HUMAN RIGHTS IN FINANCE .EU

https://hrif.eu/

Transaction monitoring in finance

Roosevelt College

March 8, 2024

1. Where does HRIF.EU come from?

Greetings from the Netherlands !!!

- The Netherlands:
  - From Republic (1648) via French to Monarchy (1814)
  - 17,6 million inhabitants today
- What are we famous for?
  - Cheese, bicycles, Rembrandt, Cruyff and tulips of course
  - The ‘golden age’, financial innovations as East/West India Company: worldwide corporations and the first shares
- **Essence of Dutch business model since 1600:**
  - **Corporations bring profit and are strongly facilitated**
  - **Infringement of human rights is: collateral damage**
  - **Very slow and unwilling learners in terms of human rights – apologies in december 2022**

Government apologises for the Netherlands’ role in the history of slavery

News item | 19-12-2022 | 16:18

In a speech this afternoon, Prime Minister Mark Rutte apologised for the past actions of the Dutch State: to enslaved people in the past, everywhere in the world, who suffered as a consequence of those actions, as well as to their daughters and sons, and to all their

Involvement of DNB and former board members in slavery

DNB acknowledged on 9 February 2022 that it had been involved in slavery between 1814-1863. For example, part of DNB's start-up capital was derived from the proceeds of slavery. Moreover, certain board members were personally involved in the trade in enslaved people. Many defended slavery's existence and its prolongation. Later, many disregarded the consequences of slavery for a long time. When slavery was abolished, DNB paid compensation to plantation owners on behalf of the Ministry of Colonies, including to DNB board members.

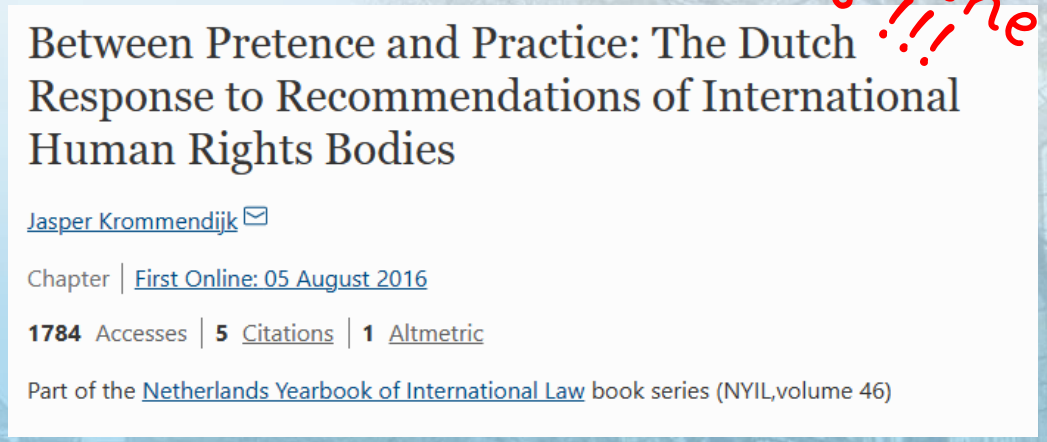
Klaas Knot, President of DNB: *"Today, on behalf of De Nederlandsche Bank, I apologise for these reprehensible facts. I offer our sincere apologies to all descendants of enslaved people in the Netherlands, in Suriname, in Bonaire, Sint Eustatius and Saba, in Aruba, Curaçao and Sint Maarten. I apologise to all those who, because of the personal choices of many, including my predecessors, were reduced to the colour of their skin. Over the past few months, I have heard many personal stories – stories of suffering, but also of resistance and struggle. I heard painful stories. I learned a great deal. And it hurt. What I heard brought the suffering of the past and present very close to home. The conversations I had made it clear that the suffering of long ago is far from over, that the fight is far from over."*

Read the full speech that Klaas Knot gave today at Keti Koti.

Human rights: pretence and practice

Greetings from the Netherlands !!!

Prof. Dr. Jasper Krommendijk is Professor of human rights at Radboud University Nijmegen and Director of the Research Centre for State and Law (SteR). He is the new Chair of the NNHRR (Netherlands Network of Human Rights Research) Steering Committee -> Jean Monnet Chair on the Rule of Law in the national and EU legal orders (EURoLNAT)



Between Pretence and Practice: The Dutch Response to Recommendations of International Human Rights Bodies

Jasper Krommendijk

Chapter | First Online: 05 August 2016

1784 Accesses | 5 Citations | 1 Altmetric

Part of the Netherlands Yearbook of International Law book series (NYIL,volume 46)

While The Netherlands champions itself as a leading human rights country that takes international human rights criticism seriously, the preliminary reaction of government officials or Member of Parliaments (MPs) to international criticism is often defensive.

This gap between pretence and practice can, however, be bridged and change can be realized when (international) recommendations are taken up and lobbied on by domestic actors.

HUMAN RIGHTS IN FINANCE .EU

HRIF.EU

Human Rights in NL: 2018 – 2020

Greetings from the Netherlands !!!


United Nations | UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER

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Landmark ruling by Dutch court stops government attempts to spy on the poor – UN expert

…5 February 2020


de Rechtspraak

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Rechtbank Den Haag > Nieuws > SyRI-wetgeving in strijd met het Europees Verdrag voor de Rechten voor de Mens

SyRI-wetgeving in strijd met het Europees Verdrag voor de Rechten voor de Mens

The litigation revolved around a tool called "System Risk Indication" (SyRI). Used to identify specific individuals as more likely to commit benefit fraud, it gives central and local authorities wide-ranging powers to share and analyze data that was previously kept in separate "silos".

SyRI employs a hidden algorithmic risk model and has been exclusively targeted at neighborhoods with mostly low-income and minority residents. Through SyRI, entire poor neighborhoods and their inhabitants were targeted and spied on digitally, without any concrete suspicion of individual wrongdoing.

A broad coalition of human rights and welfare rights groups, joined by concerned citizens, sued the Dutch state in 2018, claiming that SyRI violates regionally and internationally protected human rights norms.

Last year, the Special Rapporteur provided to the court a detailed human rights **analysis**, in which he concluded that SyRI discriminates against the poorest members of Dutch society and undermines their internationally protected human rights to privacy and to social security.

Human Rights in 2020 – 2021

Greetings from the Netherlands !!!

On 7 December 2021, the Dutch Data Protection Authority (Autoriteit Persoonsgegevens, DDPA) imposed a penalty of EUR 2.75 million on the Minister of Finance (Minister)

for the processing of personal data by the Tax Administration (Belastingdienst) in violation of the General Data Protection Regulation (GDPR) and the Dutch Personal Data Protection Act (Wbp).

Facts

The DDPA investigated the Tax Administration's processing of the (dual) nationality of applicants for childcare benefits and published its investigation report dated 16 July 2020, "Tax Authority/Benefits, Processing of the Nationality of Applicants for Childcare Benefits ↗ " (Investigation Report).

The Investigation Report reveals that the DDPA concluded that three of the data processing operations were unlawful. Firstly, the Tax Administration stored the dual nationality of applicants in the 'Benefits Provision System' (Toeslagen Verstrekking Systeem, TVS) without these data being necessary for the performance of its task. Secondly, the Tax Administration used the applicants' nationality as an indicator in a risk classification model (a system that automatically selects risky applications for the allocation of staff capacity). Thirdly, the Tax Administration used the applicants' nationalities for the purposes of detecting fraud.

The DDPA not only concludes that the processing is unlawful, but in respect of two of the processing operations it also concludes that these are discriminatory and improper.

Human Rights in 2020 – 2021

Greetings from the Netherlands !!!

THE GUARDIAN
Netherlands

“Dutch government resigns over child benefits s

Jon Henley *Euro*
@jonhenley

Fri 15 Jan 2021

As many as 26,000 parents were wrongly accused by the Dutch tax authorities of fraudulently claiming child allowance over several years from 2012, with as many as 10,000 families forced to repay tens of thousands of euros, in some cases leading to unemployment, bankruptcies and divorces.

The tax authority admitted last year that at least 11,000 were singled out for special scrutiny because of their ethnic origin or dual nationality, fuelling longstanding allegations of systemic racism in the Netherlands.

Orlando Kadir, an attorney representing about 600 families, said people had been targeted “as a result of ethnic profiling by bureaucrats who picked out their foreign-looking names”. The government has apologised for the tax

…m) in compensation,

…mentary report, …which concluded that …iolated”.

…, denounced the … Ministers, MPs, civil …ility, said the report, …way it provided

NL#TIMES

TOP STORIES HEALTH CRIME POLITICS BUSINESS T

Over 1,100 children taken from homes of benefits scandal victims

Between 2015-2020, 1,115 children were taken from the homes of family members who were later found to be victims of the childcare benefits scandal, according to the CBS, the Dutch national statistics office. The office, known as Statistics Netherlands in Enhlish, carried out the study on behalf of the Ministry of Justice and Security.

In the child benefits scandal, thousands of parents were falsely labeled as fraudsters by the tax authorities. The extra scrutiny was often the result of ethnic profiling, or because one parent was a citizen of more than one country.

Human Rights in EP 2022

Greetings from the Netherlands !!!

Parliamentary question - O-000028/2022
European Parliament

Download

The Dutch childcare benefit scandal, institutional racism and algorithms

28.6.2022

> Answer in plenary

Question for oral answer O-000028/2022

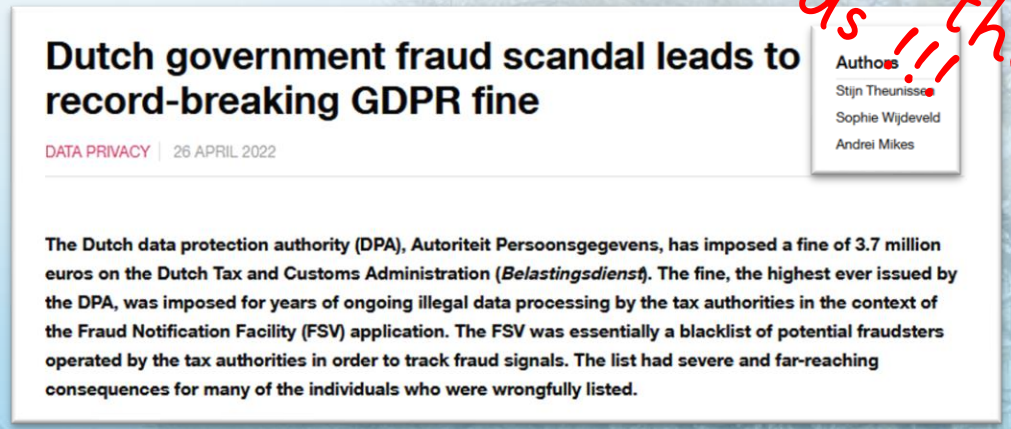
The Dutch Government did not react or reacted slowly to the worrying signs and calls from various sectors of society. Victims spent years fighting for recognition and some are still pursuing recognition today. After the resignation of the Dutch Government, the families were promised advance payments or compensation. Unfortunately, due to the broadening scope and complexity of this case, most families have never received compensation. It is also important to realise that some damages – like the loss of a child or a broken relationship – cannot be compensated for so a different approach is needed to offer redress to the families.

1. What has the Commission done about this clear breach of the fundamental rights of EU citizens, which would have justified initiating an infringement procedure in the more than two years since the scandal was brought to light?

Human Rights in 2022

Greetings from the Netherlands !!!

On 7 April 2022, the Dutch Data Protection Authority (Autoriteit Persoonsgegevens, DDPA) imposed a penalty of EUR 3.7 million on the Minister of Finance (Minister)



Dutch government fraud scandal leads to record-breaking GDPR fine

DATA PRIVACY | 26 APRIL 2022

Author
Stijn Theunisse
Sophie Wijdeveld
Andrei Mikes

The Dutch data protection authority (DPA), Autoriteit Persoonsgegevens, has imposed a fine of 3.7 million euros on the Dutch Tax and Customs Administration (*Belastingsdienst*). The fine, the highest ever issued by the DPA, was imposed for years of ongoing illegal data processing by the tax authorities in the context of the Fraud Notification Facility (FSV) application. The FSV was essentially a blacklist of potential fraudsters operated by the tax authorities in order to track fraud signals. The list had severe and far-reaching consequences for many of the individuals who were wrongfully listed.

for the processing of personal data by the Tax Administration (Belastingdienst) in violation of the General Data Protection Regulation (GDPR) by maintaining a multitude of fraud-signalling records and databases, widely distributed and unchecked.

- lack of legal basis, lack of limitation to purpose, inaccurate data, insufficient security measures and transgression of limitations to data storing, lack of involvement of Data Protection Officer

Greetings from the Netherlands !!!

Dutch Ministry of Finance is by far the biggest infringer of human rights

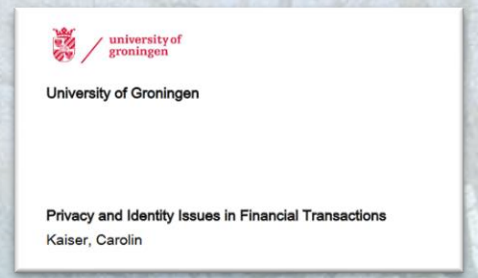
- Ministry of Finance tops the list of GDPR fines in the Netherlands
- Effectively the Data Protection Authority has an even bigger list of transgressions available but it seeks to spend resources wisely and they hope the message is now better understood at the Ministry of Finance / Tax Authority

Ministry of Finance / Tax Authority	12-4-2022	3.700.000
Ministry of Finance / Tax Authority	7-12-2021	2.750.000
BKR (credit register of banks)	6-7-2020	830.000
TikTok	22-7-2021	750.000
Unknown	30-4-2020	725.000
City Enschede	29-4-2021	600.000
VoetbalTV	16-7-2020	575.000
Ministery Foreign Affairs	6-4-2022	565.000
KNLTB (tennis union)	3-3-2020	525.000
Locatefamily.com	12-5-2021	525.000
DPG Media (Sanoma)	24-2-2022	525.000
Booking.com	31-3-2021	475.000

Source: https://www.dirkzwager.nl/kennis/artikelen/overzicht-opgelegde-boetes-en-lasten-onder-dwangsom-door-autoriteit-persoonsgegevens/

Greetings from the Netherlands !!!

2018: Thesis of C. Kaiser on financial privacy evaluates AMLD5 against COJ-rulings and rule of law and finds infringements


university of groningen

University of Groningen

Privacy and Identity Issues in Financial Transactions

Kaiser, Carolin

Based on the existing case law of the CJEU, it can be argued that the measures of the Directive go beyond what is necessary to achieve the aim pursued. The measures cut too deeply into the privacy of customers to be considered in accord with the principle of proportionality. The rights to privacy and data protection are not properly balanced with the interest in facilitating the fight against serious crime. Therefore, the measures of the Anti-money laundering Directive do not properly respect the principle of proportionality.

The design of the measures raises some concerns about their compatibility with the rights to privacy and data protection. There are several concerns that can be raised in this context, the most striking of which are the mass surveillance character of the measures, the lack of safeguards for sensitive categories of data, the excessive retention periods, and the lack of procedural safeguards ensuring the protection of the rule of law. Based on the existing case law of the CJEU, it can be argued that the measures of the Directive go beyond what is necessary to achieve the aim pursued. The measures cut too deeply into the privacy of customers to be considered in accord with the principle of proportionality. The rights to privacy and data protection are not properly balanced with the interest in facilitating the fight against serious crime. Therefore, the measures of the Anti-money laundering Directive do not properly respect the principle of proportionality.

The CJEU is exclusively competent to rule on the proportionality of a European directive. In the event that the Anti-money laundering Directive is challenged before the Court, and if the CJEU agrees with the assessment made in this thesis, the Court will invalidate the Anti-money laundering Directive. The anti-money laundering measures would have to be redrafted with the consideration due to the proper respect for human rights. This would essentially cause a shift to the warrant-system, according to which law enforcement authorities must identify a suspect and obtain a judicial authorisation for the access to specific sets of data held by certain service providers. This obligation to obtain a warrant would grant data subjects the higher level of protection of judicial review. The quick-freeze system

Greetings from the Netherlands !!!

2019: Repeated advice from AP (Data Protection Authority) as to mass surveillance character of AMLD and unlawfulness / disproportionality

March 2019 =

- First off, it is a fact that the anti-money laundering directive has not been declared invalid. Furthermore, the government has the obligation to implement the proposed amendment to the directive. On the other hand, as indicated by the judgment of the Court of Justice of the EU in the Digital Rights Ireland case, the question arises as to whether the anti-money laundering directive and its implementation comply with the right to the protection of personal data, as enshrined in, among others, the Charter; specifically, whether the anti-money laundering directive, amending directive, and (proposed) implementation legislation adhere to the principle of proportionality. Noteworthy aspects include the "mass surveillance" nature of customer due diligence, resulting in the continuous monitoring of almost every EU citizen and masses of citizens outside the EU. Additionally, some other privacy safeguards are underdeveloped, such as the right to access and the notification obligation after a non-prosecutorial financial intelligence unit investigation. In the context of the proposed implementation, the powers for data exchange are further expanded (see points 2 and 3 for more details in this advice), making the question of the proportionality of the overall system even more pressing.
- In Article 65 of the amending directive, it is stipulated that no later than January 11, 2022, and subsequently every three years, the Commission shall prepare a report on the application of this directive, submitting it to the European Parliament and the Council. This report explicitly addresses the manner in which the fundamental rights and principles recognized in the Charter are respected. The Dutch Data Protection Authority (AP) advises, to the best of its ability, to promote that on that occasion, the proportionality of the anti-money laundering directive in relation to the right to the protection of personal data is thoroughly addressed.

Dutch Ministry of Finance on purpose does more than needed when implementing EU rules

- It wrote the a law on settlement systems (wet op afwikkelsystemen) which is a Dutch law with no EU counterpart, to implement a 1980s policy promise to the central bank, leading to fragmented payment settlement market for Dutch services
- It converted the PSD2 registration regime for Payment Information Service Providers (which needed to be a registration) into a licensing regime on request of the Dutch central bank, while the PSD2 said registration,
- It was doing exactly the same when setting up a 'registration regime' for crypto, without paying respect to the legal history of the AMLD5 and the rule of law – see complaint part 1
- It is committed to keep a 1992 choice/structure of unusual transaction reporting intact where the directive says suspicous transactions reporting – see complaint ; and is providing state aid to a group of Dutch banks in order to maintain this mechanism even when AML-regulation comes in – see complaint part 2

Greetings from the Netherlands !!!

Dutch Ministry of Finance on purpose does more than needed when implementing EU rules

30-6-2019: “Our goal is to ensure an honest and secure financial system. We will achieve this together with the supervisory authorities, law enforcement agencies, FIU-Netherlands, the Public Prosecution Service, and the involved parties in the sector. With this collective effort, we aim to elevate the fight against money laundering to a higher level. In 2021, the effectiveness of the measures taken by the Netherlands to combat money laundering and terrorist financing will be evaluated by the Financial Action Task Force (FATF). To enhance the effectiveness of our system, several steps still need to be taken, to which this action plan makes a significant contribution. We aspire to be international leaders in the fight against money laundering, and we view the evaluation by the FATF as an important benchmark to assess our progress.”

14-1-2020:” We utilize innovative initiatives, such as a pilot Serious Crime Task Force, a collaborative working group involving banks, supervision, and law enforcement focusing on Trade-Based Money Laundering (TBML), and the creation of opportunities for joint transaction monitoring. With these initiatives, we go beyond what international standards prescribe. We refer to our ambition to be among the leaders in the evaluation by the Financial Action Task Force (FATF) in 2021.” - https://open.overheid.nl/documenten/ronl-16a17f5d-8695-41e3-8b0d-01d9046493b9/pdf

Greetings from the Netherlands !!!

Evaluations of anti-money laundering policies are critical on the tight-knit cooperation between selected private/public actors

- See the evaluation report here, over the years 2016-2018, with delivery well delayed beyond normal timelines
- “In addition, a number of critical observations can be made with regard to the way in which information is shared and cooperation platforms set up. (1) The Dutch cooperation platforms and also the Dutch field of actors involved in combating terrorist financing are characterized by proximity. Although this is of great importance for the trust between the actors and contributes to the effectiveness of the system, it also raises questions about how this close collaboration and familiarity with each other(´s organisations) relates to critical supervision (how to prevention 'group think'?), objective accountability and a clear understanding who can be held responsible and liable for what”
- Extending and ensuring the legal basis of these initiatives can benefit from a public and informed discussion about effectiveness, proportionality and procedures.

Greetings from the Netherlands !!!

Greetings from the Netherlands !!!

And the Dutch Ministry of Finance staff knows the legal basis is a 'point of attention'

- And the latest briefing of this month for new Minister outlines the issue of legal basis the staff identify on data protection-exchange

- "An additional point of attention is the (legal basis for) the exchange of data between public and private parties among themselves and between public and private entities"

BEHANDELING	Voor zowel de witwasbestrijding, als de aanpak van ondermijning is er een voortdurende stukkenstroom richting de Tweede Kamer (TK). Ook worden met enige regelmaat schriftelijke Kamervragen gesteld. Met betrekking tot het nationaal plan van aanpak witwassen gaat er regulier een voortgangsrapportage naar de TK, de laatste rapportage dateert van december 2020. De evaluatie voor 2021-2022 van de Financial Action Taskforce (FATF) is onlangs gestart. In deze evaluatie wordt de Nederlandse aanpak van witwassen en de financiering van terrorisme beoordeeld. Over de recente toewijzing van extra middelen voor de aanpak van ondermijning is er op 4 oktober 2021 vanuit JenV een brief naar de TK gestuurd.
AMBTELIJKE BELEIDSOPVATTINGEN	Gegeven de politieke aandacht voor en investeringen in de witwasbestrijding en de aanpak van de ondermijnende criminaliteit ligt de uitdaging er voor overheidspartijen om onder meer in samenwerking met private partijen te laten zien wat er aan resultaat wordt geboekt. Het gaat om het sorteren van effect en impact over de hele keten heen. Voor de FIOD, Douane en de Belastingdienst gaat het om de resultaten die in de vele samenwerkingsverbanden worden bereikt met inzet van het toezicht en/of de opsporing. Aandachtspunt daarbij is de (juridische basis van) uitwisseling van gegevens tussen publieke en private partijen onderling en tussen publiek-privaat

Source: https://www.dirkzwager.nl/kennis/artikelen/overzicht-opgelegde-boetes-en-lasten-onder-dwangsom-door-autoriteit-persoonsgegevens/

Meanwhile, Dutch customers have had enough of all the instrusion and excessive anti-money laundering policies

- AVRO/TROS Radar has highlighted the issue in 2 television shows, which received a lot of attention.
- Petition of HRIF.EU asking MPs to reduce the excessive Dutch bank methods/supervision approach and ensure availability of bank accounts to all reaches almost 15.000 subscribers.

Foundation Human Rights in Finance.EU

Safeguarding human rights in European financial regulation

Petitie HRIF.EU aan 2e Kamer: stop overmatige witwasonderzoeken, bescherm de mensenrechten van Nederlandse bankklanten en veranker het recht op een betaalrekening!

november 28, 2023

U kent het verschijnsel wel. Opeens is je bankrekening geblokkeerd. En dan vraagt de bank met heel korte tijdlijnen om gedetailleerd allerlei privé-informatie aan te leveren. Doe je niet mee dan kan je rekening worden opgezegd. En alles onder de toon van: u moet bewijzen dat u geen witwasser or terrorist bent. Zowel het grondrecht op privacy, eigendom en je recht om onschuldig beschouwd te worden is dan in het geding. Consument én bedrijf hangt dan het intrekken van de betaalrekening boven het hoofd of het op een zwarte lijst komen.

Minder inbreuk op privacy en recht op betaalrekening!

Stop nú de overmatige witwasmonitoring en verstevig het recht op betaalrekeningen

14.471 ondertekeningen

In Nederland moet de meldplicht ongebruikelijke transacties per direct aangepast naar melding verdachte transacties, zodat burgers en bedrijven niet onnodig het hemd van het lijf wordt gevraagd. Het recht op (behoud van) betaalrekening moet voor burger en bedrijf in de wet verankerd worden.

Greetings from the Netherlands !!!

In sum: greetings from the Netherlands

- The Dutch history, business model and current governments attitude is characterised by a lack of respect for human and fundamental rights. We are very slow learners.
- Human Rights in Finance.EU was set up to speak up on behalf of all infringed citizens/companies and to speed up the learning process and prevent harm from being done/continued
- We have the relevant Dutch scientific analysis available to balance human rights properly as well a Data Protection Authority with sufficient brain power but this perspective is not sufficiently appreciated and taken on board
- The Ministry of Finance in particular displays a fundamental lack of respect for human rights and EU rule of law in both its role as a Tax Authority and its responsibilities for intrusive AML-regulations and overexcessive implementations of EU rules
- The managerial focus at the Ministry of Finance is skewed due to their agent-principle hostage situation with financial supervisors and a groupthink constellation with law enforcement community, large banks and the FIU
- The Ministry of Finance provides the Data Protection Authority with 40 million for supervision of all sectors while the central bank gets a free pass to invoice the full supervision cost of 240 million euro to the subjects/companies under supervision.

Greetings from the Netherlands !!!

The assignment - preparation

- Pay close attention to the upcoming explanation of legal rules and transaction monitoring. Keep in mind the assignment

  - *You are an entity in the Netherlands that is subject to the provisions of AML-law and you consider the requirements going beyond what EU law requires.*

  - *What are the different legal avenues that you can pursue and on what basis would you challenge it?*

ANTI MONEY LAUNDERING DIRECTIVE (EU) 2015/849

1. Member States shall require obliged entities, and, where applicable, their directors and employees, to cooperate fully by promptly:
   (a) informing the FIU, including by filing a report, on their own initiative, where the obliged entity knows, suspects or has reasonable grounds to suspect that funds, regardless of the amount involved, are the proceeds of criminal activity or are related to terrorist financing
   (b) providing the FIU, directly or indirectly, at its request, with all necessary information,

All suspicious transactions, including attempted transactions, shall be reported

DUTCH AML-LAW - WWFT

Wwft-Artikel 16
•**1** Een instelling meldt een verrichte of voorgenomen ongebruikelijke transactie onverwijld nadat het ongebruikelijke karakter van de transactie bekend is geworden, aan de Financiële inlichtingen eenheid."

Wwft-Article 16
•1 An institution reports a completed or proposed unusual transaction to the Financial Intelligence Unit immediately after the unusual nature of the transaction has become known.

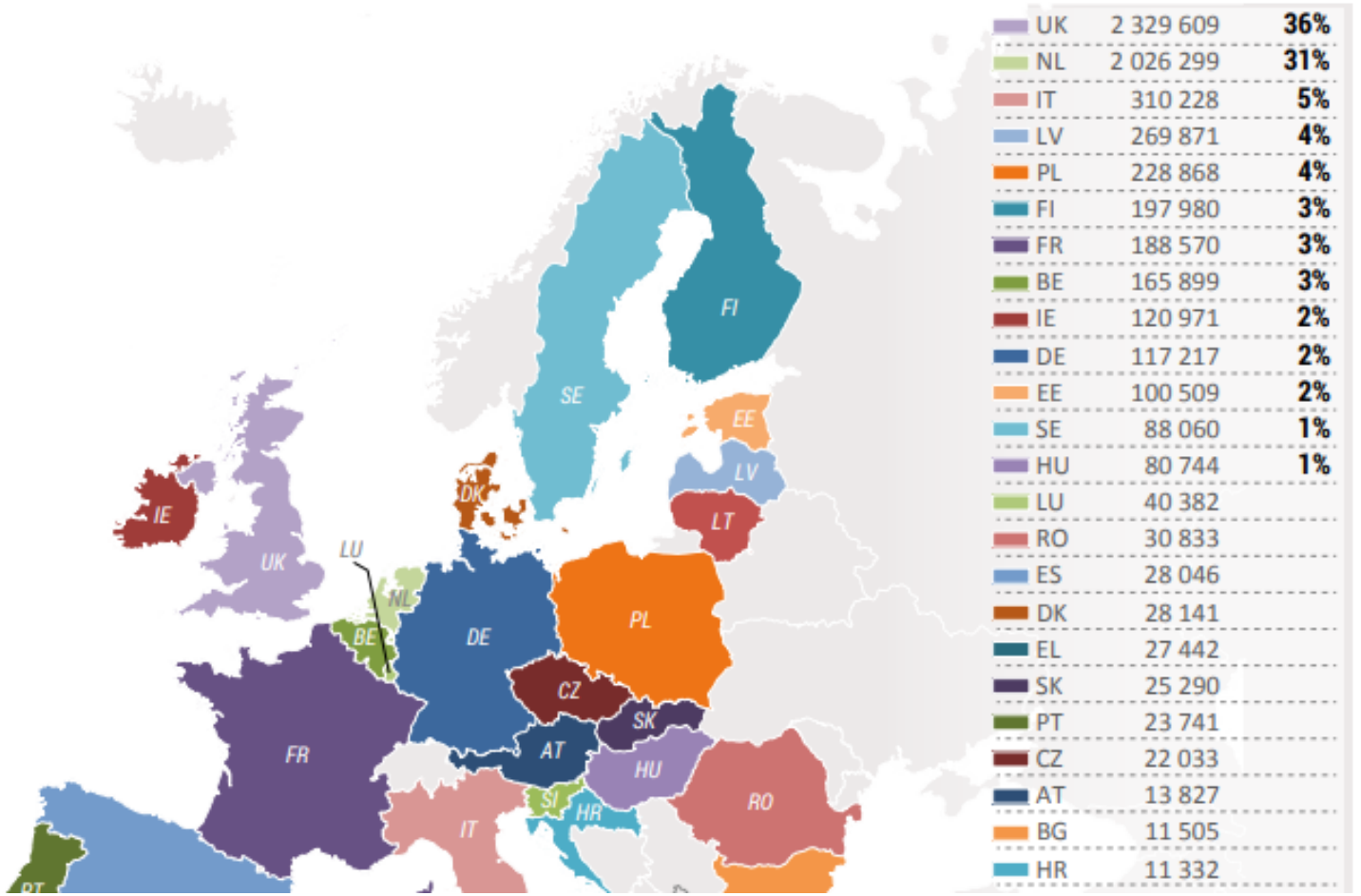
FIU decree
On the basis of the tasks assigned in the Wwft and the Wwft BES, the head of FIU-Netherlands is independently and exclusively authorized to:
   a. declare unusual transactions suspicious;

HUMAN RIGHTS IN FINANCE .EU

Europol report 2017: from suspicion to action

Reporting volumes in the Netherlands, given the size of its territory, population and financial sector, are anomalous. The very high number of reports received by the Dutch FIU can be explained by way of the fact that they do not receive STRs, but rather Unusual Transaction Reports (UTRs) from reporting institutions. The vast majority of these reports stem from money transfer offices that are obliged to report all transactions in excess of EUR 2000 ([8]). After investigation by the FIU, an unusual transaction may be declared suspicious and all STRs are forwarded to investigation services. Only a small proportion of the reports received by the Dutch FIU are declared suspicious (on average around 15%), meaning that much of the reporting is rarely utilised for investigative purposes ([9]).

Chart 2 — Total reports across all Member States (2006 - 2014)



HUMAN RIGHTS IN FINANCE .EU

PRIVATE PLAYERS

Financial Intelligence Unit => GO-AML systeem

POLICE

MONITORINGS-DUTY

Banks and obliged entities

Suspicious transaction database

Information exchange under respective laws

Banks and obliged entities

Unusual transaction

Unusual transaction database

1. FIU-research and conclusion: suspicious

2. Matching with all police records

- VROS
- CJIB
- LovJ

Suspicious transaction database

Exchange - Recursive feedback

Latest data on Dutch anomaly

	Reports: 1 per x inhabitants. X=	Absolute number of reports	Population size		
Nederland	9	1.896.176	17564000	1896176	0
Ierland	110	47.421	5200000	160174	1.736.002
België	216	53.923	11650000	81296	1.814.880
Zweden	234	45.113	10549000	75113	1.821.063
Duitsland	247	337.186	83369000	71038	1.825.138
Italië	379	155.426	58900000	46348	1.849.828
Frankrijk	417	162.708	67800000	42150	1.854.026
Estland	871	14.920	13000000	20158	1.876.018
Roemenië	1239	16.065	19900000	14179	1.881.997
Oostenrijk	1503	6.053	9100000	11683	1.884.493
Tsjechië	1709	6.145	10500000	10279	1.885.897
Spanje	3704	12.796	47400000	4742	1.891.434
Polen	9079	4.505	40900000	1935	1.894.241
				44925	1.851.251

If NL would do things the Irish way, they would report 160.174 trx meaning 1.736.000 reports do not have to be sent

If NL would do things the EU large countries way, they would report 44.925 trx meaning 1.851.251 reports do not have to be sent

The problem

- An **unusual** transaction is not necessarily a **suspicious** transaction.

- Incorrect transposition of Article 33 in national law ?

The assignment

- You are an entity in the Netherlands that is subject to the provisions of this law and you consider the requirements going beyond what EU law requires.

- The bank management grumbles stuff like:
  - Ineffective creation of ‘noise’ for Financial Intelligence Units
  - Risk of violating privacy rights
  - Costly workload

- What are the different legal avenues that you can pursue and on what basis would you challenge it?

Prompt – and image bij OPEN AI

In a bustling classroom, a diverse group of students is huddled together in small groups. Each group represents a mix of backgrounds, cultures, and identities. Some students are discussing ideas in animated conversations, while others are quietly jotting down notes. Laptops and textbooks are spread out across the tables, and the clock on the wall ticks away, reminding them of the limited time they have to complete their assignment.

The teacher moves around, checking in on each group, offering guidance and encouragement. There’s a sense of camaraderie as students collaborate, sharing their unique perspectives and learning from one another. The big clock, prominently displayed near the front of the room, serves as a visual reminder of the ticking minutes for everyone, regardless of their individual differences.

Possible legal routes

- Court case before national court
  - Disobey law and invite supervisor to fine/request compliance
  - Refuse/dispute administrative decision of supervisor
  - Appeal in court and request check national provision against EU law
  - When in doubt it will refer the case to the CJEU using Article 267 TFEU

- Infringement proceeding (Article 258)
  - A bank can not trigger this, but it can file a complaint with the European Commission in the hope that it will start up that process

- Direct action (Art 263)
  - Not relevant as the EU legislation is not the bone of contention
  - If Directive would have been illegal, it should have been appealed within 2 months of its publication
  - By a privileged applicant
    - (only 1 in 30 non privileged applicants succeed in being allowed to challenge before the General Court)

Possible grounds for action

- AML-based: AML rules must be risk based and proportional to the main risks: terrorist financing and money laundering
  - Dutch implementation violated EU principle of proportionality underlying AMLD directive
  - Dutch outsourcing of monitoring of transactions is prohibited in the Dutch AML-law itself

- GDPR based
  - Defining unusual by means of a transaction amount trigger is an arbitrary infringement of privacy and prohibited under EVRM as well as under data minimization principles of processing of personal data

- Competition based
  - Dutch regime leads to excessive cost of business and local adaptation which are not in line with EU standards – distorts the level playing field and competition

Human Rights in Finance . EU

HRIF.EU addresses human rights infringements to prevent and minimize damages

Ideally our foundation, Human Rights in Finance (EU) prevents human rights infringements in the financial sector from occuring before the damage is done. We do so by writing letters, position papers, sharing expertise and motivating all entities in society to respect human rights. But reality shows there may not always be an open ear to such statements. Therefore, HRIF.EU adds administrative procedures and litigation to the mix. In doing so we seek to encourage correction and ensure proper legal compliance with human rights laws.

We are a small foundation that is connected to a multitude of stakeholders and legal knowledge holders/legal experts. Our wide expertise allows us to identify legal and correction angles which are often overlooked. For example: we used the Bankers disciplinary Oath to confront the top executives of Dutch banks with their personal responsibility for their companies policies.

A range of actions based on knowledge how to do it right !

Experience with the legal routes

- Infringement
  - Webform EU not handy, format/web interface EU Ombudsman is far better
  - guard timelines: ask EU Ombudsman to get response,
  - Use option to explain your grounds to EC (‘invite yourself’)
- Court Case
  - In theory the argument is that local court case may be angle to invalidate law – this is true, but asking for a follow up to commission after the verdict does not appear to yield results
- Anullment / direct action
  - Standing before court: can you as organization be individually concerned under the current interpretations –
  - does the Plauman doctrine hold for privacy matters (where there is by definition no effective remedy afterwards)

Infringement complaint Human Rights in Finance.EU vs Dutch Ministry of Finance

Explanation of grounds for complaint of 12-10-2023 by Human Rights in Finance.EU registered under number CPLT(2023)02904

January 25, 2024

Agenda for the clarification of grounds

1. *HRIF.EU sends you: Greetings from the Netherlands*
2. Court case and relevant prior complaints (2019-2022)
3. Part 1: license regime for crypto instead of registration
4. Part 2: ‘unusual’ unusual transactions reporting regime
5. Urgency and political relevance

HUMAN RIGHTS IN FINANCE .EU

HRIF.EU

Court – 2023: invalidation of Dutch law

Background story
https://moneyandpayments.simonl.org/2021/09/crypto-episode-as-part-of-dutch.html

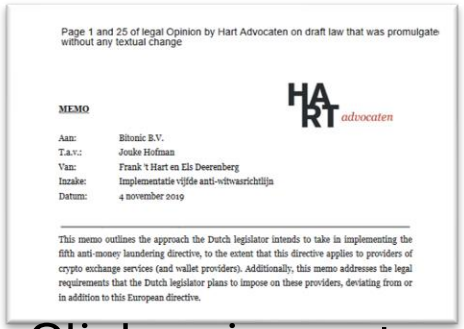
Ruling judge 2023
https://uitspraken.rechtspraak.nl/details?id=ECLI:NL:RBROT:2023:9157

3.7.
The conclusion is that Article 23d, paragraph 1, of the Wwft and Article 23c, paragraph 1, of the Wwft, read in conjunction with Article 1a of the Implementation Decree and Article 3 of the Implementation Regulation, to the extent that these articles go beyond obtaining and assessing the data needed to register a provider under Article 23f of the Wwft in the public register of providers and to test the suitability and reliability of the policymaker(s) and ultimate beneficial owner(s) of the provider, are invalid due to conflict with the scope of the registration obligation laid down in Article 47 of the AMLD5.

3.8.
This invalidity means that the way in which DNB assesses registration requests cannot be partially seen as falling under a task assigned to it by or under the Wwft and the resulting activities."

Relevant prior complaints - 1

- November 2019 - Legal opinion (Hart advocaten) confirms de facto licensing regime being put in place leading to excessive supervision, cost and effectively a license regime



Page 1 and 25 of legal Opinion by Hart Advocaten on draft law that was promulgate without any textual change

MEMO

HART advocaten

Aan: Bitonic B.V.
T.a.v.: Jouke Hofman
Van: Frank 't Hart en Els Deerenberg
Inzake: Implementatie vijfde anti-witwasrichtlijn
Datum: 4 november 2019

This memo outlines the approach the Dutch legislator intends to take in implementing the fifth anti-money laundering directive, to the extent that this directive applies to providers of crypto exchange services (and wallet providers). Additionally, this memo addresses the legal requirements that the Dutch legislator plans to impose on these providers, deviating from or in addition to this European directive.

- Click on image to arrive at Dutch source document

9. Conclusion

9.1 This memo is not aimed at criticizing the decision that providers of crypto exchange services fall within the scope of the Anti-Money Laundering and Counter-Terrorist Financing Act (Wwft).

9.2 However, this memo does raise several critical remarks and highlights some concerns, as the information provided to the House of Representatives gives the impression of a one-to-one implementation of the fifth anti-money laundering directive that aligns with the advice of the Council of State. This is not accurate for several reasons:

(i) The draft bill includes stricter requirements than the directive;
(ii) The draft bill introduces the norm deviating from the directive that a sound and controlled business operation must be ensured;
(iii) The draft bill introduces, under the label of registration, the legal concept of a license with substantive prior assessment;
(iv) The Council of State argued that the directive does not allow for the prescribed registration obligation to be structured as an (enhanced) licensing requirement with prior assessment;
(v) The draft bill thus contains some provisions that resemble and are derived from the Financial Supervision Act (Wft);
(vi) The choice to assign supervision of compliance with the Wft by providers of crypto exchange services to DNB implies that DNB is expected to act as an integrity supervisor. This results in a more intensive supervision in practice than intended by the directive; a supervision more in line with a licensing regime than a registration obligation.

9.3 Returning to what was the purpose of the directive: not to regulate providers of crypto exchange services but to eliminate anonymity in transactions involving virtual currencies. In light of this objective, a genuinely policy-light implementation would be more appropriate.

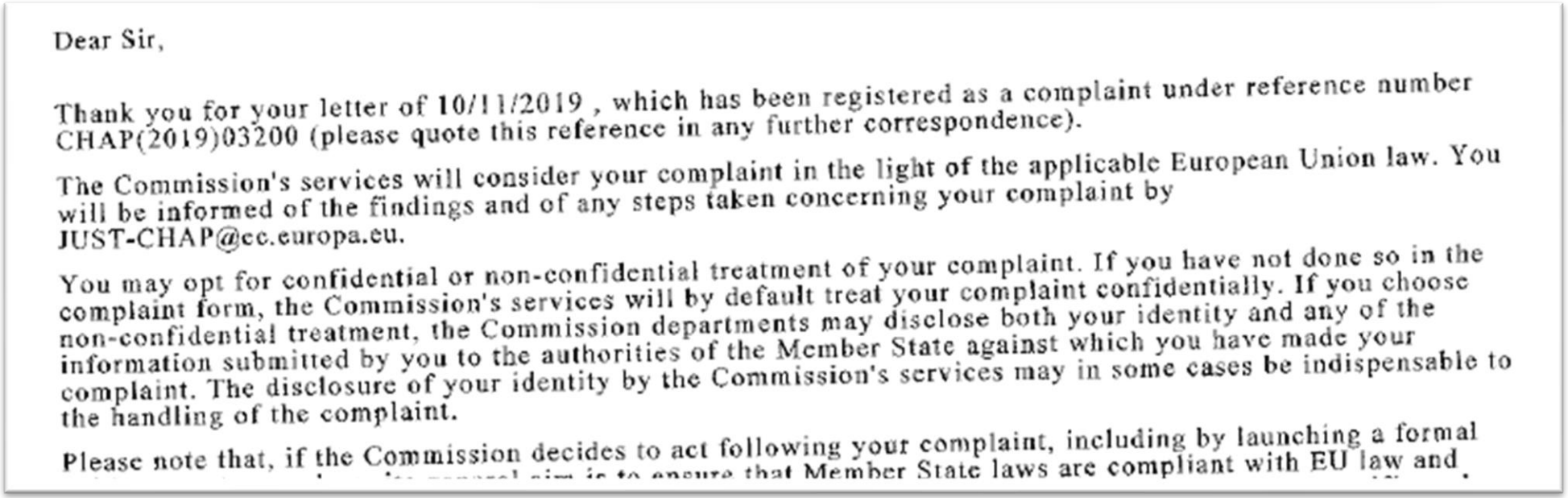
9.4 It must be respected that the European legislator has chosen a registration obligation and that virtual currencies are not within the scope of the Financial Supervision Act (Wft) and thus remain unregulated. The upcoming implementation of the fifth anti-money laundering directive is not intended, as rightly noted by the Council of State, to create a situation where de facto there is a licensing regime.

*****

- 25 -

Relevant prior complaints - 1

- Complaint registered at 15-11-2019, CHAP(2019)03200



Dear Sir,

Thank you for your letter of 10/11/2019 , which has been registered as a complaint under reference number CHAP(2019)03200 (please quote this reference in any further correspondence).

The Commission's services will consider your complaint in the light of the applicable European Union law. You will be informed of the findings and of any steps taken concerning your complaint by JUST-CHAP@ec.europa.eu.

You may opt for confidential or non-confidential treatment of your complaint. If you have not done so in the complaint form, the Commission's services will by default treat your complaint confidentially. If you choose non-confidential treatment, the Commission departments may disclose both your identity and any of the information submitted by you to the authorities of the Member State against which you have made your complaint. The disclosure of your identity by the Commission's services may in some cases be indispensable to the handling of the complaint.

Please note that, if the Commission decides to act following your complaint, including by launching a formal

Relevant prior complaints - 1

- Unexpected documentation of central bank published, confirming the idea/intent to have a license regime, leading to new e-mail on January 10, 2020 (intended implementation date) to Mr Dombrovski, with the request to take decisive action and correct this overstepping of EU law
- See the status update here on medium: https://finhstamsterdam.medium.com/january-10-2020-time-for-the-fifth-eu-anti-money-laundering-directive-but-aa3603070f78

Onderwerp:	AMLD5 infringement - Netherlands - >FW: CHAP(2019)03200 - Your letter of 10/11/2019
Datum:	Fri, 10 Jan 2020 11:53:00 +0200
Van:	Simon Lelieveldt
Aan:	cab-dombrovskis-contact@ec.europa.eu

Dear team of Mr Dombrovski,

I hope this e-mail finds you well, particularly on this day: the day that the AMLD5 should enter into force in the Member States.

As you are aware, some countries, such as the Netherlands do not meet the deadline. For the Netherlands however, the delayed timing should not be the big concern of the European Commission. What should worry you is the fact that the Dutch Ministry of Finance is pushing forward the standard market-supervisory regime for providers of investment objects into the anti-money laundering legislation, labels this as merely a registration, and proclaims this to be the standard, no-frills-added-implementation of the AMLD5.

As a regulatory and policy expert I find the move rather disturbing. It is clear that the EU political decision was to create a proportional registration regime rather than further supervisory regimes. As a result the innovative smaller EU-market players will now be forced out of business, due to higher costs than required with big international (US) companies picking up the market. It is for this reason that I raised my concerns via the infringement procedure (see attached) and I understand from the communications of the Ministry of Finance to our parliament, that indeed the Commission is already actively investigating the status of the AMLD5 implementation in the Member States.

Relevant prior complaints - 1

- Unexpected documentation of central bank published in december 2019, confirming the idea/intent to have a license regime.

- See the letter of DNB here: https://simonl.org/wp-content/uploads/reactie-DNB-op-concept-wetsvoorstel-AMLD5.pdf (in Dutch)

Subject
response DNB to draft law proposal AMLD5

www.dnb.nl

Handelsregister 3300 3396

Datum
07 maart 2019

Uw kenmerk

Ons kenmerk
A049-1233776212-274

Behandeld door

Bijlagen

Dear m.....

At the request of the Ministry of Finance, DNB is responding to the draft proposal amending the Anti-Money Laundering and Counter-Terrorist Financing Act (Wwft) to implement the fifth EU anti-money laundering directive, which was made public for consultation on December 11, 2018.

The draft bill includes, among other things, a licensing requirement for two categories of virtual currency service providers, designating DNB as the supervisory authority under the Wwft for these service providers. The licensing requirement aligns with the advice provided by DNB and the AFM to the Minister of Finance in their report titled "Cryptos, recommendations for a regulatory framework."

DNB proposes the following enhancements to the draft bill to better ensure supervision by DNB over these two categories of service providers.

1. Requirement for Establishment in the Netherlands

DNB proposes that only individuals engaged in the profession or business of virtual currency service provider and residing in, or having their registered office in the Netherlands, be eligible for a license to engage in this profession or business in the Netherlands. For those engaged in the profession or business of a virtual currency service provider and residing in or having their registered office in another state, a prohibition on providing these services in/to the Netherlands applies, unless the other state has an equivalent (licensing) system.

A cautious estimate indicates that with these requirements, around thirty entities will be subject to the licensing requirement—excluding the current financial enterprises regulated under the Financial Supervision Act (Wft) that may also wish to offer virtual currency services.

Relevant prior complaints – 1 case closes

- EU: February 7, 2020: Thank you for sending all this but we will not move in Europe as the law is not a law yet. So if you don't have further info, we will close

However, the Netherlands have not yet notified their transposition measures of the 5th Anti Money Laundering Directive and the European Commission does not comment draft laws, as it shall not intervene in the legislative processes of Member States.

For this reason, the draft law you refer to cannot be considered as a breach of European Union law and the European Commission does not intend to open an infringement procedure.

I therefore wish to inform you that it is intended to close this case. However, should you have any new information that might be relevant for the re-assessment of your case, I invite you to contact us within four weeks of this letter, after which date the case might be closed.

Yours sincerely,

Relevant prior complaint 1: shall we call perhaps?

- Saturday february 8, 2020, request to set up a call

Thank you kindly for the response in which you outline that new information could lead to a re-assessment of the case.
I would like to further understand which kind of new information you are alluding to here. It appears to me this could perhaps better be provided by phone call rather than via e-mail as there is indeed more information that I haven't shared yet but I don't know if that would qualify as the extra information you would require.
Such a call would also allow me to gain a better view on the EU constitutional considerations and the process right now. What I would seek to better understand is how on the one hand next week there will be infringement proceedings opened on the AMLD5 for Member States (if I understand the announcement of Mr Dombrovskis correctly) and why this possible issue could not be taken along as well. I am also trying to understand whether the choice not to intervene in ongoing legislation is based on policy or legal foundations (as I was advised that in some cases the Commission intervened previously before legislation entered into force).

In terms of procedure I could imagine that suspending the complaint might be a better idea in order not to burden the infringement complaint process with a new complaint that is entered immediately after the law has entered into force (and that otherwise would be identical in terms of content as the legislative process from here on does not cater for further amendments of the texts). While it is quite likely that the next weeks will confirm the rirreversability of the process, this might happen just some days or weeks after the 4 weeks you mention in the letter.

Relevant prior complaint 1: it's not an infringement

- February 18, 2020, from EU

- We will close the case and do infringement on timing only, not on content of the matter.

I write you in reply to your mail of 8 February 2020 in which you draw our attention to the draft Dutch law transposing Directive 2018/843 as regards the registration requirements for providers of exchange services between virtual currencies and fiat currencies and custodian wallet providers.

The European Commission's procedures for complaints do not allow to comment draft laws until they get adopted, published and officially notified. Indeed, draft legislation is subject to possible modifications at any moment during the national decision-making process and can never be considered as a breach of European Union law. It is only at a later stage and once it will be notified, that the Dutch transposition law content will be assessed for compliance with Directive 2018/843.

As the Netherlands failed to notify transposition measures under Directive 2018/843 on time, the European Commission opened an infringement procedure (NIF 2020/2014/NL).

However, the draft law you refer to cannot be considered as a breach of European Union law and the European Commission is not in the position to open an infringement procedure.

Commission européenne/Europese Commissie, 1049 Bruxelles/Brussel, BELGIQUE/BELGIË - Tel. +32 2 299 11 11
Office: LX40 01/037 - Tel. direct line +32 229-82396

D-145

For this reason, I confirm you that the draft law you refer to cannot be considered as a breach of European Union law and the European Commission does not intend to open an infringement procedure.

Relevant prior complaint 2:

- May 20, 2020, law has entered into force, second complaint

https://ec.europa.eu/assets/sg/report-a-breach/complaints_en/

21-5-2020

infringement complaint

National measures suspected to infringe Union law: (required)

1-Dutch law implementing AMLD5 -. https://www.officielebekendmakingen.nl/stb-2020-146.html -. Wet van 22 april 2020 tot wijziging van de Wet ter voorkoming van witwassen en financieren van terrorisme en de Wet toezicht trustkantoren 2018 in verband met de implementatie van richtlijn (EU) 2018/843 van het Europees Parlement en de Raad van 30 mei 2018 tot wijziging van richtlijn (EU) 2015/849 inzake de voorkoming van het gebruik van het financiële stelsel voor het witwassen van geld of terrorismefinanciering, en tot wijziging van de Richtlijnen 2009/138/EG en 2013/36/EU (PbEU 2018, L 156) (Implementatiewet wijziging vierde anti-witwasrichtlijn)

2- Lower level Decree -> https://www.officielebekendmakingen.nl/stb-2020-147.html -> articles 10/11 as well as objective indicators for reporting specific transactions (which indicators in themselves violate article 8 of the EVRM)

The infringements at stake are therefore:

1- The Ministry of Finance infringes the AMLD5 by adding in wording, text and effect a de facto license regime while using the label 'registration' to suggest compliance with the registration requirement,

2 - The Ministry of Finance is primarily responsible for the legitimate behaviour of the financial supervisor. It has failed to restrict the actions of its financial supervisor, DNB, to the remit defined under the AMLD5 (registration - no supervision). It has allowed the supervisor to embark on an approach where, even when under the current wording of the law a de facto proportional supervisory approach (akin to registration) might theoretically still be possible, the actual impact exceeds that for financial players

3- The Ministry obliges/enforces a data distribution system that violates EU Treaty human rights without sufficient legal basis (see below)

Relevant prior complaint 2: human rights complaint includes data distribution via FIU reporting suspicious transactions

- May 20, 2020, law has entered into force, second complaint

Please explain how EU law is involved and **which fundamental right** has been breached (required)

1. The Ministry of Finance and Ministry of Justice do not do justice to the advice of the Data Protection Authority with respect to the mass surveillance character of the proposed rules and their compatibility with the EU Charter of fundamental rights (the Dutch DPA mentions the Digital Rights Ireland case specifically. -. https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/kamerstukken/2019/07/02/advies-conceptvoorstel-autoriteit-persoonsgegevens/advies-conceptvoorstel-autoriteit-persoonsgegevens.pdf

2. A relevant Dutch legal verdict on limits to data retention (for storing telecommunications data) is left undiscussed. https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2015:2498

3. Similarly, no further discussion occurred with respect to the dissertation, mentioned by the Dutch Data Protection Authority (AP), that demonstrateswhere the AMLD(5) may infringe on the EU Charter -> https://www.rug.nl/research/portal/files/65647303/Complete_thesis.pdf
The Ministry of Finance responds: the AP view is incorrect and the privacy versus crimefighting need for data discussion will be done at the AMLD5 review (2022).

The two fundamental rights at stake are the innocence presumption (6.2) and right to privacy (article 8). The collection, starge and provision of private customer data constitutes a disproportional privacy violation which is based on the assumption that all customers (none excepted) may be committing the crime of money laundering or terrorist financing.

The obliged automated transmissions of ALL private transaction data of customers on the basis of ONLY the amount of the transaction is based on lower legislation, not the law) and does in each individual case by definition fail the test of article 8 of being necessary with respect to the interests of national security, etc..... The necessity must be argued on a case-by-case suspicion and may not be invoked on a catch-all policy point of view.

Relevant prior complaint 2: registration

- Receipt of complaint number by October 26th (5 months instead of 15 working days)

Subject: **CHAP (2020)01471- Possible infringement to Directive (EU) 2018/843**

Dear Mr Lelieveldt,

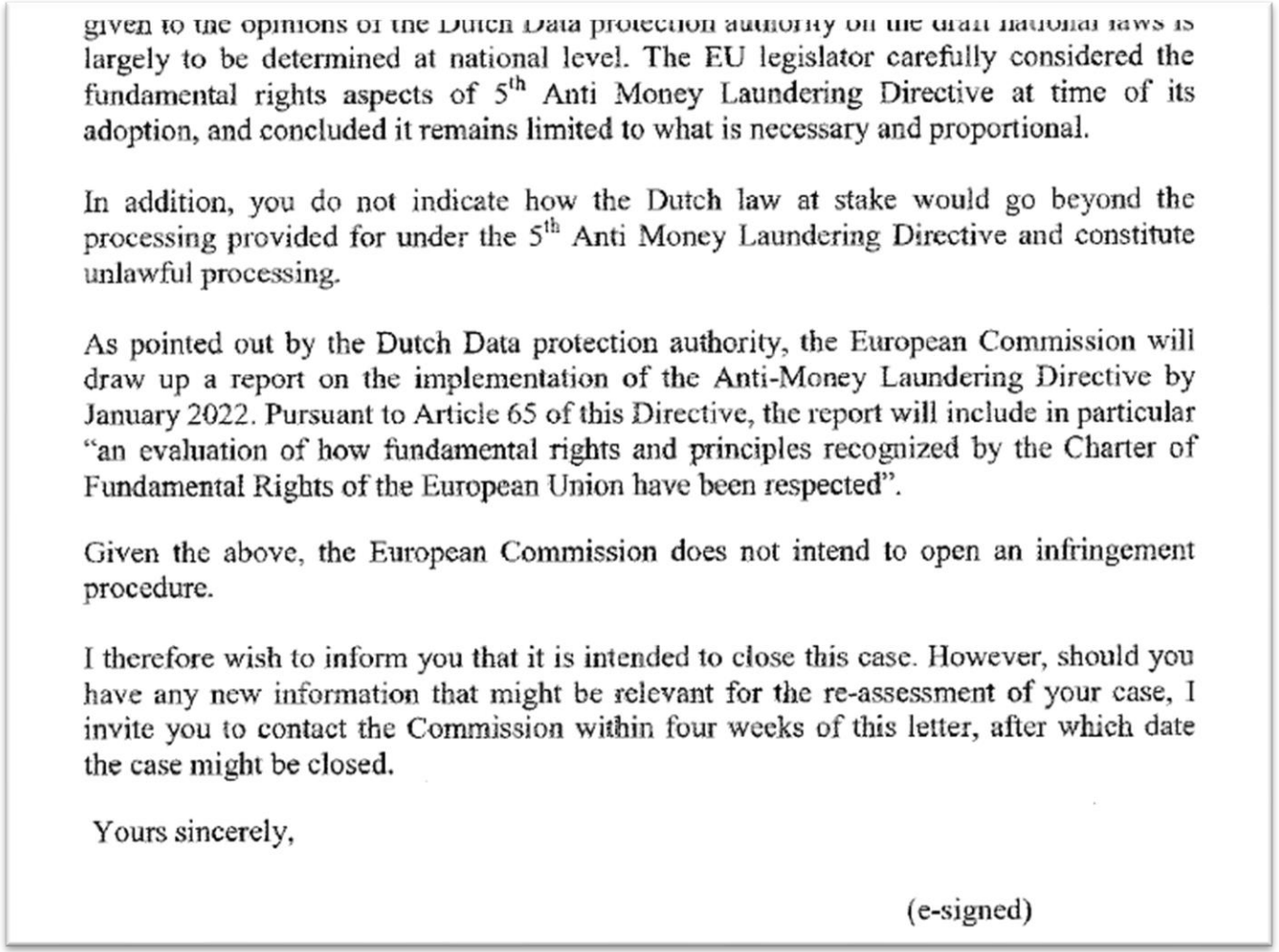
I am writing to you in reply to your complaint registered on 21 May 2020 regarding the Dutch law of 22 April 2020 aiming at implementing Directive (EU) 2018/843 (the 5th Anti Money Laundering Directive)[1], and in particular the provisions of the directive requiring Member states to provide for a registration mechanism for 2 types of virtual currencies service providers, namely providers engaged in exchange services between virtual currencies and fiat currencies and custodian wallet providers.

You claim that the Dutch law goes further than a mere registration system, with a "legal construct and rules" that would "bear more resemblance to a supervisory regime, including possible revocation of registration when the entities would no longer be compliant with prudential rules copied from the financial supervisory law and prohibition to operate on the market without a registration. In addition, you consider that this law would fail to restrict the actions of the Dutch financial supervisor (the Dutch National Bank) to the remit defined under the 5th Anti Money Laundering Directive, namely registration and not supervision.

Relevant prior complaint 2: we don't agree

- EU: Oct 26, 2020

We don't agree and we think you don't substantiate the human rights infringement and there is going to be an evaluation of human rights impact of AMLD anyway by January 2022. So closing case now.



given to the opinions of the Dutch Data protection authority on the draft national laws is largely to be determined at national level. The EU legislator carefully considered the fundamental rights aspects of 5th Anti Money Laundering Directive at time of its adoption, and concluded it remains limited to what is necessary and proportional.

In addition, you do not indicate how the Dutch law at stake would go beyond the processing provided for under the 5th Anti Money Laundering Directive and constitute unlawful processing.

As pointed out by the Dutch Data protection authority, the European Commission will draw up a report on the implementation of the Anti-Money Laundering Directive by January 2022. Pursuant to Article 65 of this Directive, the report will include in particular "an evaluation of how fundamental rights and principles recognized by the Charter of Fundamental Rights of the European Union have been respected".

Given the above, the European Commission does not intend to open an infringement procedure.

I therefore wish to inform you that it is intended to close this case. However, should you have any new information that might be relevant for the re-assessment of your case, I invite you to contact the Commission within four weeks of this letter, after which date the case might be closed.

Yours sincerely,

(e-signed)

Relevant prior complaint 2: please re-consider

- EU: Oct 30, 2020

Please reconsider the complaint and do open the infringement procedure.

This has substance to it!

Please find my response attached, which also contains a reflective question.

If with my 20 plus years of experience in payments/regulation I am unable to convince the Commission services to at least take this complaint into further consideration, what would it take for any other less-EU-law literate citizen to be able to do so?

I respectfully ask you to reconsider your position and hope that the additions in this letter may be able to change your views. I think they provide an opportunity for the Commission to demonstrate foresight and responsiveness to the relevant dynamics in Europe.

with kind regards

Simon Lelieveldt

Relevant prior complaint 2: please re-consider

- EU: Oct 30, 2020

Please reconsider the complaint and do open the infringement procedure. This has substance to it and EU must take onboard referrals to literature as an argument.

I am somewhat puzzled why your services would attach a different weight to the observations of our DPA-s as well as the recent Court of Justice verdicts on export of data to the US. Of course the complaint form does not allow elaborate wording, which is why I referred to the dissertation of C. Kaiser. It provides 17 fundamental legal arguments why there are already now violations of human rights by means of the AMLD5 rules. I would have hoped those would be taken into consideration. The referral to the planned evaluation procedure is interesting in this respect but does not equal a further consideration by the Court of Justice, to which the procedure might provide access.

As for the more extensive local rules/licensing approach, I fully understand that the position that the idea that Member States could introduce more rules can be correct. However, this specific matter was intensely debated in our Senate. It ended in the very explicit clarification of the Ministry of Finance that this is just a registration and not a licensing regime.

> *"Registreren doe je, en een vergunning wordt aan je verleend. Dat is gewoon echt wat anders. De lat ligt daar ook op een ander niveau."* [1]

Despite the wish to add more rules, the Ministry of Finance also explained that it had stuck with only the European rules. So both the content of the AMLD5, the law and the intention of the regulation are fully clear. This is a registration by wording and intent of the regulator, with the proof of the pudding to be determined later.

In the mean time, the pudding is served and there were two later developments which illustrate my complaint and fear that instead of the intended registration there is now a license regime with undue entry requirements into the market, which uneven the level playing field for Dutch companies. These requirements pertain to the imposition of supervisory rules from the trust offices law/domain and to the addition, in month 5 of the registration process, of a new and unfounded verification requirement as an entry requirement for the registration. I have detailed those in the annex.

I hope you will also indulge me a process observation.

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[1] https://www.eerstekamer.nl/verslag/20200421/verslag

Relevant prior complaint 2: please re-consider

- EU: Oct 30, 2020

Please reconsider the complaint and do open the infringement procedure. This has substance to it and here are the latest developments which demonstrate the infringement.

Annex: Additional events, occurring over the summer, further illustrating the complaint

1-This summer DNB copied a webpage with financial trust officices law requirements to the page for crypto-companies, just replacing trust-offices with the word crypto-companies but leaving reference to terminology and norms for trust officers intact. In particular the wording: systemic integrity risk assessment and customer service files 'dienstverleningsdocument' does not coincide with the norms and terminology from AMLD5 or law. The law speaks of a proportional risk assessment, which is distinctly different from the so-called SIRA. As also outlined in the legal opinion of ''t Hart Advocaten, mentioned in the infringement complaint.

The cryptopage is here: https://www.dnb.nl/nieuws/dnb-nieuwsbrieven/nieuwsbrief-cryptodienstverleners/nieuwsbrief-cryptodiensten-juli-2020/dnb389619.jsp and the original trust offices page is here: https://www.dnb.nl/nieuws/dnb-nieuwsbrieven/nieuwsbrief-trustkantoren/nieuwsbrief-trustkantoren-augustus-2019/index.jsp

2- On september 21, DNB issued a mandate to all registered company with the inclusion of a new entry requirement into the market for all participants busy registering. The mandate is very specific but legally invalid as it pertains to an incomprehensible sanction law interpretation. This specific rule does not follow from the law and DNB does not have the right to demand this additional requirement as it is not listed in the AMLD5. A form of this requirement was discussed during consultations of the law but retracted by the Ministry in its Memorandum about the law. Also the Finance Ministry explicitly outlined in parliament that there were no other rules/requirements in place except for those in the AMLD5 itself.

Over the last few months I have spoken to 6 law firms and a very reputable sanction experts (involved in both drafting requirements and supervising the Sanction law) and all of them unanimously agree that there is insufficient legal basis for this requirement. There is a range of legal considerations that I will not bother you with, as apparently even our Council of State observations don't carry sufficient weight with the commission services.
The requirement and indication that it serves as a entry market entry requirement, as opposed to the formal boundaries set by the Ministry of Finance in parliament, can be found here:

https://www.toezicht.dnb.nl/en/2/50-238362.jsp

https://www.dnb.nl/nieuws/dnb-nieuwsbrieven/nieuwsbrief-cryptodienstverleners/nieuwsbrief-aanbieders-van-cryptodiensten-oktober-2020/index.jsp

Relevant prior complaint 2: reminder – january 6, 2021 and reference to fincen-response

- SL: Jan 6, 2021

Please look at FINCEN response for futher info on the infringements at hand – what is the status by the way?

https://moneyandpayments.simonl.org/2021/01/response-by-simon-lelieveldt-to-fincen.html

I hope this e-mail finds you well and wish you all the best for the new year.

Could I kindly ask what the current status is of the infringement discussion and whether you have indeed reconsidered your position as to further proceeding with both parts of my complaint?

As far as the privacy and human rights angle is concerned I take it you will take onboard the statement of the EDPB of last december, which struck me as supportive to the complaint and argument that I put forward.

In addition I would like to point out that the FINCEN is further proceeding on an extraterritorial rule, similar to the disputed DNB-rule, that requires verification of unhosted or covered crypto-wallets for jurisdiction unilaterally pointed out by the US regulator. You may find my response to the undesirable market effects of this measure in this blog. https://moneyandpayments.simonl.org/2021/01/response-by-simon-lelieveldt-to-fincen.html

If so desired you can consider the blog and the arguments to be part of the infringement complaint and a further detailing of the origins and political dynamics that lead to the flaws and human right infringements that the current AMLD5 constitutes.

Relevant prior complaint 2: closure letter jan 27, 2021, Ares(2021)669189 - CHAP(2020)01471-

- EU: Jan 27, 2021

Thanks for all the info but we're really closing the case

Bye bye.

The statement you refer to highlights the need, in the future legislative action and in particular an update to the anti-money laundering framework announced by the European Commission, to adhere to the principles relating to processing of personal data of Article 5(1)of the General Data Protection Regulation (GDPR). In that regard, and as already indicated in my former letter, the EU legislator carefully considered the fundamental rights aspects of 5th Anti Money Laundering Directive at time of its adoption, and concluded it remains limited to what is necessary and proportional.

Given the above and after reviewing the additional comments and observations that you sent us by your letter and e-mail registered on 30 October 2020 and 6 January 2021, these did not provide any new facts/elements to lead us to reconsider our previous position, we therefore confirm that your complaint was closed on *January 27, 2021.*

Yours sincerely,

Electronically signed

Relevant prior complaint 2: closure letter jan 27, 2021, Ares(2021)669189 - CHAP(2020)01471-

- At the time of writing Bitonic was proceeding in a court case against the central bank – on the topic of registration/requirement

Datum: Wed, 27 Jan 2021 17:42:35 +0100
Van: Simon Lelieveldt <simon@simonl.org>
Aan: ve_fisma.d.2(FISMA) <fisma-d2@ec.europa.eu>

I thank you for your extensive elaboration on why the infringement issue will not be further taken up by the Commission.

You will understand that this is a disappointment, then again, I rest assured that pretty soon the first legal clarifications will become known, as a part of the litigations that have just started here in the Netherlands on both issues.

With kind regards

Simon Lelieveldt

Relevant prior complaint 2: law suit outcome and EBA/FATF information

- SL: April 12, 2021

Please look at the EBA-statement and the outcome of the law suit that occured in the Netherlands where infringement was noticed by relief judge and privacy violation was basis for fast procedure =

https://www.linkedin.com/pulse/eba-identifying-dutch-central-bank-frontrunning-simon-lelieveldt

You may wish to take note of the last developments in the matter that I laid out before the Commission.

The EBA itself has rendered the verdict that DNB is overstepping its boundaries while last week a relief judge essentially also outlined that it is not unlikely that the Dutch implementation is beyond the EU rules (but ruling on that matter is a case for larger court proceedings).

In this article you can find the references to EBA and FATF reports at stake:

https://www.linkedin.com/pulse/eba-identifying-dutch-central-bank-frontrunning-simon-lelieveldt/

The legal ruling is only in Dutch for now and can be found here:

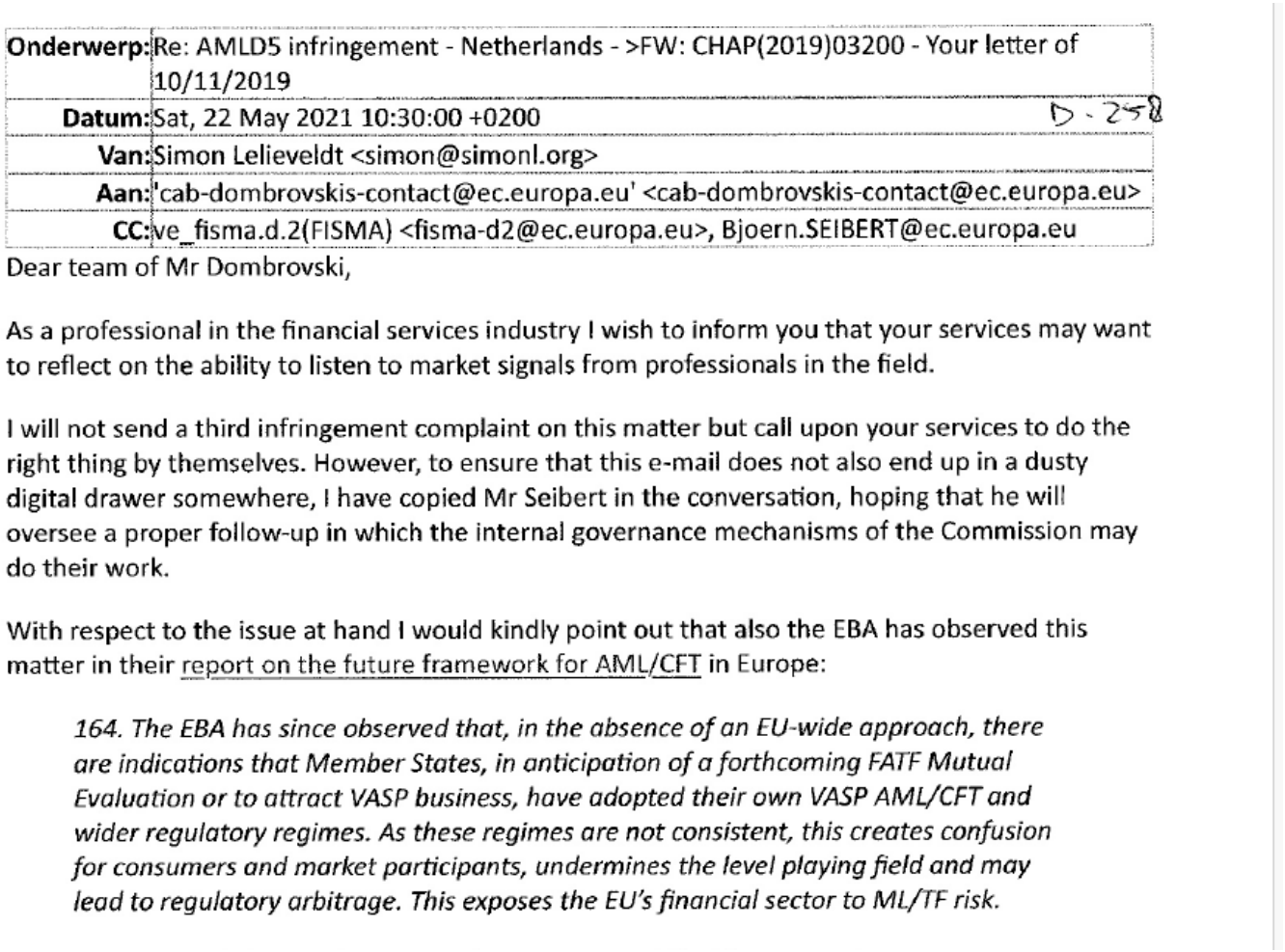
https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBROT:2021:2968

With kind regards

Simon Lelieveldt

Relevant prior complaint 3: law suit outcome and EBA/FATF information

- Information about retracted registration requirement law suit and call upon the Commission do live up to the spirit of European law and do the right thing as a matter of being a good European civil servant



Onderwerp:	Re: AMLD5 infringement - Netherlands - >FW: CHAP(2019)03200 - Your letter of 10/11/2019
Datum:	Sat, 22 May 2021 10:30:00 +0200 D-258
Van:	Simon Lelieveldt <simon@simonl.org>
Aan:	'cab-dombrovskis-contact@ec.europa.eu' <cab-dombrovskis-contact@ec.europa.eu>
CC:	ve_fisma.d.2(FISMA) <fisma-d2@ec.europa.eu>, Bjoern.SEIBERT@ec.europa.eu

Dear team of Mr Dombrovski,

As a professional in the financial services industry I wish to inform you that your services may want to reflect on the ability to listen to market signals from professionals in the field.

I will not send a third infringement complaint on this matter but call upon your services to do the right thing by themselves. However, to ensure that this e-mail does not also end up in a dusty digital drawer somewhere, I have copied Mr Seibert in the conversation, hoping that he will oversee a proper follow-up in which the internal governance mechanisms of the Commission may do their work.

With respect to the issue at hand I would kindly point out that also the EBA has observed this matter in their report on the future framework for AML/CFT in Europe:

> *164. The EBA has since observed that, in the absence of an EU-wide approach, there are indications that Member States, in anticipation of a forthcoming FATF Mutual Evaluation or to attract VASP business, have adopted their own VASP AML/CFT and wider regulatory regimes. As these regimes are not consistent, this creates confusion for consumers and market participants, undermines the level playing field and may lead to regulatory arbitrage. This exposes the EU's financial sector to ML/TF risk.*

Relevant prior complaint 3: law suit outcome and EBA/FATF information

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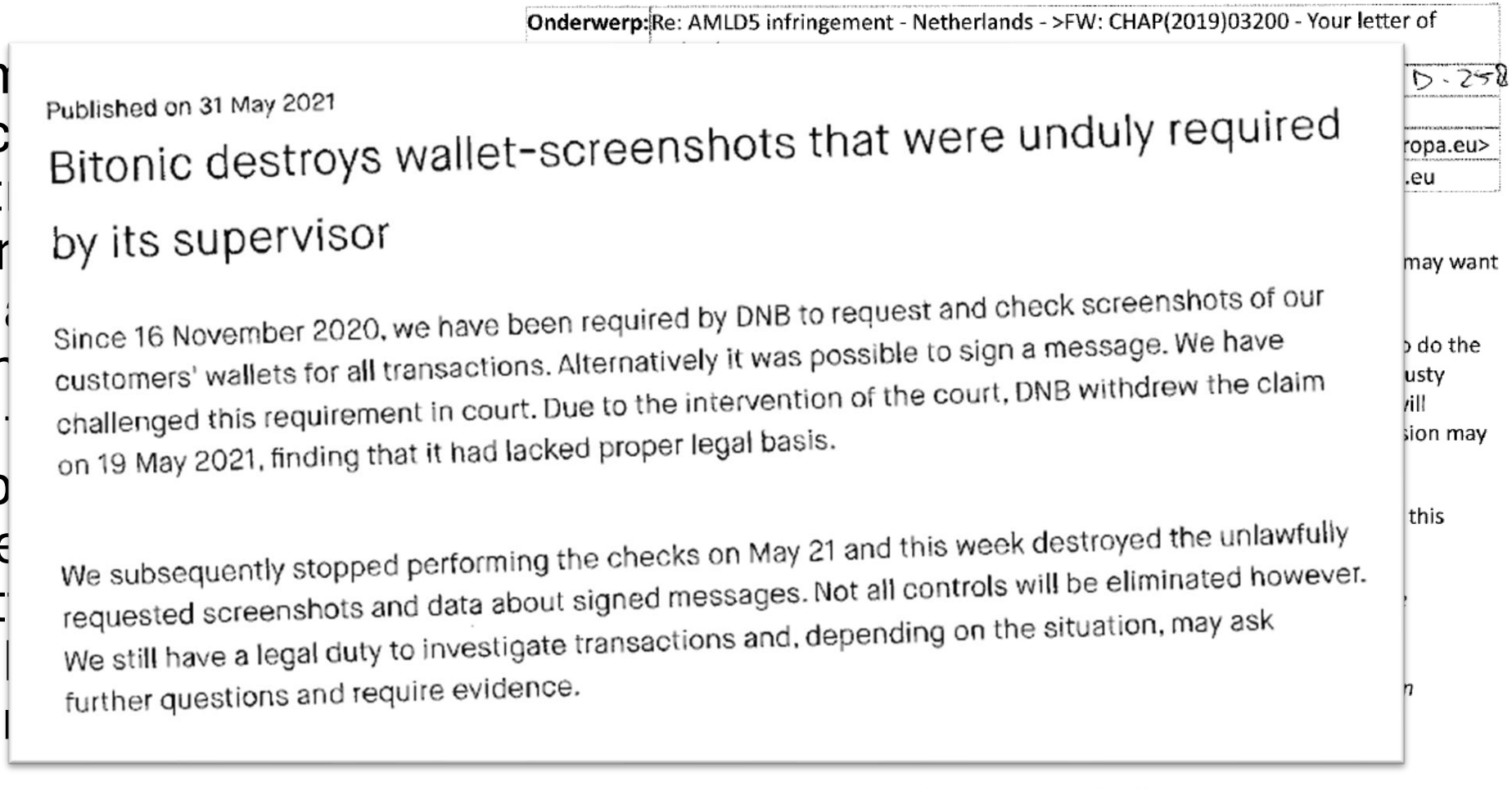


Onderwerp: Re: AMLD5 infringement - Netherlands - >FW: CHAP(2019)03200 - Your letter of

Published on 31 May 2021

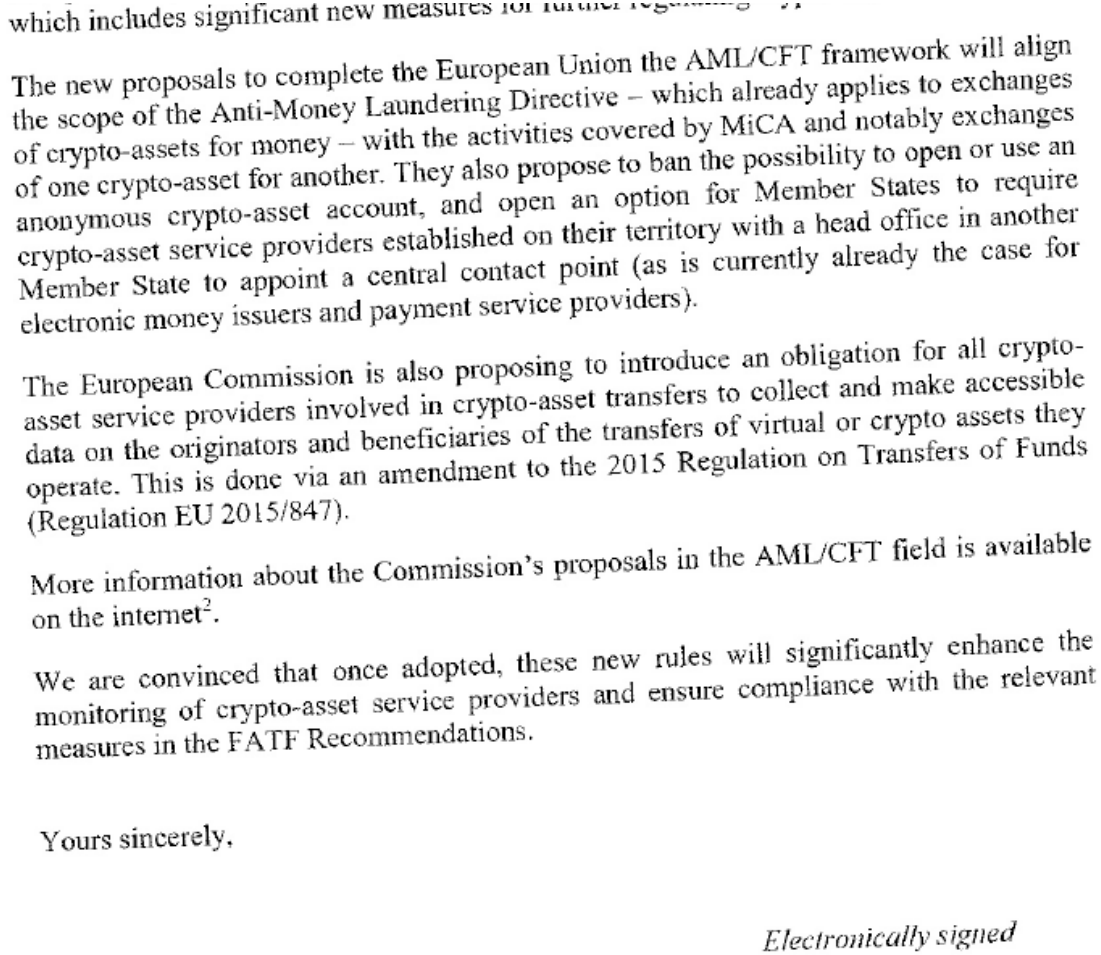
Bitonic destroys wallet-screenshots that were unduly required by its supervisor

Since 16 November 2020, we have been required by DNB to request and check screenshots of our customers' wallets for all transactions. Alternatively it was possible to sign a message. We have challenged this requirement in court. Due to the intervention of the court, DNB withdrew the claim on 19 May 2021, finding that it had lacked proper legal basis.

We subsequently stopped performing the checks on May 21 and this week destroyed the unlawfully requested screenshots and data about signed messages. Not all controls will be eliminated however. We still have a legal duty to investigate transactions and, depending on the situation, may ask further questions and require evidence.

Relevant prior complaint 3: law suit outcome and EBA/FATF information

- Response by september 2021.
- Note the absence of human rights considerations and the mentioning of ‘compliance with FATF-recommendations’



which includes significant new measures for further regulating [illegible]

The new proposals to complete the European Union the AML/CFT framework will align the scope of the Anti-Money Laundering Directive – which already applies to exchanges of crypto-assets for money – with the activities covered by MiCA and notably exchanges of one crypto-asset for another. They also propose to ban the possibility to open or use an anonymous crypto-asset account, and open an option for Member States to require crypto-asset service providers established on their territory with a head office in another Member State to appoint a central contact point (as is currently already the case for electronic money issuers and payment service providers).

The European Commission is also proposing to introduce an obligation for all crypto-asset service providers involved in crypto-asset transfers to collect and make accessible data on the originators and beneficiaries of the transfers of virtual or crypto assets they operate. This is done via an amendment to the 2015 Regulation on Transfers of Funds (Regulation EU 2015/847).

More information about the Commission’s proposals in the AML/CFT field is available on the internet[2].

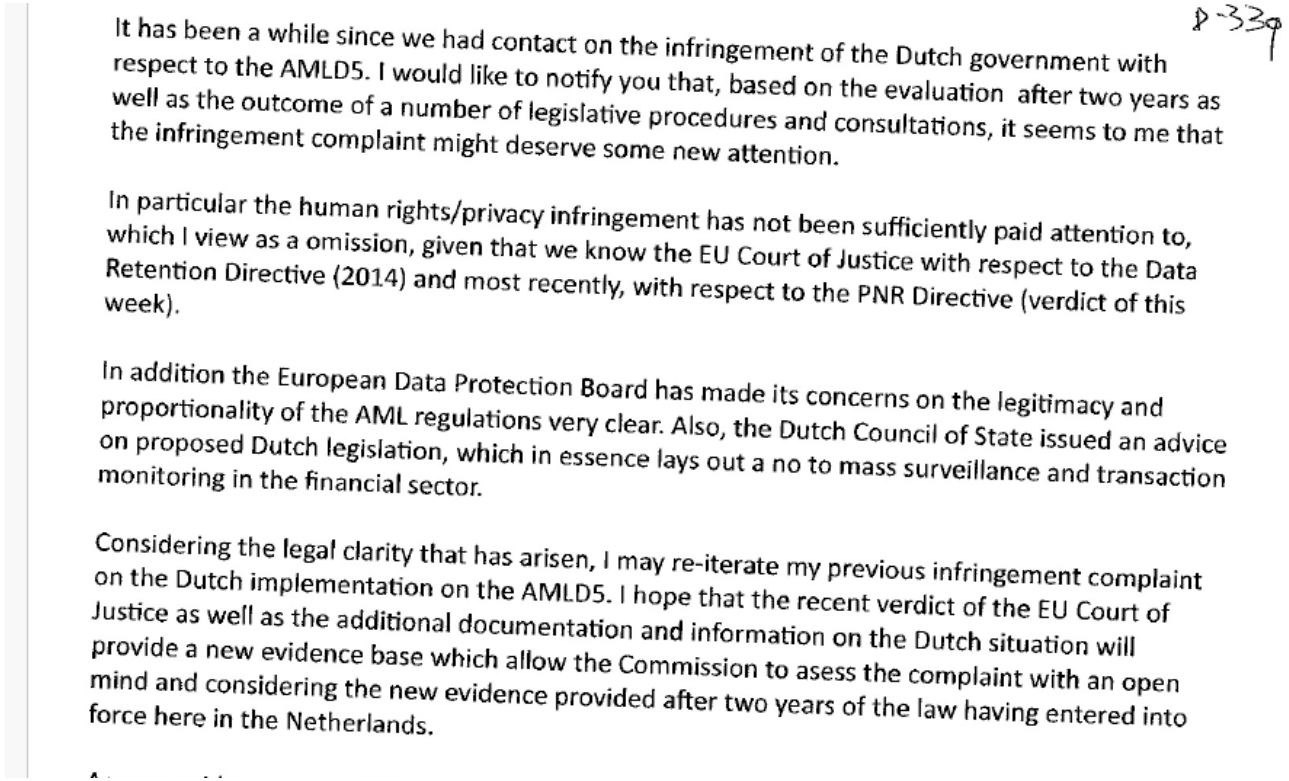
We are convinced that once adopted, these new rules will significantly enhance the monitoring of crypto-asset service providers and ensure compliance with the relevant measures in the FATF Recommendations.

Yours sincerely,

Electronically signed

Relevant prior complaint 3: e-mail announcing the reiteration of complaint

- June 2022, sent by founder Simon Lelieveldt



p-339

It has been a while since we had contact on the infringement of the Dutch government with respect to the AMLD5. I would like to notify you that, based on the evaluation after two years as well as the outcome of a number of legislative procedures and consultations, it seems to me that the infringement complaint might deserve some new attention.

In particular the human rights/privacy infringement has not been sufficiently paid attention to, which I view as a omission, given that we know the EU Court of Justice with respect to the Data Retention Directive (2014) and most recently, with respect to the PNR Directive (verdict of this week).

In addition the European Data Protection Board has made its concerns on the legitimacy and proportionality of the AML regulations very clear. Also, the Dutch Council of State issued an advice on proposed Dutch legislation, which in essence lays out a no to mass surveillance and transaction monitoring in the financial sector.

Considering the legal clarity that has arisen, I may re-iterate my previous infringement complaint on the Dutch implementation on the AMLD5. I hope that the recent verdict of the EU Court of Justice as well as the additional documentation and information on the Dutch situation will provide a new evidence base which allow the Commission to asess the complaint with an open mind and considering the new evidence provided after two years of the law having entered into force here in the Netherlands.

Relevant prior complaint 3: e-mail announcing the reiteration of complaint

- September 2022, EU
- Nothing new here, so we will not open any further infringment procedure

D3

As indicated in our replies to your previous letters and messages, new legislative proposals to strengthen the European Union's AML/CFT legal framework[2] are currently under negotiations, including measures that will complete the regulation of crypto-asset service providers, both from a market entry and anti-money laundering/countering the financing of terrorism perspective.

Currently, the Anti-Money Laundering Directive only requires Member States to subject providers of exchange services between virtual currencies and fiat currencies, and custodian wallet providers to national anti-money laundering rules, and to ensure they are registered, without impeding however the Member States to take additional measures and impose additional requirements.

And as you do not indicate what precise consequences should be derived from the European Union Court of Justice case-law, European Data Protection Board opinion and Dutch Council of State advice mentioned in your letter, on which you give neither references nor summaries of their conclusions, there is nothing new in your letter that could lead the European Commission to consider the Netherlands anti-money-laundering legislation as infringing the 5th Anti-Money Laundering Directive.

In conclusion, and in the light of this analysis, the Commission services will not open an infringement procedure against the Netherlands on the basis of your latest letter.

Yours sincerely,

Status Complaint HRIF.EU October 2023

- Asked Ombudsman to intervene so we get timely response
- Invited for meeting/call on the topic
- Follow up mail

Mail HRIF.EU January 2024

First off I would like to thank you for hosting the call on our infringement complaint last week. It was insightful in many respects and we are now adapting and completing our slides to ensure that we provide a package that is as helpful as possible for your work on the infringement.

This means we will move slides from the prior discussions to an annex, further clarify the gounds with reference to other regulation etc. This is taking a bit more time than expected, but we will, as agreed, be sending an updated and complete version of our presentation to make the clarification of our grounds complete.

In this respect it would be helpful to know whether you would like full english translations of relevant Dutch documentation/verdicts or whether we may freely assume that native Dutch papers can be understood.

In the meanwhile, to understand the relevance of the recent verdict in the Netherlands, this blogpost may be informative. It's a summary and partial translation of the verdict of the Rotterdam judge (https://moneyandpayments.simonl.org/2023/10/long-story-short-dutch-judge-finds-dnb.html) which invalidates those sections of the Dutch law that are contrary to the AMLD5 directive.

While we understand the policy position of the Ministry of finance and European Commission to be distinct from the legal analysis of the Council of State and 2 verdicts from the Dutch Court in Rotterdam, the reason for sending the infringement is that in our view the evidence base for further action has now become sufficient for the commission to act. In this respect we are keen to understand what further evidence would be helpful to aid the Commission in taking action in the Netherlands.

We thank you for the efforts you undertake in this matter and will send the completed slide set as soon as it's finished,

with kind regards

SImon Lelieveldt

Mail HRIF.EU March 2024

We'd like to inform you that we are still in the process of restructuring our arguments to ensure an effective further discussion. However due to local logistic challenges we are faced with a delay, but we can give you an intermediary update.

We would like to inform you that under Dutch law, article 10 of the AML-law forbids the outsourcing of transaction processing in its fullest. This is a local Dutch implementation decision and current law. Despite this prohibition Dutch banks are already executing and operating an outsourced monitoring of unusual transactions within the context of transaction monitoring NL (www.tmnl.nl). Considering the explicit prohibition in Dutch law, there is no room for the claimed processing ground under GDPR which is justified grounds (see screenshot below). The AML-law does not allow any outsourcing, regardless of whether this is personal data or company data being processed.

As you may have noticed, the Dutch government has made a voting statement in the COREPER with respect to the lack of possibilities to now further continue down the path the create a legal ground for TMNL. This is what I was referring to in our call when I said: The Dutch will not listen and obey the rules in the EU regulation. Already now plans are underway to find a new exception to duck the AML-rules and continue local processing. This is most prominent in the Linkedin post of our FIU (in response to a television documentary on the excessive reporting).

Mail HRIF.EU March 2024

Referring back to our conversation and the infringement complaint: your remark that intervention was only possible if for example the GDPR was being violated has not gone unnoticed. As you can see from the website of TMNL, their legal grounds are insufficient and the privacy statement is far from what it should be, when looking at the GDPR rules for disclosure. It is this continued transgression of EU GDPR rules, leading to unlawful processing of personal data without due respect to disclosure rules for joint processing, that we will further record/submit in our forthcoming document. But we would also draw your urgent attention to it, in the light of the human rights infringement discussion of our complaint.

We have also taken due notice of your remark not to expect everything from the Commission and henceforth have this week submitted a compliance-request to the Dutch Central Bank as the AML-supervisor of banks, to immediately stop the banks and the bankers association from transgression of article 10 of the Dutch AML-law. You can find a copy enclosed. This was also sent to our contacts at the Ministry of Finance today.

We will update you on the progress with respect to the 'handhavingsverzoek' and would finally invite you to also take note of our recent calculation as to the degree of overkill that we have in the Netherlands. In our blogpost here, we calculate that in 2022 we had 1,89 reported transaction in NL whilst under EU standards this would be 45.000.

with kind regards

Simon Lelieveldt