



Changes in the WWFT, effective from 1 January 2013

How will the changes affect you?

Several provisions in the Money Laundering and Terrorist Financing (Prevention) Act (Wwft) have been altered, with effect from 1 January 2013.

Below, you will find a description of the main changes. This brochure outlines the provisions directly related to the duty to report and the FIU-TheNetherlands which may affect you as a reporting institution.

The main changes include the following:

- The **client screenings** which have to be carried out by the institutions has become stricter. This is due to the widespread use of strawmen, and the role of the Ultimate Beneficial Owner (UBO) and of Politically Prominent Exposed Persons (in Dutch: PEP). The latter two terms (UBO and PEP) have been redefined.
- The definition of the term '**transaction**' has been amended and is now: **an act, or a combination of acts, by or for the benefit of the client that has come to the attention of the institution in the course of its services to the client in question**. No direct or causal link between the unusual transaction and the institution's services is required. In principle, the time at which an unusual transaction took place has **no bearing** on the duty to report.
- The term '**UBO**' has been redefined. A natural person who is the beneficiary of 25 percent or more of a client's or trust's assets now also falls within the scope of the Wwft.

New and newly defined institutions:

The duty to report unusual transactions has been expanded. The changes in the Wwft under Article 1, paragraph 1, sub a, 'institution' are listed below:

- 9° Branches of electronic money institutions and payment service providers are now included in the list of institutions that are subject to the Wwft.
- 11° Accountants' professional activities are also to include forensic activities. Independent forensic accountancy activities, including fraud investigations, are part of an accountant's professional activities and thus fall within the scope of the Wwft, irrespective of whether these activities are carried out as part of the compilation, assessment or auditing of the annual accounts.
- 12° A lawyer or civil-law notary who acts as an advisor on or assists in the purchase or sale of **property subject to registration** is now also defined as an 'institution'. The term 'real estate' has been replaced by 'property subject to registration', which extends the scope of the Article to goods other than real estate.
 - d. Advice on or assistance in the purchase or take-over of **part of a company** that is substantial enough to make a person an ultimate beneficial owner as a result of the transaction. In the case of the transfer of (part of) a company, this will apply in particular when a natural person acquires an interest of more than 25% in the capital of the company, or more than 25% of the voting rights in the company's general shareholders meeting.
 - f. Advice on or assistance in establishing a right of mortgage on property subject to registration, without the additional transfer of title.
- 19° Payment services provided by a payment service provider with a registered office in another member state with a permit issued in that country.
- 22° New institution: **electronic money institution**
- 23° Independent new or existing institution: **independent tax advisor**. A company or natural person that professionally provides tax advice on an independent basis or is engaged in similar activities.
- 24° New institution: independent or employed professional real estate surveyor.

The name of the Office for the Disclosure of Unusual Transactions has been changed to Financial Intelligence Unit (FIU), in line with the terminology used within the European Union. The term FIU is used in the third European Directive on money laundering (2005/60/EC) and in Regulation no. 2006/1781/EC.

If a transaction or planned transaction is found to be unusual, it must be reported **without delay**, as soon as the unusual nature of the transaction comes to light. The maximum period of 14 days no longer applies. A third and a fourth clause have also been added. The third clause refers to the real estate surveyor, and the fourth clause broadens the term '**planned transaction**' to include '**contemplated transaction**'.

To be eligible for the right of indemnity from criminal liability and indemnity against civil liability regarding a reported transaction, the Act now explicitly includes the condition that a unusual transaction report must be submitted in **good faith**. This also applies to data and information provided pursuant to Article 17.

In addition to indemnity from criminal liability with regard to answers to Article 17 requests (provided in good faith), the institution responding to the Article 17 request **cannot be held liable under civil law**. This stipulation, which did not appear in the old Wwft, is now included in Article 20, paragraph 1.

The description of 'feedback' (Article 13, sub c) has been changed. Feedback now means that an institution will be informed of:

- receipt of a report submitted by the institution in question;
- **receipt of further details or intelligence provided by the institution in question;**
- trends and phenomena that emerge from the received information;
- and, where relevant, in the event of the public prosecution service intervening, the bearing of a report by the institution in question on the prosecution of criminal offenses.

It should be noted that, in the context of providing feedback, the observations of FIU-The Netherlands in the form of analyses and reports are of increasing importance. Reporting institutions are officially informed about detected trends and conspicuous phenomena. This will enable them to scrutinize certain transactions more closely in order to determine whether they pose a risk, are unusual and should therefore be reported.

Introduction of the **information exchange regulation for supervisory authorities**. Information exchange, both between supervisory authorities and at the international level, is being facilitated for monitoring tasks. For this purpose, the relevant confidentiality clauses have been altered.

An institution must **properly determine, record, and save all (unusual) transaction data for a period of five years**, to enable reconstruction of the transaction.

The institution must provide **periodic training** to enable their employees to properly screen clients and recognize unusual transactions.

As indicated above, the changes outlined in this information leaflet constitute the main changes. **The full text of the adjusted Wwft** and the accompanying Explanatory Memorandum can be found on the **FIU-The Netherlands website: www.fiu-nederland.nl**.

Contact and Questions

FIU-The Netherlands hopes that this information leaflet will provide sufficient information related to the amendments of the Wwft. Please contact the FIU-The Netherlands Service Desk if you have any further questions.

We are happy to answer all your questions and can be reached on weekdays from 08:30am to 16:30pm via the following telephone number +31 (0)88 - 662 95 00, or by e-mail: info@fiu-nederland.nl

Additional information about FIU-The Netherlands, the duty to report, and the applicable legislation and regulations can be found at:

FIU-The Netherlands
www.fiu-nederland.nl

Ministry of Security and Justice /
Ministry of Finance
www.rijksoverheid.nl