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Transaction Monitoring Netherlands: A novel solution to the banking industry's AML puzzle?

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Transaction Monitoring Netherlands (TMNL), a novel collective monitoring initiative designed to counter sophisticated money laundering and terrorism financing activity in the Netherlands, is set to become operational in 2021. Born out of a series of roundtable discussions hosted by the Dutch central bank (DNB) in 2017 and 2018, TMNL is a first-of-its-kind private company established by the five largest Dutch banks—ING, ABN Amro, Rabobank, Triodos Bank, and de Volksbank (the "Founding Banks"). TMNL will work closely with Dutch financial regulators and law enforcement agencies to curb money laundering through "faster, better, and more complete detection of money laundering and financing of terrorism."[1]

Filling a gap in AML detection and reporting

TMNL is another step in the continued efforts by Dutch financial institutions to curtail money laundering, which is increasingly the focus of Dutch enforcement action. The Dutch Banking Association (NVB) has estimated that around €16 billion ($18 billion) of funds are laundered in the Netherlands each year, originating from activities including drug trafficking, human trafficking, child pornography, and extortion.[2]

In recent years, Dutch authorities have enforced Dutch Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT) laws aggressively, leading to record fines. In September 2018, ING was fined €775 million ($900 million) to settle claims by financial crime prosecutors that ING had violated AML/CFT laws "structurally and for years" by failing to verify beneficial owners of accounts and properly monitoring for suspicious transactions.[3] Shortly after the ING settlement, the DNB sent a letter to the Dutch Finance minister, recognizing that "several banks have faulty client and transaction monitoring" and that "the bank sector insufficiently acts as a gatekeeper."[4] A year later, in September 2019, Dutch prosecutors confirmed that they were conducting a similar investigation into ABN Amro, which is alleged to have reported suspicious transactions either too late or not at all, as well as having failed to properly vet clients.[5] Pending the outcome of that investigation, certain analysts consider the ING fine as a reference point for predicting the scope of penalties that may be imposed on ABN Amro.[6]

Yet, financial institutions can find it challenging to identify or detect potential criminal activity on their own. While criminal networks deliberately conceal money laundering schemes by using multiple accounts across multiple financial institutions (and often jurisdictions), a given institution will normally only see a fraction of the transaction, network, or

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[1] *What is TMNL?*, TRANSACTIE MONITORING NEDERLAND, https://tmnl.nl/summary-eng//.
[2] *Transaction Monitoring Netherlands: a unique step in the fight against money laundering and the financing of terrorism*, NEDERLANDSE VERENIGING VAN BANKEN (July 08, 2020), https://www.nvb.nl/english/transaction-monitoring-netherlands-a-unique-step-in-the-fight-against-money-laundering-and-the-financing-of-terrorism/.
[3] *Dutch bank ING fined $900 million for failing to spot money laundering*, REUTERS (Sept. 4, 2018), https://www.reuters.com/article/us-ing-groep-settlement-money-laundering/dutch-bank-ing-fined-900-million-for-failing-to-spot-money-laundering-idUSKCN1LK0PE.
[4] *Dutch banks too lax on money laundering – central bank*, REUTERS (Sept. 25, 2018), https://www.reuters.com/article/uk-netherlands-cenbank/dutch-banks-too-lax-on-money-laundering-central-bank-idUKKCN1M522V.
[5] *Dutch prosecutors confirm money laundering probe at ABN Amro*, REUTERS (Sept. 26, 2019), https://www.reuters.com/article/abn-amro-money-laundering-prosecutors/dutch-prosecutors-confirm-money-laundering-probe-at-abn-amro-idUSA5N20801K.
[6] *ABN Amro hit by Dutch money laundering investigation*, REUTERS (Sept. 26, 2019), https://www.reuters.com/article/us-abn-amro-moneylaundering/abn-amro-hit-by-dutch-money-laundering-investigation-idUSKBN1WB0MT.

trend, and most countries prohibit information-sharing between counterpart financial institutions regarding financial crime risk or suspicion.

One response to these practical challenges was to establish models of public-private financial information-sharing partnerships. The first of those partnerships, led by the example of the UK Joint Money Laundering Intelligence Taskforce (JMLIT) in 2015, signaled a fundamental shift in approach to financial crime and set information-sharing and collaboration across public and private sector partnership members as the center of efforts to detect and respond to financial crime. What was once a unique UK innovation in 2015 has now become a mainstream feature of the financial crime architecture in most liberal democracies, with 18 countries (including the Netherlands) establishing similar partnerships, covering 20 of the top 30 global financial centers.[7]

The Dutch banking industry takes action

Spurred on by the practical challenges as well as the prospect of ever-increasing fines and the joint Money Laundering Action Plan of the Dutch ministries of Finance and Justice and Security, the Founding Banks announced in September 2019 that they were collaborating with the NVB to study the feasibility of a joint monitoring program.[8] On July 8, 2020, the Founding Banks announced that they had signed the TMNL shareholder agreement establishing TMNL as an independent private limited company, and that an amendment to Dutch AML laws to enable collective monitoring was anticipated. NVB President Chris Buijink stressed in a statement that "[r]eally effective combating of this type of criminality is only possible through closer cooperation. This cooperation will have positive consequences throughout the chain from detection to prosecution. TMNL is an essential collective step that is a world first."[9]

TMNL is still building the unique transaction-monitoring utility using a cloud-based platform, which was expected to take 18 months to two years to complete. The first transactional alerts are expected to be generated by June 2021.[10]

TMNL: How will it work?

When it launches in 2021, TMNL's collective transaction monitoring will cover all payment transactions of companies with Dutch accounts at the five Founding Banks, with the ultimate aim of extending monitoring to all of their payment transactions, which amounts to €12 billion ($14 billion) a year, or €33 million ($40 million) every day.[11] Other banks will be able to join TMNL, but it has not stated when it will be open to additional members.[12]

TMNL has not yet released comprehensive details as to how the combined monitoring will be achieved. Its outline of the process indicates that the participant banks will send transaction information data to TMNL in an encrypted manner, with TMNL then combining and connecting transactions so as to identify and monitor any networks and patterns. Participant banks will not share information with each other. TMNL will then report any potentially unusual or suspicious transaction patterns or networks back to the particular Founding Banks involved for further analysis and possible reporting to the Dutch Financial Intelligence Unit (FIU).[13] TMNL considers that such combined transaction data

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[7] As defined in the 27th edition of the Global Financial Centres Index (GFCI 27) published on March 26, 2020, https://www.longfinance.net/publications/long-finance-reports/global-financial-centres-index-27/.

[8] *Dutch banks join forces to combat money laundering*, NEDERLANDSE VERENIGING VAN BANKEN (Sept. 19, 2019), https://www.nvb.nl/english/dutch-banks-join-forces-to-combat-money-laundering/.

[9] *Transaction Monitoring Netherlands: a unique step in the fight against money laundering and the financing of terrorism*, NEDERLANDSE VERENIGING VAN BANKEN (July 08, 2020), https://www.nvb.nl/english/transaction-monitoring-netherlands-a-unique-step-in-the-fight-against-money-laundering-and-the-financing-of-terrorism/.

[10] *Dutch Banks Forge Ahead with Joint Transaction Monitoring* (Aug. 5, 2020) https://www.moneylaundering.com/news/dutch-banks-forge-ahead-with-joint-transaction-monitoring/.

[11] *What is TMNL?*, TRANSACTIE MONITORING NEDERLAND, https://tmnl.nl/summary-eng//.

[12] *Id.*

[13] *How does TMNL work?*, TRANSACTIE MONITORING NEDERLAND, https://tmnl.nl/summary-eng//.

monitoring will facilitate more effective detection of indicators of money laundering, with quicker and more accurate identification of criminal networks than would be possible by the Founding Banks on their own, which are otherwise inherently limited to seeing only part of any money flows or networks. An important open question remains as to the nature and level of detail TMNL will provide to the Founding Banks regarding its combined review. If TMNL only flags a bank's individual transactions without providing details as to why they are suspicious in the context of the combined data available only to TMNL, then it is unclear how the bank will be able to properly investigate and potentially report the suspicious activity. TMNL therefore needs to strike a careful balance between disclosing too much (with attendant regulatory and data privacy concerns) and disclosing too little, effectively undermining the value it was designed to bring to transaction monitoring. In addition to the combined monitoring by TMNL, each Founding Bank will continue to monitor their individual transactions under Dutch law.[14]

TMNL has not released the estimated costs of its operations or how they are allocated among the five Founding Banks, but the NVB has estimated that 5,500 to 6,000 banking sector employees in the Netherlands were "working directly and full-time" on AML issues as of September 2019, a number that can be expected to grow with an expansion of monitoring activities.[15]

TMNL in context – working with national agencies and partnerships

TMNL will work closely with Dutch enforcement agencies, including the ministries of Finance and Justice and Security, the Fiscal Information and Investigation Service (FIOD), and the FIU.[16]

TMNL will also work in parallel with, and feed into, the existing Dutch national public private financial information-sharing partnerships,[17] all of which exist under the strategic direction of a public-private coordinating authority, the Dutch Financial Expertise Centre (FEC).

Key Takeaways

All countries rely on an effective prosecution chain to stamp out money laundering—from detection, through prosecution, to conviction. TMNL is expected to enhance the effectiveness of the first link, helping banks to detect suspicious activity more quickly and efficiently. This should result in more accurate and relevant reports and information to enforcement agencies, thereby enhancing the effectiveness and/or prospects of the second and third links, prosecution and conviction. When combined with the parallel public-private financial information-sharing partnership efforts, there are obvious gains to be made in tackling financial crime as well as the associated or underlying criminal activities.

If successful, TMNL may serve as a model for replication by other countries struggling to combat money laundering effectively. Germany, for example, experienced a 50% spike in money laundering cases in 2019, according to its Financial Intelligence Unit.[18] German authorities face a lack of public confidence in their ability to successfully enforce AML laws and have been criticized for what is seen as a "hands-off approach and a number of missed opportunities to

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[14] *What is TMNL?*, TRANSACTIE MONITORING NEDERLAND, https://tmnl.nl/summary-eng//.

[15] *Dutch banks join forces to combat money laundering*, NEDERLANDSE VERENIGING VAN BANKEN (Sept. 19, 2019), https://www.nvb.nl/english/dutch-banks-join-forces-to-combat-money-laundering/.

[16] *Transaction Monitoring Netherlands: a unique step in the fight against money laundering and the financing of terrorism*, NEDERLANDSE VERENIGING VAN BANKEN (July 08, 2020), https://www.nvb.nl/english/transaction-monitoring-netherlands-a-unique-step-in-the-fight-against-money-laundering-and-the-financing-of-terrorism/.

[17] *I.e.*, the Netherlands Terrorist Financing Taskforce (NL-TFTF), the Netherlands Fintell Alliance (FA-NL), and the Netherlands Serious Crime Taskforce (NL-SCTF).

[18] *Germany sees record spike in money laundering cases – report*, DEUTSCHE WELLE (Aug. 18, 2020), https://www.dw.com/en/germany-sees-record-spike-in-money-laundering-cases-report/a-54603783.

spot problems," particularly after the collapse of Fintech firm Wirecard.[19] Wirecard is now subject to investigation, including in relation to alleged money laundering by its employees.[20]

TMNL will be a welcome development for Dutch enforcement agencies, which should reap the reward for innovation and substantive action in the private sector to better comply with AML laws. TMNL's future success could be a win-win for any participating banks as well as regulators and enforcement agencies: the banks can reduce their risk of facing the record penalties of recent years, and regulators and enforcement agencies can expend fewer resources investigating and compiling and combining the complex financial data reported by (or requested from) individual banks, effectively shifting part of the analytical burden to the banking industry itself.

Law enforcement and financial services regulators around the world will have a keen and vested interest in the progress and results of TMNL, which may mark a significant turning point in the evolution of anti-money laundering and counter terrorist financing reporting around the globe.

[19] *German prosecutors open Wirecard money laundering probe*, REUTERS (July 9, 2020), https://www.reuters.com/article/us-wirecard-accounts-probe/german-prosecutors-open-wirecard-money-laundering-probe-idUSKBN24A1EH.
[20] *Id.*