

#20: 'Fail to notify' project and unusual transactions

The Dutch Anti-Money Laundering and Anti-Terrorist Financing Act (hereinafter: Wwft) entered into force on 1 August 2008. The Wwft implements the [EU's Third Anti-Money Laundering Directive](#) in Dutch national law. The Wwft provides a set of measures to prevent the use of the financial system for money laundering or terrorist financing. An important element is that every institution subject to the Wwft should perform a client assessment. Whereas institutions must – in principle – comply with all client assessment measures, the intensity with which measures are applied may be adjusted to the risk posed by a certain type of client, relation, product or transaction. Another important measure is that a financial institution or other institution that, in a professional capacity or on a commercial basis, provides certain (financial) services identified by the law, must notify any unusual transactions to the Financial Intelligence Unit Nederland (FIU). Unusual transactions may be identified using the so-called list of indicators. But what happens if you fail to notify an unusual transaction to the FIU Nederland?

Failure to notify an unusual transaction to the FIU Nederland is an infringement under article 2, section 1, of the Economic Offences Act. In 2012 the so called 'fail to notify' project was launched. The project has been set up by the Anti Money Laundering Centre (AMLC) of the Dutch Financial Intelligence service (FIOD), the police, the FIU Nederland, the Financial Supervision Office (BFT), the tax authorities, the Dutch National Bank (DNB), the Dutch Authority for the Financial Markets (AFM) and the prosecution services. Together they promote and enhance the compliance of the Wwft.

Recently an [evaluation report](#) of this project dating from 2016 has been published. This report evaluates which collaborating

party notifies the most signals and which institutions fail to notify unusual transactions. Furthermore an overview is given of the ongoing criminal cases and investigations in relation to non-compliance to the Wwft. In total there are 49 cases deriving from the project in which an institution failed to notify an unusual transaction. In 47% of these cases a signal derived from the Financial Intelligence services. The ongoing cases are directed to thirteen notaries, five accountants, five tax advisors, three trust offices, two estate agents, one currency exchange office and twenty traders. The traders mostly consisted of car dealers, gold traders, jewelries and furniture dealers. By going after a wide range of professionals the project team is trying to create a widespread awareness of the Wwft.

The evaluation report states that by 1 June 2016 ten people have been convicted for violating the Wwft. The greatest part of the cases are awaiting whether or not to go to trial . Four cases have been dismissed by the prosecution office and the FIOD has discontinued its research in two cases.

Although these facts are well worthy to know in our point of view this evaluation report is missing crucial information. The report does not provide for a clear guideline on which cases are fit for prosecution. Any policy on this seems to be absent. Are the prosecuted cases selected in an arbitrary way? For instance it is unclear how the signals that an infringement of the Wwft took place arose. Moreover it would be interesting to understand why certain cases have been dismissed or why in certain cases a transaction was offered by the public prosecution. Perhaps legal issues in relation to obtaining the infringement 'signals' play a role in these decisions? Hence, it would be helpful to not only report on the numbers of alleged Wwft infringements. The selection of prosecuted cases is as important in order to understand the success of the project group.

Do you have any questions about this subject, are you

struggling with a related issue or would you like to discuss this with us? Please feel free to contact us via boezelman@hertoghsadvocaten.nl and boer@hertoghsadvocaten.nl.