



AMLC

Newsletter June 2021

Anti Money Laundering Centre

Dear colleague,

Attached is the June 2021 AMLC newsletter on developments related to money laundering.

This edition contains news about an amendment to the Money Laundering and Terrorism Financing (Prevention) Act (Wwft) BES, which will enter into force on 1 July. Subsequently, we pay attention to an article about underground banking, written by colleague Dorine Stahlie and Lisette de Zeeuw (FP) that was published in the Dutch Journal of Criminal Law.

The in-depth article is an interview about the money laundering game Pressure Cooker, which was launched on 17 June and developed jointly by PwC and AMLC. Furthermore this newsletter has links to new AMLC podcasts on, among other things, money laundering via crowdfunding, the use of data and Trade Based Money Laundering. As always, we conclude with case law.

If you have gained experience or have run into set-ups that you want to share, please mail AML.Centre_Postbus@belastingdienst.nl. Do you know any colleagues who would also like to receive the newsletter? They can subscribe using this email address. Lastly, if you want to stay up-to-date: follow us on [LinkedIn!](#)

Enjoy the read,
The AMLC



News

Amendment to the Wwft BES

On 1 July, an amendment to the Wwft BES comes into force tightening up the preventive measures against money laundering and terrorist financing in the Dutch Caribbean. There will be new obligations for institutions to draw up a risk assessment, policies, procedures and courses of action (more emphasis on a risk-based approach). The definition of a 'politically exposed person' (PEP) has been broadened, a legal principle has been included to align the definition of a UBO with the European-Dutch definition, the relationship between obligations under the Wwft BES and the client privilege of lawyers and civil-law notaries has been clarified, and a dean from the European Netherlands, appointed by the general council of the Netherlands Bar will oversee compliance with the Wwft BES by the legal profession in the Caribbean Netherlands. You can find the parliamentary documents [here](#).

Underground banking

The June issue of the Dutch Journal of Criminal Law (*Tijdschrift voor Strafrecht*) includes a comprehensive article by Dorine Stahlie (AMLC) and Lisette de Zeeuw (FP) on recent case law on underground banking. There is no doubt that the underground banking system facilitates criminals. The criminal pays for anonymity and can thus circumvent the regular financial system, which is armed with all kinds of safeguards to combat money laundering. Investigative services and the Public Prosecution Service are therefore keen to tackle underground banking involving criminal money. This is mainly done through the money laundering articles. Given the importance of taking an effective approach to money laundering facilitators, recent case law on this subject has been further examined and clarified for legal practice. What are the requirements set in recent case law for proving money laundering through underground banking? And what is enough to justify a suspicion of money laundering suspicion, and when are additional circumstances required? Recent case law on subjects such as unlicensed banking has also been included to provide a broader view of this subject. The article is also available to our newsletter readers and can be found [here](#).



AMLC-podcasts

New podcasts! Money laundering through crowdfunding, money laundering through the use of the courts, Trade Based Money Laundering (TBML), the use of data and analysis tools in the fight against money laundering, discussion of FATF reports ... short podcasts of a few minutes and more extensive.... for financial investigators and for private parties.... there is something interesting for everyone! You will find our podcasts [here](#) and you can click through to your favourite platform, for example, Spotify.



Want to stay up to date with new podcasts? Follow us on [LinkedIn](#).

AML Game the Pressure Cooker

Money Laundering Game: pressure cooker

Interview with Sebastiaan van Zijl (PwC) and Dorine Stahlie (AMLC)

PwC and AMLC have jointly developed a new money laundering game. An initial version of the game was presented at the Fraud Film Festival in 2019. Since then, the game has been further developed. On 17 June, the game was officially 'launched' through an online event. Sebastiaan van Zijl and Dorine Stahlie explain the game and this public-private partnership.

Tell us in a few sentences what the pressure cooker is?

Dorine: In the pressure cooker, the participants put themselves in the shoes of consultants of the company NaBook. Those advisors help NaBook work out if and how NaBook has been *unwillingly* used by criminals to launder money. They are given some starting information, and during the game we provide access to a dashboard with a great deal of data. The participants have to come up with possible money laundering structures within 60 minutes.

Sebastiaan: Former PwC member Jeroen Goudsmit is the spiritual father of this project. He wanted his clients to experience that if you're looking for fraud, you shouldn't start by haphazardly delving into large amounts of data. That doesn't work: you have to base your approach on a hypothesis. Jeroen discussed this idea with AMLC member Diego Crijns, who warmly welcomed it. His view was that to formulate those hypotheses; you need to think like a criminal. With PwC member Sofie Wulp in attendance, we then set to work. The aim of the game is to learn to work based on hypotheses and acquire knowledge about money laundering.



From left to right: Diego Crijns, Sebastiaan van Zijl, Dorine Stahlie en Sofie Wulp at the launch of the game on June 17.

What kind of company is NaBook?

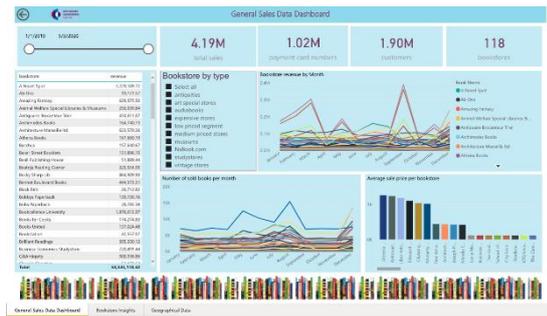
Sebastiaan: NaBook is a Dutch company that started out as a second-hand bookstore. At one point, a webshop was set up to sell second-hand books online as well. The company grew quickly. For that reason, NaBook drew the attention of other bookstores as well. The business model of NaBook now consists of several pillars: the sale of second-hand books supplied by hundreds of thrift stores, the sale of unmarketable second-hand books from the thrift stores to recyclers, and the provision of a platform for the online sale of books from other bookstores. Purchases at the NaBook webshop are settled through an online payment system. The payment goes in bulk from NaBook to the bookstore, and NaBook deducts a commission. The bookstore itself ships the books, so NaBook does not know of that.

Dorine: Perhaps the first hypothesis is already bubbling up!

Participants have signed up, and then?

Dorine: They are given some information beforehand, including about the company NaBook. For now, we are organizing the game remotely, which means that all participants meet online. The game kicks off with an urgent call from Nabook's CEO, and then the participants break up into subgroups. The various groups first formulate hypotheses on how NaBook can be abused in a money-laundering scheme. Prior to the game they were given basic information what criminals do to launder their criminal assets: their aim is to place their money in the financial system, disguise its origin, and put up a justification the

criminal money so they can spend it undisturbed. They need that information to formulate hypotheses, but we also give some hints. Each subgroup has a supervisor from PwC and the AMLC to help them.



screenshot datadashboard

Sebastian: Next, the groups are given access to a data dashboard. It contains all kinds of data about the company NaBook. Which publishers use the platform, how many books do these individual publishers sell and at what price, from which bank accounts are purchases made, etc. Based on the hypotheses formulated by the group, the data is reviewed and the hypotheses verified or rejected.

Dorine: The different groups come together again for feedback. Each group gives a short pitch sharing what the group found. It then sets out, in a structured manner, how NaBook was used and what data could have been used to find this out.

Sebastian: With this game, we mainly focus on companies that can be unwittingly used for money laundering constructions. We hope that after the game they can detect the risks in their company so that mitigating measures can be taken.

Government parties and private parties have different interests. What did you notice about this in the cooperation?

Dorine: We had one common goal in this project: include as many companies as possible in the joint effort to keep criminals out. So we were all on the same page. PwC, good at data analysis, put a lot of energy into a superb and realistic data dashboard, and we were able to contribute our experiences from criminal investigations to arrive at realistic hypotheses. It was precisely by sitting down together that we achieved an excellent result. Of course, sometimes there are different interests and priorities, but our experience is: if you have a common goal, you will get there.

Interested in participating in one of the sessions on 14/9, 28/9, 7/10 of 14/10? Mail to: Fiod.PwC.pressurecooker@belastingdienst.nl

Maximum 3 participants per organisation to allow as many organisations as possible to participate.

Case law

Supreme Court, May 25, 2021: [ECLI:NL:HR:2021:728](#) and [ECLI:NL:PHR:2021:495](#) (Individual responsibility for reporting unusual transactions)

This case involved a car dealer suspected of being the de facto leader of the legal entity's breach of the reporting obligation. In the first instance and on appeal, the defendant stated that he knew about the reporting obligation but had no intention of violating the Wwft, assuming that his accountant would file the reports. The Court and the Court of Appeal rejected this, because there was no evidence of an agreement with the accountant on filing reports. In cassation the defendant complained about the proven intent. The



Supreme Court upheld the judgment of the Court of Appeal without addressing its substance. The Procurator-General did however do so in his advisory opinion. The Court of Appeal's finding that the existence of an agreement with the accountant has not become plausible implies that the defendant at least consciously accepted the significant chance that the report would not be filed. This constitutes (conditional) intent. The Court based this, among other things, on the accountant's testimony that there was no agreement on reporting. The accountant also testified that they visited the accused monthly. This meant that in many cases, the accountant was unable to file an immediate report, although this is required under Section 16 of the Wwft. The Court of Appeal's finding that the accused was the de facto leader of the violation of the reporting obligation is therefore understandable. *The Supreme Court confirmed in this case that a Wwft institution cannot hide behind an accountant. The fact that the accountant has filed reports for the car dealer in the past does not relieve him of his own responsibility for complying with the reporting obligation. It must in any event at least be verified that the accountant has actually filed the reports. Also, an unusual transaction must be reported without delay. That means within at least fourteen days.*

Amsterdam Court of Appeal, 20 April 2021: [ECLI:NL:GHAMS:2021:1111](#) (Money laundering with art)

In this case, a defendant relied on the art trade to explain the possession of a large sum of cash. The defendant was suspected of being involved in drug trafficking. During the search of his home, a safe was found containing €100,000 consisting of various denominations, including 50 banknotes of € 500. The defendant stated that this money was his. The question to be answered is whether this money derived from crime. According to the Court, there is a suspicion of money laundering because of the considerable amount of cash in denominations of 500, which are rare in legal payment transactions. For that reason, the defendant may be required to give a statement that is concrete, verifiable and not highly unlikely at first sight.

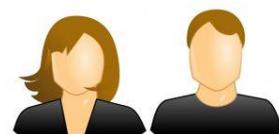


The defendant stated that he made the money by trading in art and that he had borrowed the money. To support his statement, he submitted his accounts for the year 2015, which was further examined by the police. According to his accountant, the suspect's company did not keep any purchase or sales invoices in its records: everything was done in cash. As a result, the purchase and sales figures are not verifiable. Because the information about the business operations was based exclusively on the defendant's word and the records were not found conclusive, the Court of Appeal considered it impossible to verify in any way whether the defendant had actually traded in art. Therefore, the Court of Appeal concluded that the defendant's statement was not verifiable and that the only possible explanation was that the €100,000.00 derived from crime. The defendant was convicted of money laundering.

Art is an attractive vehicle to launder money, because its value is difficult to determine. The accounts kept in this case were unusual and did not provide a sound basis for the art transactions. The unusual pattern of payment traffic, the preference for cash, and the fact that there were payments without an invoice were remarkable.

Court of The Hague, 18 March 2021: [ECLI:NL:RBDHA:2021:2457](#) (preliminary relief proceedings against privacy organisation UBO register)

We have previously reported on [the UBO register](#) in our newsletters and on our website. The register entered into force in the Netherlands in September 2020 and contributes to the fight against money laundering. Since then, companies and legal entities have been required to register their direct or indirect owners. Some of this personal



information, such as the name and economic interest of the UBO, is publicly disclosed through the register.

In preliminary relief proceedings, the foundation Privacy First claimed that the obligation to register privacy-sensitive data regarding the UBO should be set aside. According to Privacy First, by requiring a public UBO register, the Union legislature is violating the protection of UBO privacy. According to the privacy organization, in particular public access to UBO information poses a problem. Privacy First claims that only the competent authorities should have access to the data. Although Privacy First agrees that combating money laundering is a legitimate reason to infringe the fundamental rights of privacy and personal data protection, it does not regard the infringement as proportional. According to Privacy First, money laundering can also be effectively combated without a publicly accessible UBO register. Privacy First also petitioned the preliminary relief judge to put questions to the European Court of Justice about the lawfulness of the UBO register.

The Court in preliminary relief proceedings ruled that the obligation to provide information about the UBO cannot be set aside because the State may not act contrary to the Fifth Anti-Money Laundering Directive. The decision on the legality of the AMLD5 Directive is reserved to the Court of Justice of the European Union.

The Court upheld the Dutch UBO register but acknowledged that there are doubts about its mandatory public nature. The Court could have submitted preliminary questions on the legality of the register to the European Court, but did not do so because a Luxembourg court has already submitted questions to the Court on this point. No answer has yet been received. Privacy First appealed both the Court's decision to uphold the UBO register and its decision not to raise any preliminary questions.

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