suspicious transactions to the police and special investigation services. It publishes relevant statistics in its annual reports.⁸⁴ The FIU is also partly responsible for information sharing on AML-related issues and for undertaking outreach and awareness initiatives. The FIU further handles information requests by national and international investigatory authorities for the purposes of criminal investigations (so-called 'LOVJ requests'). Requests can be made at the start of a criminal investigation, during ongoing investigations and to analyse security issues.⁸⁵
- In addition to these specific criminal investigatory requests to the FIU, general sharing of information between Dutch authorities amongst each other is facilitated through the FEC, a partnership between authorities with monitoring, supervising, prosecutorial, or investigative tasks in the financial sector. Members include the AFM, the tax authorities, DNB, the FIU, FIOD, the OM and the police. It was established to strengthen the integrity of the financial sector by actively preventing developments that might adversely affect the sector's integrity.⁸⁶ An important part of this work is the structural exchange of information between the members. Within this framework, the FEC also ensures compliance with the rules that apply to the duties of confidentiality and privacy that competent authorities have to respect regarding the information that they handle.
- The Dutch tax authorities have agreements with various national organisations and competent authorities regarding the exchange of information. The list of organisations is long and includes but is not limited to agreements with the OM, FIU, FEC, the national police, the Royal Association of Civil-law Notaries, various ministries, the institute for workers' insurance UWV, the Central Judicial Collection Agency CJI, the labour inspectorate, and the Chamber of Commerce, as well as with provinces, municipalities, trade organisations, umbrella organisations and fiscal service providers.⁸⁷

⁸³ TI-NL, *Project niet-melders: actie tegen ongebruikelijke transacties* (Amsterdam: TI-NL, 4 October 2016), <https://www.transparency.nl/nieuws/2016/10/project-niet-melders-onderzoek-naar-ongebruikelijke-transacties/> (accessed 9 February 2017).

⁸⁴ In its annual report the Dutch FIU mostly focused on 'suspicious transactions' (STR) statistics and analysis. Both the number and the value of relevant transactions were disclosed. In the Netherlands, relevant entities report on the so-called 'unusual transactions' (UTRs) to the FIU and this is the basis for initial investigation and selection of the actual STRs. In 2014 the number of STRs was around 10% of the number of UTRs. The FIU also discloses the number of criminal investigations for money laundering activities. See Transparency International, *Top Secret – Countries Keep Financial Crime Fighting Data to Themselves*, p. 28.

⁸⁵ In 2015, the Dutch FIU received a total of 1,218 information requests from domestic public authorities, which is a slight increase in comparison to 2014 when 1,093 requests were made. See Transparency International, *Top Secret – Countries Keep Financial Crime Fighting Data to Themselves*, p. 28 and FIU, Annual Report FIU-Netherlands 2015 (*Jaaroverzicht FIU-Nederland 2015*), (FIU, May 2016), https://www.fiu-nederland.nl/sites/www.fiu-nederland.nl/files/documenten/fiu-nederland_jaaroverzicht_2015_def.pdf (accessed 9 February 2017).

⁸⁶ Financial Expertise Centre (FEC), <https://www.fec-partners.nl/nl> (accessed 9 February 2017).

⁸⁷ Tax Authority (*Belastingdienst*), Overview of National Information Exchange Agreement (*covenanten*), <http://www.belastingdienst.nl/wps/wcm/connect/bldcontentnl/belastingdienst/intermediairs/toezicht/convenanten/convenanten> (accessed February 9 2017).

2. Cooperation and information sharing between Dutch and foreign authorities is improving, especially within the EU

Relevant Dutch financial laws stipulate the authorities' right to share information with international authorities.

- The Netherlands is an active and coordinating member of the Egmont Group, a partnership between 152 financial intelligence units for the purpose of facilitating secure exchanges of expertise and financial intelligence to combat money laundering and the financing of terrorism. Within this framework, information is exchanged internationally.⁸⁸
- Within the framework of the European Union, the Netherlands is partaking in a close cooperation with other Member States via the EU FIU Platform. The purpose of this formal partnership is to streamline means to exchange information and make such an exchange more effective. FIUs from all Member States can exchange information via the platform FIU.NET. All 28 FIUs of the Member States are connected to the network and together submit an average of 1,000 FIU.NET requests per month.⁸⁹
- The Netherlands exchanges tax information based on bilateral and multilateral arrangements. Examples include tax agreements based on the models provided by the OECD and the United Nations, tax information exchange agreements, and the Convention on Mutual Administrative Assistance in Tax Matters. Further sources include certain European directives and the US American Foreign Account Tax Compliance Act.
- Within the framework of the Mutual Administrative Assistance in Tax Matters, the Netherlands has committed to exchanging tax information with other jurisdictions under the Common Reporting Standard of the OECD as of September 2017.

IDENTIFIED GAPS

Based on the above, it seems that domestic and international cooperation are well-developed and effective. However, the following points warrant close attention when assessing the effectiveness of the Dutch cooperation and exchange of information, including on UBO related matters.

1. Dutch law imposes several restrictions that add complexity to the legal framework

Dutch law imposes a few fundamental restrictions on information sharing, either domestic or international in nature. Generally, a request for information must pass these legal tests before information can be shared. Below follows a summary of this complicated legal framework:

- Firstly, every competent authority (e.g. supervisory, investigative, and tax authorities) has a legal duty of confidentiality regarding the data it administers. A supervisor may only override this duty if it is required to share the specific information for the proper fulfilment of the requesting authority's legal task. The tasks of the supervisors are enshrined in the relevant specific laws.
- Secondly, Dutch legislation on the protection of privacy is strict in international comparison. The Personal Data Protection Act (*Wet bescherming persoonsgegevens*) stipulates that an entity may only share information relating to an identified or identifiable natural person if such entity is under a legal obligation to do so. The previously mentioned proper fulfilment of a legal task by a competent authority is generally considered to be such a legal obligation. Moreover, the request must fulfil the legal test of proportionality and subsidiarity. Information that can be gathered elsewhere cannot be shared along these lines.
- Depending on the circumstances of the case, restrictions also play a role when the requested information is held by someone who is under a duty of confidentiality, such as a lawyer, or are subject to contractual bank secrecy provisions.

It is important that competent authorities have procedures in place to safeguard respect for data protection and privacy laws. The relevant laws are meant to harmonise with each other to ensure smooth cooperation and information sharing. However, given the complexity of the summarized legal restrictions above, this is not always the case. The future introductions of a shareholders' and UBO register will improve Dutch effectiveness regarding cooperation and information sharing.

2. Lack of statistics on international cooperation and exchange of information on AML matters

As mentioned, it is important that a country publishes statistics on its AML activities. In its guidance on AML statistics, the FATF included statistics on international cooperation as one of the most useful indicators for its effectiveness assessment. The statistics that the Dutch authorities made publicly available in this area are very limited.

- Published information on international cooperation related to AML risks is limited to the numbers of (i) AML-related mutual legal assistance (MLA) agreements and (ii) AML-related MLA requests received.

⁸⁸ Egmont Group, <https://www.egmontgroup.org/> (accessed 9 February 2017).

⁸⁹ FIU, Annual Report FIU-Netherlands 2015 (*Jaaroverzicht FIU-Nederland 2015*), p. 41.

- Dutch authorities do not publish (current) data on:
 - the number of AML-related MLA requests that were granted, refused, or processed by the Dutch authorities;
 - the number of AML-related extradition requests that Dutch authorities made, received, granted, refused, or processed;
 - the average time that Dutch authorities take to provide a response on the merits of MLA requests received; and
 - the average time that Dutch authorities take to process extradition requests received.⁹⁰

As mentioned, statistics on this type of information should be published by the Dutch authorities on a yearly basis to facilitate Dutch effectiveness assessments and to generally improve the Dutch AML system

3. *International cooperation outside of the EU can be tedious, complicated, and untrustworthy*

As discussed above, national authorities find it difficult to cooperate with foreign authorities, especially outside the EU. Most consulted experts and practitioners report that international cooperation and information sharing can at times be complicated.

- Global financial advisors, including Dutch service providers, assist in setting up complex legal arrangements with companies and bank accounts in various foreign jurisdictions with which the Dutch tax authorities do not have a tax information exchange agreement, such as Panama. This makes it difficult, if not impossible in certain cases, for (tax) investigative authorities to access and obtain necessary information, including on UBOs.
- When tax agreements exist, there are many examples that show effective and smooth international cooperation between Dutch authorities and counterparts in non-EU jurisdictions. At the same time, however, expert consultations show that the contrary can also be the case. The main challenges are complex, non-transparent, and unclear local legal rules and regulations, resulting in slow responses or no response at all.

CASE STUDIES

The following case studies present a selection of examples that illustrate some of the key shortcomings and identified gaps as presented in the above report. These examples expose that while the general understanding of and approach to AML risks is on a relatively sophisticated level, effectiveness in practical terms has not yet reached the same level in the Netherlands.

The first two studies concern Dutch financial service providers and Dutch trust service providers (*trustkantoren*).⁹¹ As will be demonstrated, some of these service providers have been involved, consciously or unconsciously, in practices that involve grand corruption schemes and money laundering. The UBOs operating behind the scenes in these case studies were either not identified or not properly scrutinised by the service providers, thereby neglecting their gatekeeping role and impairing the integrity of the financial system.⁹²

The third case study describes a new development in the area of UBO transparency. Recent investigations by the FIOD and the OM into money laundering by means of virtual currencies, such as the bitcoin, have led to several criminal cases that will be brought to court this year. The investigations show that criminals have found ways to abuse bitcoins by employing certain digital tools to create anonymity. Virtual currencies are relatively new and unregulated, and their anonymous abuse has not received enough attention by lawmakers until now.

CASE STUDY #1: FINANCIAL SERVICE PROVIDERS

The first case study concerns the gatekeeping role of the financial service providers in the Dutch financial market, such as banks, notary offices, law firms and accountancy firms. It is about the much-discussed VimpelCom bribery scheme, in which an international telecom provider 'successfully' bribed a letterbox company in Gibraltar with more than a hundred million dollars between 2006 and 2012 to gain entry to the Uzbek telecom market.⁹³ The UBO behind the bribed company, pulling the strings behind the scenes, was Gulnara Karimova, the daughter of the former president of Uzbekistan. Various Dutch service providers were involved in the scheme. The case study serves as a wake-up call that financial service providers in the Netherlands need to re-evaluate their compliance structures and risk appetites accordingly.

1. *The VimpelCom case: international bribery made in Amsterdam*

The Dutch financial sector has a higher-than-average-risk of facilitating financial flows that are tied to corruption and money laundering. The attractive Dutch fiscal policies attract many foreign companies that incorporate their head office or letterbox companies in the Netherlands. The OECD Phase 3 Report on the Netherlands mentions this as one of the Dutch high-risk factors. According to the OECD, investigations of possible corruption connected to the foreign (letterbox) companies situated in the Netherlands should be intensified.⁹⁴ More clarity and stricter laws around UBO identification of clients that engage with the Dutch financial sector are needed for effective anti-corruption enforcement.

The facts surrounding the VimpelCom corruption scheme illustrates this. In the framework of this case, VimpelCom, a Norwegian-Russian telecom giant headquartered in Amsterdam, paid a total amount of more than 114.5 million dollars in bribes to secure entry to the Uzbek telecom market. The investigations by Dutch and international authorities discovered that VimpelCom was aware that the bribes were eventually paid to a foreign PEP, namely the daughter of the former president of Uzbekistan, Gulnara Karimova.⁹⁵ At the time, Karimova was an Uzbek diplomat at the United Nations in Geneva. Several Dutch financial institutions allegedly facilitated the transfer of funds to an offshore company based in Gibraltar called Takilant. The investigations by the authorities found that Gulnara Karimova acted as UBO behind this

⁹¹ Not to be confused with common-law trusts.

⁹² In the wake of the revelations of the Panama Papers in April 2016, the Dutch government reaffirmed the gatekeeping duty of Dutch financial service providers: "financial service providers are designated as gatekeepers of the financial system, because in the framework of their services, they are ideally positioned to pick up signals that their clients are involved in financial dealings that are related to money laundering or terrorist financing." See: Ministry of Finance, Reaction of Parliament to Panama Papers (*kabinetsreactie*). (The Hague: 18 May 2016), <https://www.rijksoverheid.nl/documenten/kamerstukken/2016/05/18/kabinetsreactie-panama-papers> (accessed 9 February 2017).

⁹³ Dutch Public Prosecutor's Office (OM), *VimpelCom betaalt bijna 400 miljoen dollar aan Nederland voor omkoping in Oezbekistan* (OM, 18 February 2016), <https://www.om.nl/onderwerpen/afpakken/@93225/VimpelCom-betaalt/> (accessed 9 February 2017).

⁹⁴ Organisation for Economic Co-operation and Development (OECD), *Phase 3 Report on implementing the OECD Anti-Bribery Convention in the Netherlands* (OECD, 14 December 2012), <https://www.oecd.org/daf/anti-bribery/Netherlandsphase3reportEN.pdf> (accessed 9 February 2017).

⁹⁵ OM, *VimpelCom betaalt bijna 400 miljoen dollar aan Nederland voor omkoping in Oezbekistan*.

⁹⁰ See Transparency International, *Top Secret – Countries Keep Financial Crime Fighting Data to Themselves*, p. 11.

offshore company.⁹⁶ The reconstruction carried out by the investigative authorities show that the offshore construction was set up in such a way that Gayane Avakyan, Karimova's trusted aide, was the sole shareholder and director of the offshore company Takilant, with Karimova as the UBO pulling the strings behind the scenes.⁹⁷

2. Where were the gatekeepers? The role of Dutch service providers

Both direct payments to the offshore company and transactions in shares, leaving a surplus of money at the offshore firm, were part of the bribery scheme. These unusual transactions in shares took place under the approval of Dutch notary office Houthoff Buruma. The remarkable cash payments by VimpelCom flowed from one of its subsidiary companies to Takilant in Gibraltar. These payments were conducted through the trust desk of ING Bank in Amsterdam. Also, VimpelCom was audited by EY during the years these payments took place.⁹⁸

It is unclear whether any of these service providers reported the unusual transactions to the FIU when there are arguments to be made that they should have done so. The question is whether and to what extent these service providers neglected their gatekeeping duties by either not following their CDD measures or not having sufficient procedures in place. To fulfil their role as gatekeepers of the financial sector, financial institutions in the Netherlands are obliged by law to apply adequate CDD measures with regard to their clients and to monitor transactions for possible money laundering.⁹⁹ The measures must include UBO identification and verification. A client that cannot be identified through these procedures should not be accepted. An institution must also have procedures in place that analyse suspicious transaction patterns by clients. This entails, among other things, the identification of the client, their purpose of business, whether a client is acting on behalf of a third party, and whether the client's representative is competent. Also, notaries have a duty to make due notice of the shares a client receives and to check the manner in which the shares were acquired by the seller. Just like financial institutions, the Wwft obliges notaries to report unusual transactions to the FIU.¹⁰⁰

Eventually, the investigations by the authorities show that none of the aforementioned Dutch institutions fulfilled their gatekeeping roles and flagged the unusual transactions. It was in fact the Swiss bank Lombard Odier that first noticed irregular activities around accounts connected to Karimova in June 2012.

3. Will there be consequences for the gatekeepers?

The VimpelCom corruption scheme is unprecedented in the Netherlands. In February 2016, VimpelCom agreed to settle foreign bribery charges with the Dutch and US prosecutors for a record fine of 795 million dollars, of which roughly half goes to the Dutch authorities.¹⁰¹ This is a record in Dutch settlement cases and a laudable sign regarding anti-corruption law enforcement. The Dutch authorities announced that there are still several pending criminal investigations into involved individuals as well.¹⁰² However, not enough attention has been paid to the involved Dutch banks, notaries and accountants.

The service providers that played their part in the payment and share transactions seem to have failed to recognise and/or report the unusual financial flows in this case to the supervisors or the FIU, despite several red flags. This raises several questions: did the large sums of money that were concerned with the transactions or the fact that the cash and share transactions went to an offshore letterbox company raise the level of CDD measures? Did the Dutch service providers actually identify and verify the UBO? If so, did they realise that the large amounts of money were ultimately paid to the daughter of the former president of Uzbekistan, who was a PEP and a public official at the time? The client and the characteristics of the transactions themselves could have led to sufficient reasons for triggering risk-based investigations and reporting. It is unclear whether such risk-based investigations or reporting occurred. The supervisors and the OM announced that they would investigate the roles that these financial service providers played in this case and the extent

96 OM, *Statements of Facts*, https://www.om.nl/publish/pages/48610/20160217_dpp_statement_of_facts_-_nl_om_-_final.pdf (accessed 9 February 2017).

97 OM, *VimpelCom betaalt bijna 400 miljoen dollar aan Nederland voor omkoping in Oezbekistan..*

98 NRC, *OM onderzoekt dienstverleners die smeergeld mogelijk maakten* (NRC, 20 February 2016), <https://www.nrc.nl/nieuws/2016/02/20/om-onderzoekt-dienstverleners-die-smeergeld-mogelijk-maakten> (accessed 9 February 2017) and NRC, *De miljoenen gaan naar de dochter van de president* (NRC, 24 April 2015), <https://www.nrc.nl/nieuws/2015/04/24/de-miljoenen-gaan-naar-de-dochter-van-de-president-1487575-a1368408> (accessed 9 February 2017) and FD, *smeergeld voor Oezbeken liep deels via Nederlandse banken en Houthoff* (FD, 19 February 2016), <https://fd.nl/economie-politiek/1140298/smeergeld-voor-oezbeken-liep-deels-via-nederlandse-banken-en-houthoff> (accessed 9 February 2017).

99 See Wft and Wwft.

100 FIU, *Notarissen*, <https://www.fiu-nederland.nl/nl/meldergroep/276> (accessed 9 February 2017).

101 TI-NL, *NL en VS schikken met VimpelCom* (Amsterdam: TI-NL, 19 February 2016), <https://www.transparency.nl/nieuws/2016/02/nl-en-vs-schikken-met-vimpelcom/> (accessed 9 February 2017).

102 OM, *VimpelCom betaalt bijna 400 miljoen dollar aan Nederland voor omkoping in Oezbekistan.*

to which they fulfilled their gatekeeping duty. It is not yet clear whether these investigations will lead to any sort of criminal or administrative investigations and sanctioning of the service providers. Suspicions of criminal or administrative guilt have not been publicly discussed at the date of writing.¹⁰³

4. Time to step up the game: the Dutch financial service sector is too vulnerable

These facts confirm that the Dutch financial sector has a higher-than-average-risk of facilitating financial flows that are tied to corruption and money laundering. The attractive Dutch fiscal policies appeal to many foreign companies that incorporate their head office or letterbox companies in the Netherlands. The OECD Phase 3 Report on the Netherlands mentions this as one of the Dutch high-risk factors. According to the OECD, investigations of possible corruption connected to the foreign (letterbox) companies situated in the Netherlands should be intensified.¹⁰⁴ More clarity and stricter laws around UBO identification of clients that engage with the Dutch financial sector are needed for effective anti-corruption enforcement.

It has been acknowledged by the authorities and the government that more specific attention needs to be paid to the role of financial institutions as facilitators for corruption and money laundering. The FIOD will be playing a more important role in tracking financial flows and notifying the financial supervisors DNB and AFM of corruption risks, including UBO-related issues. It remains to be seen whether this move in the right direction will prove effective.

CASE STUDY #2: TRUST SERVICE PROVIDERS

The second case study illustrates the issues that have been identified in the Netherlands regarding the trust service sector. Dutch trust service providers (*trustkantoren*) should not be confused with the common law legal structure of a 'trust'. Trust service providers can be best compared to corporate service providers. They serve foreign corporate clients by providing them with a Dutch address or acting as a nominee director of a Dutch subsidiary.¹⁰⁵ Dutch trust service providers are regulated and supervised. There are around 150 trust service providers in the Netherlands, which together service and administer around 24,000 companies. The sector has been identified as high-risk and has been under special watch by financial supervisor DNB.¹⁰⁶ The case study below illustrates why.

1. IMFC Trust and Fund Services: a service hatch for bribery payments?

Former Dutch trust service provider IMFC Trust and Services (IMFC) based in Amsterdam has appeared in Dutch and Spanish media as having allegedly facilitated certain bribery payments originating in Spain, transferred through the Dutch bank accounts of IMFC, channelled through the Caribbean, and paid out in cash to corrupt Algerian public officials in the framework of a public procurement project. These are the suspicions of a Spanish judge investigating the case.¹⁰⁷

The suspicions form part of a larger scheme. Spanish authorities launched an investigation into twenty Spanish officials to determine whether they secured contracts from foreign governments for Spanish construction companies, in return for bribes. Among other things, the investigation focuses on Pedro Gómez de la Serna and Gustavo de Aristegui, both high-level politicians of the ruling party Partido Popular. The latter is also a diplomat, resigning in late 2015 from his post as ambassador to India due to the allegations.¹⁰⁸ These two individuals were clients of the Dutch trust service provider IMFC. Serna and Gustavo both have extensive experience as lobbyists and secured two major construction contracts for the Spanish company Elecnor. In 2011 and 2012, IMFC invoiced an amount of almost 1.65 million euros to Elecnor on behalf of the two politicians. According to the invoices, Elecnor was requested to pay this amount to a Dutch bank account at ABN AMRO bank. The bank account holder was a company called Castelino BV, which had been incorporated by IMFC

103 NRC, *OM onderzoekt dienstverleners die smeergeld mogelijk maakten* and NRC, *De miljoenen gaan naar de dochter van de president* and FD, *smeergeld voor Oezbeken liep deels via Nederlandse banken en Houthoff*.

104 OECD, Phase 3 Report on implementing the OECD Anti-Bribery Convention in the Netherlands.

105 See for a more detailed description of trust service: DNB, *What is a trust service?* (DNB, 9 October 2012), <http://www.toezicht.dnb.nl/en/2/51-226561.jsp> (accessed 15 February 2017).

106 DNB, *Nieuwsbrief Trustkantoren January 2017* (DNB, 25 January 2017), <https://www.dnb.nl/nieuws/dnb-nieuwsbrieven/nieuwsbrief-trustkantoren/nieuwsbrief-trustkantoren-januari-2017/dnb351794.jsp> (accessed 9 February 2017).

107 Case number ECLI:ES:AN:2016:7A Id Cendoj: 28079270052016200002, as well as case number ECLI:ES:AN:2016:45 Id Cendoj: 2807927005201620000, Investigative Judges Madrid Section 5, Nr. 12/2016, Jose de la Mata Maya; also see TI-NL, *Spaanse corruptie gefaciliteerd door Nederlands trustkantoor* (Amsterdam: TI-NL, 15 August 2016), <https://www.transparency.nl/nieuws/2016/08/spaanse-corruptie-gefaciliteerd-door-nederlands-trustkantoor/> (accessed 9 February 2017) and El Mundo, *Judge detects Aristegui and De la Serna's Algerian connection* (El Mundo, 12 December 2016), <http://www.elmundo.es/espana/2016/12/08/584881a046163f8a178b45e1.html> (accessed 9 February 2017).

108 The Hindu, *Envoy quits as kickbacks scam rocks Spain* (the Hindu, 15 December 2014), <http://www.thehindu.com/news/national/gustavo-de-aristegui-resigns-as-kickbacks-scam-rocks-spain/article7988555.ece> (accessed 9 February 2017).

and whose nominee director was IMFCs managing director. The transactions then allegedly moved through a letterbox company on the Dutch Antilles for tax reasons, before reaching their final destination in Algeria. Here, the suspicion is that the money was paid out in cash to Algerian public officials. According to the Spanish authorities, these Algerian public officials helped the politicians-gone-lobbyists-gone-politicians Serna and Gustavo to secure public procurement contracts in Algeria for their client Elecnor.

2. Politicians and international money flows: know your customer and their business

The IMFC case is an example of the sort of high-risk arrangements facilitated by the Dutch trust sector that might include financial flows possibly destined for bribery and fraud practices. Even though there were arguably clear indicators of a high-risk transaction, the trust service provider IMFC ostensibly did not report the unusual transaction to the Dutch regulators. The clients were PEPs before, during, and after the alleged bribery payments channelled through the Dutch bank account of IMFC. The payments were invoiced at a large Spanish construction firm, were related to public procurement contracts abroad, and channelled through the Caribbean, allegedly for tax reasons, to end up in Algeria. Based on these circumstances, there are arguments to be made that knowing your customer and its business should entail asking more questions and potentially reporting the payments as unusual transactions. Neither the accusations by the Spanish investigative judge nor related reports mention such an unusual transaction report.¹⁰⁹

The above illustration demonstrates a possible lack of effective CDD measures and subsequent reporting by a Dutch trust service provider. According to the provisions of the law regulating the sector, the Wtt and related laws, a trust service provider is obliged to conduct effective CDD, gather and update knowledge of the client's UBO, and inform the FIU in case of unusual transactions. When PEPs are involved, enhanced measures should be taken.¹¹⁰ IMFC knew that its clients were Spanish politicians and diplomats and operated as lobbyists in high-risk countries. To safeguard its gatekeeping role, the invoices totalling almost 1.65 million euros should have alerted IMFC to at least request additional information regarding the origin and destination of the payments, or report it as an unusual transaction.

3. Regulation and risks are out of balance

However, seeing that it was IMFC itself, via its subsidiary Castelino BV, that invoiced and administered the payments, the reporting obligation would have meant self-reporting. This paradoxical situation shows the problematic interlacement of the Dutch trust service sector and its clients. IMFC and its managers have denied to comment on the suspicions by the Spanish authorities. Hence, it is unknown whether this mandatory enhanced due diligence took place in this case.

The IMFC case illustrates why the Dutch trust service sector has been getting negative attention from the media and supervisors lately. Financial supervisor DNB identifies the trust service sector as providing financial services with a high inherent risk.¹¹¹ As seen above, the complex (often fiscally-driven) structures that characterise the sector are prone to abuse. DNB reports in its position paper that the trust sector inadequately performs its function as one of the gatekeepers of the Dutch financial sector.¹¹²

4. Reform is needed

Cases such as IMFC occur despite the sector being regulated relatively strictly. However, the regulation described above did not stop the sector from getting out of balance. Reform and more and stricter supervision by DNB, as well as an internal cultural change, is needed. The supervisor has heard this call and stepped up supervision, outreach, and sanctioning to a creditable extent already.¹¹³ In January 2017, DNB reported several Dutch trust service providers to the OM for criminal investigation.¹¹⁴ At time of writing, it is unclear what the nature of the suspicions and which trust service providers are being investigated. DNB plans to intensify this development in 2017.¹¹⁵

109 ECLI:ES:AN:2016:7A Id Cendoj: 28079270052016200002, as well as ECLI:ES:AN:2016:45 Id Cendoj: 2807927005201620000; TI-NL, *Spaanse corruptie gefaciliteerd door Nederlands trustkantoor* and El Mundo, *Judge detects Aristegui and De la Serna's Algerian*.

110 Article 10(e)-1 Wtt and Article 23 Regulation on Sound Operational Management (Rib 2014).

111 DNB, *Position Paper Trustsector*, (DNB, 2016), <https://www.dnb.nl/nieuws/nieuwsoverzicht-en-archief/nieuws-2016/dnb339363.jsp> (accessed 9 February 2017).

112 Ibid.

113 DNB, *Supervision on Trust offices*, <http://www.toezicht.dnb.nl/en/4/5/11/51-204672.jsp?s=n> (accessed 9 February 2017).

114 TI-NL, *DNB doet aangifte tegen trustkantoren uit Panama* and DNB, *Visie DNB toezicht 2014-2018*, http://www.dnb.nl/binaries/VoT_tcm46-304577.pdf?2017011020 (accessed 9 February 2017).

115 DNB, *Toezicht Vooruitblik 2017*, https://www.dnb.nl/binaries/Toezicht%20Vooruitblik%202017_tcm46-349591.pdf (accessed 9 February 2017).

IMFC and similar cases also show that regulatory reform is needed. An amendment of the Wtt is indeed expected in 2018. This legislative development is a chance to further address and debate the aforementioned issues. On the basis of the draft bill, the most prominent changes will be (i) a mandatory two-headed daily management, (ii) the adoption of the same norms on business integrity as in the Wft and (iii) the ability for supervisory authorities to prohibit the offering of trust services to certain types of high-risk structures.¹¹⁶

Additionally, the draft bill should be amended to also include (i) a prohibition for trust service providers to act as nominee directors for clients, (ii) the ability for supervisors to publish non-compliance fines and administrative penalties at their own discretion, (iii) a specific prohibition to service legal structures or arrangements that entail anonymity of the UBO, and (iv) the introduction of a compulsory compliance officer at each licensed trust service provider to introduce internal cultural change.¹¹⁷

CASE STUDY #3: BITCOINS

The abuse of the legal trade in and with bitcoins is a current problem that deserves more attention in AML risk analyses. This is illustrated by the following case study, which is based on three criminal cases recently initiated by the OM in which the abuse of bitcoins in the form of money laundering plays a central role.¹¹⁸

1. Bitcoins can be easily abused, e.g. by anonymising their origin

The trade in and payment with bitcoins as such is legal.¹¹⁹ However, criminal abuse is possible due to a lack of regulations, supervision by official authorities, and the possibility to trade bitcoins anonymously. With anonymity, it is relatively easy for the criminal circuit to abuse bitcoins for means of money laundering, fraud and terrorist financing.¹²⁰ According to Europol, criminals fund 40% of their total money exchange through bitcoins.¹²¹ This occurs mainly on the dark web, where criminals purchase illegal commodities using bitcoins.¹²² Subsequently, criminals can use so-called intermediary bitcoin cashers to launder the bitcoins obtained through illegal transactions into cash.¹²³ For a fee, bitcoin cashers exchange these bitcoins through legal bitcoin exchange platforms and attain the equivalent in a 'real' currency in return. Thus, bitcoin cashers facilitate money laundering. Another way to anonymise the trade in bitcoins is by using so-called bitcoin mixers.¹²⁴ Through these mixers, different bitcoin traders exchange their bitcoins and arbitrarily retrieve 'clean' bitcoins in return.¹²⁵ Thus, the link between the criminal transaction and the profit in bitcoins disappears, rendering the trader's identity non-traceable and anonymous. The anonymity facilitates the laundering of illegally obtained profits, because it renders it nearly impossible to trace the illegal actions back to their origin.

2. Lack of regulation leads to insecurity

Currently, there is no legislation governing the use of bitcoins in the Netherlands. A 2014 court ruling of the District Court of Overijssel qualified the bitcoin as a medium of exchange instead of qualifying it as money.¹²⁶ Minister Dijsselbloem confirmed this definition in a statement from a governmental standpoint.¹²⁷ Consequently, the use of bitcoins falls outside

116 Draft bill Wtt 2018, <https://www.internetconsultatie.nl/wettoezichttrustkantoren2018> (accessed 9 February 2017).

117 See also: DNB, *Position Paper Trust Sector*.

118 FD, *OM voert strijd op tegen witwassen bitcoin* (FD, 3 January 2017), <https://fd.nl/economie-politiek/1181589/om-voert-strijd-op-tegen-witwassen-via-bitcoin> (accessed 9 February 2017).

119 Bitlegal, company website, <http://map.bitlegal.io/nation/NL.php> (accessed 9 February 2017).

120 European Commission, *Commission strengthens transparency rules to tackle terrorism financing, tax avoidance and money laundering*, (Strasbourg: European Commission, 5 July 2016), http://europa.eu/rapid/press-release_IP-16-2380_en.htm (accessed 9 February 2017).

121 Europol, *The Internet Organised Crime Threat Assessment (IOCTA)*, (Europol, 2015), p. 46, <https://www.europol.europa.eu/activities-services/main-reports/internet-organised-crime-threat-assessment-iocta-2015> (accessed 15 February 2017).

122 Ibid.

123 FD, *Bitcoin is reservemunt van de onderwereld geworden* (FD, 3 January 2017), <https://fd.nl/economie-politiek/1181590/bitcoin-is-reservemunt-van-de-onderwereld-geworden> (accessed 9 February 2017).

124 Ibid. Bitcoin mixers do a simple randomization of bitcoins from different origins. Each time when a client passes some coins through such a mixing service, all of the information related to his or her coins gets wiped off, rendering the origins of the newly retrieved bitcoins anonymous.

125 Ibid.

126 District Court of Almelo, Decision of 14 May 2014, <https://tweaking.net/files/upload/20140514%20vonnissen%20geanonimiseerd.pdf> (accessed 9 February 2017).

127 House of Representatives, Parliamentary Papers, 6 January 2014, <https://zoek.officielebekendmakingen.nl/ah-tk-20132014-830.html?zoekcriteria=%3Fzkt%3DUitgebreid%26pst%3DParlementaireDocumenten%26vrt%3Dbitcoin%26zkd%3DInDeGeheleText%26dpr%3DAlle%26kmr%3DEersteKamerderStatenGeneraal%7cTweedeKamerderStatenGeneraal%7cV> (accessed 9 February 2017).

the scope of the relevant Dutch financial regulation laws. Thus, supervising authorities DNB¹²⁸ and AFM¹²⁹ do not monitor the trade of bitcoins. Despite their lack of jurisdiction, the supervising authorities warn the public regarding the risks of trading in bitcoins.¹³⁰ Moreover, the Ministry, DNB and AFM closely follow the development of the bitcoin and its risks in order to carry out timely interventions when necessary.¹³¹

Similarly, European law does not yet regulate the trade of bitcoins. However, this year the European Commission will focus on digital currencies in order to combat money-laundering issues.¹³² In addition, last year the European Commission proposed the adoption of stricter rules for the use of virtual currencies within the framework of an amendment of AMLD4.¹³³ The amendment includes measures to combat the anonymous financing of terrorism and anonymous payments through bitcoins by establishing certain safeguards for the use of virtual currencies, including CDD measures.¹³⁴

3. CDD measures are still voluntary and fragmented

Due to the lack of regulations, no formal client due diligence obligations exist for bitcoin exchange platforms. Currently, Dutch bitcoin exchange platforms uphold certain, albeit highly fragmented, identity criteria in their policies. For example, BTCDirect obliges customers to identify themselves by sending an identification document, prior to the acquisition of bitcoins.¹³⁵ However, at other exchange platforms, such as Bitrush, the verification procedure merely includes an e-mail address, phone number, and back account number.¹³⁶ The AMLD4 amendment will change this by establishing customer due diligence control and restricting the possibilities for anonymous trade.¹³⁷ Minister Koenders agreed that there is a need for a better client due diligence framework by obliging platforms trading in bitcoins to identify their customers.¹³⁸ It remains to be seen in which form these European developments will be implemented in Dutch law.

4. The OM actively prosecutes money laundering with bitcoins

Despite the aforementioned rather slow legislative process, the OM and investigative authorities identify the risks and have in recent months investigated certain cases. Three such cases will come before the courts in 2017.¹³⁹ In these cases, the OM initiated proceedings regarding the abuse of the virtual currency.¹⁴⁰ In the first case, the OM suspects two persons of trading drugs, money laundering, and participating in a criminal organisation. Allegedly, the two laundered a total amount of 2.4 million euros through bitcoins.¹⁴¹ The second case concerns the allegation of the laundering of millions of euros through a currency exchange office specialised in the exchange of bitcoins into euros run by four individuals. Unlike regular exchange platforms, this exchange office guaranteed the anonymity of the customers and allegedly focused on shady customers who obtained bitcoins through illegal activities.¹⁴² The third case emerged after the national banks noticed the exchange of unusually large amounts of money, which were immediately withdrawn in cash.¹⁴³ This concerns a large international investigation known as 'Ice Berg', in which the OM suspects the criminals of trading illegal goods on the dark web and operating as bitcoin cashers.¹⁴⁴ This case is expected to appear before the court no sooner than late 2017.

128 DNB, *Virtuele Valuta*, <https://www.dnb.nl/betalingsverkeer/virtuele-en-lokale-valuta/virtuele-valuta/> (accessed 9 February 2017).

129 AFM, *Wees je bewust van de risico's van Bitcoins* (AFM, 10 December 2013), <https://www.afm.nl/nl-nl/nieuws/2013/dec/bitcoins> (accessed 9 February 2017).

130 DNB, *Virtuele Valuta* and AFM, *Wees je bewust van de risico's van Bitcoins*.

131 Ibid.

132 European Parliament, *the Juncker Commission's ten priorities*, (European Parliament January 2017), p. 20, [http://www.europarl.europa.eu/RegData/etudes/IDAN/2017/595876/EPRS_IDA\(2017\)595876_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2017/595876/EPRS_IDA(2017)595876_EN.pdf) (accessed 9 February 2017).

133 European Commission, *Action Plan for strengthening the fight against terrorist financing*, (European Commission, 2 February 2016), <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1455113825366&uri=CELEX:52016DC0050> (accessed 9 February 2017).

134 European Commission, *Commission strengthens transparency rules to tackle terrorism financing, tax avoidance and money laundering*.

135 BTCDirect, company website, <https://btcdirect.eu/nl-nl> (accessed 9 February 2017).

136 Bitrush, company website, <https://bitrush.nl/nl> (accessed 9 February 2017).

137 European Commission, *Action Plan for Strengthening the Fight Against Terrorist Financing*.

138 House of Representatives, 2015-2016, 22112, nr 2200, p. 4, <https://zoek.officielebekendmakingen.nl/dossier/22112/kst-22112-2200?resultIndex=5&sorttype=1&sortorder=4> (accessed 9 February 2017).

139 FD, *OM voert strijd op tegen witwassen bitcoin*.

140 Ibid.

141 Ibid.

142 Ibid.

143 OM, *10 aanhoudingen in internationaal bitcoins onderzoek* (OM, 20 January 2016), <https://www.om.nl/actueel/nieuwsberichten/@92718/10-aanhoudingen/> (accessed 9 February 2017).

144 Ibid.

As a result of the investigation of such cases, the investigative authorities proposed to establish a so-called 'red flag' money-laundering indicator for bitcoin mixers.¹⁴⁵ This indicator would simplify the initiation of criminal proceedings when a bitcoin mixer is allegedly used for money laundering. A representative of the investigative authority appropriately commented by stating: "Why else would someone use a service that lacks any logical economic explanation, but for the disguise of its [the bitcoins] origins?"¹⁴⁶

The current investigations and court proceedings regarding money laundering through bitcoins demonstrate the possibilities for the abuse of bitcoins, especially when the UBO is impossible to establish after anonymity was created. To combat these risks, the possibility of trading bitcoins anonymously should be restricted through improved national and international regulations. The expected court rulings will hopefully provide additional information concerning the current situation of the enforcement of the abuse of bitcoins.

145 FD, *Bitcoin is reservemunt van de onderwereld geworden*.

146 Ibid.

RECOMMENDATIONS

Drawing from the lessons learned in the technical and effectiveness evaluation, as well as the case studies, the below puts forward the most important recommendations for an adequate and effective future Dutch AML legislation with a special focus on UBO transparency.

Dutch, European and international lawmakers should take these propositions into account in the framework of current and future legislative discussions and decisions. Additionally, the Dutch Scientific Research and Documentation Centre (WODC) should consult these recommendations in the framework of its current work on the first national risk assessment (NRA) regarding money laundering risks related to legal persons and arrangements.

UBO AWARENESS AND DEFINITION

1. Increase general awareness and understanding of specifically UBO-related issues, both in the public and private sector, for example by intensifying outreach activities specifically focusing on topics surrounding beneficial ownership. (See Outcome 1 above, as of page 19.)
2. Use the current legislative developments to introduce a new UBO definition by lowering the owner threshold from 25% to 10% for all companies and other legal entities, to decrease the chance that the new legislation will allow ill-intentioned persons to stay under the radar. (See G20 Principle 1, page 8, and Outcome 3, as of page 25, above.)

NATIONAL RISK ASSESSMENT

3. Ensure that the first NRA will:
 - a. be published in 2017 and followed-up with new versions periodically without delay;
 - b. include an identification of all relevant (not only five) and current high-risk sectors, areas, and scenarios that require enhanced CDD measures together with a corresponding risk evaluation by including quantitative (data-driven) research methods;
 - c. include a forward-looking analysis of new and probable future high-risk sectors, such as trading in, paying with and potential forms of abuse of virtual currencies, e.g. bitcoins (see Case Study #3, page 37, above);
 - d. consult all relevant external stakeholders, including FIs, DNFBPs and civil society organisations, such as TI-NL; and
 - e. include clear results that will be effectively communicated to FIs and DNFBPs and published online.

(See G20 Principle 2, page 9, and Outcome 1, as of page 19, above.)

FUTURE UBO AND SHAREHOLDERS REGISTERS

4. Adjust the plans for the future UBO register in such a way that:
 - a. an independent authority (e.g. the administering Chamber of Commerce), is designated to verify and double check the UBO information that Dutch companies and other legal entities will be obliged to provide to the future UBO register;
 - b. Dutch companies and legal entities are obliged to report to the administering authority regarding any and all changes and updates of UBO information on a regular basis (e.g. every 30 days by way of an automatized information supply system);
 - c. foreign trusts with a connection point in the Netherlands, either via the place of residence of the settlor, the trustee, the beneficiaries, or the location of the assets, are obliged to supply UBO information to the future UBO register; and
 - d. obliged entities that fail to report UBO information or fail to report accurate UBO information will be sanctioned with high-category fines and, in deliberate cases, short-term imprisonment, as is the case in the United Kingdom.¹⁴⁷

(See G20 Principle 4, page 10, and Outcome 3, as of page 25, above.)

5. Adjust the draft law regarding the introduction of a central shareholders' register to make such register public and openly accessible to parties with a legitimate interest (i.e. journalists and civil society organisations). (Ibid.)

¹⁴⁷ Government of the United Kingdom, *Summary guide for companies – register of people with significant control*, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/555657/PSC_register_summary_guidance.pdf (accessed 9 February 2017).

BEARER SHARES AND NOMINEES

6. Abolish bearer shares by ceasing issuance of any new bearer shares and phasing out those that currently exist. As outlined by a proposal for a draft law, this can be done by converting them into registered shares and holding them in a central register hosted by a public agency. One step further, eventually, pre-existing unregistered bearer shares should be determined to be void and invalid after a reasonable period. (See G20 Principle 10, page 15, above.)
7. Adjust the legislative plans for an amendment of the Act on the Supervision of Trust Service Providers (*Wet toezicht trustkantoren*) by:
 - a. abolishing the possibility for a trust service provider to act as nominee director of the Dutch (subsidiary) companies of its clients;
 - b. including the ability for supervisors to publish non-compliance fines and administrative penalties at their own discretion;
 - c. prohibiting the servicing of legal structures or arrangements that entail anonymity of the UBO; and
 - d. introducing a duty for each licensed trust service provider to employ a compliance officer.

(See G20 Principle 10, page 15, and Case Study #2, page 35, above.)

AML SUPERVISION AND GUIDANCE

8. Supervisors should provide concrete recommendations and tools in guidance documents and handbooks regarding:
 - a. the management of and practical approach to high-risk scenarios, instead of yielding all responsibility to FIs and DNFBPs regarding the adequate fulfilment of their gatekeeping role; and
 - b. the legal duty of FIs and DNFBPs to properly conduct CDD measures on clients that are (i) from foreign jurisdictions that render such CDD difficult or (ii) based on foreign legal forms, such as common-law trusts.

(Also see Outcome 1, as of page 19, and Outcome 4, as of page 28, above.)

REGULAR PUBLICATION OF AML STATISTICS

9. Publish all-encompassing AML statistics on a yearly basis, including data on international cooperation, AML supervision, sanctions, legal persons and arrangements, financial intelligence, and the AML legal system and operations.¹⁴⁸ (See Outcome 4, as of page 28, and Outcome 5, as of page 30, above.)

INTERNATIONAL COOPERATION IN UBO TRANSPARENCY

10. Continue and intensify active contribution to international efforts to push foreign jurisdictions that do not comply with international UBO transparency standards. This should include a push to improve their respective legislation and instruments for centralised maintenance of UBO information and international access thereto for obliged entities and competent authorities from abroad. (See Outcome 5, as of page 30, above.)
11. Ensure that MLAs and tax (information exchange) agreements with such jurisdictions are entered into and effectively used. (Ibid.)

¹⁴⁸ See Transparency International, *Top Secret – Countries Keep Financial Crime Fighting Data to Themselves*.

METHODOLOGY AND INTERVIEWS

METHODOLOGICAL APPROACH

The methodology for the national risk assessments uses techniques to assess both (i) **technical compliance** and (ii) **effectiveness of implementation** against the AML standards in this field, as set out by the Financial Action Task Force (FATF) in their 2012 40 Recommendations¹⁴⁹, and the specific EU requirements contained in the adopted text of the 4th Anti-Money Laundering Directive (AMLD4)¹⁵⁰, which was agreed in May 2015 and which Member States are required to implement by June 2017. The methodology also takes into account the recent proposal by the European Commission to amend the text of AMLD4, including in relation to transparency of beneficial ownership¹⁵¹. Moreover, it builds on the G20 High Level Principles on Beneficial Ownership, agreed in November 2014.

The national risk assessment is assorted with case studies identified on the basis on their significance in relation to the weaknesses and vulnerabilities identified in certain sectors through the technical and effectiveness evaluations.

i) TECHNICAL EVALUATION

Current situation

The first stage of the methodology consists of carrying out a technical assessment of the arrangements currently in place. In doing so, the methodology uses existing standards as a basis, in particular the overlapping and complementary standards in the G20 Principles, the FATF standards and the EU AMLD4. Where there are differences in detail, data collection differentiates between the standards. The technical assessment section examines the legal and institutional frameworks on beneficial ownership and transparency, with a particular focus on existing legal provisions and their actual enforcement, the role of key stakeholders, high-risk sectors and cross-border cooperation. Given the changing environment (e.g. the requirement to implement AMLD4, global political initiatives on transparency, particularly in light of the reaction to the Panama Papers) the study also examines proposals and plans to enhance transparency in national frameworks, by assessing future plans (both in terms of commitment and anticipated outcome).

The technical assessment section draws upon a questionnaire designed for TI's previous work¹⁵² on reviewing G20 countries' compliance with G20 commitments with a view to allowing for inserting the six covered countries into the existing ranking. In line with the previous methodology, points are awarded on a 4-point scale for each answer (0 corresponding to 'The country's legal/institutional framework is not at all in line with the principle/standard' and 4 to 'The country's legal/institutional framework is fully in line with the principle/standard'). The completed questionnaire is attached to this report in the Annex, see page 45 below.

The scores are averaged across each Principle and converted to percentage scores to illustrate the strength of the system using a 5-band system:

Scores between 81% and 100%	Very strong
Scores between 61% and 80%	Strong
Scores between 41% and 60%	Average
Scores between 21% and 40%	Weak
Scores between 0% and 20%	Very weak

Future plans

The second stage of the technical evaluation consists of identifying a 'direction of travel'; that is to take account of forthcoming changes, such as implementation of recently adopted laws, plans to adopt new laws and so forth. The analysis consists of two parts – how advanced plans are to address gaps and how adequate the proposals appear to be.

¹⁴⁹ FATF, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation*.

¹⁵⁰ Directive 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or financing (2015) OJ L 141/73, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015L0849> (accessed 9 February 2017).

¹⁵¹ European Commission, Proposal for the Amendment of AMLD4.

¹⁵² Transparency International, *Just for Show – Reviewing G20 Promises on Beneficial Ownership* (Transparency International, September 2015) http://www.corruptionwatch.org.za/wp-content/uploads/2015/11/2015_G20BeneficialOwnershipPromises_EN.pdf (accessed 9 February 2017).

These data are captured by a parallel set of questions to the technical assessments above; where gaps or shortcomings against the highest standard are identified, additional questions are posed:

Qxx Commitments:

If the score on Qxx is less than 4, are there any commitments to address the shortcomings?

4	Legislation is drafted and under consideration for this issue.
3	There is a consultation exercise underway on this issue.
2	There are firm proposals, e.g. in an AML/CFT Action Plan, to address this issue in the next year.
1	There has been a commitment, e.g. in a AML/CFT Strategy, to address this issue at some point.
0	There are no current plans to address this issue.

Qxx Adequacy:

If the plans identified above are implemented what would the score on Qxx be post-implementation?

4	The country's legal framework will be fully in line with the principle/standard.
3	The country's legal framework will be generally in line with the principle/standard but with shortcomings.
2	There are some areas in which the country will be in line with the principle/standard, but significant shortcomings will remain.
1	The country's legal framework will not be in line with the principle/standard, apart from some minor areas.
0	The country's legal framework will not be at all in line with the principle/standard.

As with the previous TI G20 Principles methodology, the answers are scored and averaged using the same bands (Very Strong to Very Weak), to give direction of travel risk scores alongside the scores of the adequacy of the current framework – so a country may be scored weak currently with an average score on adopting plans which would result in a strong score ultimately.

ii) EFFECTIVENESS EVALUATION

The second phase of the methodology consists of an effectiveness evaluation which looks at the outcomes expected to be achieved by the legislative and institutional framework relating to transparency of beneficial ownership. In the context of an overall AML framework, the outcomes are expressed in the FATF 2013 methodology¹⁵³, which uses a cascade of a high-level objective for the AML regime, three intermediate outcomes and eleven immediate outcomes. It is the immediate outcomes (IOs) that form the basis for FATF evaluation work, as they most closely describe what evaluators will be able to measure. How well those outcomes are being achieved is a measure of the effectiveness of the system.

The effectiveness evaluation seeks to come to an overall understanding of the degree to which the country is achieving the outcome. Inevitably this does depend to some extent on technical implementation, but goes beyond the existence of legal and institutional structures, looking at how well they are working, producing the outputs required and achieving the desired outcome. In the context of this study, the relevant FATF immediate outcomes include parts of IO1 (Risk, Policy and Coordination), IO2 (International Cooperation), IO3 (Supervision), IO4 (Preventive measures), and all of IO5 (Legal persons and arrangements). For each of these IOs, the methodology draws upon the FATF Methodology and identifies Characteristics of an Effective System and then Core Issues to be considered in determining if the Outcome is being achieved; Examples of Information that could support the conclusions on Core Issues; and Examples of Specific Factors that could support the conclusions on Core Issues.

The evaluation analysis is based on desk research conducted by TI-NL under the supervision of and in collaboration with Transparency International EU, consultations with experts in the field of money laundering risk analysis and UBO transparency, discussions with representatives of competent Dutch authorities, as well as interviews with professionals who operate in the financial services market, including at Dutch banks, law firms and accountancy firms. TI-NL conducted a total of eight such in-depth expert meetings and interviews. As a result of the express demand by some interviewees that their name and institution not be cited in the report, it was decided to provide the above-mentioned indication of the number of stakeholders consulted disaggregated by sector of activities.

¹⁵³ FATF, *Methodology for assessing technical compliance with the FATF recommendations and the effectiveness of AML/CFT systems* (Paris: FATF, February 2013), <http://www.fatf-gafi.org/media/fatf/documents/methodology/FATF%20Methodology%2022%20Feb%202013.pdf> (accessed 9 February 2017).

iii) HIGH RISK SECTORS AND CASE STUDIES

The selection of the case studies for this report is based on the analysis of effectiveness, and particularly the identification of particular sectoral weaknesses and vulnerabilities to money laundering and abuse of legal persons and arrangements (either on the basis of published material or data gathered through interviews or both).

The analysis of identified high risk sectors looks more particularly at:

- the specific risks in these sectors
- the nature (and strengths/weakness) of supervision of the sector
- application of customer due diligence and reporting of money laundering suspicions by the sector
- good quality case studies illustrating the crystallised risks

ANNEX

TECHNICAL QUESTIONNAIRE ON BENEFICIAL OWNERSHIP TRANSPARENCY

PRINCIPLE 1: BENEFICIAL OWNERSHIP DEFINITION

Guidance: The beneficial owner should always be a natural (physical) person and never another legal entity. The beneficial owner(s) is the person who ultimately exercises control through legal ownership or through other means.

Q1. To what extent does the law in your country clearly define beneficial ownership?

Scoring criteria:

- 4: Beneficial owner is defined as a natural person who directly or indirectly exercises ultimate control over a legal entity or arrangement, and the definition of ownership covers control through other means, in addition to legal ownership.
- 1: Beneficial owner is defined as a natural person [who owns a certain percentage of shares] but there is no mention of whether control is exercised directly or indirectly, or if control is limited to a percentage of share ownership.
- 0: There is no definition of beneficial ownership or the control element is not included.

Reference/Comments: See article 1(f) Wwft.

Q2. If thresholds are used to define beneficial ownership, what are they?

Scoring criteria:

- 4: Any shareholding is regarded as a beneficial ownership
- 3: 10% for all companies is regarded as beneficial ownership
- 2: 10% is regarded as beneficial ownership for profit-making companies only
- 1: 25% is the threshold for beneficial ownership

Reference/Comments: See article 1(f) Wwft.

Future plans: Currently, there are no plans to lower this threshold.

PRINCIPLE 2: IDENTIFYING AND MITIGATING RISK

Guidance: Countries should conduct assessments of cases in which domestic and foreign corporate vehicles are being used for criminal purposes within their jurisdictions to determine typologies that indicate higher risks. Relevant authorities and external stakeholders, including financial institutions, DNFBPs, and non-governmental organisations, should be consulted during the risk assessments and the results published. The results of the assessment should also be used to inform and monitor the country's anti-corruption and anti-money laundering policies, laws, regulations and enforcement strategies. Countries should require financial institutions and designated non-financial businesses and professions (DNFBPs) to identify, assess and take effective action to mitigate their money laundering and terrorist financing risks.

Q3: Has the government during the last three years conducted an assessment of the money laundering risks related to legal persons and arrangements?

- 4: Yes
- 0: No

Future plans: There have been plans for a first Dutch NRA for years. The first edition is planned to be published in 2017. Please see the discussions regarding G20 Principle 2 and Outcome 1 above for more details regarding these plans.

Q4: Were external stakeholders (e.g. financial institutions, designated non-financial businesses or professions (DNFBPs), non-governmental organisations) consulted during the assessment?

- 4: Yes, external stakeholders were consulted.
- 0: No, external stakeholders were not consulted or the risk assessment has not been conducted.

Future plans: External stakeholders will be consulted, but it is not clear which stakeholders will be involved.

Q5: Were the results of the risk assessment communicated to financial institutions and relevant DNFBPs?

- 4: Yes, financial institutions and DNFBPs received information regarding high-risks areas and other findings of the assessment.
- 0: No, the results have not been communicated.

Future plans: It is not clear whether the results will be specifically and directly communicated to FIs and relevant DNFBPs on top of the public access to the report.

Q6: Has the final risk assessment been published?

- 4: Yes, the final risk assessment is available to the public.
- 2: Only an executive summary of the risk assessment has been published.
- 0: No, the risk assessment has not been published or conducted.

Future plans: The NRA will be published in a transparent way for public access.

Q7: Did the risk assessment identify specific sectors / areas as high-risk, requiring enhanced due diligence?

- 4: Yes, the risk assessment identifies areas considered as high-risk where additional measures should be taken to prevent money laundering.
- 0: No, the risk assessment does not identify high-risk sectors / areas.

Future plans: The NRA 2017 will analyse five risks. These risks will not be evaluated.

Q8: Are financial institutions required to identify, assess and take effective action to mitigate their money laundering and terrorist financing risks, relating to legal persons and arrangements.

- 4: Yes, financial institutions are required to carry out an enterprise wide AML/CFT risk assessment and risk-rate their customer.
- 2: Financial institutions are only required risk-rate their customers.
- 0: There are no obligations on financial institutions to carry out their own risk assessment.

Reference/Comment: See articles 3-11 Wwft.

Q9: Are DNFBPs required to identify, assess and take effective action to mitigate their money laundering and terrorist financing risks, relating to legal persons and arrangements.

- 4: Yes, DNFBPs are required to carry out an enterprise wide AML/CFT risk assessment and risk-rate their customer.
- 2: DNFBPs are only required risk-rate their customers.
- 0: There are no obligations on DNFBPs to carry out their own risk assessment.

Reference/Comment: See articles 3-11 Wwft.

PRINCIPLE 3: ACQUIRING ACCURATE BENEFICIAL OWNERSHIP INFORMATION

Guidance: Legal entities should be required to maintain accurate, current, and adequate information on beneficial ownership within the jurisdiction in which they were incorporated. Companies should be able to request information from shareholders to ensure that the information held is accurate and up-to-date, and shareholders should be required to inform changes to beneficial ownership.

Q10: Are legal entities required to maintain beneficial ownership information?

- 4: Yes, legal entities are required to maintain information on all natural persons who exercise ownership or control of the legal entity.
- 3: Yes, legal entities are required to maintain information on all natural persons who own a certain percentage of shares or exercise control in any other form.
- 0: There is no requirement to hold beneficial ownership information, or the law does not make any distinction between legal ownership and control.

Reference/Comment: Currently, Dutch law does not know the category 'UBO information' as such, i.e. it does not make any distinction between legal ownership and control.

Future: Under the envisaged future law, 'UBO information' will become an explicit category as entities will be obliged to collect and provide UBO information to the future UBO registry. Thus, legal entities will become required to maintain information on all natural persons who own a certain percentage of shares or exercise control in any other form.

Q11: Does the law require that information on beneficial ownership has to be maintained within the country of incorporation of the legal entity?

4: Yes, the law establishes that the information needs to be maintained within the country of incorporation regardless whether the legal entity has or not physical presence in the country.

0: There is no requirement to hold beneficial ownership information in the country of incorporation or there is no requirement to hold beneficial ownership information at all.

Reference/Comment: Please refer to Q10.

Future: Dutch law knows an incorporation system. The envisaged law establishes that the information needs to be maintained by and provided to the UBO register by all respective Dutch legal entities.

Q12: Does the law require shareholders to declare to the company if they own shares on behalf of a third person?

4: Yes, shareholders need to declare if control is exercised by a third person.

2: Only in certain cases do shareholders need to declare if control is exercised by a third person.

0: No, there is no such requirement.

Reference/Comment: Dutch law does not know such a requirement.

Q13: Does the law require beneficial owners / shareholders to inform the company regarding changes in share ownership?

4: Yes, there is a requirement for beneficial owners / shareholders to inform the company regarding changes in share ownership.

2: While there is a requirement for shareholders to inform the company regarding changes in share ownership, there is no such requirement for beneficial owners.

0: No, there is no requirement for beneficial owners or shareholder to inform the company regarding changes in share ownership.

Reference/Comment: Share ownership changes are done via notarial deeds and need to be registered in the company's internal shareholders register. For now, beneficial owners do not have a duty to report any changes to the company.

Future plans: The plans for a future UBO register include a duty for the UBO of entities to cooperate with the entity that is obliged to provide its UBO information to the register. It is not clear whether this duty includes the obligation to proactively report changes to the company.

Q14: Does the law require that information on beneficial ownership be maintained by foreign legal entities that are carrying out economic activity or otherwise subject to tax requirements?

4: Yes, in all circumstances

2: Yes, but only in some circumstances (e.g. owning property, participating in public procurement)

0: No, there are no requirements on foreign legal persons or arrangements

PRINCIPLE 4: ACCESS TO BENEFICIAL OWNERSHIP INFORMATION

Guidance: All relevant competent authorities, including all bodies responsible for anti-money laundering, control of corruption and tax evasion / avoidance, should have timely (that is within 24 hours) access to adequate (sufficient), accurate (legitimate and verified), and current (up-to-date) information on beneficial ownership. Ideally, this should be through a central register (and this will be required under 4MLD), but may be through other mechanisms – see Question 14.

Countries should establish a central (unified) beneficial ownership registry that is freely accessible to the public. As a minimum, beneficial ownership registries should be open to competent authorities, financial institutions and DNFBPs. Beneficial ownership registries should have the mandate and resources to collect, verify and maintain information on beneficial ownership. Information in the registry should be up-to-date and the registry should contain the name of the beneficial owner(s), date of birth, address, nationality and a description of how control is exercised.

ACCESS BY COMPETENT AUTHORITIES

Q15: Does the law specify which competent authorities (e.g. financial intelligence unit, tax authorities, public prosecutors, anti-corruption agencies, asset recovery offices etc.) are allowed to have access to beneficial ownership information?

4: Yes, the law specifies that all law enforcement bodies, asset recovery offices, tax agencies and the financial intelligence unit should have access to beneficial ownership information

2: Only some competent authorities are explicitly mentioned in the law.

1: The law does not specify which authorities should have access to beneficial ownership information.

Reference/Comment: The Dutch legal system knows a variety of specific laws, in which the powers of all relevant competent authorities are stipulated, including accessing information such as on UBOs. These specialized laws are linked to the general financial supervision and AML laws and include but are not limited to taxation (*Wet inzake rijksbelastingen*), investigative powers (*Wet bijzondere opsporingsdiensten*), police data (*Wet politiegegevens*) and criminal procedure (*Wetboek van strafvordering*).

Q16: Which information sources are competent authorities allowed to access for beneficial ownership information?

4: Information is available through a central beneficial ownership registry/company registry.

3: information is available through decentralised beneficial ownership registries/ company registries.

1: Authorities have access to information maintained by legal entities / or information recorded by tax agencies/ or information obtained by financial institutions and DNFBPs.

0: Information on beneficial ownership is not available.

Reference/comment: UBO information is not yet a category as such in the framework of Dutch law. The UBO information that competent authorities can access is either held by other competent authorities or by legal entities, FIs and DNFBPs, which the authorities can access by using their legal powers.

Future plans: The future UBO register will be the main and centralized source of UBO information. It remains to be seen how the register will work in practice.

Q17: Does the law specify a timeframe (e.g. 24 hours) within which competent authorities can gain access to beneficial ownership?

4: Yes, immediately /24 hours.

3: 15 days. 2: 30 days or in a timely manner.

1: Longer period.

0: No specification.

Reference/Comment: This question does not apply to the current Dutch legal structure of accessing UBO information on an ad-hoc basis.

Future plans: The plans for the future register do not yet include a time frame. However, it is expected that such access will be immediate/ within 24 hours.

Q18: What information on beneficial ownership is recorded in the central company registry?

In countries where there are sub-national registries, please respond to the question using the state/province registry that contains the largest number of incorporated companies.

4: All relevant information is recorded: name of the beneficial owner(s), month and year of birth, identification or tax number, personal or business address, nationality, country of residence and description of how control is exercised.

3: Some relevant information is recorded: name, the month and year of birth, the nationality and the country of residence of the beneficial owner as well as the nature and extent of the beneficial interest held

2: Information is more partially recorded.

1: Only the name of the beneficial owner is recorded.

0: No information is recorded.

Reference/Comments: The UBO register has not been established yet. The current company register does not include UBO information as such.

Future plans: On the basis of the plans for a future UBO register, it can be expected that the following information regarding an entity's UBO will be recorded in the register: name, nationality, day, month and year of birth, address, citizen

service number (BSN), information regarding the verification of the UBO, documents pertaining to the reasons for classification of the person as a UBO and the nature and extent of economic interest of the UBO.

Q19: What information on beneficial ownership is made available to the public?

- 4: All recorded information is published online: name of the beneficial owner(s), identification or tax number, personal or business address, nationality, country of residence and description of how control is exercised.
- 3: Information is partially published online, but some data is omitted (e.g. tax number).
- 2: Only the name of the beneficial owner is published/ or information is only made available on paper / physically.
- 1: Only parties with a 'legitimate interest' are allowed access to the information.
- 0: No information is made available.

Future: The plans for the future register stipulate that the following information will be made available to the public in the form of extracts (PDFs) for everybody against a small fee and upon registration: name, month and year of birth, nationality, country of residence and nature and extent of economic interest of the UBO.

Q20: Does the law mandate the registry authority to verify the beneficial ownership information or other relevant information such as shareholders / directors submitted by legal entities against independent and reliable sources (e.g. other government databases, use of software, on-site inspections, among others)?

- 4: Yes, the registry authority is obliged to conduct independent verification of the information provided by legal entities regarding ownership of control.
- 2: Only in suspicious cases.
- 0: No, the information is registered as declared by the legal entity.

Reference/Comments: The UBO register has not been established yet. On the basis of the plans for the future register, it can be expected that the register authority (probably the Chamber of Commerce) does not verify the information. There are plans to include a duty on obliged entities and supervisory and investigative authorities to report discrepancies that they encounter to the authority. It is not yet clear how this will work in practice.

Q21: Does the law require legal entities to update information on beneficial ownership, shareholders and directors provided in the company registry?

- 4: Yes, legal entities are required by law to update information on beneficial ownership or information relevant to identifying the beneficial owner (directors/ shareholders) immediately or within 24 hours after the change.
- 3: Yes, legal entities are required to update the information on beneficial ownership or directors, shareholders within 30 days after the change.
- 2: Yes, legal entities are required to update the information on the beneficial owner or directors/ shareholders on an annual basis.
- 1: Yes, but the law does not specify a specific timeframe.
- 0: No, the law does not require legal entities to update the information on control and ownership.

Reference/Comment: Legal entities are not required to update information about beneficial ownership, but only about directors and shareholders. The time frame for reporting changes is eight days.

Q22: Do the requirements on access to beneficial ownership information also apply to foreign legal entities carrying out economic activity for profit or otherwise subject to tax requirements?

- 4: Yes, in all circumstances
- 2: Yes, but only in some circumstances (e.g. owning property, participating in public procurement)
- 0: No, there are no requirements on foreign legal persons or arrangements

Reference/Comment: All foreign companies with establishments in the Netherlands, e.g. branches or subsidiaries, must be registered with the Dutch Chamber of Commerce. As regards the plans for a future UBO register, the 'incorporation system' applies, i.e. entities that were incorporated in the Netherlands will have a duty to register their UBO with the register authority, probably the Chamber of Commerce.

PRINCIPLE 5: TRUSTS

Guidance: Trustees should be required to collect information on the beneficiaries and settlors of the trusts they administer. In countries where domestic trusts are not allowed but the administration of trusts is possible, trustees should be required to proactively disclose beneficial ownership information when forming business relationship with financial institutions and DNFBPs. Countries should create registries to capture information about trusts, such as trust registries or asset registries, to be consulted by competent authorities exclusively or open to financial institutions and DNFBPs and / or the public.

Q23: Does the law require trustees to hold beneficial information about the parties to the trust, including information on settlors, the protector, trustees and beneficiaries?

- 4: Yes, the law requires trustees to maintain all relevant information about the parties to the trust, including on settlors, the protector, trustees and beneficiaries.
- 2: Yes, but the law does not require that the information maintained should cover all parties to the trust (e.g. settlors are not covered).
- 1: Yes, but only professional trusts are covered by the law.
- 0: Trustees are not required by law to maintain information on the parties to the trust.

Reference/Comments: The legal concept of trust does not exist under Dutch law. Trusts as they are known in common law jurisdictions cannot be incorporated in the Netherlands. However, trusts and parties to trusts are active in the Netherlands, e.g. when soliciting advice from financial, legal or tax service providers. On the basis of the Wwft (articles 3(3) and 11), FIs who service a foreign trust must conduct CDD measures, including UBO identification and verification. However, Dutch law does not require trustees to hold beneficial information about the parties to the trust.

Q24: In the case of foreign trusts, are trustees required to proactively disclose to financial institutions / DNFBPs or others information about the parties to the trust?

- 4: Yes, the law requires trustees to disclose information about the parties to the trust, including about settlors, the protector, trustees and beneficiaries in all circumstances.
- 2: Yes, the law requires trustees to disclose information about the parties to the trust, including about settlors, the protector, trustees and beneficiaries, but only in some circumstances.
- 0: Trustees are not required by disclose information on the parties to the trust.

Reference/Comments: This duty to disclose information is limited to CDD measures by FIs. Articles 3(3) and 11 of the Wwft require Dutch obliged entities to conduct CDD measures when servicing a foreign trust. This includes information about the parties to the trust.

PRINCIPLE 6: COMPETENT AUTHORITIES' ACCESS TO TRUST INFORMATION

Guidance: Trustees should be required to share with legal authorities all information deemed relevant to identify the beneficial owner in a timely manner, preferably within 24 hours of the request. Competent authorities should have the necessary powers and prerogatives to access information about trusts held by trustees, financial institutions and DNFBPs.

Q25: Is there a registry which collects information on trusts?

- 4: Yes, information on trusts is maintained in a registry.
- 2: Yes, there is a registry which collects information on trusts but registration is not mandatory or information registered is not sufficiently complete to make it possible to identify the real beneficial owner.
- 0: No, there is no registry.

Reference/Comments: There is no registry for trusts somehow operating in the Netherlands. In its proposals for an amendment of AMLD4, the European Commission proposes a requirement of UBO registration of the trustee in the Member State where such trustee is administered, instead of the Member State in which the trust was established.¹⁵⁴ The Dutch reaction to this proposal was limited in the sense that the government reiterated its position that Dutch law does not include a requirement to register trusts because, again, the concept of a trust is not known in Dutch law.¹⁵⁵

¹⁵⁴ European Commission, Proposal for the Amendment of AMLD4.

¹⁵⁵ Ministry of Foreign Affairs, Note 3: Amendment Wwft and Company Law Act (*Fiche 3: Wijziging vierde anti-witwasrichtlijn en de richtlijn vennootscapsrecht*).

Q26: Does the law allow competent authorities to request / access information on trusts held by trustees, financial institutions, or DNFBPs?

- 4: Yes, competent authorities are able to access beneficial ownership information held by trustees and financial institutions, or access information collected in the registry.
- 2: Competent authorities have to request information or only have access to information collected by financial institutions.
- 0: No.

Reference/Comments: Dutch competent authorities may use their respective legal powers enshrined in the relevant specific laws to request such information when it is held by a party in the Netherlands. When such information is held abroad, authorities must follow MLA procedures.

Q27: Does the law specify which competent authorities (e.g. financial intelligence unit, tax authorities, public prosecutors, anti-corruption agencies, asset recovery offices etc.) should have timely access to beneficial ownership information held by trustees?

- 4: Yes, the law specifies that all law enforcement bodies, asset recovery offices, tax agencies and the financial intelligence unit should have access to beneficial ownership information
- 2: Only some competent authorities are explicitly mentioned in the law.
- 1: The law does not specify which authorities should have access to beneficial ownership information.
- 0: The law does not allow for access by competent authorities at all.

Reference/Comments: The relevant specific laws mention the competent authorities that have the legal powers to request information from entities, including trustees when they are located in the Netherlands, e.g. the tax authorities (*Wet inzake rijksbelastingen*) and investigative authorities (*Wet bijzondere opsporingsdiensten, wet politiegegevens, Wetboek van strafvordering*).

Q28: Do these requirements also extend to foreign trusts being administered in the jurisdiction?

- 4: All trusts established anywhere with any connection to the country concerned
- 3: Trusts from other Member States with a connection to the country concerned
- 1: Only trusts established in the country concerned
- 0: No requirement

Reference/Comments: Currently, the Dutch position is that Dutch law does not include a requirement to register trusts because the concept of a trust is not known in Dutch law.¹⁵⁶

Q29: What information on beneficial ownership of trusts is made available to the public?

- 4: All relevant information is published online: name of the beneficial owner(s), identification or tax number, personal or business address, nationality, country of residence and description of how control is exercised.
- 3: Information is partially published online, but some data is omitted (e.g. tax number).
- 2: Only the name of the beneficial owner is published/ or information is only made available on paper / physically/ only information on "business-type" trusts is made available
- 1: Only parties with a 'legitimate interest' are allowed access to the information.
- 0: No information is made available.

Reference/Comments: None, please see question 25 above.

PRINCIPLE 7: DUTIES OF FINANCIAL INSTITUTIONS & OTHER BUSINESSES AND PROFESSIONS

Guidance: Financial institutions and DNFBPs should be required by law to identify the beneficial owner of their customers. DNFBPs that should be regulated include, at a minimum, casinos, real estate agents, dealers in precious metals and stones, lawyers, notaries and other independent legal professions when acting on behalf of the legal entity, as well as trust or company service providers (TCSPs) when they provide services to legal entities. The list should be expanded to include other business and professions according to identified money laundering risks. In high-risk cases, financial institutions and DNFBPs should be required to verify – that is, to conduct an independent evaluation of – the beneficial ownership information provided by the customer. Enhanced due diligence, including ongoing monitoring of the business relationship

¹⁵⁶ Ibid, p. 6.

and provenance of funds, should be conducted when the customer is a politically exposed person (PEP) or a close associate of a PEP. The failure to identify the beneficial owner should inhibit the continuation of the business transaction and / or require the submission of a suspicious transaction report to the oversight body. Moreover, administrative, civil and criminal sanctions for non-compliance should be applicable for financial institutions and DNFBPs, as well as for their senior management. Finally, they should have access to beneficial ownership information collected by the government. According to 4MLD, financial institutions and DNFBPs should have access to the central registry of beneficial ownership when carrying out customer due diligence as required by the Directive.

FINANCIAL INSTITUTIONS

Q30: Does the law require that financial institutions have procedures for identifying the beneficial owner(s) when establishing a business relationship with a client?

- 4: Yes, financial institutions are always required to identify the beneficial owners of their clients when establishing a business relationship.
- 2: Financial institutions are required to identify the beneficial owners only in cases considered as high-risk or the requirement does not cover the identification of the beneficial owners of both natural and legal customers.
- 0: No, there is no requirement to identify the beneficial owners.

Reference/Comment: Articles 3 to 5 Wwft.

Q31: Does the law require financial institutions to also verify the identity of beneficial owners identified?

- 4: Yes, the identity of the beneficial owner should always be verified through, for instance, a valid document containing a photo, an in-person meeting, or other mechanism.
- 0: No, there is no requirement to verify the identity of the beneficial owner.

Reference/Comment: Articles 3, 4 and 11 Wwft.

Q32: In what cases does the law require financial institutions to conduct independent verification of the information on the identity of the beneficial owner(s) provided by clients?

- 4: Yes, independent verification is always required or required in cases considered as high-risk (higher-risk business relationships, cash transactions above a certain threshold, foreign business relationships).
- 2: Independent verification is always required, but on the basis of a risk-based approach.
- 0: No, there is no legal requirement to conduct independent verification of the information provided by clients.

Reference/Comments: Relevant Dutch law follows a risk-based approach. This means that independent verification must be carried out in all cases. However, the intensity of the due diligence is determined by the risks associated with certain types of customers, products or transactions.¹⁵⁷

Q33: Does the law require financial institutions to conduct enhanced due diligence in cases where the customer or the beneficial owner is a PEP or a family member or close associate of a PEP?

- 4: Yes, financial institutions are required to conduct enhanced due diligence in cases where their client is a foreign or a domestic PEP, or a family member or close associate of a PEP.
- 2: Yes, but the law does not cover both foreign and domestic PEPs, and their close family and associates.
- 0: No, there is no requirement for enhanced due diligence in the case of PEPs and associates.

Reference/Comments: See article 8 (4) and (5) Wwft. Dutch law understands PEPs to be individuals who are or have been entrusted with prominent public functions, as well as the immediate family members or close associates of these individuals. For the definition of this term, the Wwft (article 1(f)) refers to Section 2 of Implementing Directive 2006/70/EC, where the term 'politically exposed person' is specified in detail.

¹⁵⁷ DNB, *DNB Guidance on the Anti-Money Laundering and Counter-Terrorist Financing Act and the Sanctions Act* (DNB, April 2015), p. 10, <http://www.toezicht.dnb.nl/en/binaries/51-212353.pdf> (accessed 9 February 2017).

Q34: Does the law allow financial institutions to proceed with a business transaction if the beneficial owner has not been identified?

- 4: No, financial institutions are not allowed to proceed with a transaction if the beneficial owner has not been identified.
- 2: No, financial institutions may in principle not proceed with a transaction if the beneficial owner has not been identified. However, there are exceptions to this principle in certain e.g. low-risk cases.
- 0: Yes, financial institutions may proceed with business transactions regardless of whether or not the beneficial owner has been identified.

Reference/Comment: In principle, identification and verification are completed before the business relationship is established or the transaction commences. However, article 4(2) Wwft stipulates that there are exceptions in cases where the an FI may proceed with the relationship and/or transaction. provision of services, e.g. advisory services to customers, should not be interrupted. These exceptional cases must be low in terms of money laundering or terrorist financing risk. The FI must verify the identity as soon as possible after the first contact with the customer.¹⁵⁸

Q35: Does the law require financial institutions to submit suspicious transaction reports if the beneficial owner cannot be identified?

- 4: Yes.
- 2: Only if there is enough evidence of wrongdoing.
- 0: No.

Reference/Comments: Dutch law does not directly require FIs to submit a suspicious transaction report to the FIU in all cases where the beneficial owner cannot be identified. However, such a case may be an indicator ('red flag') for certain service providers.

Q36: Do financial institutions have access to beneficial ownership information collected by the government?

- 4: Yes, online for free through, for instance, a beneficial ownership registry.
- 3: Online, upon registration.
- 2: Online, upon registration and payment of fee.
- 1: Upon request or in person.
- 0: There is no access to beneficial ownership information collected by the government.

Future plans: FIs will have access to the future UBO register. The plans for the future register stipulate that the following information will be made available to the public, including FIs, in the form of extracts (PDFs) for everybody against a small fee and upon registration: name, month and year of birth, nationality, country of residence and nature and extent of economic interest of the UBO.

Q37: Does the law specify a timeframe (e.g. 24 hours) within which financial institutions carrying out CDD can gain access to beneficial ownership collected by the government?

- 4: Yes, immediately /24 hours.
- 3: 15 days.
- 2: 30 days or in a timely manner.
- 1: Longer period.
- 0: No specification.

Future plans: The plans for the future register do not yet include a time frame. However, it is expected that such access will be immediate/ within 24 hours.

Q38: What information on beneficial ownership of companies is made available to the financial institutions?

- 4: All relevant information is published online: name of the beneficial owner(s), identification or tax number, personal or business address, nationality, country of residence and description of how control is exercised.
- 2: Information is partially published online, but some data is omitted (e.g. tax number).
- 1: Only the name of the beneficial owner is published/ or information is only made available on paper / physically.
- 0: No information is made available.

Future plans: The plans for the future register stipulate that the following information will be made available to the public, including FIs, in the form of extracts (PDFs) for everybody against a small fee and upon registration: name, month and year of birth, nationality, country of residence and nature and extent of economic interest of the UBO.

Q39: What information on beneficial ownership of trusts is made available to the financial institutions?

- 4: All relevant information is published online: name of the beneficial owner(s), identification or tax number, personal or business address, nationality, country of residence and description of how control is exercised.
- 2: Information is partially published online, but some data is omitted (e.g. tax number).
- 1: Only the name of the beneficial owner is published/ or information is only made available on paper / physically.
- 0: No information is made available.

Reference/Comments: Please refer to questions 23 to 29 above.

Q40: Does the law allow the application of sanctions to financial institutions' directors and senior management?

- 4: Yes, the law envisages sanctions for both legal entities and senior management.
- 0: No, senior management cannot be held responsible or there is no criminal liability for legal entities.

Reference/Comments: Articles 23 to 32 Wwft, article 1(2) Economic Offences Act (*Wet op de economische delicten*), article 51 Dutch Penal Code (*Wetboek van strafrecht*) and relevant case law of the Supreme Court (*Hoge Raad*).

DNFBPS

Q41: Are TCSPs required by law to identify the beneficial owner of the customers?

- 4: Yes, TCSPs are required by law to identify the beneficial owner of their customer when performing transactions on behalf of their clients.
- 2: TCSPs are partially covered by the law.
- 0: No, TCSPs are not covered by the law and do not have anti-money laundering obligations.

Reference/Comments: Articles 10 Wtt, Regulation on Integrity of Business Operations under the Wtt (*Regeling integere bedrijfsvoering Wtt 2014 / Rib Wtt 2014*) and relevant provisions of the Wwft.

Q42: Do these obligations extend to foreign trusts being administered or provided with other services, rather than being arranged?

- 4: Yes, in all circumstances
- 2: Yes, but only in some circumstances
- 0: There are no requirements relating to foreign trusts

Reference/Comments: Articles 3(3) and 11 of the Wwft require Dutch obliged entities to conduct CDD measures when servicing a foreign trust. This includes information about the parties to the trust.

Q43: Are lawyers, when carrying out certain transactions on behalf of clients (e.g. management of assets), required by law to identify the beneficial owner of the customers?

- 4: Yes, lawyers are required by law to identify the beneficial owner of their customer when performing transactions on behalf of their clients.
- 0: No, lawyers are not covered by the law and do not have anti-money laundering obligations.

Reference/Comments: Limited to certain activities as when operating as intermediaries in real estate transactions, administering moneys, e.g. by way of a lawyer's account etc. See articles 1a(12)(13) and 3 to 5 Wwft.

Q44: Are accountants required by law to identify the beneficial owner of the customers?

- 4: Yes, accountants are required by law to identify the beneficial owner of their customer when performing transactions on behalf of their clients.
- 0: No, accountants are not covered by the law and do not have anti-money laundering obligations.

Reference/Comments: Articles 1a(11) and 3 to 5 Wwft.

¹⁵⁸ Ibid, p. 20.

Q45: Are real estate agents required by law to identify the beneficial owner of the customers?

- 4: Yes, real estate agents are required to identify the beneficial owner of their clients buying or selling property.
- 2: Real estate agents are partially covered by the law.
- 0: No, real estate agents are not covered by the law and do not have anti-money laundering obligations.

Reference/Comments: Articles 1a(14), 3 to 5 and 8(1) Wwft and Policy Rule on Integrity Policy regarding Commercial Real Estate Activities (*Beleidsregel Integriteitbeleid ten aanzien van zakelijke vastgoedactiviteiten*).

Q46: Are casinos required by law to identify the beneficial owners of the customers?

- 4: Yes, casinos are required by law to identify the beneficial owners of their customers or casinos are prohibited by law.
- 0: No, casinos are not covered by the law and do not have anti-money laundering obligations.

Reference/Comments: Articles 1a(16), 3 to 5 Wwft and the Act on Gambling Services (*Wet op de kansspelen*).

Q47: Are providers of gambling services required by law to identify the beneficial owners of the customers when collection of winnings or wagering of a stake exceeds EUR 2 000?

- 4: Yes, providers of gambling services are required by law to identify the beneficial owners of their customers or providers of gambling services are prohibited by law.
- 0: No, providers of gambling services are not covered by the law and do not have anti-money laundering obligations.

Reference/Comments: Articles 1a(16) and 3(5) Wwft. Although covered by the law, the stake threshold is 15,000 euro.

Q48: Are dealers in precious metals and stones required by law to identify the beneficial owner of the customers?

- 4: Yes, dealers in precious metals and stones are required to identify the beneficial owner of clients in all transactions or in transactions above a certain threshold.
- 0: No, dealers in precious metals and stones are not covered by the law and do not have anti-money laundering obligations.

Reference/Comment: Articles 1a(15), 3 to 5 Wwft. Although covered by the law, the stake threshold is 15,000 euro.

Future plans: The draft bill amending the Wwft envisages a lowering of this threshold to 10,000 euro.¹⁵⁹

Q49: Are dealers in luxury goods required by law to identify the beneficial owner of the customers?

- 4: Yes, dealers in luxury goods are required to identify the beneficial owner of their customer.
- 0: No, dealers in luxury goods are not covered by the law and do not have anti-money laundering obligations.

Reference/Comment: Articles 1a(15), 3 to 5 Wwft. Although covered by the law, the stake threshold is 15,000 euro.

Future plans: The draft bill amending the Wwft envisages a lowering of this threshold to 10,000 euro.¹⁶⁰

Q50: Are persons trading in goods required by law to identify the beneficial owner of the customers when carrying out cash transactions over EUR 10 000?

- 4: Yes, persons trading in goods are required to identify the beneficial owner of their customer.
- 0: No, persons trading in goods are not covered by the law and do not have anti-money laundering obligations.

Reference/Comment: Articles 1a(15), 3 to 5 Wwft. Although covered by the law, the stake threshold is 15,000 euro.

Future plans: The draft bill amending the Wwft envisages a lowering of this threshold to 10,000 euro.¹⁶¹

Q51: Does the law require relevant DNFBPs to also verify the identity of beneficial owners identified?

- 4: Yes, the identity of the beneficial owner should always be verified through, for instance, a valid document containing a photo, an in-person meeting, or other mechanism.
- 0: No, there is no requirement to verify the identity of the beneficial owner.
<https://www.internetconsultatie.nl/implementatiewetvierdeantiwitwasrichtlijn>

Reference/Comment: Articles 3, 4 and 11 Wwft.

¹⁵⁹ Articles 1a(4)(h) and 3(7) Dutch bill implementation AMLD4, 5 July 2016, <https://www.internetconsultatie.nl/implementatiewetvierdeantiwitwasrichtlijn> (accessed 9 February 2017).

¹⁶⁰ Ibid.

¹⁶¹ Ibid.

Q52: Does the law require DNFBPs to conduct independent verification of the information on the identity of the beneficial owner(s) provided by clients?

- 4: Yes, independent verification is always required or required in cases considered as high-risk (higher-risk business relationships, cash transactions above a certain threshold, foreign business relationships).
- 2: Yes, the identity of the beneficial owner should always be independently verified, but on the basis of a risk-based approach.
- 0: No, there is no legal requirement to conduct independent verification of the information provided by clients.

Reference/Comment: Relevant Dutch law follows a risk-based approach. This means that independent verification must be carried out in all cases. However, the intensity of the due diligence is determined by the risks associated with certain types of customers, products or transactions.¹⁶²

Q53: Does the law require enhanced due diligence by DNFBPs in cases where the customer or the beneficial owner is a PEP or a family member or close associate of the PEP?

- 4: Yes, DNFBPs are required to conduct enhanced due diligence in cases where their client is a foreign or a domestic PEP, or a family member or close associate of a PEP.
- 2: Yes, but the law does not cover both foreign and domestic PEPs and their close family and associates.
- 0: No, there is no requirement for enhanced due diligence in the case of PEPs and their associates.

Reference/Comment: See article 8 (4) and (5) Wwft. Dutch law understands PEPs to be individuals who are or have been entrusted with prominent public functions, as well as the immediate family members or close associates of these individuals. For the definition of this term, the Wwft (article 1(f)) refers to Section 2 of Implementing Directive 2006/70/EC, where the term 'politically exposed person' is specified in detail.

Q54: Does the law allow DNFBPs to proceed with a business transaction if the beneficial owner has not been identified?

- 4: No, a business transaction may only proceed if the beneficial owner of the client has been identified.
- 2: No, DNFBPs may in principle not proceed with a transaction if the beneficial owner has not been identified. However, there are exceptions to this principle in certain e.g. low-risk cases.
- 0: Yes, relevant DNFBPs are allowed to proceed with a business transaction regardless of whether or not the beneficial ownership has been identified.

Reference/Comment: In principle, identification and verification are completed before the business relationship is established or the transaction commences. However, article 4(2) Wwft stipulates that there are exceptions in cases where the an FI may proceed with the relationship and/or transaction. provision of services, e.g. advisory services to customers, should not be interrupted. These exceptional cases must be low in terms of money laundering or terrorist financing risk. The FI must verify the identity as soon as possible after the first contact with the customer.¹⁶³

Q55: Does the law require DNFBPs to submit a suspicious transaction report if the beneficial owner cannot be identified?

- 4: Yes, the law establishes that relevant DNFBPs have to submit a suspicious transaction report if they cannot identify the beneficial owner of their clients.
- 2: The law establishes that suspicious transaction reports should be submitted only if there is enough evidence of wrongdoing.
- 0: No, a business transaction may only proceed if the beneficial owner of the client has been identified.

Reference/Comment: Dutch law does not directly require DNFBPs to submit a suspicious transaction report to the FIU in all cases where the beneficial owner cannot be identified. However, such a case may be an indicator ('red flag') for certain service providers.

Q56: Does the law allow the application of sanctions to DNFBPs' directors and senior management?

- 4: Yes, the law envisages sanctions for both legal entities and senior management.
- 0: No, senior management cannot be held responsible or there is no criminal liability for legal entities.

Reference/Comments: Articles 23 to 32 Wwft, article 1(2) Economic Offences Act (*Wet op de economische delicten*), article 51 Dutch Penal Code (*Wetboek van strafrecht*) and relevant case law of the Supreme Court (*Hoge Raad*).

¹⁶² DNB, *DNB Guidance on the Anti-Money Laundering and Counter-Terrorist Financing Act and the Sanctions Act*, p. 10.

¹⁶³ Ibid, p. 20.

Q57: Do DNFBPs have access to beneficial ownership information collected by the government?

- 4: Yes, online for free through, for instance, a beneficial ownership registry.
- 3: Online, upon registration.
- 2: Online, upon registration and payment of fee.
- 1: Upon request or in person.
- 0: There is no access to beneficial ownership information collected by the government.

Future plans: DNFBPs will have access to the future UBO register. The plans for the future register stipulate that the following information will be made available to the public, including FIs, in the form of extracts (PDFs) for everybody against a small fee and upon registration: name, month and year of birth, nationality, country of residence and nature and extent of economic interest of the UBO.

Q58: Does the law specify a timeframe (e.g. 24 hours) within which DNFBPs carrying out CDD can gain access to beneficial ownership collected by the government?

- 4: Yes, immediately /24 hours.
- 3: 15 days.
- 2: 30 days or in a timely manner.
- 1: Longer period.
- 0: No specification.

Future plans: The plans for the future register do not yet include a time frame. However, it is expected that such access will be immediate/ within 24 hours.

Q59: What information on beneficial ownership is made available to DNFBPs?

- 4: All relevant information is published online: name of the beneficial owner(s), identification or tax number, personal or business address, nationality, country of residence and description of how control is exercised.
- 2: Information is partially published online, but some data is omitted (e.g. tax number).
- 1: Only the name of the beneficial owner is published/ or information is only made available on paper / physically.
- 0: No information is published.

Future plans: The plans for the future register stipulate that the following information will be made available to the public, including DNFBPs, in the form of extracts (PDFs) for everybody against a small fee and upon registration: name, month and year of birth, nationality, country of residence and nature and extent of economic interest of the UBO.

Q60: Does access to beneficial ownership for DNFBPs include any information provided by foreign trusts or companies?

- 4: Yes, all information is provided
- 2: More limited information is provided on foreign than domestic arrangements
- 0: No information is provided on foreign trusts or companies

Reference/Comments: Please refer to questions 23 to 29 above.

PRINCIPLE 8: DOMESTIC AND INTERNATIONAL COOPERATION

Guidance: Domestic and foreign authorities should be able to access beneficial ownership information held by other authorities in the country in a timely manner, though, for instance, access to central beneficial ownership registries. Domestic authorities should also have the power to obtain beneficial ownership information from third parties on behalf of foreign authorities or to share information without the consent of affected parties in a timely manner.

Governments should publish guidelines explaining what type of information is available and how it can be accessed.

DOMESTIC SHARING OF INFORMATION

Q61: Does the law impose any restriction on information sharing (e.g. confidential information) across in-country authorities?

- 4: No, there are no restrictions in place.
- 2: There are some restrictions on sharing information across in-country authorities.
- 0: Yes, there are significant restrictions on sharing information across in-country authorities.

Reference/Comment: Dutch law imposes a few fundamental restrictions on information sharing, including strict tests by the respective specific laws stipulating the legal powers of the competent authorities, the Personal Data Protection Act (*Wet bescherming persoonsgegevens*) and professional duties of confidentiality and secrecy provisions.

Q62: How is information on beneficial ownership held by domestic authorities shared with other authorities in the country?

- 4: Information on beneficial ownership is shared through a centralised database, such as a beneficial ownership registry.
- 3: There are several online databases managed by different authorities that contain relevant beneficial ownership information (e.g. company registry, tax registry, etc.) that can be accessed.
- 2: Domestic authorities can access beneficial ownership information through written requests or memoranda of understanding.
- 1: Domestic authorities may only access beneficial ownership maintained by another authority if there is a court order.
- 0: Information on beneficial ownership is not shared.

Reference/Comment: Information is shared on the basis of cooperation systems and institutions such as the FIU and the FEC, as well as bilateral agreements between various competent authorities. See the discussion on Outcome 5 above for more details.

INTERNATIONAL SHARING OF INFORMATION

Q63: Are there clear procedural requirements for a foreign jurisdiction to request beneficial ownership information?

- 4: Yes, information on how to proceed with a request for accessing beneficial ownership information is made available through, for instance, the domestic authority's website or guidelines.
- 2: Yes, information on how to proceed with a request for accessing beneficial ownership information can be found and will be provided by the relevant competent authority/ counterpart.
- 0: No, information on how to proceed with a request is not easily available.

Reference/Comment: This depends on the jurisdiction of the requesting authority. Cooperation with EU Member States is more centralized and systematized, while cooperation with jurisdictions outside of the EU is mostly based on bilateral agreements, often modelled after the OECD models. See the discussion on Outcome 5 above for more details.

Q64: Does the law allow competent authorities in your country to use their powers and investigative techniques to respond to a request from foreign judicial or law enforcement authorities?

- 4: Yes, domestic authorities may use their investigative powers to respond to foreign requests.
- 0: No, the law does not allow domestic competent authorities to act on behalf of foreign authorities.

Reference/Comment: Dutch competent authorities may use their legal powers as stipulated in the relevant specific laws if a valid request is received.

Q65: Does the law in your country restrict the provision or exchange of information or assistance with foreign authorities (e.g. it is impossible to share information related to fiscal matters; restrictions related to bank secrecy; restrictions related to the nature or status of the requesting counterpart, among others)?

- 4: No, the law does not impose any restriction.
- 2: There are some restrictions that hamper the timely exchange of information.
- 0: Yes, there are significant restrictions in the law.

Reference/Comment: The same restrictions as with domestic cooperation apply, see also question 61 above.

Q66: Do foreign competent authorities have access to beneficial ownership information maintained by domestic authorities?

- 4: Yes, online for free through, for instance, a beneficial ownership registry.
- 3: Yes, online upon registration.
- 2: Yes, online upon the payment of a fee and registration.
- 1: Beneficial ownership information can be accessed only upon motivated request.
- 0: No.

Reference/Comment: Currently such access must follow the cooperation procedures in place. UBO information as an own category does not yet exist in the Dutch context.

Future plans: The future UBO register will also be accessible to foreign competent authorities, which will simplify access of foreign authorities to UBO information of Dutch entities.

Q67: Do the information sharing requirements extend to any beneficial ownership information provided by foreign companies and trusts?

- 4: Yes, in all circumstances
- 2: Yes, but in limited circumstances
- 0: Information on foreign trusts or companies cannot be shared or is not collected

Reference/Comment: Currently, such information is limited UBO information that competent authorities incidentally gather during the fulfilment of their tasks.

PRINCIPLE 9: TAX AUTHORITIES

Guidance: Tax authorities should have access to beneficial ownership registries or, at a minimum, have access to company registries and be empowered to request information from other government bodies, legal entities, financial institutions and DNFBSs. There should be mechanisms in place, such as memoranda of understanding or treaties, to ensure that information held by domestic tax authorities is exchanged with foreign counterparts.

Q68: Do tax authorities have access to beneficial ownership information maintained by domestic authorities?

- 4: Yes, online for free through, for instance, a beneficial ownership registry.
- 3: Yes, online upon registration.
- 2: Yes, online upon the payment of a fee and registration.
- 1: Beneficial ownership information can be accessed only upon motivated request.
- 0: No.

Reference/Comment: Tax authorities have access to the company register and to information held by other competent authorities on the basis of the various bilateral agreements that the tax authorities have entered into. This includes UBO information, as far as available. Please see the discussion of Outcome 5 above for more details.

Future plans: The plans for a future UBO register include full access for the tax authorities.

Q69: Does the law impose any restriction on sharing beneficial ownership information with domestic tax authorities (e.g. confidential information)?

- 4: No, the law does not impose restrictions.
- 2: The law does not impose significant restrictions, but exchange of information is still limited or cumbersome (e.g. a court order is necessary)
- 0: Yes, there are significant restrictions in place.

Reference/Comment: The same general restrictions as with other domestic cooperation apply, see also question 61 above.

Q70: Is there a mechanism to facilitate the exchange of information between tax authorities and foreign counterparts?

- 4: Yes. The country is a member of the OECD tax information exchange and has signed tax information exchange agreements with several countries.
- 2: There is a mechanism available, but improvements are needed.
- 0: No.

Reference/Comment: The Netherlands exchanges tax information on the basis of bilateral and multilateral arrangements, including tax agreements based on the models provided by the OECD and United Nations, tax information exchange agreements (TIEA), for which there is also an OECD model and the Convention on Mutual Administrative Assistance in Tax Matters, as well as certain European directives and the US American Foreign Account Tax Compliance

PRINCIPLE 10: BEARER SHARES AND NOMINEES

Guidance: Bearer shares should be prohibited and until they are phased out they should be converted into registered shares or required to be held with a regulated financial institution or professional intermediary. Nominee shareholders

and directors should be required to disclose to company or beneficial ownership registries that they are nominees. Nominees must not be permitted to be registered as the beneficial owner in such registries. Professional nominees should be obliged to be licensed in order to operate and to keep records of the person(s) who nominated them.

Q71: Does the law allow the use of bearer shares in your country?

- 4: No, bearer shares are prohibited by law.
- 0: Yes, bearer shares are allowed by law.

Reference/Comments: Article 82 of book 2 Dutch Civil Code (*Burgerlijk wetboek*). See for more details the discussion regarding G20 Principle 10 above.

Q72: If the use of bearer shares is allowed, is there any other measure in place to prevent them being misused?

- 2: Yes, bearer shares must be converted into registered shares or share warrants (dematerialisation) or bearer shares have to be held with a regulated financial institution or professional intermediary (immobilisation).
- 1: Bearer share holders have to notify the company and the company is obliged to record their identity or there are other preventive measures in place.
- 0: No, there are no measures in place.

Reference/Comments: See for more details the discussion regarding G20 Principle 10 above.

Q73: Does the law allow the incorporation of companies using nominee shareholders and directors?

- 4: No, nominee shareholders and directors are not allowed.
- 0: Yes, nominee shareholders and/or directors are allowed.

Reference/Comments: Nominee shareholders do not exist as such in the Netherlands. Nominee directors exist and are regularly offered as a service by trust service providers (*trustkantoren*). See for more details the discussion regarding G20 Principle 10 above.

Q74: Does the law require nominee shareholders and directors to disclose, upon registering the company, the identity of the beneficial owner?

- 2: Yes, nominees need to disclose the identity of the beneficial owner.
- 1: No, nominees (or the local equivalent) do not need to disclose the identity of the beneficial owner but are otherwise strictly regulated.
- 0: No, nominees do not need to disclose the identity of the beneficial owner or nominees are not allowed.

Reference/Comments: Nominee shareholders do not exist as such in the Netherlands. Nominee directors offered as a service by trust service providers (*trustkantoren*) are supervised by DNB and are generally regulated on the basis of the Wtt. A trust service provider offering a nominee director as a service must comply with CDD measures regarding the UBO following its obligations arising articles 10 Wtt, Regulation on Integrity of Business Operations under the Wtt (*Regeling integere bedrijfsvoering Wtt 2014 / Rib Wtt 2014*) and relevant provisions of the Wwft. See for more details the discussion regarding G20 Principle 10 above.

Q75: Does the law require professional nominees to be licensed?

- 0.5: Yes, professional nominees need to be licensed.
- 0: No, professional nominees do not need to be licensed.

Reference/Comments: Nominee directors as such do not need to be licensed. However, the trust service provider offering such service must be licensed following the provisions of the Wtt (articles 2 et al).

Q76: Does the law require professional nominees to keep records of the person who nominated them?

- 0.5: Yes, professional nominees need to keep records of their clients for a certain period of time.
- 0: No, professional nominees do not need to keep records.

Reference/Comments: Trust service providers offering the service of a nominee director must conduct CDD measures and maintain records of these measures following its obligations arising articles 10 Wtt, Regulation on Integrity of Business Operations under the Wtt (*Regeling integere bedrijfsvoering Wtt 2014 / Rib Wtt 2014*) and relevant provisions of the Wwft. See for more details the discussion regarding G20 Principle 10 above.

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