



AMLC

Newsletter October 2020

Anti Money Laundering Centre

Dear colleague,

This is the October 2020 edition of our newsletter.

It contains the latest news about a recent publication on the European money laundering regulations and about the finCEN files. After that we touch base with science in an interview with Teun van Ruitenburg on financial crime scripting. What is it, and how can it help us to combat money laundering? That is followed by our regular article on the latest case law.

The recent commotion about the finCEN files once again underlines the fact that money laundering cannot be effectively combatted without cooperation in the anti-money laundering chain. Please let us know if you come across any money laundering structures you'd like to share. You are always welcome to send questions or comments AMLC_Centre_Postbus@belastingdienst.nl. Do you have any colleagues who would also like to receive the newsletter? They can use this e-mail address to sign up.

Kindest regards,
The AMLC



News

'The European money laundering prohibition explained'

Senna Kerssies, now a PhD student at the Willem Pompe Institute for Criminal Law (UU), recently published a paper on European money laundering legislation. She provides an overview of relevant European legal instruments, including how the Directive on combating money laundering by criminal law (2018/1673) relates to AMLD4 (the Fourth Anti-Money Laundering Directive, 2015/849) and AMLD5 (the Fifth Anti-Money Laundering Directive, amendment of AMLD4, 2018/843). The Directive on combating money laundering by criminal law was passed shortly after the adoption of AMLD5, so why does it not cover the prohibition of money laundering? The short answer: since the specific objective was to harmonise Member States' criminal laws, Article 114 TFEU (on which AMLD4 and AMLD5 are based) could not serve as a legal basis. Questions have also been raised about the correctness of the position adopted by the AMLC in a previous newsletter to the effect that Dutch legislation already meets the obligations of the Money Laundering Directive. The short answer: Yes.

The paper – in Dutch- can be ordered [here](#).

FinCEN files

It will not have escaped anyone's notice that we were recently confronted with another leak of financial data revealing possible money laundering structure. The FinCEN files contain more than 2,000 suspicious activity reports (gatekeepers' reports to the FIU's American counterpart) and thousands of bulk transactions concerning correspondent banking (a service that facilitates foreign payments and payments in foreign currency; in this case dollar transactions). The information was shared via an international journalists' collective with journalists who uncover cover-up structures relevant to their own country. Some of the information was also released via the website of the journalists' collective. This seems to be less information than what the journalists have in their possession.

What makes this leak different from previous ones is that it involves secret information from another state. The US government takes the [position](#) that those who disclose information about the suspicious activity reports are committing a criminal offence. [Previous leaks](#) concerned information originating from private companies (the Paradise papers, the Panama papers, Swiss leaks, Lux leaks, offshore leaks).

The AMLC is examining the information that has been made public. It is too soon for us to draw any conclusions at this stage because we need to consider the reliability aspect and compare the information to other sources. That includes the gatekeeper role of the banks.

No Shelter

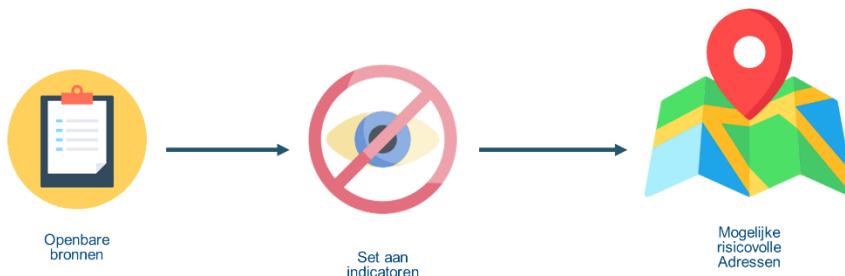
One of the headlines in a Dutch paper on the FinCEN files is a good opportunity to tell something about the No Shelter project. The headline reads: [How shady roubles flow through Nieuwegein](#). It concerns, among other things, a legal entity on a remote business park in Nieuwegein. To set up a Dutch legal entity, you obviously need a civil-law notary, but what you need to arrange yourself are a director and an address for this legal entity. The addresses and also directors are the focus of the No Shelter project.

The IDEA Summerjam 2019¹ has started a pilot of the No Shelter project, namely the joint mapping of the shadow trust sector. The reason for this included publications on the cutting up of trust services and the shadow trust sector

¹ IDEA is the FIOD's digital ideas platform that helps innovations move forward. During the FIOD IDEA Summerjam, all kinds of parties (both public and private) come together to brainstorm about problems and solutions. From this, one winning idea is chosen and, under the project supervision of the innovation team NOVA of the FIOD, this idea will be further developed into a working solution in 3 months.

that this will create, and a public-private partnership on this subject.² The pilot project involved the innovation team NOVA of the FIOD (project management) and colleagues from the Tax and Customs Administration, FIOD, Taskforce West Brabant Zeeland and AMLC.

It was decided to map high-risk addresses for the shadow trust sector on the basis of public information (such as the Trade Register). On the basis of various indicators, such as the number of legal entities registered at an address or indicators about the role of a director, a risk profile for addresses has been drawn up that provides insight into conspicuous domicile addresses in the Netherlands. The parties then each independently analysed and validated, based on their own sources, whether or not high-risk addresses are indeed present in relation to the shadow trust sector. An initial sample showed that approximately 30% of the addresses had indications of illegal trust services. These initial results from validation and analysis are valuable for further elaboration.



After the pilot, the AMLC took up the gauntlet to take the No Shelter project further. The focus of AMLC will be broader than that of the pilot which focused on the shadow trust sector. In the follow-up, we will focus on identifying various service providers (legal or illegal) who may be involved in concealing (international) corporate structures and facilitating money laundering. Service providers that can play a role in this include accountants, administrative offices, lawyers, banks, tax advisers, domiciliary providers, notaries and trust offices.

The AMLC is currently conducting exploratory talks with public and private parties on the follow-up to the No Shelter project. To be continued!

Fraudulent investment institutions with a Dutch bank account

The AFM is receiving more and more signals about high-risk investments in the case of [foreign providers](#). The providers operate in the Netherlands with a European Passport and therefore do not come under the supervision of the AFM. In some cases, the providers do not even have (or no longer have) the required European Passport and feign a certain legitimacy by using trade names very similar to those of licensed providers.

Online, the provider shows the investor healthy profits. The tipping point for the investor is reached at the 'cash-out': the point where the investor wants to have the virtual profits paid out. That's where it all falls down: the provider fails to pay out. In reality, the investor's funds have never been invested. The funds are usually channelled away shortly after being credited. They are laundered through foreign companies, possibly using payment service providers.

The fact that the Dutch financial system enjoys a reputation for reliability makes it an attractive option for foreign providers to hold Dutch bank accounts to which the unsuspecting investor makes deposits. Red flags include:

- The absence of payment to (foreign) private investors (the 'cash-out')
- No sign of investment activities
- Payments (bulk) to unrelated foreign entities
- Low or no credit balance ('conduit account')

² <https://www.groene.nl/artikel/witwassen-in-een-flexkantoor>, <https://www.trouw.nl/nieuws/lees-ook-er-blijft-een-achterdeur-voor-witwassers-bestaan~bc5ec522/>, <https://www.nrc.nl/nieuws/2018/06/15/van-asielzoeker-tot-verdachte-miljonair-a1606813>.

Financial Crime Scripting

Interview with the project leader for Financial Crime Scripting: Teun van Ruitenburg (Follow the Money Team)

To start with the obvious question: who is Teun van Ruitenburg?

I'm a criminologist and I've been working at the Policy & Strategy Department of the Public Prosecution Service since May 2019. All of my time at that department is devoted to the Follow the Money Team. Before that, I worked for 4 and a half years at the Criminology Section of the Erasmus University Rotterdam. During my time there I did my PhD research on the approach to outlaw motorcycle gangs in the Netherlands, which I defended in May of this year. I see it as a very interesting challenge in my current position to link science to practice and vice versa. This is also one of my roles in the Follow The Money Team: how can science help us to uncover criminal assets?



Before we go into the content, what does the Follow the Money Team do?

With the Follow the Money Team, the National Public Prosecutor's Office for Financial Economic and Environmental Offences (FP) and the FIOD join forces to uncover criminal assets and work up new criminal investigation signals. These signals are the result of data-driven investigations into existing and new sources to which innovative indicators are applied. The worlds of big data and financial investigation come together in the team. The signals generated are transmitted to our partners. Our focus is broader than confiscation and money laundering alone, and we work mainly regionally. We started in the Rotterdam region and are now in the Central Netherlands. We introduce the regions to our way of working so that in time they can continue it themselves.

You are the project manager for *financial crime scripting*, and that is...? Let's start with: what is *crime scripting*?

Crime scripting involves splitting up and analysing the logistical process of specific criminal activities. To give an example, the criminal process of cannabis farming can be broken down into acquiring a location, setting it up, purchasing growing materials, growing, harvesting and storage, marketing and finally the use of the proceeds. The model then goes on to show which service providers and opportunities (in legitimate business and the underworld) the criminal depends on for the 'successful' completion of these steps. After all, once you understand what factors and circumstances a criminal depends on to commit a crime, you can also identify ways of frustrating that process. The various barrier models that have been and are being developed in recent years within different government departments are the direct result of this methodology.

And that takes us to *financial crime scripting*?

While barrier models provide a clear insight into the different steps of criminal activity, it is striking that the currently available scripts pay little attention to the role of finance in them. By viewing crime scripts from a 'financial perspective', we try to develop *financial crime scripts* that provide an insight into the role of finance within the crime script of a specific criminal activity. In other words, a financial crime script such as this can provide an insight into the places in the crime script where the criminal is also dependent on money. To return to the example of cannabis farming, the criminal needs financing to pay for the raw materials and location, and the cannabis cutters have to be paid for their services. After that, money may be needed to transport the harvest and the waste by renting a van. Payments in this process can also be made from previously acquired criminal assets. This simple example illustrates the fact that financial crime scripting is a potentially valuable method we can use to investigate money flows in organised crime and expose financial structures. A financial crime script can similarly be made for activities such as cocaine trafficking, arms dealing or specific forms of fraud.

The development of a financial crime script is a new approach. This method is still being used to a limited extent both in the field of criminal investigation and in science. There are of course crime scripts for financial-economic

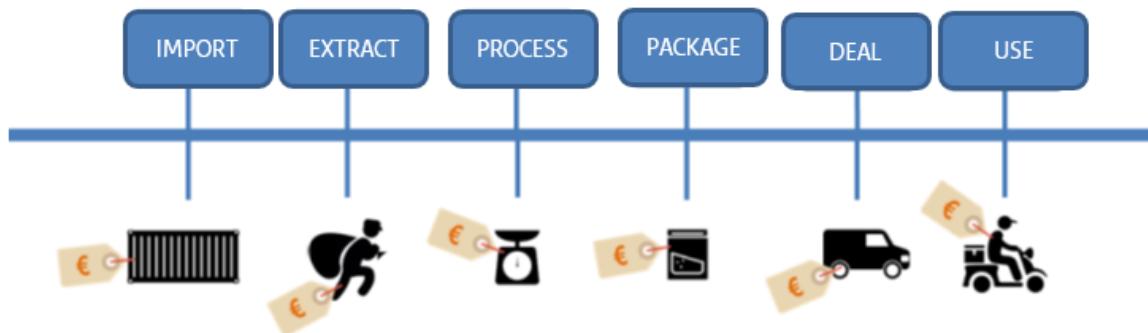
crimes such as money laundering³, but these scripts, too, 'only' show which steps a criminal has to take to launder and not, for example, how much money it costs the criminal to go through them.

The added value of a financial crime script is that it helps us to look at crime more from a financial perspective. This is important because in most cases criminals are of course out for financial gain. Once we have an insight into the financial flows of a criminal activity, the financial crime script can also serve as a framework for gathering evidence in criminal investigations, confiscating criminal proceeds, but also for raising financial) and other barriers among private parties.

So a financial crime script is not only important for government parties, but also for private parties?
Certainly. Financial crime scripts could provide additional insights that can be shared with private parties to identify and frustrate crime at the front end.

Sounds interesting, but also very large scale. How do you keep the project manageable?

In this project we're focusing on one criminal activity: cocaine trafficking in the Netherlands. The production process of cocaine abroad will not be considered and nor (at first) will the possible export of the imported cocaine to foreign countries. Instead, we'll be looking at the financial flows from import onwards: extraction, processing, packaging, and dealing. All the way up to the sale to the user.



Is the idea to put the script of the predicate offence in the picture and to help tackle money laundering, or could you ultimately develop a script for money laundering? After all, an advantage of the money laundering approach is that there's no need to focus on the predicate offence. My answer to both questions is 'yes'. First of all, a financial crime script for a predicate offence gives you a clearer insight into how much money the different roles or facilitators generally earn within a script, and those insights could also be important to a money laundering investigation. At the same time, money laundering is of course also an independent offence that can be committed in various ways, which in turn can be elaborated on in various financial crime scripts. It would be very worthwhile to develop several financial crime scripts in the future so that we can see straight away how they are actually interwoven. After all, since money is made by various criminals in each step of a criminal activity, money also has to be laundered at each step of the process.

Good luck with your project, keep us posted!

³ [https://researchportal.port.ac.uk/portal/en/theses/improving-the-prevention-of-money-laundering-in-the-united-kingdom\(8ca206d0-fc37-469e-8717-653eb68b41c3\).html](https://researchportal.port.ac.uk/portal/en/theses/improving-the-prevention-of-money-laundering-in-the-united-kingdom(8ca206d0-fc37-469e-8717-653eb68b41c3).html)

Case law

Amsterdam Court of Appeal, 07-07-2020 standard for closing investment account: ECLI:NL:GHAMS:2020:1992
The defendant is an investment firm offering 'execution only' services. This means that it does not give investment advice to its clients, but only provides a platform that clients can use to invest in securities. The claimant is a self-employed person who placed an investment portfolio with the platform containing thousands of put and call options with a term until December 2023. The investment firm announced its intention to terminate the customer relationship and the claimant protested that this is unlawful.

Because of the large deposits, the investment firm subjected the claimant to an enhanced customer due diligence. This showed that the client was mentioned in the Panama Papers, has been expelled as a member of the Dutch Association of Tax Advisers and that the license of the trust and company services provided to which the customer was affiliated has been revoked by the Dutch Central Bank (DNB). The investor's argument against this is that he has never been convicted of a criminal offence, that he himself asked DNB to revoke his express trust licence and that all his deposits have been made with income known to the Tax and Customs Administration.

The Court of Appeal ruled that it was lawful for the investment firm to terminate the customer relationship. No longer having an investment account is less onerous than no longer having a payment account. Case law on the termination/continuation of a payment account, to which the claimant refers, therefore does not necessarily apply to the current situation. The contract relating to the investment account may, in principle, be terminated **without** serious or compelling reasons. The court of appeal found that the outcome of the intensified customer due diligence did not lead to an actual chance of reputational damage or the withdrawal of the license of the investment business, and that there was no serious or compelling reason to terminate the client agreement. However, this does not alter the fact that the outcome of the customer due diligence gave good cause to place the claimant in a higher risk category and that the investment company could decide to terminate the customer relationship.

The claimant also argued that the circumstances that came to light during the enhanced customer due diligence already existed when the investment relationship was entered into and could have been investigated at that time. In spite of that, the investment firm was entitled to carry out an enhanced customer due diligence at a later stage and to decide to terminate the customer relationship based on its findings.

The investment firm was however required to give the customer time to relocate the portfolio, and he was given until 31 December 2020 to do so.

Board of Discipline Amsterdam 24-08-2020, cash payment to lawyer: ECLI:NL:TADRAMS:2020:190

A lawyer has accepted cash from a client. The amount involved is not excessive, but the verdict of the disciplinary judge is clear. The starting point is that payments should be made by bank transfer unless there are facts or circumstances that justify cash payment, and amounts exceeding EUR 5,000 a year require consultation with the Dean (Article 6.27 of the Legal Profession Regulations). No facts or circumstances have been put forward in this case that indicate that there was an exceptional situation. The fact that the lawyer was said not to have asked for the cash payment himself is irrelevant.

Colofon

mr. Dorine Stahlie
mr. Sophie de Ridder

Anti Money Laundering Centre
Utrechtseweg 297 gebouw C, 3731 GA De Bilt

E: AML.Centre_Postbus@belastingdienst.nl

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