



Combating money laundering and the financing of terrorism in Sint Maarten

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Law Enforcement Council

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List of abbreviations

AML/CTF	Anti-Money Laundering and Counter-Terrorism Financing
ART	Asset Recovery Team
CFATF	Caribbean Financial Action Taskforce
Council	Raad voor de rechtshandhaving (<i>Law Enforcement Council</i>)
FATF	Financial Action Taskforce
FIU	Financial Intelligence Unit
JVO	Justitieel Vierpartijen Overleg (<i>Four Party Judicial Consultation</i>)
KPSM	Korps Politie Sint Maarten (<i>Sint Maarten Police Force</i>)
KWCarib	Kustwacht Caribisch Gebied (<i>Dutch Caribbean Coast Guard</i>)
LSM	Landsrecherche Sint Maarten (<i>National Detectives Agency</i>)
Ministry	Ministerie van Justitie (<i>Ministry of Justice</i>)
OM	Openbaar Ministerie Sint Maarten (<i>Public Prosecutor's Office Sint Maarten</i>)
PPG	Parket Procureur Generaal (<i>Attorney General's Office</i>)
RST	Recherche Samenwerkingsteam (<i>Detective Cooperation Team</i>)
TBO	Team Bestrijding Ondernijning (<i>Anti-Corruption Task Force</i>)
TCI	Team Criminele Inlichtingen (<i>Criminal Intelligence Unit</i>)
WvSr	Wetboek van strafrecht Sint Maarten (<i>Penal code of Sint Maarten</i>)

Preface

Cross-border crimes such as money laundering and terrorism financing if not combated sufficiently can have far-reaching consequences for the image of a country, its economy and undermines the democratic legal order. It is therefore imperative that countries live up to international obligations set to address the phenomenon of money laundering and terrorism financing and that countermeasures and mechanisms based on these are being utilized by the judicial authorities to combat the phenomenon in Sint Maarten.

In this report the Law Enforcement Council (Council) assessed the approach of the judicial authorities in combating money laundering and terrorism financing. The Council's inspection shows that their approach to combating money laundering and terrorism financing is insufficient. The continuous lack of resources specifically, hampers the authorities from achieving the desired results, as well as further professionalizing their organizations and executing their lawful tasks.

The protocols currently in place regarding border control and detective cooperation as well as the country reforms, however, are producing opportunities to strengthen authorities in combating cross-border crimes such as money laundering and terrorism financing. Another positive aspect is that all the partners in the judicial chain are cognizant of the situation and highly aware that this is a major threat that needs to be addressed effectively. It is therefore crucial that the necessary investments are made by the Minister of Justice to further strengthen the local authorities in a structural as well as timely manner. The latter also due to the fact that the Caribbean Financial Action Taskforce will be conducting the following evaluation round in 2024.

The Council expresses its appreciation to the interviewees from the Public Prosecutor's Office, the Attorney General's Office, the Financial Intelligence Unit, the Ministry of Justice, the Sint Maarten Police Force, the Coast Guard, the Anti-corruption taskforce, the National detectives, and Customs for the pleasant and candid discussions as well as for their contribution to this inspection.

THE LAW ENFORCEMENT COUNCIL

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Summary and Recommendations

Summary

Introduction

The Law Enforcement Council (hereafter: the Council) included in its 2021 annual plan an inspection on the combating of money laundering and terrorism financing in Sint Maarten. The central question in this inspection is: To what extent does the judicial approach contribute to effectively combating money laundering and the financing of terrorism in Sint Maarten?

To answer this question the Council examined the relevant (inter)national laws and regulations, as well as the recommendations by the Caribbean Financial Action Taskforce (CFATF) and applicable policy and cooperation agreements. The current practice of the justice organizations involved in combating money laundering and terrorism financing and the resources available to them was also reviewed.

Nature and scope

The crime analysis (2011) paints a picture of a government/judicial system in which money laundering is allowed to flourish due to the inability of authorities to combat these crimes. Even though the analysis dates from 2011, little has changed since then. The fact that money laundering continues to go unchecked is worrisome, as this form of crime is often how other forms of crime, such as drug trafficking and arms trafficking are funded. The complexity of money laundering combined with a lack of resources (e.g., financial expertise) at the authorities is one of the main causes why it cannot be combated effectively. The scale of money laundering, just as in 2011, therefore remains guesswork. However, authorities still suspect that it continues to happen on a large scale. In as far as terrorism financing is concerned, the Council noted that authorities currently have not observed any concrete signs of terrorism financing in Sint Maarten. However, this is possibly due to the lack of oversight. It is therefore possible that it also takes place.

Legislation and policy

The Council found that there are different local regulations to combat money laundering and terrorism financing which are based on international regulations. Nonetheless, the government still has work to do in drafting policy and updating some of these regulations. Sint Maarten is also participating in various protocols to support local authorities. The protocol related to detective cooperation in the Kingdom provides for limited capacity to local authorities such as the Sint Maarten Police Force (KPSM) and the National Detectives Agency (LSM) on an operational level. Border authorities are also being supported in various areas based on the protocol to strengthen border control in the countries. The Council considers the focus on border control positive as other cross-border crimes, such as drug trafficking, can indirectly contribute to crimes of money laundering.

While the CFATF has established recommendations to serve as a guide for combating money laundering and terrorism financing, not all the operations of the law enforcement authorities were found to be in (full) compliance with these recommendations. Additionally, even though the Financial Intelligence Unit (FIU) for example, was found to be compliant by the CFATF in 2020, the current findings of the Council related to this organization are concerning.

The Ministry of Justice has not yet established a specific policy to combat money laundering and terrorism as stipulated in the law but has since (2020) drawn upon the reforms stipulated in the

country package as a guideline. The Council has determined that the soon to be established National Risk Assessment can aid authorities in drafting said policy and encourages all efforts in this regard.

Combating money laundering and terrorism financing

The Council is of the opinion that the approach to combating money laundering and terrorism financing would benefit from a common goal and long-term vision. The Council therefore encourages the Ministry of Justice and other relevant ministries and their departments to come together to ensure that the judicial approach as well as the administrative approach does not fall behind. To successfully create barriers to combat money laundering and terrorism financing it is namely conditional that all tools available are utilized. As the Council has stated in the past on numerous occasions, a criminal justice approach alone cannot achieve the desired results. In the area of criminal investigations, the Council has established that, despite suffering from a staff shortage, the FIU is able to produce reports of suspicious transactions. But be that as it may, the local investigative authorities are only able to carry out limited investigations into money laundering, whether as a stand-alone offence or as a component of a criminal investigation. This because of their lack of financial investigative capacity. On the other hand, the Anti-Corruption Taskforce (TBO), having specialist expertise and sufficient capacity, has been able to conduct large scale criminal investigations and was able to apprehend and prosecute key subversive figures. In some of these cases money laundering formed a component.

The Asset Recovery Team (ART) was established as a control mechanism to deprive criminals of their gains after conviction. The concept entailed a multidisciplinary team, under the authority of the Public Prosecutor's Office (OM), comprising of the Tax Administration, Customs, the Dutch Caribbean Coast Guard (KWCarib) and the KPSM. This concept has proven not to be feasible in practice. Two of the four organizations (Tax Administration and Customs) are currently not participating in the team, which hampers its effectiveness. The Tax Administration due to a lack of dispensation by the Minister of Finance and Customs due to a lack of personnel with the necessary profile. The strength of the team namely lies in the cooperation between the organizations, the sharing of information and the integrated execution of the recovery investigations it is tasked with.

Results

Although the Council acknowledges the constraints each organization faces, due to a lack of resources (financing, materials, capacity, trainings, information, cooperation) the consequences of these forms of cross-border crimes going unchecked are not to be overlooked. Based on the findings of this inspection the Council concludes that due consideration needs to be given to increasing the priority money laundering and terrorism financing currently receive from authorities.

General conclusion

Just as in its previous reports regarding (other forms of) cross-border crime the Council has observed that there are various bottlenecks impeding an effective (joint) approach to money laundering and terrorism financing by authorities. Given the nature of these crimes (not bounded by borders) and that these forms of crime also greatly impact local crime, it is imperative that the necessary investments are made by the Minister of Justice to better enable authorities to apply countermeasures. Also, given the need of the country to comply with the recommendations of the CFATF on the subject of money laundering and terrorism financing by 2024, the Council stresses that a determined effort by the Minister of Justice is necessary in order to carry out the recommendations of the Council as soon as possible.

Recommendations

To reinforce the approach to money laundering and terrorism financing, the Council recommends the following to the Minister of Justice of Sint Maarten:

Table 1. Recommendations

	To the Minister of Justice
1	Ensure full compliance with the recommendations of the CFATF no later than the following evaluation round in 2024.
2	In accordance with a strategic vision of the Ministry, develop a concrete policy plan for the Ministry to specifically combat money laundering and terrorism financing.
3	Strengthen the working relationship with the other ministries to ensure that administrative measures are enforced in the field of combating money laundering and terrorism financing.
4	Promote activities such as the non-reporters project by authorities regularly to stimulate the reporting obligation of entities.
5	Ensure that an integral approach, necessary for the success of the ART, is supported and executed by all the participating authorities.
6	Following other recommendations made by the Council in this field, facilitate where possible an increase of the budget allocated to the relevant authorities to provide for the necessary resources to combat money laundering and terrorism financing.
7	Be instrumental in facilitating a possible increase in the number of personnel deployed by the RST to further support local authorities with (financial) expertise.
8	Include trainings in anti-money laundering and terrorism financing in the education policy set to be developed by the Ministry for the various law enforcement authorities to increase their knowledge base.
9	Follow up on the recommendations previously made by the Council to combat the various forms of cross-border crime.
	To the Minister of Justice to the attention of the OM
10	Ensure that a money laundering and or terrorist financing specialist can be called upon if necessary.
11	Discuss with the investigative authorities how a higher priority for cases of money laundering could be achieved and act accordingly.
12	Continue to seek cooperation with the FIU in the benefit of combating money laundering and terrorism financing and in any case cooperate to improve the management of its reports.

1. Introduction

1.1 Background

The Council is charged with the general inspection of the organizations of the judicial chain in Curaçao, Sint Maarten and the Netherlands regarding the public entities of Bonaire, St. Eustatius, and Saba (hereinafter: Caribbean Netherlands). Furthermore, the Council is charged with the general inspection of the quality and effectiveness of judicial cooperation between the countries.

In November 2019, the Caribbean Financial Action Taskforce (CFATF) issued a public statement calling for CFATF members to consider the risks arising from the deficiencies associated with fellow member Sint Maarten. In the event of the lack of further progress, a nomination for placement on the Financial Action Taskforce (FATF) gray list would be the next measure. Said measure would be taken if the country failed to introduce or amend (in a timely manner) anti-money laundering and counter-terrorism financing (AML/CTF) legislation in line with most of the CFATF core recommendations. In July 2020 the public statement was withdrawn due to Sint Maarten making progress in addressing the deficiencies identified in its 2013 Mutual Evaluation Report. By December 2020 Sint Maarten had made significant progress in addressing the deficiencies and successfully completed the third evaluation round.

The measures and mechanisms based on AML/CTF legislation, that are implemented and applied by judicial organizations such as for example the Financial Intelligence Unit (FIU), the Public Prosecutor's Office (OM) and the Korps Politie Sint Maarten (KPSM), play an important role in combating money laundering and terrorism financing in Sint Maarten.

Anti-Money Laundering and Counter-Terrorism Financing

The aim of most forms of crime is to make a profit. To be able to spend these particularly large sums of money undetected, it must first acquire a legal status. This is done by laundering the money. By means of money laundering the criminal money is put into circulation within the legal economy of a country through various constructions (e.g., legal entities).

The terrorist attacks of September 11, 2001, on the World Trade Center had a major impact on intensifying the fight against terrorism financing. Terrorist activities can be financed with both legal and illegal money. As with money laundering, terrorism financing involves the use of legal entities, including financial institutions and financial service providers. Given its far-reaching consequences, criminal money laundering and terrorism financing are topics that require the attention of governments worldwide.

Due to the international nature of money laundering and terrorism financing, a group of leading industrialized countries (G7) established the FATF in 1989 to jointly combat money laundering and terrorism financing. The organization established 40 recommendations that member countries are required to follow. The member countries of the FATF are able to decide for themselves how to implement these recommendations in their national legislation and regulations.

As indicated earlier, Sint Maarten is a member of the CFATF, an organization of twenty-five (25) countries in the Caribbean, Central and South America, which have developed common countermeasures to address the phenomenon of money laundering. The countermeasures consist of nineteen recommendations. These recommendations are specifically relevant to the region and complement the FATF's original forty recommendations. In 2020, the CFATF conducted a detailed analysis of the measures taken by Sint Maarten to address identified shortcomings. The analysis provides insight into and an overview of the extent to which the core, main and other recommendations¹ have been addressed by Sint Maarten.

Both money laundering and terrorism financing have a negative impact on a country as these (cross-border) crimes can have far-reaching consequences for the image of a country, its economy and the possible intertwining of the upper and underworld (undermining crime). They are therefore criminalized in most countries through statutory regulations. In Sint Maarten they have been made punishable in the Penal Code². Furthermore, the Parliament of Sint Maarten has adopted several anti-money laundering laws such as the National Ordinance Reporting Point Unusual Transactions³ and the National Ordinance Combating Money Laundering and Terrorist Financing⁴.

The fight against money laundering and the financing of terrorism consists of different elements and various organizations, both within and outside the judiciary. In the 2011 crime analysis⁵ shortcomings were identified regarding the approach to money laundering in Sint Maarten.

The media give the subject the necessary attention as well. In 2019 the articles; 'Sint Maarten is an attractive island for tourists - and for criminal gangs who launder money'⁶ and 'Sint Maarten refuses to act against money laundering'⁷ were published. These articles created the impression (at that time) that Sint Maarten was not giving enough attention to the problem of money laundering on an administrative level.

Commitment by the judiciary in addressing the issues of money laundering and terrorism financing is extremely important to prevent undermining of the rule of law and the democratic legal order. The Council therefore decided to include the inspection of the approach to money laundering and terrorism financing in its annual plan 2021. With this inspection, the Council aims to examine aspects such as laws and regulations, policies, knowledge, resources, capacity, and procedures of the judicial organizations and to make recommendations where necessary.

¹ The FATF has identified recommendations that should be implemented as a priority in all countries. According to the FATF, the core recommendations are 1, 5, 10, 13, SR II, and SR IV, and the key recommendations 3, 4, 23, 26, 35, 36, 40, SR I, SR III and SR V.

² AB 2013, no. 2

³ AB 2019, no. 24

⁴ AB 2019, no. 25

⁵ National Police Forces, (2011) Crime Analysis Sint Maarten: An investigation into organized and communal crime.

⁶ Knipselkrant, (30-04-2019): [Volkskrant | 'Sint Maarten' is een aantrekkelijk eiland voor toeristen - en voor criminele bendes die geld witwassen \(knipselkrant-curacao.com\)](#)

⁷ Knipselkrant, (30-04-2019): [Volkskrant | Sint Maarten weigert strijd tegen witwassen en terrorismefinanciering aan te gaan \(knipselkrant-curacao.com\)](#)

1.2 Objective

The purpose of this inspection was to gain insight into the combating of money laundering and terrorism financing by the judicial authorities and to assess to which extent results have been achieved. Where gaps were found in the approach to money laundering and terrorism financing, the Council made recommendations to the Minister of Justice for improvement.

1.3 Central question

The central question of this inspection is:

To what extent does the judicial approach contribute to effectively combating money laundering and the financing of terrorism in Sint Maarten?

Sub-questions that were addressed in this regard are:

1. What are the applicable laws, regulations and policies regarding criminal money laundering and terrorist financing?
2. Which FATF recommendations are relevant for the judicial organizations in the context of supervision, investigation, and prosecution?
3. What is the role of the judicial organizations in combating money laundering and terrorism financing?
4. What mechanisms are available to these judicial organizations to combat money laundering and terrorist financing?
5. What approach is taken in practice to combat money laundering and terrorist financing?
6. To what extent are the objectives achieved?

Tasks that were executed for the purpose of answering the sub-questions:

By means of desk research and interviews the Council investigated how the two subjects are regulated in legislation, regulations, and policy, and how the approach is organized in practice. In addition, it looked at the results achieved by the various (judicial) authorities.

1.4 Limitation and scope

The focus of this inspection was the judicial authorities' approach to combating criminal money laundering and terrorism financing. The inspection did not focus on the combating of acts of terrorism in themselves but only on the financing thereof.

The Council limited the scope of the inspection to the judicial authorities responsible for monitoring compliance with anti-money laundering and terrorism financing requirements and the detection and prosecution of money laundering and terrorism financing. Although financial institutions, financial service providers, and non-financial professional groups within the private sector are important in the overall fight against money laundering and terrorism financing, they are outside the scope of this inspection.

The inspection covers the period 2010 - 2021.

For the definitions of money laundering and terrorism financing, the Council refers to the Penal Code of Sint Maarten (*Wetboek van Strafrecht Sint Maarten, WvSr*). Conduct that is considered a criminal offense in the context of money laundering is listed in articles 2:404, 2:405 and 2:406 and in the context of terrorist financing in article 2.55.

Briefly defined, money laundering is considered as concealing or disguising (by natural or legal persons and organizations) the true nature, origin, location, disposition or movement of property and property rights obtained from any crime, or who is the rightful owner thereof or has them at hand.

Terrorism financing is defined as the intentional collection, provision or disposition of funds for oneself or for another, directly or indirectly, with the intention of using them, or knowing that some or all of these funds will be used, for the commission of a terrorist crime or for the support of persons or organizations committing or attempting to commit terrorist crimes, or for the commission of a crime in preparation for or facilitating the commission of a terrorist crime.⁸

1.5 Assessment Framework

To answer the sub-questions formulated, an assessment framework was drawn up with the aid of the following sources:

- Legislation and regulations
- Policy and other relevant information
- (C)FATF recommendations

1.6 Research methodology

The inspection was performed as listed below:

- 1) Orientation phase: the Council studied the topics to determine the approach of the inspection and developed a joint plan of action.
- 2) Desk research: a literature search was performed by the Council, a theoretical/legal framework was developed, and the interviews were prepared.
- 3) Data collection: interviews were conducted with representatives of the FIU, OM, the Attorney General's Office (PPG), the Anti-corruption taskforce (TBO), the KPSM, the Asset Recovery Team (ART), Customs, the National Detectives Agency (LSM) and the Dutch Caribbean Coastguard (KWCarib). Reports of all interviews were prepared, and all interviewees were afforded the opportunity to verify their interview report. The interview reports were approved after submission to the individuals involved.
- 4) Analysis and reporting: the Council processed and analyzed the information collected according to the main and sub-questions. Based on this, the information was then compared to the evaluation framework. A draft inspection report was then prepared.

⁸ These definitions were utilized by the Council in its 2017 report: 'Inspection report of the Law Enforcement Council regarding the combating of money laundering and terrorism financing in Curaçao' (2018).

- 5) Rebuttal and approval: the findings in the report were presented to the representatives of the relevant agencies and to the Minister of Justice for rebuttal, after which the report was approved by the Council.

1.7 Reading Guide

In Chapter 1, the Council describes the background for the inspection as well as its design and approach. Chapter 2 contains background information regarding the nature and scope of money laundering and terrorism financing in Sint Maarten. Chapter 3 in turn provides an outline of the laws, regulations, and policies applicable to money laundering and terrorism financing relevant to this inspection (sub-questions 1 and 2). Chapter 4 highlights the research findings on the role of the various judicial organizations in combating money laundering and terrorism financing, the mechanisms available to them and their approach in practice. The findings regarding to what extent results are achieved based on the available resources are also presented in Chapter 4. Thus, answering sub-questions 3 to 6. The report concludes with an analysis, a general conclusion, and recommendations to the Minister of Justice (Chapter 5).

2. Research results: nature and scope of money laundering and terrorism financing⁹

2.1 Introduction

This chapter provides a brief insight into the nature and scope of money laundering and terrorism financing. To provide the necessary insight the findings of the interviews with interviewees are highlighted in the relevant sections along with research findings.

2.2 Nature and scope of money laundering and terrorism financing

Criterion: There is up-to-date insight into the nature and scope of money laundering and terrorism financing.

Money laundering

The crime analysis published in 2011,¹⁰ highlighted the fact that in Sint Maarten law enforcement authorities such as Customs and the KWCarib were insufficiently equipped to execute controls at the ports and that the investigative authorities also lacked the capacity and financial expertise to conduct investigations where it pertained to money laundering. At that time the FIU also lacked capacity and was not forwarding any suspicious transactions to the OM. It was deemed that these issues were well known to criminals who were continuing to use the island with impunity to launder or conceal illegal monies. Regarding the nature and scope of money laundering in Sint Maarten the following is stated in the mentioned report:

“To get a better idea of the scope and seriousness of the money laundering problem, extra capacity is indispensable for traditional enforcement and investigation services and for special services such as the Tax Inspectorate and the Unusual Transactions Reporting Office. Until then, it remains guesswork how big the actual extent of money laundering on St. Maarten is. Our investigation only allows the conclusion that there is reason to suspect that money laundering occurs on a large scale given the large non-cash and cash flows, the many opportunity structures for money laundering and a very limited supervision thereof.”

The analysis also listed the following forms of money laundering in Sint Maarten:

- trust offices and offshore constructions;
- money remitters;
- underground banking;
- physical money transports.

A follow up to this analysis is not yet available for Sint Maarten. However, the ‘*Regional Crime Analysis*’

⁹ This report contains unofficial English translations of Dutch regulations and policies. Reasonable efforts have been made to provide accurate translations, however, any discrepancies or differences created in the translation are not binding and have no legal effect. Under all circumstances the official Dutch publication of regulations and policies prevails.

¹⁰ National Police Forces, (2011) Crime Analysis Sint Maarten: An investigation into organized and communal crime.

(2019)¹¹, of which the aim is to provide a basis for making choices in the tackling of cross-border/transnational crime and crime that disrupts the rule of law such as money laundering, touches on the subject. It states that transnational crime is a new form of cross-border crime and can be broadly classified into three main groups, one of these being the infiltration of businesses and governments, for example through extortion, money laundering and corruption. It further states that in order to grow, these transnational networks require capital to for example, establish illegal companies or invest in new companies. Of the three main sources of financial capital available to them (reinvestment of criminal gains, borrowed capital and legal sources), reinvestment of criminal gains is the most important.

The analysis also reports that transnational crime is considered one of the biggest threats in the region and suggests that one of the methods that can be utilized by authorities, such as the police and the Detective Cooperation Team (RST), to gain insight into the whole network is a bottom-up approach. This entails tackling intermediaries, coordinators, facilitators, and executors within the Dutch Caribbean. Because unlike the front men, intermediaries and exporters are to be found in these countries as they play an important role in the transit of contraband.

Money laundering has also been touched upon in earlier reports by the Council. According to the inspection report *'The approach to drug crime and drug related problems in Sint Maarten'* by the Council, drug smuggling is often associated with the smuggling of other illegal commodities such as weapons or illegal cash shipments.¹² Corruption and money laundering are also considered as drug-related problems in Sint Maarten. Furthermore, the OM and the FIU also indicated in this report that large sums of criminal assets from drug trafficking are laundered in Sint Maarten.

Multiple interviewees observe that criminals are using the same earlier mentioned forms of money laundering as in the past, only now in a more sophisticated manner. Complicated financial constructions are created to conceal the ultimate beneficiaries, and the knowledge and expertise of facilitators is widely used.

According to the KPSM, the scale of money laundering on the island is large given the size of the population in relation to the number of casinos. While casinos do report transactions to the FIU, the KPSM believes that this is done by most merely to 'appear' transparent as they are known to be popular venues for the laundering of money. Other types of businesses and investments in real estate are also known to facilitate money laundering. According to an interviewee, the larger the business, the easier it is to the launder criminal proceeds as it is less conspicuous. More expertise is needed to deal with these complex forms of money laundering. Another interviewee, based on their knowledge and experience, as well as the tactical and intelligence information known to them, also concludes that the phenomenon of money laundering on Sint Maarten is extensive and creates a worrying situation.

¹¹ Van der Zee, S. (2019). Regional Crime Analysis. Trends in the Dutch Caribbean 2020-2022.

¹² Law Enforcement Council, (2019). The approach to drug crime and drug related problems in Sint Maarten.

According to the OM the overall view on money laundering is incomplete but based on the limited information available and indicators in general, they have the strong impression that the extent of money laundering in Sint Maarten is large. This impression is strengthened by the fact that criminal behavior is allowed to go unchecked. There are namely very few information-driven investigations being carried out related to money laundering at the local level due to the lack of capacity, expertise, and specialization of the various investigative services. The OM indicates that money laundering is often only associated by the investigative authorities with the illegal drugs trade but note that other forms of crimes can also have a financial component which can lead to money laundering. Based on professional knowledge of the matter and the indicators, the OM further indicates that the most common forms of money laundering happen via trust and offshore constructions (this often involves extensive and complex constructions), money remitters, physical money transports and underground banking. In the latter case the example is given of foreigners who reside in Sint Maarten without the necessary documentation and would like to send money abroad but who cannot do so legally due to their status.

On the extent of the money laundering phenomenon the PPG indicate that "the more you look, the more you see." Money laundering investigations are often lengthy investigations as finding out what the money was invested in is often complex due to the construction used. Trust constructions, among other things, can be used for this purpose. Accountants and notaries also play an important gatekeeper role to prevent the misuse of such (trust) constructions or can have an active role in setting up the constructions. These constructions can be set up locally and internationally in a professional and ingenious manner. There are also professionals in this field providing these (illegal) services on the surrounding islands. This international and cross-border aspect makes it complex for the investigative authorities.

The nature and scope of money laundering has also been investigated on the other islands of the Dutch Caribbean. Bonaire for example, according to the Analyst Network National Security, is a popular location for money laundering as it pertains to the investment of criminal proceeds in real estate which has consequences for the housing market, such as prices rising sharply making it less affordable for the local population. Money laundering occurs via (malicious) money transaction offices and credit institutions. It is also further facilitated by the fact that the economy of Bonaire runs largely on cash.¹³ In 2018 the Council conducted an inspection into money laundering and terrorism financing in Curaçao. This inspection ascertained that the risks related to this phenomenon had not been identified as a national risk assessment had not yet taken place and the last crime analysis dated from 2008. The Council determined then that in order to obtain the necessary insight into the nature, extent and development of criminality in Curaçao, it was necessary to conduct the legally prescribed crime analysis every two years.¹⁴ As mentioned, the last crime analysis specifically for Sint Maarten was conducted in 2011.

¹³ Analyst Network National Security, (2020). Integrated risk analysis Caribbean Netherlands.

¹⁴ Law Enforcement Council, (2018). Inspection of the Law Enforcement Council on the combating of money laundering and terrorism financing in Curaçao.

Internationally, the United States State Department, for example, labels Sint Maarten as a major money laundering jurisdiction. In its *'International Narcotics Control Strategy Report. Volume II Money Laundering'* (2021), it states that the favorable investment climate and rapid economic growth of the island is responsible for drawing rich investors who invest in large-scale real estate developments which include hotels and casinos. These casino's, gaming houses and its visitors are a large source of money laundering activities on the island. The State Department furthermore points out that legislation to regulate and supervise casinos and the gaming sector have yet to be passed.¹⁵ In chapter 3 the legal framework and policies will be discussed.

Terrorism financing

According to the policy program on cross-border crime of the OM (2016), there were indications of terrorism financing in the Caribbean.¹⁶ All interviewees currently indicate however that they have not come across any concrete signs of terrorism financing in Sint Maarten. They do note that terrorism financing can go hand in hand with criminal offences such as money laundering and often uses routes where there is little to no government oversight and that it is therefore possible that it also takes place in or via Sint Maarten.

¹⁵ United States Department of State, Bureau of international narcotics and law enforcement Affairs, (2021). International Narcotics Control Strategy Report. Volume II Money Laundering.

¹⁶Attorney General's Office (2016), Policy program cross-border organized crime 2016-2020 Public Prosecutor's Office.

3. Research results: Legal framework and policy

3.1 Introduction

This chapter describes the main legislation, regulations and policies adopted to combat money laundering and terrorism financing. The subject of money laundering and terrorism financing are included in various (inter)national laws and (inter)regional agreements. National laws are required to be implemented in accordance with these international conventions.

3.2 Legal framework

Criterion: National laws and regulations are consistent with international conventions on combating money laundering and terrorism financing.

3.2.1 International Laws and Conventions

Conventions

United Nations Convention on Transnational Organized Crime

The purpose of the United Nations Convention on Transnational Organized Crime is to enhance international cooperation to prevent and more effectively combat transnational organized crime such as money laundering and the growing links between transnational organized crime and terrorist crimes.¹⁷ This convention is applicable in the entire Kingdom of the Netherlands. Parties of the convention are recommended to take measures with regards to law enforcement and the combating of money laundering, specifically in the areas of reporting, cooperation, and training.

International Convention for the Suppression of the Financing of Terrorism

The purpose of this convention is to prevent and counteract that countries through appropriate local measures, the financing of terrorists and terrorist organizations, whether the financing is direct or indirect through organizations which also have or claim to have charitable, social or cultural goals. These can also be engaged in unlawful activities such as illicit arms trafficking, drug dealing and racketeering, including the exploitation of persons for purposes of funding terrorist activities. The intention is also for countries to consider, where appropriate, adopting regulatory measures to prevent and counteract movements of funds suspected to be intended for terrorist purposes. This without impeding in any way the freedom of legitimate capital movements and to intensify the exchange of information concerning international movements of such funds.¹⁸

Kingdom laws

*Kingdom Act on Public Prosecutor's offices of Curaçao, Sint Maarten and Bonaire, Sint Eustatius and Saba*¹⁹ (*Kingdom Act Public Prosecutor's offices*) and *the Kingdom Act on Police of Curaçao, Sint Maarten and Bonaire, Sint Eustatius and Saba (Kingdom Act Police)*²⁰

¹⁷ UN Convention against Transnational Organized Crime, New York, 15-11-2000. <https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html>

¹⁸ UN 1999 International Convention for the suppression of the financing of terrorism. <https://www.un.org/law/cod/finterr.htm>

¹⁹ Stb. 2010, 388

²⁰ Stb. 2010, 387

The Kingdom Act on Public Prosecutor's offices and the Kingdom Act on Police explicitly refer to cooperation to combat cross-border crime, including international money laundering. The Kingdom Act Public Prosecutor's offices lists terrorism, international drug trafficking, computer crime, international money laundering, international arms trafficking, international human trafficking, and international corruption as forms of cross-border organized crime. The Kingdom Act Public Prosecutor's offices also calls for a policy program to be drafted every four years to address these.²¹ This policy program is detailed in paragraph 3.3.

The Kingdom Act Police contains stipulations concerning the structure, organization, authority and management of the police and the cooperation between the forces of Curaçao, of Sint Maarten and of Bonaire, Sint Eustatius, and Saba. Article 57a of said Kingdom Act provides for a protocol establishing specialized detective cooperation between the countries of the Kingdom with regards to carrying out investigations as it pertains to cross-border crimes. See paragraph 3.2.4 for the protocol.

*Kingdom Act Coast Guard of Aruba, Curaçao and Sint Maarten as well as for the public entities Bonaire, Sint Eustatius and Saba*²²

The Kingdom Act Coast Guard of Aruba, Curaçao and Sint Maarten as well as for the public entities Bonaire, Sint Eustatius and Saba describes the general police tasks and border control tasks of the Coast Guard. The Coast Guard's '2018-2021 Justice Policy Plan' includes the following policy spear points: the transportation of narcotics and strategic goods; human smuggling and trafficking; the transportation and trafficking of illegal firearms; and terrorism. The smuggling of drugs, weapons and people are possible sources of financing for terrorist acts and by continuously combating these, the Coast Guard makes an (indirect) contribution in combating terrorism financing.

3.2.2 Recommendations Caribbean Financial Action Taskforce

Criterion: Sint Maarten is in compliance with the CFATF recommendations on the follow-up of the fight against fraud and money laundering.

As indicated earlier in chapter 1 the FATF has established 40 recommendations to guide member countries in the fight against money laundering and terrorism financing. The CFATF in turn has fine-tuned these for its Caribbean member countries. For this inspection the Council has taken a closer look at the four recommendations specific to the operating of law enforcement. These recommendations of the FATF are listed in table 1 along with the corresponding recommendations of the CFATF. Additionally, the recommendation related to the operations of the FIU, although not a law enforcement agency but a regulator, will be assessed as it also falls under the responsibility of the Ministry of Justice. Recommendation 30/27 which is relevant to this chapter will be looked at in paragraph (3.3), the remaining three recommendations will be handled in chapter 4.

An evaluation conducted by the CFATF in 2020 shows that Sint Maarten addressed all core and main recommendations that were rated as "partially compliant/ non-compliant" to a level comparable to

²¹ Articles 33 and 34 of the Kingdom Act Prosecutor's Offices.

²² Stb. 2010,388

“largely compliant” or “compliant”.²³ The status and level of compliance according to the CFATF pertaining to the recommendations specific to this report by the Council are listed in table 2.

Table 2. Status of AML/CTF recommendations of the (C)FATF including level of compliance.

Recommendations	FATF	CFATF	Status	Compliance
Establish a financial intelligence unit (FIU) to serve as a national center for receiving and analyzing: (a) suspicious transaction reports; and (b) other information relevant to money laundering, related predicate offences and terrorist financing, and for the dissemination of the results of that analysis.	R. 29	R. 26	Sint Maarten has strengthened the legal and institutional framework of the FIU and now the legal basis for the establishment and the autonomy of the FIU is appropriately set out. The FIU has also improved its relationship with and outreach to service providers, the number of reports submitted to the OM, the security of its premises, and the production of annual reports.	Compliant
Countries should ensure that designated law enforcement agencies are responsible for money laundering and terrorist financing investigations under national AML/CTF policies.	R. 30	R. 27	Sint Maarten did not provide information on actions taken to address the deficiencies relative to the allocation of resources for money laundering and terrorism financing training for the local law enforcement agencies, the execution of training activities, and the increase of the number of law enforcement officers qualified to execute effective money laundering investigations.	Partially compliant
In investigations of money laundering, related predicate offences and terrorist financing, competent authorities should also be able to access all necessary documents and information for use in those investigations and in prosecutions and actions.	R.31	R.28	* Compliant since 2013	Compliant

²³ CFATF, (2020) Twelfth follow-up report of Sint Maarten. LI Plenary and working group Meeting November 20th – December 11th, 2020.

Recommendations	FATF	CFATF	Status	Compliance
Countries should have measures in place to detect physical cross-border transportation of currency and bearer negotiable instruments, including through a declaration and/or disclosure system.	R. 32	SR. IX	Sint Maarten addressed most of the deficiencies related to Special Recommendation IX by including provisions in the National Ordinance Cross-Border Money Transfers that amends the National Ordinance Reporting Cross-Border Cash Transports. (With these amendments, the country has been able to establish a declaration system for cross-border transportation of currency and bearer negotiable instruments, restrain currency where there is a suspicion of ML or TF and keep relevant statistics. Not with-standing, the country still needs to ensure that is a process for confiscating currency or negotiable instruments for persons listed under United Nations Security Council Resolution 1267.	Largely compliant

Bron: CFATF, (2020) Twelfth follow-up report of Sint Maarten. LI Plenary and working group Meeting November 20th – December 11th, 2020

The government is tasked with complying with the guidelines of the CFATF regarding combating fraud and money laundering. According to the Ministry of Justice, a plan of approach thereto has been drawn up and is being implemented. In paragraph 4.2 the Council discusses its findings related to the above recommendations.

3.2.3 National laws and regulations

Criterion: A strong regulatory framework for operating casinos reduces significant risks, including money laundering and organized criminal activity.

In 2014 the report ‘*Integrity inquiry into the functioning of the government of Sint Maarten*’ by Price Waterhouse and Coopers, identified notable gaps in the regulatory framework with regards to money laundering which led the inquiry team to issue a recommendation to this effect:

“Utilize the gaming oversight board to monitor compliance with gaming regulations and advance policies to address integrity risks associated with casino operations in Sint Maarten (e.g., money-laundering): As previously stated, the Inquiry team recommends that the gaming oversight board be an independent body that is separate from the ministerial framework of the Government of Sint Maarten. In addition, to its role in issuing licenses, the oversight board should monitor casino revenue in coordination with local tax authorities to identify suspected tax fraud, money laundering, and other

financial crimes. Most gaming boards have as one of their primary functions an audit division to monitor and review compliance with reporting requirements of gaming revenue. These procedures will not only help to reduce the risk of money laundering but identify the appropriate amount of revenue subject to tax.”²⁴

A regulatory framework for the operation of casinos (such as a centralized gaming regulatory body) has not yet been established. However, at the time of the drafting of this report a ministerial decree was issued whereby by the Minister of Tourism, Economic Affairs, Transport and Telecommunication (TEATT) established a workgroup and appointed members. The workgroup is tasked with executing the plan of approach that was approved by the Council of Ministers on August 12, 2021, for the establishment of the Sint Maarten Gaming Authority.²⁵

The national laws and regulations that are relevant to AML/CTF often fall into three categories: the reporting obligation of institutions (e.g., National Ordinance FIU), the criminalization of money laundering and terrorism financing (e.g., Penal code) and the imposing of economic-financial sanctions (e.g., Sanction regulation). Below is an overview of the current legislation and directives available. This overview contains the main legislation with regards to the topic of this report. According to the Ministry of Justice, a plan of action has been prepared with respect to adapting and or updating the national legislation as per international standards.

- National Ordinance on the obligation to report Cross-border Money Transfers (2002, no.74)
- Penal Code of Sint Maarten (AB 2015, no.9)
- Indicator regulator Sint Maarten (AB 2013, GT no. 489)
- Code of Criminal Procedures (PB. 1997, no. 237)
- Sanction Regulation Sint Maarten (AB 2017, GT no.30)
- Confiscation Directive (2017.02)
- National Ordinance Financial Intelligence Unit (AB 2019, no. 24)
- National Ordinance Money laundering and terrorism financing (AB 2019, no. 25)
- National Ordinance to amend the National Ordinance Cross-border Money Transfers (AB 2019, no. 26)
- National Ordinance for the purpose of amending the Penal Code in connection with the implementation of some urgent international obligations (AB 2019, no. 41)

Bottlenecks associated with the current national legislation, according to the PPG/OM, is that the authorities available to them are not always sufficient in order to be able to access all the necessary information in investigations concerning the laundering of money and the financing of terrorism. The PPG/OM indicates that in certain respects the legislation is also outdated and therefore inadequate in relation to the manner in which society has developed over the years. For example, privacy legislation is not yet up to date, certain necessary special investigative powers are not included in the current Code of Criminal Procedure. For example, it is not possible to seize goods of a third party if there is no evidence that these goods originated from a crime. In the Netherlands, for example, this is possible under certain conditions. This type of seizure can namely sometimes prove necessary in cases whereby persons attempt to conceal acts of money laundering or terrorism financing by utilizing third parties.

²⁴ Price Waterhouse Coopers (2014), Integrity inquiry into the functioning of the government of Sint Maarten.

²⁵ Decree by the Minister of Tourism, Economic Affairs, Traffic and Telecommunications to establish the St. Maarten Gaming Authority Work Group and appoint the members of the work group (Decree Sint Maarten Gaming Authority - Work Group). No. 2022/628.

The necessary amendment for the latter is however included in the new draft Code of Criminal Procedures which has yet to be adopted in Sint Maarten.

A new Code of Criminal Procedures for Sint Maarten, as well as for Aruba, Curacao and the BES islands is still pending. The changes in the revised legislation are regulated in a corresponding manner as far as possible within the countries. A draft was submitted to the Parliament of Sint Maarten in June 2019.²⁶ In April 2020 sessions were still ongoing. In November 2020 the Justice Committee of Parliament was scheduled to meet about the draft legislation and the concerns by various members of Parliament regarding it.²⁷ As indicated, anno 2022 the Code has yet to be adopted.

As it regards legislation related to the protection of data (privacy), the Council observed that in the January 2021 Judicial Four Party Consultation (JVO), it was agreed on a project approach whereby a project group would begin preparations for the joint creation of a Consensus Kingdom Data Protection Act. This project group (consisting of participants from all countries) drafted a contour note, which has since been adopted. The next step that is to be taken is the preparation of a draft text for the Kingdom Act for the June 2022 JVO. According to the Ministry of Justice, this deadline might prove unattainable due to the complexity of the material.

The OM adds two bottlenecks as it pertains to national legislation. The first is that while the indictment can be changed in first instance until the demand for sentencing is read, it cannot be changed in second instance (appeal) by the prosecutor if new facts have come to light. The second is that the act of "simple money laundering" is not punishable in Sint Maarten. This term refers to the acquisition or possession of an object immediately derived from any crime of its own in which the defendant has not yet committed any concealing or cover-up act.

The Confiscation directive (*Aanwijzing afpakken 2017*) of the OM/PPG²⁸ which is applicable for Sint Maarten as well as for Curacao, Bonaire, Sint Eustatius and Saba, is especially relevant when it comes to conducting criminal investigations to combat money laundering. It states that to gain insight into the assets and financial flows associated with lucrative crime, financial investigation is crucial, either as an initial investigation or as part of the investigative process. In this regard it lists a few basic principles that detail when and how (financial) criminal investigations should be conducted. One of the guiding principles is that in every investigation where there is a proceed from a crime such as for example fraud, drugs, and human trafficking, there should be an investigation into the assets of the convicted individual. Another is that information should always be sought from the FIU in the context of a financial investigation or if there is an indication of possible money laundering.

According to the OM/PPG the Confiscation Directive does list several principles that are important for gaining insight into assets and money flows, but in many criminal cases these principles do not play a role. Due to cases of for example, domestic violence, murder, and vice, which can, but might not necessarily contain a financial component. Therefore, there being no basis for money laundering and the directive not needing to be applied.

3.2.4 Protocols

Protocol Strengthening of border control

²⁶ [ZJ 2018-2019-129 – Parliament of Sint Maarten \(sxmparliament.org\)](#)

²⁷ [Justice Committee of Parliament to meet about the proposed Criminal Procedure Code and concerns with this draft legislation – Parliament of Sint Maarten \(sxmparliament.org\)](#)

²⁸ Confiscation directive (2017.02)

Since 2017 Sint Maarten has participated with Kingdom partners on strengthening border control. First via the *'Mutual Agreement Strengthening Border Control'* (ORVG) which ended on July 31, 2021²⁹, and now via the *'Protocol on strengthening border control in the Caribbean countries of the Kingdom'*³⁰. The goal of this protocol is to adopt measures on border control to contribute to the prevention of cross-border/transnational organized (undermining) crime in the Kingdom by making investments in the Caribbean countries of the Kingdom and improving inter-agency cooperation. The explanatory memorandum accompanying the protocol specifies that the Caribbean borders of the Kingdom are involved in transnational organized (undermining) crime, such as drug smuggling, illegal immigration, human trafficking and smuggling, arms trafficking, and money laundering. These varying forms of transnational organized (undermining) crime are said to affect not only the rule of law, but also the communities of the Caribbean countries in the Kingdom. The countries therefore expressed their desire for intensive cooperation in combating transnational organized and undermining cross-border crime as well as the improvement of border control at airports and maritime borders.

Under this protocol, several departments and agencies in Sint Maarten were involved in a work group tasked with developing a plan of approach for strengthening the border; with respect to justice the following operational agencies were involved: KWCarib, IGD, KPSM, OM and Customs. Within the framework of the ORVG, which solely concerns Sint Maarten, a plan of approach was drafted which focused on, among others, personnel, uniforms, and training. This plan served as a starting point for the new plan of approach that was drafted. In its report *'Illegal firearms in Sint Maarten'*³¹ the Council mentioned that Sint Maarten's earlier plan of approach was being used as an example for the other countries, in relation to establishing an Alpha Team. The new plan of approach focusses on, among others, budget, resources, personnel, and training, whereby each agency can specify its needs. According to the Ministry of Justice, the final version of the draft plan of approach was submitted by the government of Sint Maarten to the Dutch ministry of the Interior and Kingdom Relations (BZK) on November 5th, 2021, and approved on November 9th, 2021, by BZK.

Protocol Detective Cooperation Team

According to article 2 of the adapted protocol related to specialized detective cooperation between the countries of the Kingdom, Aruba, Curaçao, Sint Maarten and the Netherlands,³² the detective cooperation includes the availability of detectives at the respective police forces and the continued development thereof for the purpose of effective law enforcement. The availability of capacity and expertise is in part to support the detective capacity of the countries aimed at tackling cross-border crime and offences. Which, by reason of their seriousness or frequency or the organized context in which they are committed, constitute a serious breach of the rule of law as well as legal assistance in respect of such offences. The cooperation also includes enhancing the collective processing of criminal investigation information within this framework. The *'Policy Plan Detective Cooperation in the Caribbean part of the Kingdom 2020-2023'* goes into further detail on how the RST is to be deployed.³³

²⁹ Decree of the Minister of Justice dated December 19, 2017, number 72542, on the mutual agreement between Sint Maarten and the Netherlands pursuant to article 38, paragraph 1, of the Charter of the Kingdom of the Netherlands to strengthen the border control of Sint Maarten.

³⁰ Protocol related to strengthening of supervision of the borders of the Caribbean countries of the Kingdom dated 05-02-2021.

³¹ Law Enforcement Council, (2021). *Illegal firearms in Sint Maarten*.

³² Changes to the protocol related to specialized detective cooperation between the countries of the Kingdom, Aruba, Curaçao, Sint Maarten and the Netherlands, 2019.

³³ Policy Plan Detective Cooperation in the Caribbean part of the Kingdom 2020-2023, 2 December 2019.

3.3 Policy

Criterion: Countries should ensure that designated law enforcement agencies are responsible for money laundering and terrorist financing investigations under national AML/CTF policies.

Policy Program Cross-border Crime PPG

The 'Policy program on cross-border crime 2016-2020'³⁴ of the PPG, expounds on the approach to money laundering and terrorism financing by the OM which will be discussed further in chapter 4. The approach in short entails conducting criminal investigations and improving the information position. Besides this focus is also given to:

- Cooperation with the FIU
- Financial Top X
- Building expertise
- Confiscation and repossession
- TBO
- Financing (of terrorism)

National policy Ministry of Justice

According to article 18 of the National Ordinance Combating Money Laundering and the Financing of terrorism,³⁵ the Minister of Justice is responsible for drafting a national policy to combat money laundering and terrorism financing based on risks that have been identified. All interviewees indicate that there is currently no policy available. The main reason for this being the lack of people, resources, and finances across the board. The FIU indicated that anno 2016 there was a good start-up between the different chain partners regarding the development of a common long-term vision in the field of anti-money laundering. In particular, the establishment of the TBO led to a significant boost in this area. Since then, the common character has slowly but surely waned and there is no longer a joint effort to come to a common vision. The FIU furthermore indicated that the common long-term vision should be the 40 recommendations of the FATF.

The LSM noted that if by a shared vision is meant that there is a mutually agreed upon and written policy, that this is not the case. However, they have observed that the various stakeholders are on the same page regarding the need to tackle money laundering during the mutual consultations. This considering the damage the phenomenon causes on Sint Maarten and the threat that it poses to the democratic legal order. The FIU indicated that in general there is too little attention, interest and dedication from the Government Administration and the Parliament of Sint Maarten (Parliament) regarding money laundering, and sometimes outright opposition. Examples of this are reactions to the proposal that was submitted in Parliament to amend the then draft law containing rules to prevent and combat money laundering and terrorist financing³⁶ and the law amendment that was submitted to increase the threshold for cross-border cash transports to ANG 25.000.³⁷ The FIU is of the opinion

³⁴ Attorney General's Office (2016), Policy program cross-border organized crime 2016-2020 Public Prosecutor's Office.

³⁵ AB 2019, no. 25

³⁶ [The Daily Herald - Some MPs still on fence about FIU law changes](#)

³⁷ [Law amendment aims to increase cross-border cash to NAf. 25,000 | THE DAILY HERALD | SXM Talks \(sxm-talks.com\)](#)

that attention should be given to administrative enforcement, creating awareness, and increasing resources of the relevant authorities.

Together with representatives of the Ministry of Justice, the FIU is part of the steering committee for an administrative approach to subversive crime. This was initiated during the JVO in June 2021. A project plan is being set up for each country, with the intention of drafting legislation whereby a structure is developed that imposes the necessary checks and balances, such as the screening of an application by the relevant ministries (for example the Ministry of Public Health, Social development and Labor) before a permit, for example for a foreign investor, is issued.

In its report *'Inspection on the approach to human trafficking and human smuggling in Sint Maarten'*³⁸ the Council had indicated that to successfully create barriers that reduce the opportunity to commit human trafficking and human smuggling, administrative measures and controls are indispensable. Also, that the necessary legislation must be put in order, and that ministries should take joint policy responsibility for preventing and combating all manifestations of these serious crimes, as a criminal law approach alone cannot achieve the desired result.

Country package

Because of the COVID-19 pandemic the countries within the Kingdom required financial support. A mutual agreement between the Netherlands and Sint Maarten based on the Kingdom Charter³⁹ was proposed, the so-called country package. The agreement states amongst others that the countries are confronted with many cases of cross-border crime related to drug smuggling, human smuggling and trafficking, arms trafficking, and money laundering. For this reason, it contains measures and reforms to be taken to strengthen the rule of law such as focusing on strengthening border control, tackling financial-economic crime, and improving the detention system.⁴⁰

The intention of the country package is that further reforms of an administrative nature are implemented, sustainable public finances are achieved, and the resilience of the economy is strengthened, including embedding the legal framework that will be required to do so.⁴¹ In anticipation of this Kingdom Act the countries are already executing the tasks contained within the country packages. An agreement has since been reached and the proposed law has been submitted to the parliaments of the countries.⁴²

In the explanatory note on the 2021 annual budget, it states that the country package will set the policy framework for the coming years and that wherever possible a link will be made with the measures and their impact on the national budget. It goes on to state that the fight against and prevention of crime are inextricably linked to law enforcement. The main priority therefore is initially to further develop and strengthen the operational services.

In 2021, crime enforcement would therefore focus on:

- tackling High Impact Crimes through the establishment of a steering group 'Integral

³⁸ Law Enforcement Council, (2019). Inspection on the approach to human trafficking and human smuggling in Sint Maarten.

³⁹ Article 38, paragraph 1 of the Kingdom Charter.

⁴⁰ The Council also took note of the developments concerning the country package in its State of Law Enforcement 2020 and 2021.

⁴¹ Caribbean body for reform and development (in the making) country package Sint Maarten.

⁴² [Agreement for Draft Consensus Kingdom Law to Parliaments \(sintmaartengov.org\)](https://www.sintmaartengov.org)

Improvement of Investigation and Prosecution Instruments' and increasing regional cooperation, particularly with French Saint Martin, the United States and surrounding neighboring countries;

- strengthening border security and tackling border crime by deploying combined teams of border security authorities (Immigration, Customs and Coast guard) in cooperation with the country's police force in high-risk areas at airports and seaports.⁴³

National Risk Assessment

One of the risks already identified in the Crime Analysis in 2011 was the gambling sector. The risks associated with this sector were also highlighted in the integrity report 'Doing the right things right' commissioned by the Government Administration in 2014:

*"The lack of oversight into casinos and other cash-heavy businesses creates an environment susceptible to money laundering and other financial crimes. The Government of Sint Maarten should conduct a specific review of its money-laundering, identifying gaps with leading practices with respect to compliance with money laundering regulatory requirements, reporting and investigations."*⁴⁴

One of the (core) FATF recommendations (R.1) states that countries should organize a National Risk Assessment (NRA) in order to apply a risk-based approach to ensure that measures to prevent or mitigate money laundering and terrorist financing are commensurate with the risks identified.⁴⁵ A National Risk Assessment can therefore be considered as the basis for determining policy priorities and the allocation of resources. This was also pointed out by the Ministry of Justice. On December 5th and 6th 2019, the first anti-money laundering awareness and NRA conference was organized by the Ministry. Relevant public and private sectors were invited, and information was provided on the launching of an NRA exercise against money laundering, financing of terrorism and the proliferation of weapons to comply with FATF recommendations.⁴⁶ At the time of the drafting of this report another conference was organized by the Ministry on 6-13 June 2022 to orientate stakeholders on the content of the NRA. This included an introduction to the NRA-process to be utilized in Sint Maarten, information on threats, vulnerabilities and risks associated with money laundering and terrorism financing.

The World Bank will be aiding Sint Maarten in carrying out its National Risk Assessment, a core element of the country's compliance with international anti-money laundering and counter terrorism financing obligations (funded partially by the Sint Maarten trust fund under the management of the National Recovery Program Bureau)⁴⁷. Interview findings confirm that the execution of the NRA, which is scheduled to take place in 2022, is of the utmost importance. According to a progress report of the country packages⁴⁸, an external project manager is currently being appointed to take charge of writing

⁴³ AB 2021, no. 62 Appendix part 2 Explanatory book.

⁴⁴ Committee on integrity in government administration, (2014). Doing the right things right.

⁴⁵ FATF (2021). International Standards on combating money laundering and the financing of terrorism & proliferation.

⁴⁶ [Invitation Anti-Money Laundering Awareness and National Risk Assessment Conference Ministry of Justice \(sintmaartengov.org\)](https://www.sintmaartengov.org)

⁴⁷ National Recovery Program Bureau - Semi-Annual Report January 1 – June 30, 2020

⁴⁸ Caribbean body reform and development (in the making) (2021), Execution report country packages Aruba, Curaçao and Sint Maarten – fourth quarter, 2021.

the NRA's plan of action as well as its implementation. Progress on the inventory is on schedule.

Interviewees indicate that the NRA will be executed on a smaller scale than in larger countries. This is seen as a more realistic approach considering the size of Sint Maarten. It will also have a significant positive impact on the cost of the project. Not to mention that many of the risks already identified on the surrounding islands are applicable to Sint Maarten as well. Regardless, the NRA should provide unique insights into the problems that exist in Sint Maarten, such as bottlenecks related to its open borders.

The OM is positive about the initiative to develop an NRA that can identify the specific risks of the country. They believe that it is incredibly important for the country, this in relation to being able to substantiate policy and to be able to demonstrate that conducting investigations on, for example, money laundering is necessary. As the NRA has not yet been executed, the earlier mentioned crime analysis and regional crime analysis are used as points of reference by the authorities.

The International Money Laundering Report (2021) by the United States' State Department also lists the following vulnerabilities, including the gambling sector, for Sint Maarten:

“Sint Maarten has 13 officially licensed casinos serving a population of approximately 40,000 persons, up to 30,000 temporary residents, and the nearly two million tourists who visited annually before the COVID-19 pandemic. Some gaming houses have reputations as money laundering centers, albeit not so much for the criminal money of customers, but more for the owners and their contacts. Online gaming is legal. Sint Maarten has offshore banks and companies. Traditionally, money laundering occurs through business investments and international tax shelters. Sint Maarten’s favorable investment climate and rapid economic growth over the last few decades drew wealthy investors to the island to invest in large-scale real estate developments, including hotels and casinos. Hurricane Irma in 2017 destroyed many of those real estate developments.”⁴⁹

Policy Plan RST/KPSM/LSM

The earlier mentioned policy plan related to detective cooperation in the Caribbean part of the Kingdom is partially based on the findings of the earlier mentioned regional crime analysis. According to the plan, the judicial approach concentrates on the leaders/principals of criminal networks who operate locally in Sint Maarten; when dealing with international principals, participation from the Kingdom is provided in the deployment of international investigative partners. It notes that crucial in this is that the focus is on coordinators and facilitators being used by principals to execute criminal acts in the country. The plan describes amongst others the way the central and decentralized teams of the RST will carry out its duties. The decentralized team of the RST consists of four officers deployed in Sint Maarten, in the so-called major crimes unit of the KPSM where priority is given to addressing

⁴⁹ United States Department of State, Bureau of international narcotics and law enforcement Affairs, (2021). International Narcotics Control Strategy Report. Volume II Money Laundering.

local disruptions and socially disruptive elements that have a relationship with transnational crime. This is expressed in particular in combating elements of violence within Sint Maarten society and addressing locally operating key figures that enable transnational crime. Part of this may include conducting financial investigations, combating money laundering, and dealing with corrupt elements. The execution of these is also dependent on the level of the KPSM (e.g., capacity, expertise, finances)

Furthermore, the central RST team located in Curaçao consists of two core teams. There is a team dedicated to combating cross-border/ transnational crime whereby in the deployment of investigative capacity, priority is given to disrupting international routes and illegal trade flows (e.g., narcotics or people), monitoring money flows and conducting financial investigation, combating money laundering, and tackling corrupt elements in the countries. The other team named TBO focusses on major corruption crimes with an emphasis on financial-economic aspects and involving Politically Exposed Persons (PEP), public servants, Government NPOs, facilitators, or public sector organizations. According to the policy plan this cross-border crime, in addition to corruption, often consists of serious forms of tax fraud and money laundering. Via the RST two officers have also been deployed within the LSM. The OM/PPG notes during rebuttal however that at the moment these two positions within the LSM are vacant.

4. Research results: Combating money laundering and terrorism financing

4.1 Introduction

This chapter will establish the way the different (investigative, prosecutorial) approaches outlined in the various aforementioned (inter)national laws, regulations, policy plans and recommendations by the CFATF, highlighted in chapter 3, have been implemented in practice. Criteria based on these have been formulated and will serve as a framework. A closer look will also be taken at the resources available to the organizations to execute said approaches.

4.2 Recommendations CFATF

4.2.1 Establishment FIU

Criterion: States must establish a financial intelligence unit (FIU) to serve as a national center for receiving and analyzing: (a) suspicious transaction reports; and (b) other information relevant to money laundering, related predicate offences and terrorist financing, and for the dissemination of the results of that analysis.

In its 'State of Law Enforcement 2019', the Council remarked that it considers an effective fight against money laundering and terrorism financing to be of great importance in the fight against cross-border crime. In addition, the Council pointed out that it is seriously concerned about the far-reaching (economic) consequences for Sint Maarten when the shortcomings to meet international requirements lead to measures regarding the international payments system.⁵⁰

Aside from the recommendation by the FATF (R. 29) to have a FIU established, the UN Convention on Transnational Crime also encourages states to consider the establishment of an FIU to serve as a national center for the collection, analysis, and dissemination of information regarding potential money laundering. In Sint Maarten the FIU is established in the National Ordinance Reporting Center Unusual Transactions.⁵¹ The FIU works in accordance with the recommendations of the FATF. The FIU in Sint Maarten, in contrast to the other countries within the Kingdom, is the only regulator that falls under the responsibility of the Ministry of Justice and thus within the justice chain.

The tasks of the FIU are legally embedded in the laws enacted relating to anti-money laundering and anti-terrorist financing (see chapter 2). Implementation and enforcement of the laws on a practical level is the next step, for which qualified personnel is needed, according to the FIU. The supervision department within the FIU has been virtually at a standstill since 2017, because of capacity problems. There have however been slight improvements in the field of supervision and the department is slowly progressing in the right direction.

⁵⁰ Law Enforcement Council, (2020). The State of Law Enforcement.

⁵¹ AB 2019, no 24.

According to the FIU, there are concerns about its limited powers to impose financial contributions (fees) on the private sector for the tasks executed, as this could help fund activities. In addition, the powers of the FIU are insufficient in gaining access to information of for example, the Cadastre, Chamber of Commerce and Civil registry.

The FIU also has a clear role in monitoring compliance with laws and regulations within the gambling sector. As indicated earlier a centralized gaming regulatory body has not yet been established. The FIU reports however that they are aware that a plan of action has been drafted by the Ministry of TEATT regarding the establishment of a gaming control board. There is communication between TEATT and the FIU regarding this, as there may be overlap in some of the activities. The FIU is also fully engaged in initiatives to push the various ministries to develop and implement their legally mandated tasks. The FIU is in consultation with, among others, the Ministry of TEATT, and the Ministry of Public Housing, Spatial Planning, Environment, and Infrastructure to organize, strengthen or improve administrative enforcement around licensing.

According to the FIU, the renewal of the FIU registers is an ongoing project. Due to technological issues the old register, which facilitated digital transactions, can no longer be utilized. A provisional template is being used, for the past eleven months, which is manually created by the reporting agent, encrypted, and sent to the FIU by e-mail. This is then processed by the FIU in an Excel file. This improvisation is in anticipation of a new register; however, the necessary financial provisions have yet to be made available for this. The FIU in the Netherlands, in comparison, is currently working on an upgrade of its anti-money laundering system, goAML, which is used worldwide. GoAML has also been implemented in Curacao, however, according to the FIU there have been some issues with its performance. The major stumbling blocks in Sint Maarten for the implementation of a new digital system are the high cost and the size of the system (given the relatively limited amount of data in Sint Maarten). The current (temporary) register is nevertheless not satisfactory. For example, consulting the register is possible but new data cannot be entered. At the moment investments are also taking place by the FIU for a new reporting program. This project has already been outsourced, but due to issues with the supplier it is currently on hold.

Furthermore, the FIU indicates that much work still needs to be done before the fourth evaluation round by the CFATF in 2024. Examples of this are the NRA, the registers, the further development of the FIU in terms of people, resources, knowledge, and improvement of the number of investigations of unusual transactions. Given these issues, the FIU is concerned that these might not be realized in line with the recommendations of the CFATF in time. Possible consequences could be the CFATF calling its member jurisdiction to apply countermeasures on the country for a lack of compliance with international standards.

According to the FIU, terrorism financing may well be taking place in Sint Maarten, but it is not being adequately investigated. However, the FIU has not received any signals of such but notes that terrorist financing runs along the same lines as money laundering. However, unlike money laundering, when

combating the financing of terrorism, the focus is less on the origin of the money, and more on its destination. The terrorist situation in France a few years ago (2015/2016) led the FIU to pay more attention to the potential financing of terrorism in Sint Maarten based on international lists, but this did not lead to any hits.

In 2017, the FIU, OM/PPG, KPSM and RST collaborated in a 'non-reporters' project. The goal of this project was to have more, timely and better reports of unusual transactions made to the FIU. The effect of this action was immediate for the FIU.⁵² The FIU is of the opinion that the organizations in the public and private sector in Sint Maarten are currently sufficiently aware of their reporting obligation. Unusual transactions based on objective and subjective indicators are generally reported in time. Nonetheless, there is the fear that this effect will only be temporary if there is no follow-up. This due to a lack of capacity.

The FIU is also authorized to initiate an investigation based on signals from its surroundings (for example, the media). Subjective indicators are most important in the selection process, however, both objective and subjective unusual transactions can lead to a forwarding of these to the OM. Suspicious transactions that are selected are reported to the OM, but this does not necessarily lead to an investigation (see paragraph 4.3). A possible solution brought forward by the FIU for the future to deal with reports not being investigated by chain partners, due to capacity issues, is the establishment of a so-called "hybrid" FIU. A hybrid FIU, in contrast to the current administrative FIU, would also consist of an investigation department in addition to the analysis and supervision departments. Anguilla was given as an example by the FIU of where such a construction is already in place. It would require a change in the law however, and there is currently no political support for this. A proposal to this end submitted in 2019 was namely turned down by Parliament, this despite a positive advice from the Council of Advice, according to the FIU.

4.2.2 Access to documents and information

Criterion: In investigations of money laundering, related predicate offences and terrorist financing, competent authorities should also be able to access all necessary documents and information for use in those investigations and in prosecutions and actions.

As reported earlier, the FIU noted that their powers are currently insufficient in gaining access to information of the Cadastre, Chamber of Commerce and Civil registry. The OM/PPG also noted that the powers available to them are not always sufficient to be able to access all the necessary information in investigations.

According to the KPSM, not all private entities are eager to cooperate with providing information. The notaries often appeal to their confidentiality clause. However, there are other options for obtaining the necessary information. The banks are cooperative and have compliance officers who act as liaisons. The information is encrypted and made available digitally. This is an improvement on the previous situation. In the past information was only available in hardcopy. Given that the information

⁵² Public Prosecutor's Office, (2017). Annual report.

is now provided digitally it can be processed more efficiently. The KPSM can also access the database of the Cadastre directly on site. Government departments such as the inspectorate also provide information to the info unit. The interviewee indicated that in an ideal situation all information would be stored in one system which can then be accessed by the info-unit. Registration discipline however remains an area of concern at all organizations.

4.2.3 Measures

Criterion: Countries should have measures in place to detect physical cross-border transportation of currency and bearer negotiable instruments, including through a declaration and or disclosure system.

According to the earlier cited International Narcotics Control Strategy Report (Volume II Money Laundering), law enforcement authorities such as Customs are alert for regional smuggling, trade-based money laundering, and value transfer schemes. The earlier mentioned Crime Analysis also reported that Customs had signaled that large amounts of cash were being brought into Sint Maarten via the airport or by sea with some regularity, and presumably a significant portion of these was not reported to Customs, even though this is mandatory for amounts greater than ANG 10,000. In total, over the period of 2008-2011, Customs had recorded fourteen unreported shipments with a combined value of over \$608,000. Statistics for the period 2018-2021 were requested from Customs, however these were not received within the given timeframe.

In 2019 the National Ordinance on the reporting obligation of cross border money transports was amended to amongst others increase the amount to be declared by travelers to ANG 25,000.⁵³ According to the earlier mentioned report of the CFATF the amendments to the ordinance allowed Sint Maarten to establish a declaration system for cross-border transportation of currency and bearer negotiable instruments, restrain currency where there is a suspicion of money laundering or terrorism financing and keep relevant statistics.

During this inspection Customs indicated that cash is sometimes found in baggage or on persons at the airport during authorized controls but that during controls they have not come across any illegal cross-border transportation of currency in the harbor, for example in containers. Yachts at the various marinas do often have large amounts of cash on board, however this is always declared. The declaration obligation by travelers is listed at the airport in four different languages. If individuals do not declare the amount and it is discovered by the authorities' contact is then sought with the public prosecutor on a decision as to how to proceed. A fine of ten percent of the amount is often issued. This amount eventually goes into the Crime Fund. A decision can also be made to confiscate the entire amount. This can be the case if there are indications that monies are for example being 'smurfed'. This term refers to multiple individuals traveling together with an amount that in total supersedes the amount which would require declaration. This method of cross-border transportation of cash is not common in Sint Maarten, according to Customs. The number of times an undeclared cross-border transportation of cash is detected at the airport varies but concerns a few times per year.

The individuals that do make a declaration are entered into a database and this information is shared with the FIU. The FIU subsequently investigates if there are any indications of a suspicious transaction.

⁵³ National Ordinance to amend the National Ordinance Cross-border Money Transfers (AB 2019, no. 26)

If this turns out to be the case the public prosecutor is then notified, and the case is transferred to the KPSM for further investigation.

The joint investigative team (Alpha team) has been detailed in various earlier reports of the Council related to cross-border crime, amongst which *'Illegal firearms in Sint Maarten'* whereby it describes its make-up and tasks. The team consists of personnel of the KPSM, Customs, KMar and KWCarib and is authorized to execute its tasks related to combating cross-border crime at the ports of entry. Conducting controls in search of illegal goods is however the responsibility of Customs as they are the primary authority with regard to import and export. The Alpha Team only conducts brief investigations of illegal goods. Investigations of a longer duration are transferred to the major crimes unit of the KPSM.⁵⁴

The KWCarib is also alert during its controls for signs of illegal activity, such as cross border cash transportation. Before boarding the vessel, its information is sent to the Joint Operations Center to be crosschecked in their database and the information is then fed back to the patrol. The vessels' documents are requested, and the behavior and the make-up of the crew (e.g., nationalities) is studied and questioned. The biggest concern for the KWCarib during controls at the moment however is human smuggling/human trafficking. The interviewee of the KWCarib indicates that he has only come across two cases of cross-border money transfers (cash smuggling). However, it is also mentioned that one could assume that there are more incidents unknown to the KWCarib. In the respective cases the cash was confiscated and was investigated by the FIU and the KPSM, as one case was also drug related. The outcome of these cases is unknown to the interviewee.

4.3 Investigative approach

4.3.1 Financial investigation

Criterion: To gain insight into the assets and financial flows associated with lucrative crime, financial investigation is crucial, either as an initial investigation or as part of the investigative process.

Elements involved in combating cases of criminal money laundering and the financing of terrorism include the investigation, criminal prosecution, and the conviction thereof. Investigations into these types of cases are executed within the judicial chain in Sint Maarten by the following investigative authorities: the LSM, the KPSM, the RST, the TBO, and the Asset Recovery Team (ART). Outside the justice chain, organizations such as the Tax Administration, the National Security Service Sint Maarten (VDSM) and financial service providers also play an important role. The OM/PPG has the authority over the investigations conducted by these investigative authorities and is responsible for the criminal enforcement of the rule of law through the investigation and prosecution of criminal offenses such as money laundering. The KWCarib and Customs execute controls in this context but do not conduct investigations, while the Alphateam conducts controls as well as investigations of short duration. If controls by the KWCarib and Customs or investigations by the Alphateam require further investigation these cases are transferred as soon as possible to the KPSM. The KPSM then conducts a follow-up investigation in consultation with the OM.

⁵⁴ Law Enforcement Council, (2021). *Illegal firearms in Sint Maarten*.

In 2019 the Council reported the following with regards to financial investigations being conducted by authorities as part of a criminal investigation, specifically as it related to drug trafficking:

“Another approach, according to interviewees, is to frustrate international drug trafficking transiting Sint Maarten by creating barriers using financial criminal investigations. In this context, the Public Prosecutor’s Office works closely with the Financial Intelligence Unit (FIU or in Dutch, MOT). The FIU concentrates on fighting corruption, the entanglement of the underworld, and the regular world, plus, in Sint Maarten, tax evasion, drug trafficking, and human trafficking are priorities. It is important, according to interviewees, to align the priorities of the investigation and the FIU. At present, cooperation depends to a large extent on the knowledge and management of financial investigations of individual officers. According to some interviewees, however, financial investigations do not address the root of the problem of international drug trafficking (the demand for and supply of drugs) at all.”⁵⁵

During this inspection multiple interviewees indicated that a criminal investigation (e.g., drugs) does not necessarily contain a financial component and that besides this, it is not always possible to carry out a financial investigation due to the lack of capacity and expertise within the organizations. As indicated earlier however, drug crime and money laundering are often interconnected. This is also confirmed by the KPSM as they also indicated that the most common crime associated with money laundering is drugs, whereby the money is oftentimes laundered by opening a legal business.

4.3.2. Reports and complaints

Criterion: The bulk of the inflow of investigations into possible money laundering should consist of reports from the FIU, together with the incoming complaints at the KPSM.

While interviewees confirm that most of the investigations into money laundering conducted by the KPSM stem from the FIU and KPSM, most reports or complaints submitted to the OM/PPG are not investigated. According to the KPSM the fraud department consists of two (2) fraud detectives and one (1) dispatched from the decentralized team of the RST. In November 2021, 1 (one) detective resigned, and the department is currently understaffed. The KPSM also provides the Asset Recovery team with a financial detective. This lack of (financial) investigative capacity and the approach to financial investigations was already cited in the 2017 annual report of the OM/PPG.

“Given the limited investigative capacity, cases must be selected. The selection consultation takes place monthly and is conducted by a so-called financial expertise group. This group consists of a specialized prosecutor and public prosecutor’s office secretary as well as financial investigators from both KPSM and RST. In addition, the financial expertise group acts as a medium to share knowledge and to examine the extent to which certain phenomena manifest themselves in society that should become the subject of a criminal investigation.

Unfortunately, in 2017, as in previous years, investigative capacity was a problem so that many reports of suspicious transactions -in the event that they are selected for further investigation- remain stuck in the initial phase. Also, the staff outflow resulting from the departure of the RST, following the passage of Hurricane Irma, has brought a significant portion of ongoing investigations into cross-border crime to a standstill. This is undoubtedly a challenge for the coming years.”⁵⁶

⁵⁵ Law Enforcement Council, (2019). Inspection into the approach to drug crime and drug-related problems in Sint Maarten.

⁵⁶ Public Prosecutor’s Office, (2017). Annual report.

Anno 2021 the necessary (financial) investigative capacity is still not available at the KPSM. This is one of the reasons given by various interviewees as to why cases into money laundering are not carried out, along with the fact that some cases are not justifiable.

With regards to the current selection of cases, on an operational level the team leader together with the fraud detective of the KPSM meet with the public prosecutor monthly to discuss, amongst other, financial crime cases. Besides this, on a strategic level the chief of police, the division head and the chief prosecutor meet in a steering group where priorities are discussed, and capacity is set for these cases. Priority however generally goes to solving murder cases which are often drugs/gang related. These types of cases tend to require substantial capacity from the police force, which means that financial crime cases tend to receive less priority. This, despite the intention to also look at each murder case from a financial perspective. Due to the complexity of money laundering and terrorism financing this is most of the time not successful in practice. Investigations therefore often only result in low hanging fruit as proving the involvement of key figures is often problematic.

As it regards investigations into possible money laundering by the LSM, their 2019 annual report provides an overview of the types of investigations that were handled in that year. These varied from fraud, abuse by officials, money laundering, and information leaks, to shooting incidents. The report also indicates that in 2019 the LSM would (even more so than was currently the case) acquire extensive experience with so-called financial investigations and seizure cases. In its inspection 'Review of Sint Maarten's National detectives' Agency' in 2020, the Council concluded that the LSM did not have the necessary basic resources (capacity, and financial and material) at its disposal to carry out its investigative tasks in practice, for example financial investigations into money laundering. According to the LSM, a lack of resources is still prevalent, and notes that namely the lack of capacity is a determining factor why a financial investigation is not automatically conducted in a criminal investigation. However, if there are indications of financial components, efforts are made to initiate a financial investigation. Whether there are financial components to a criminal case is generally determined by the financial detective and the financial analysts. They are then responsible for conducting the financial criminal investigation by utilizing the knowledge and resources available to them. The tactical and criminal intelligence departments can be supportive in this regard.

4.3.3. Handling FIU reports

Criterion: Through the Duradero team (Curaçao), the Public Prosecutor's Office has tried to give an impetus to the reprocessing of FIU information, in order to lead to criminal investigations. The project will be evaluated and will look in particular at the lessons learned and it will then be considered how these can be used in the various countries for improved handling of FIU reports.

Interviewees of the PPG indicate that there is currently an integrated, criminal approach to combating money laundering, with the establishment of the Anti-corruption taskforce (TBO), which is part of the PPG. They also point out that with the establishment and recent solidification of the TBO, the follow up of the concept of a so-called Duradero team for Sint Maarten, as mentioned in its policy program on cross-border crime 2016-2020, is secured.

4.3.4 Strategy

Criterion: The Financial Top X⁵⁷ regards information sharing between the various services on Bonaire, Saba, and Sint Eustatius (BES islands), with the aim of identifying the most important subjects in the financial field. Based on this Top X, a selection is made of the most promising cases, after which a strategy is determined with which the subjects can be tackled. In addition, the most appropriate intervention is considered. The intention is also to introduce this method in the other countries.

The previously highlighted policy program cross-border crime states that the success of the implementation of a Financial Top X strategy hinges on a good information position and information sharing as these are necessary for the compiling of an overview of criminal syndicates (Top X). The drafting of a Top X was however considered less urgent in Sint Maarten due to the extremely serious local crime taking place. The available capacity to work on a project basis was therefore considered limited. Investment would be required in creating coherence in the collection of information by the various Criminal Intelligence Units (TCI's), formerly known as CID's (*Criminele Inlichtingen Diensten*). The (local) TCI officers, would be tasked with this under the final responsibility of the coordinating criminal investigation officer. This would possibly lead to a partial picture of the Top X, which could be supplemented from the info-units. Furthermore, each country would have to ensure that sufficient analysis capacity is available to be able to arrive at a complete picture.⁵⁸

The OM/PPG reveals that the Financial Top X approach is not being applied in Sint Maarten. While the interviewee of the OM/PPG thinks that the Duradero approach as well as the Financial Top X are both good ideas, due to the lack of capacity and knowledge these approaches are not feasible in practice. The way cases are selected in Sint Maarten is by looking at the most promising cases (meaning to say cases that would have the most effect, not necessarily the easiest cases to solve) while taking into account the known capacity limitations (people and resources).

In its earlier mentioned report '*Illegal firearms in Sint Maarten*' (2021) the Council already observed that due to a lack of resources and capacity, several components, such as in-depth investigation and analysis, cannot be (optimally) executed on Sint Maarten and that the agencies involved consider this a serious shortcoming.

4.3.5 Thematic, administrative, and multidisciplinary approach

Criterion: The TBO is expected to conduct criminal investigations on the topic of international money laundering. In two years (from establishment), the TBO will focus on apprehending, prosecuting and bringing to justice key subversive figures by conducting investigations. This will help reveal the seriousness and extent of the problem.

The 2019 annual report of the PPG states that the TBO focuses on a specialized so-called thematic approach to combat corruption and subversion of financial and economic crimes. The starting point is

⁵⁷ This is an overview of criminal syndicates and is named Top X.

⁵⁸ Attorney General's Office (2016), Policy program cross-border organized crime 2016-2020 Public Prosecutor's Office.

serious undermining crime with a primarily financial-economic component. It goes on to state that this is a phenomenon that manifests itself in Sint Maarten in various forms and compositions. According to the PPG, a thematic approach entails that in addition to the focus on criminal law, investigations are undertaken with the additional aim that they result in improvements on a broader front. For example, that the government administration is induced, as a result of a criminal investigation, to apply stricter rules when granting permits. Attention is also to be paid by the government administration to utilize existing administrative tools or, if there are none, make legal provisions for this. In this context it also the intention that a steering committee administrative approach to undermining, consisting of representatives of each country (initiated during the JVO), draw up an action plan for this and other purposes, and for which a total of one million euros per year has been made available. The PPG remarks that the TBO does not only focus on conducting criminal investigations but also project-based multidisciplinary investigations.

The 2019 report furthermore states that there was emphasis on tackling so-called facilitators and potential money laundering infrastructures through which criminal proceeds can be concealed. The TBO increasingly invested in several short-term investigations in which a targeted approach quickly achieved the desired effect. By utilizing this approach, a trust office (and management) was convicted of intentionally failing to report multiple unusual transactions to the FIU.

As part of the short-term investigations, the TBO also addressed the long-running problem of illegally operating money transaction offices in Sint Maarten. According to the report these money transaction offices operating without a required license from the Central Bank for Curaçao and Sint Maarten are easy money laundering vehicles for proceeds from criminal activities. The flow of money is not easily tracked due to international cash movement which also puts the integrity of the financial system of Sint Maarten at risk.

Through a steering committee, a selection is made of which investigations will be carried out by the TBO or by the local authorities (KPSM, LSM). It is however sometimes a case of, according to the Dutch saying, “mopping with the pipe open”, especially due to the lack of investigative capacity and specialist expertise at the local authorities. They go on to state that as a rule, investigations into corruption also include for example an investigation of possible money laundering components. They point out that corruption involves laundering of the bribes paid, and the earnings obtained through bribery, in which case an attempt is made to confiscate those assets. The management of the seizure is hampered in practice however because, as a rule, the dispossession of seized property first requires the authorization of the instructing judge. This means that non-disposable assets remain under the seizure (and therefore the management of the OM/PPG) for a long period. This is problematic in amongst other cases of assets of great value that depreciate or have high management costs (e.g., vehicles, vessels, real estate) as this involves a great deal of expense, and the OM/PPG is not equipped to handle this. The results of the TBO are further mentioned in paragraph 4.5.7.

4.3.6 Cooperation

Criterion: The Prosecutor's Office will continue to seek cooperation with the FIU and seek to improve it. The Prosecutor's Office strives on all islands, with due regard for the local situation, to create a cooperative relationship between various services in order to deprive criminal assets.

Monthly consultations between the OM and the FIU (director and analyst FIU, prosecutor, and the secretary of the public prosecutor's office) were held in the past at a case level, but since the last change of prosecutors this is no longer the case⁵⁹. According to the FIU this is probably due to capacity issues at the OM. This is seen as a concern by the FIU, as precisely due to the scarcity of capacity and resources there should be more guidance and insight into the desired approach of the OM. The OM in this context states that the intention is to resume these consultations in the short term. They do indicate however that despite this cooperation between the OM and the FIU is (very) good. The lines of communication are short. When information is needed, for example in the case of a financial investigation or suspicion of money laundering, the FIU is always consulted, and the information is obtained immediately.

According to the FIU most requests for information are received from the TBO. Requests from the KPSM, the ART and the LSM are more infrequent. The FIU believes that this is because a tactical approach is often favored by these authorities in cases but is of the opinion that a financial investigation should always be conducted parallel to a criminal investigation for example, a drug crime.

The FIU also expressed its concern regarding the collection and maintenance of data by the various authorities. This is because if data is not kept, there is no way to prove that investigations have been carried out on the subject. The FIU also pointed out that the system PRIEM being utilized by the OM does not function optimally in this regard. The FIU is in the hope that the TBO is keeping track of their data as they have carried out several cases that included a component of money laundering over the years. Few investigations with respect to money laundering are carried out by the KPSM due to them having only one financial investigator available, according to the FIU.

Confiscation

Confiscation as a control mechanism can be an effective tool in deterring money laundering when criminals realize that they are not only facing a prison sentence but are additionally deprived of their criminal gains after their conviction. According to the annual report 2017 of the OM/PPG the ART was established in Sint Maarten in 2017 and is a multidisciplinary team that is comprised of members of the Tax Administration, Customs, the KWCariib, and the KPSM. The purpose of the team is to confiscate criminal gains from suspects of criminal offenses in an integral manner. The strength of the team lies in the cooperation between the investigative agencies, the sharing of information and the integrated execution of recovery investigations. It goes on to mention that the OM and the local investigative agencies had a number of successes in the confiscation of criminal gains. Several confiscation claims were brought before the courts and awarded, and further experience was gained with alternative ways of settling cases. The example of suspects having been successfully persuaded to relinquish

⁵⁹ Prosecutors are often contracted from the Netherlands to work in Sint Maarten for a period of three years.

confiscated amounts of money or assets to avoid (further) prosecution was also given.

The ART operates under the authority of the OM. Interview findings indicate that since the startup of the ART there have been issues with, housing, continuity, and staffing. According to an interviewee of the KPSM the team started in 2017 without an office and were temporarily located in the office of the OM/PPG. Five months after commencement, the team was put on hold by the Minister of Justice. In December 2017, the decision was then made by the Minister of Justice to have operations resume. The interviewee points out that the ability of the ART to be able to function is not only dependent on the available resources, but also on the authorization of the responsible minister to exercise their powers.

The Council notes that the ART was publicly launched on May 4th, 2017, by the Chief Public Prosecutor and the Minister of Justice.⁶⁰ An urgent public plenary session of Parliament was subsequently requested by all parties in Parliament on May 22nd, 2017, to discuss concerns regarding the tasks of this team. The meeting was continued on May 23rd, July 31st, and December 5th 2017⁶¹.

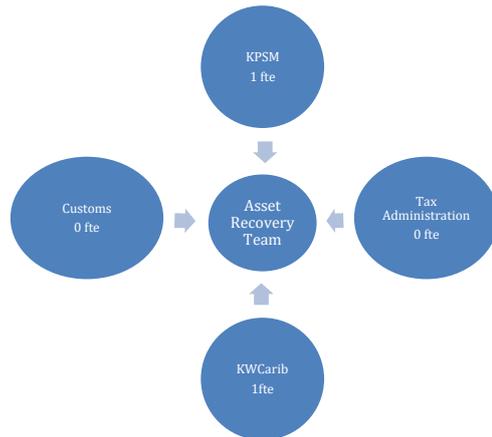
Customs also made-up part of the ART in practice until roughly eight months ago. Customs indicates that a suitable replacement has yet to be found. There is namely little enthusiasm for this position within Customs, partly because it does not involve the regular tasks of a customs officer and requires specialist knowledge that most customs officers do not require to execute their daily tasks. Customs hopes to make someone available for this position in 2022. The prosecutor has also made inquiries to this end. Even though the Tax Administration is also officially part of the team, they still do not have a representative on the team as they have yet to receive a dispensation from the Minister of Finance to share information. Therefore, the only way to currently obtain information from the Tax Administration during an investigation is via an official request.

As stated, the investigations of the team are led under the authority of the OM/PPG. The staffing of the team currently comprises one (1) KPSM financial detective and one (1) KWCarib officer, (see figure 1). However, the financial detective of the KPSM is not solely tasked with responsibilities of the ART, as the detective is also part of the fraud department and required to for example assist the fraud department when necessary. The public prosecutor as well as interviewees of the KPSM indicate that while the concept of an ART is a good one and the need is there for such, the concept which has been implemented (successfully) in other countries is simply not feasible in Sint Maarten at this time due to the lack of resources. This despite the willingness of stakeholders. The team receives numerous reports of suspicious transactions, however, due to the lack of capacity, cases are selected carefully or sometimes simply cannot be carried out due to other priorities.

⁶⁰ [Asset Recovery Team St. Maarten launched | SXM Talks \(sxm-talks.com\)](#)

⁶¹ [MPs to dissect Asset Recovery Team on Monday - Dutch Caribbean Legal Portal](#)

Figure 1. Current staffing ART.



All organizations participating in the ART indicate that the working relationship with the public prosecutor is positive. One interviewee explained that meetings are held once a week in which the state of affairs is discussed, brainstorming takes place, and goals are set. The work is information-driven, for example based on information from the TCI. There are currently, five (5) ongoing cases. The interviewee also confirms that in 2020, the team was idle for roughly nine months due to the Covid-19 pandemic. As a result of this, there are still cases pending from 2019/ 2020 which are all related to money laundering.

As indicated earlier the KWCariB has made personnel available for participation in the ART. Their role in the team is to provide knowledge of maritime affairs. The individual currently participating in the team does not have a financial background. The fact that there are only two organizations participating in the team, the KWCariB and the KPSM, means that this hampers the effectiveness of the operations. An evaluation of the team was requested by the KWCariB to, among others, establish a profile for team members. This has not yet materialized. They are however still pleased with their participation in the team as the participants gain a wealth of knowledge and are of added value to the organization. The intention is therefore to continue supporting the team and rotate personnel to fill the post.

The RST do not take part in the ART and utilize their own teams when confiscating assets in Sint Maarten. They are therefore not hampered by the lack of staffing at the ART.

The laundering of criminal funds has been visibly addressed in Sint Maarten in the past by the prosecution through the seizure of goods via the ART. Proceeds generated are ultimately transferred into the Crime Fund. Although the confiscation of unlawfully obtained proceeds is important in all cases revolving around financial gain, the purpose of money laundering is to conceal the origin of the financial proceeds. In this form of crime, the confiscation of the proceeds should therefore be considered the main objective of an (financial) investigation.

In its 2020 annual report, the OM emphasized the importance of confiscating criminal assets such as property, (money on) bank accounts, cars, and boats. With the motto: "Crime does not pay", their focus was on confiscating proceeds of crime to hamper criminal activities and provide funds for the country's coffers. It also states that the ART at that time consisted of one police detective, one

KWCarib officer and one customs officer. In 2020, the team had started three new cases. However, due to all law enforcement officers being needed to enforce the COVID-19 measures and restrictions, the team had to scale back ongoing- and new investigations for the second part of 2020.

Furthermore, it was the OM's aim to work efficiently with the investigation capacity available by working more intensely with the FIU and with the investigative department of the Tax Administration. According to the report, the regular meetings with the FIU continued digitally and were beneficial for starting research into financial crimes and at least one of the cases that was assigned to the Asset Recovery Team was a result of reporting of irregularities by the FIU. Lastly, the OM indicated in its report that it was awaiting approval by the Ministry of Finance to assign an inspector of the Tax Administration to the Asset Recovery Team. According to the 2021 annual plan of the OM the targeted amount to be confiscated is ANG 50.000 per prosecutor and that to achieve this monitoring will be intensified in accordance with the P&C cycle.

4.4 Prosecutorial approach

4.4.1 Specialist knowledge

Criterion: Conducting international money laundering investigations requires specialist knowledge on the part of the Public Prosecutor's Office, due to both the financial expertise required and the international nature of the investigations.

The earlier mentioned policy program cross-border crime 2016-2020 states that conducting (international) money laundering investigations requires specialist knowledge, due to both the financial expertise required and the international nature of the investigations. At that time however there was insufficient expertise within the OM/PPG organization to conduct these investigations independently and cooperation with the Dutch Public Prosecutor's Office would therefore be sought. However, the OM/PPG would be responsible for setting up its own organization in such a way as to optimally facilitate specialist investigations.

As mentioned earlier, a financial investigation is not always initiated in a criminal investigation, this due to the insufficient capacity, specialist knowledge, and information position of the authorities. The way cases are selected is by looking at the cases with the most promising indications considering the known constraints (resources). The reports from the FIU, for example often do not contain sufficient information to initiate a case, according to the OM/PPG. Information gathering must therefore first be done, which requires the necessary capacity from the KPSM. According to the OM another reason why financial investigations are not always carried out is that the focus of the KPSM is more on the crimes themselves, such as drug offenses, robberies and so forth, rather than on the underlying money flows. The OM goes on to state that based on the assertion that a criminal offence is often committed for profit, this means that each of these offences should have a financial element and thus deserves a financial criminal investigation. Therefore, there can and should be much more financial investigations done. In principle, when unusual amounts of cash or other unexplained assets are detected, an investigation must always be initiated into their origin. On the understanding that here too capacity and expertise amongst others, play a role. Meaning that most investigations cannot be initiated. In investigations where there are reasonable indications of concrete "proceeds", an attempt is made in

as far as possible to further investigate the money flows originating from these crimes and the offender's assets. In this context several deprivation cases have gone to trial in recent years.

Financial irregularities can often come to light through an audit or inspections by the Tax Administration. The OM points out the lack of tax audits and inspections being conducted on the island. These are deemed of great importance because of the type of information they can provide, which can serve as a basis for further investigation.

In 2018 an inspection by the Council found that the OM-Carib (prosecutors of the Dutch Caribbean countries, excluding Aruba) had chosen to internally appoint specialists in the areas of cybercrime; forensic detection; human trafficking and smuggling; military affairs; terrorism; and money laundering.⁶² A review in 2021 by the Council showed that the subject matter of specializations is still discussed but no longer actively pursued by the prosecutor's offices. The fundamental idea of knowledge sharing which drives subject matter specializations is however addressed centrally where necessary. The Council recommended that it would be prudent for the Attorney Generals of the islands to consult on cooperation, which should include the desirability of maintaining subject matter specializations and the approach thereto.⁶³ In this current inspection the interviewee of the OM points out that a lack of specialist knowledge within the prosecution, both in first instance and in appeals, is a point of concern within the OM in Sint Maarten as well as the Courts.

According to the PPG/OM, specialist expertise related to money laundering is currently available at the OM via TBO and that, as far as the countries' prosecutors' offices are concerned, efforts are made to find prosecutors and clerks with such expertise, considering the needs of the country concerned. Given the limited availability of prosecutors who can be dispatched from the Netherlands OM, this is however not always possible. It has been proven difficult to fill vacancies at the Prosecutor's Office in Sint Maarten. Despite this, there is currently a prosecutor within the Prosecutor's Office in Sint Maarten who has in-depth knowledge in the field of money laundering. This prosecutor functions as a source of information for stakeholders by providing presentations, information, and advice internally and externally to the authorities.

The below press release by the OM/PPG is an example of a complex money laundering investigation that was conducted under the authority of the OM/PPG and describes the method that was used.

The Public Prosecutor of the Attorney General's Office of Curacao, Sint Maarten and Bonaire, Sint Eustatius, and Saba has offered three suspects of money laundering an out-of-court settlement. All suspects, a legal entity incorporated under the laws of Anguilla named Prospect Trading Limited and its ultimate beneficial owners, an entrepreneurial couple residing on Sint Maarten, have accepted the proposal.

Investigation Amoer

In 2014 and 2015, a Sint Maarten based financial institution reported several unusual transactions (which could be linked to the aforementioned suspects) to the Financial Intelligence Unit (hereinafter: "FIU"). After analysis by the FIU, these were identified as suspicious transactions and subsequently reported to the Public Prosecutor's Office. From June 2016, a special investigation team consisting of investigators from the Sint Maarten Police Force (KPSM) and the Special Police Taskforce (RST) investigated possible cross-border money laundering infrastructures. This investigation, codenamed Amoer, was performed under authority of the Public Prosecutor's Office.

⁶² Law Enforcement Council, (2018). Cooperation between public prosecutors. Inspection regarding the cooperation between the public prosecutors' offices of Curacao, Sint Maarten and Bonaire, Sint Eustatius, and Saba.

⁶³ Law Enforcement Council, (2021). General review of recommendations: Sub-inspection II Crime Prevention Fund; Investigative and prosecutorial policies of the Public Prosecutor's Office; Enforcement of fines, damages, and dispossessions; The Public Prosecutor's Office in Incident-based Investigation; Cooperation between Public Prosecutors offices.

Suspected complex money laundering construction

Through extensive investigations - where the investigative team was to a large extent dependent on assistance from the judicial authorities of Canada, Germany, and the United States of America - several suspicious money flows were identified. The Public Prosecutor's Office suspects that these are part of a complex, cross-border money laundering scheme that could launder large amounts of money.

A cluster of companies active in the car rental industry on Sint Maarten frequently transferred money to the Anguillan legal entity from where further distribution took place. This happened beyond the reach of the authorities in Sint Maarten.

Certain typical patterns are recognizable in the investigated money flows. For example, with the intervention of the Anguillan entity and (foreign) bank accounts, the money flowed through several jurisdictions without a clear economic purpose. This is a so-called money laundering typology.

Part of the money flows was accounted for by a web of intercompany loans but also by money loans between the Anguillan entity and the various Sint Maarten car rental operating companies. Investigation revealed that this accounting was not conclusive. On the contrary: according to the Public Prosecutor's Office it showed irregularities.

This contributes to the money laundering suspicion.

In addition, the alleged money laundering cycle revealed frequent cash exchanges (without clear economic purpose). These exchanges were made through cheques issued on behalf of various companies and subsequent withdrawals and deposits into the private accounts of the entrepreneurial couple. This was followed by cross-border transfers which ended in a couple of events in the purchase of a real estate in Germany and the United States of America but also in private spending through credit card transactions. Such behavior related to the transfer of funds is internationally considered as a money laundering typology: it may indicate an intended interruption or concealment of the paper trail.

Money laundering without a demonstrable predicate offense

The investigation did not lead to the identification of a specific crime from which the circulated money may have originated, in legal jargon also referred to as a "demonstrable predicate offense". For a suspicion of money laundering, it is not necessary to identify such an offense. The process of money laundering itself is independently punishable, regardless of whether one or more predicate offenses can be indicated.⁶⁴

4.4.2 Information position

Criterion: To tackle terrorist financing in a project-based manner, it is necessary to obtain a better information position. To this end, the relationship between the Public Prosecutor's Office and the security services will need to be further shaped.

The relationship and subsequential exchange of information between the OM/PPG and the National Security Service Sint Maarten is maintained by the public prosecutor tasked with handling TCI information. According to the earlier mentioned policy program cross-border crime 2016-2020, there is information that facilitation of terrorist financing may exist in the countries and that to the extent that such information is available it will be critical in the selection process for criminal financial investigations. However according to multiple interviewees, there are currently no indications of terrorist financing taking place in Sint Maarten and consequently no investigations that are being carried out. They do note that simply because it is not being investigated, does not mean that it does not occur. Terrorism financing is often intertwined with other criminal offenses and routes are often utilized where there is little to no oversight.

4.5 Resources

Criterion: The key enforcement agencies have sufficient resources to carry out their mandate effectively.

Results of the various organizations are dependent on the resources available to them. This while findings indicate that most organizations suffer from a lack of resources. The main points concerning

⁶⁴ The Daily Herald. *Public Prosecutor's Office Reaches Settlement in Complex Money Laundering Investigation*. 04-11-2020

these will therefore be described briefly before an overview is given of the results that the authorities are able to achieve as it relates to their approach to money laundering and terrorism financing.

In this report the lack of resources has already been briefly mentioned in various paragraphs. In the prior mentioned crime analysis (2011), the following was stated about the lack of resources of the relevant authorities in Sint Maarten:

"At the moment the enforcement services on Sint Maarten are insufficiently equipped to control the illegal money flows from and to the island. For example, the Coast Guard and Customs do not have enough personnel to check in the ports, bays and airport for money that comes in on a daily basis on luxury private yachts and planes. Investigative agencies also lack the capacity and financial expertise to initiate sound criminal financial investigations from investigative inquiries."⁶⁵

A report by the Advice Council International Issues (2020), also cites the lack of capacity in the Dutch Caribbean as a serious issue:

"The small scale of the island communities means that organizations in the judicial chain have to contend with a shortage of people and resources, which makes it harder for them to respond to new developments. Partly to overcome capacity shortages, the Netherlands provides officials for the judiciary, the Public Prosecution Service and the police, who are temporarily placed on the islands. Nevertheless, when there is a need to 'scale up', the limits of the ability to act are quickly reached."⁶⁶

Because money laundering and terrorism financing are forms of cross-border crimes, strengthening the borders is deemed as crucial in the fight. In this context the mutual agreement on strengthening border control and its successor, the protocol on strengthening border control in the Caribbean countries of the Kingdom, have played a large role with regards to providing resources for the strengthening of border control. In the Councils' earlier mentioned inspection report focusing on illegal firearms in Sint Maarten this was elaborated on as well.

4.5.1 Financing

Criterion: In the interest of stability of the public order and safety, no cuts will be applied that will restrict the operational implementation capacity within the most vital sectors of the rule of law (Police, Customs, National Detectives Department, Public Prosecutor's Office, Court, Coastguard, prison system and the Intelligence Service)

The country package (2020) prevented any cuts being made to the budgets of law enforcement departments. According to the earlier cited country package progress report of November 2021, there were no indications that the operational implementation capacity of the vital departments had been affected because of additional budget cuts.

The table below provides an overview of the annual budget allocated to the authorities relevant to

⁶⁵ National Police Forces, (2011) Crime Analysis Sint Maarten: An investigation into organized and communal crime.

⁶⁶ Advisory council on international issues, (2020). Security and the rule of law in the Caribbean region. Necessary steps for a future-resistant Kingdom.

this inspection in the period 2019-2021.

Table 3. 2019-2021 budgeted expenditures of judicial authorities in Antillean Guilders.⁶⁷

	2019	2020	2021
KPSM	30,712,078	26,039,439	26,335,834
KWCarib	3,220,000	4,000,000	4,000,000
Customs	2,530,889	3,219,058	2,654,602
LSM	2,270,671	2,396,171	2,118,240
OM	4,617,576	4,669,336	3,804,570
FIU	1,201,373	1,500,604	1,953,140

Funding available for the local agencies (LSM, KPSM and OM), except for the FIU, has dropped over the past 3 years and is problematic. However, the organizations involved in the implementation of the earlier mentioned protocol on strengthening border control are currently in the stage of securing the necessary funding for their projects. The KWCarib revealed that the implementation of the plan of approach is proceeding well, and that the workgroup is currently busy with drafting financial cost projections for the various projects to be initiated. These must first be approved by the Minister of Justice and can then be sent on to the Netherlands as they will be covering the cost. The hope is that this phase will be completed by the end of the second quarter 2022. One of the projects of the KWCarib pertains to enabling 24/7 driven operations. The success of this project is also dependent however on increasing capacity.

The Minister of Justice announced in December 2021 that the Netherlands will structurally make an amount of 30.5 million euro's available for support by the Royal Netherlands Marechaussee, Customs Netherlands and KWCarib in strengthening border control.⁶⁸ Besides this, the financial resources of the TBO were expanded in 2021 by the Minister of Justice and Safety of the Netherlands. The additional resources total to an additional 13 million euros per year in 2025 via a growth model, this in addition to the 12 million euros already allocated per year.⁶⁹

4.5.2 Materials

In accordance with its long-term plan 2019-2028 the KWCarib has a total of 168 million euros, intended for equipment replacements. The four countries in the Kingdom jointly provide the financial coverage of this budget of which Sint Maarten contributes four per cent of the total amount, spread over 2019-2028. To carry out its tasks properly in the coming years, equipment of the KWCarib must be replaced periodically. Of the 168 million euros, 159.9 million euros is intended for equipment replacements and the remaining amount is intended for operating costs.⁷⁰

Through the mutual agreement on strengthening border control, opportunities for the obtainment of resources are provided for all the organizations involved. Customs for example was able to finance various materials. They are now in the possession of a handheld scanner and a large scanner in use at the cargo area at the airport, which can be used to scan entire pallets. There is also a mobile scanner in use at the port and a scanner located at the postal office. Training has also been given on how to

⁶⁷ AB 2020 no.25, AB 2021 no 62.

⁶⁸ The Daily Herald. *Joint efforts to combat illegal immigration and employment*; 20-12-2021.

⁶⁹ Parliamentary letter on the results of the Anti-corruption Taskforce 2019-2021, 16-12-2021.

⁷⁰ Parliamentary letter of administrative agreements long-term plan 2019-2028 Coast Guard for the Kingdom of the Netherlands in the Caribbean region, 28-05-2021.

use the various devices. They have also been able to acquire ten new vehicles and new uniforms. Customs is also working towards acquiring a container scanner in the long run; however, this is a very costly endeavor.

As indicated earlier the FIU is working on realizing new software programs to facilitate their tasks, however budgetary constraints are negatively affecting these developments.

Previous inspections by the Council have shown that the KPSM continues to suffer from a general lack of resources to include materials. There have been little to no improvements in this regard.

The Council concluded in its earlier mentioned inspection of the LSM (2021) that they have not been able to make the required investments in amongst other material resources, such as investing in the tools necessary for operations, including its vehicle fleet, and equipment and supplies for use in and around the building being utilized.

As it pertains to the confiscation of assets in particular, the various interviewees indicate that the lack of a proper and safe storage facility for especially large goods such as vehicles is a bottleneck. The ART notes that a case involving the illegal rental of cars could not be carried out because of this. As a solution, the case was taken up by the Tax Administration, although this is a lengthier process.

4.5.3 Capacity

All the organizations, except for the TBO and the OM, cite that they suffer from a lack of capacity. The lack of capacity at the local investigative authorities is one of the major bottlenecks hampering an efficient approach to combating money laundering and if applicable terrorism financing in general. While the KWCarib and Customs also cited capacity problems, they are currently in the stages of recruiting new staff and or providing training to increase their capacity and improve their knowledge.

According to the FIU, it in principle has the knowledge to conduct cases, but the current situation is problematic due to a great lack of capacity, and resources, which leads to an inadequate execution of the tasks. The current capacity is around 30% of what is needed.

In the Council's earlier mentioned report on illegal firearms in Sint Maarten (2021), the OM observed that it has long been established that the KPSM is completely lacking in financial and human resources. The fraud department of the KPSM is currently understaffed. According to the KPSM there is one (1) individual within the KPSM who is trained as a fraud investigator who could theoretically be transferred to the fraud department. In terms of solving the capacity problem, the interviewee hopes for reinforcement. One (1) fraud investigator (from the RST) is scheduled to leave in April 2022. There is no replacement yet as the round of applications did not yield any results. Consultations are also currently ongoing for the financial detective stationed with the ART to man the fraud department for two days a week. It is unclear what this will mean for the ART, but it will undoubtedly hamper its operations, according to the KPSM.

A covenant is in place that states what requirements ART members must meet. The candidate must be able to amongst others draft a statement of account (*proces verbaal*) to determine if they are suitable for the team. According to the KPSM the team member from Customs did not meet the requirements, however the team member KWCarib does currently meet the necessary requirements.

In 2014 the Committee on Integrity in Government⁷¹ indicated that key enforcement functions lacked sufficient capacity to effectively carry out their mandate. This included the LSM:

“The National Detectives do not have enough personnel who possess the specialized forensic and financial investigative expertise to handle integrity-related cases in an efficient manner (e.g., corruption and money laundering)”.

The lack of resources at the disposal of the LSM, amongst which capacity, as mentioned earlier, was reported on by the Council in 2021⁷². At that time the PPG noted that while the PPG is responsible for leading the cases of the LSM, the Minister is responsible for its management. If the LSM is unable to achieve its objectives due to management problems, this is brought to the attention of the Minister during management consultations. However, the issue of the lack of budget is oftentimes presented by the Minister as to why the organization cannot be strengthened in terms of resources such as capacity.

In the context of this current inspection the LSM indicated that they are still significantly understaffed. Of the desired formation, only roughly thirty percent is filled. This has serious consequences for the execution of tasks, the training of staff and the quality of the work. For example, the function of head LSM has been vacant for quite a while, however, recruitment is (again) taking place.

At the moment there is relatively little specialist knowledge within the organization regarding money laundering. There are financial analysts who are on track to become financial investigators and until recently, there was also financial investigation capacity available. This was provided for by the RST. This has now temporarily ceased, but the expectation is, that the vacancy will be filled in 2022 (a request has been made to this effect). Depending on the type of support and the duration required, sister agencies within the Kingdom can be called upon. However, seeing the limited capacity of all the organizations, this can be challenging. The sister agency in Curaçao and the Kingdom detectives can barely provide support due to their own capacity issues, according to the LSM.

4.5.4 Training

Criterion: Specific training programs in relation to combating money laundering and terrorism financing are initiated, developed or are improved, to the extent necessary for law enforcement personnel.

Important for the approach in combating money laundering and terrorism financing is that law enforcement personnel have the necessary knowledge to have a better understanding of the subject. The Ministry of Justice has taken on a stronger role as it pertains to the development, education, and training of all law enforcement personnel within the various organizations. A course coordinator was recruited in 2021 who is responsible for developing and implementing policy to this end.

Where possible, the FIU participates in training courses with the main aim of increasing its knowledge

⁷¹ Committee on integrity in government administration, (2014). Doing the right things right.

⁷² Law Enforcement Council, (2020). Inspection: Review of Sint Maarten’s National Detective’s Agency.

base and strengthening the specialism of its staff. However, there are few training courses available on methodology in this area. However, in March 2020 a supervision project in order to strengthen the supervisory systems of the FIU was organized via the CFATF. The focus was to strengthen the capacity of team members to effectively monitor, regulate and supervise Designated Non-Financial Businesses and Professionals (DNFBPs) for compliance with AML/CFT requirements commensurate with their risks. The FIU remarks that the Netherlands is the best location for staff trainings, but that due to a lack of finances and the long duration of some training courses it is not feasible.

The LSM notes that the training of staff is challenging due to the lack of budget and the limited number of seats available at the police academy in the Netherlands. Customs reveals that twenty-four new custom recruits still require the necessary training. Courses have been arranged locally by the Minister of Justice due to unavailability of instructors from abroad (Bonaire and Curaçao). At a later date these trainings will be evaluated in order to ascertain if the objectives were achieved. In the plan of approach courses in laws and regulations have also been requested by Customs.

The OM/PPG has provided awareness training in relation to money laundering for the KWCarib and plans to do the same for Customs based on their need. The KWCarib further strengthens itself in combating money laundering and terrorism financing by raising awareness among employees regarding this subject. Personnel are offered refresher courses (*Bavpol*) yearly to stay up to date with the latest developments. Theoretical cases are then handled by a law enforcement liaison to provide more insight. A so called “safety standout” which comprises two days is also organized twice a year. The last one was held in December 2021. No patrols are conducted on those days to ensure that all personnel, including non-operational support staff can attend. These days allow for the knowledge base of personnel to be increased and to improve connectivity with their role within the organization, especially as it concerns non-operational staff. Speakers are also invited, for example a public prosecutor gave a presentation at the last event about money laundering for the first time and this was experienced as very positive.

Lastly, in 2021 a Financial Economic Crime (FINEC) course was held in Sint Maarten which was attended by FIU and KPSM personnel and ART members.

4.5.5 Cooperation with regards to resources

Criterion: Endeavors are made to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money laundering and the financing of terrorism.

The FIU indicates that there is good cooperation with the RST also at the operational level. This is because the RST has the necessary resources to make use of the reports of the FIU. There is less cooperation with the OM, the KPSM and the LSM, but that is mainly due to the chronic lack of resources available to them. As a result, they have nothing to offer each other. Within all layers of the chain (detection, enforcement, prosecution) resources are insufficient which means Sint Maarten runs a great risk in the field of money laundering, according to the FIU:

“Far-reaching cooperation and integration between the various components of the anti-money laundering efforts is an absolute prerequisite, partly in view of the lack of ‘everything’ among everyone.”

This rhetoric was already shared by interviewees in earlier reports by the Council. In the earlier mentioned inspection report detailing Sint Maarten’s National Detectives Agency, the following was stated:

“Several interviewees pointed out that (local) cooperation is strongly dependent on the condition of an organization and that one’s own organization must first be in good shape to be able to offer and contribute anything to others. This is currently not the case for most of the institutions, partly due to management bottlenecks and also because the “whims of the day” prevail, according to interviewees.

With regards to its cooperation with the FIU the following was noted:

“As for the Financial Intelligence Unit (FIU), according to interviewees, the cooperation is focused on financial matters, given the many financial investigations carried out by LSM and the authority of the FIU to request information from abroad. Although the LSM regularly requests information from the FIU, there is a desire for more active cooperation. However, the actual consolidation of such cooperation is difficult due to several factors, including legislation and a lack of resources.”

The RST does not generally exchange information with the KPSM, however, this is not considered a bottleneck by interviewees as according to them, the OM/PPG is aware of all cases/information being carried out and is responsible for the overview. Despite this, one interviewee notes that sharing information with each other is still important as connections in and between investigations are easier detected this way. The PPG indicates that cooperation between the TBO/OM part and local services has improved over the years. Because investigations done by this part of the OM are mainly embargo investigations, open communication needs to be limited. However, improvements have been made resulting in better coordination with and use of local knowledge and expertise.

However, there are still several bottlenecks that impede an efficient and powerful approach to money laundering. Investments still need to be made, for example, in linking information from the various databases, such as those of the Chamber of Commerce, and Cadastre. Also, as previously indicated, the legal basis is inadequate or outdated in parts. There should also be better coordination of policy priorities with the administration as they are at the forefront and play an important role in the prevention and enforcement of (administrative) undermining activities. A multidisciplinary approach would also contribute significantly to the tackling of money laundering on Sint Maarten, according to the OM/PPG.

The purpose of cooperation on an international level by authorities is to exchange information on money laundering and terrorist financing between the different countries. This is done through requests for legal assistance to exchange certain financial information and or to carry out certain

actions. International legal assistance requests go through the International Legal Assistance Center in Sint Maarten, the coordination point for OM Carib.

The OM/PPG, the KPSM, the KWCarib and Customs all indicate that they maintain good contacts with foreign partners and organizations at the organizational level and can call on them at any time and vice versa. According to the interviewees, cooperation with these services takes place on a regular basis and the intended results are achieved.

Cooperation from the public is also important for the authorities when conducting investigations. One interviewee suggested launching information programs to increase public awareness of money laundering. Besides this, awareness should also be cultivated within the organizations themselves, as according to another interviewee, officials, investigators, prosecutors, and judges are also not always sufficiently aware of what exactly money laundering entails.

4.5.6 Information exchange

Criterion: Law enforcement should have the ability to cooperate and exchange information at the national and international levels to combat money laundering and terrorism financing.

The report *'Security and the rule of law in the Caribbean region'* (2020)⁷³ states that in practice the sharing of information, intelligence cooperation for investigation and prosecution and the exchange of personnel between the countries is still difficult. The PPG indicated that strategic and operational analyses of the way in which existing (social) systems are used for subversive activities, such as money laundering and serious forms of corruption, can be shared by the OM/PPG if this is legally possible and the interests of the investigation permit it, for instance via administrative reports⁷⁴.

The PPG indicated that information reaches the TCI's via multiple channels. The KPSM receives information about possible money laundering locally from the FIU, and its TCI and info unit. The LSM points out that the contribution of their TCI in the fight against money laundering in investigations is invaluable, adding that having knowledge of the local situation in this is very important. The PPG also confirms that information comes in through many channels, including the various TCIs. The KWCarib reported that it participates in the Intelligence Center Sint Maarten (ICSM) which serves as an information hub and where (TCI and operational) information is exchanged. The information of every vessel that is controlled by the KWCarib for example is sent to the ICSM.

On an international level Customs receives information from the CICLEC, on money laundering, narcotics, and firearms. In the case that a significant amount of money is seized, the information and photos are shared with members. Internationally the KPSM exchanges information with the Asset Recovery Network for the Caribbean (ARIN-CARIB) as it pertains to money laundering. This happens on a police-police basis. If useful information is obtained, an official legal aid request is made by the

⁷³ Advisory council on international issues, (2020). Security and the rule of law in the Caribbean region. Necessary steps for a future-resistant Kingdom.

⁷⁴ As a result of a criminal investigation, the prosecutor's office may provide the minister with advice to prevent certain forms of crime with administrative measures.

OM/PPG. According to the KPSM ARIN-CARIB has proven to be a good source of information. Lastly, the FIU is part of the Egmond group for the purpose of information retrieval and exchange with other countries and is also a member of an analysts' consultation group within the Kingdom.

4.5.7 Results

Criterion: The judicial approach to combating international money laundering and terrorism financing is producing the desired results.

The above-mentioned issues in the area of resources have consequences for the performance of duties and the achievement of objectives. Nevertheless, one interviewee wished to emphasize that the authorities succeed in carrying out the investigations that they can well, and with good results. The KPSM and the LSM as indicated earlier both namely suffer from a lack of financial expertise which means that fewer financial investigations are carried out.

While Customs have reported on two suspicious transactions to the FIU this year, this does not automatically mean that an investigation will be started. Customs is however satisfied with the feedback from both the OM and the FIU. They also believe that the set goals incorporated in the new plan of action in accordance with the protocol on border control can be achieved, due to financing being provided for by the Netherlands. The interior of the newly renovated customs building for example was financed by means of the previous agreement.

The annual reports and annual plans of the FIU as of 2015 are not (yet) publicly available. The figures on the number of unusual transactions are however available upon request. No official targets are set for the FIU and therefore cannot be evaluated.

The results of the TBO are presented in the annual reports of the Attorney General. These reports show that the TBO has been successful over the years in investigating key figures of subversive crime. The PPG indicated that the resources for the TBO, OM part of PPG (financial, personnel, equipment) are currently adequate to meet the objectives. The size of the TBO/RST team is satisfactory as there is sufficient staff available to carry out the investigations, however there is certain insufficient financial analytical expertise within the organization. By conducting investigations, the TBO has arrested, prosecuted, and tried key subversive figures.

The ART exists on paper in accordance with FATF recommendations, however the team is operating in practice at minimum capacity and is therefore unable to carry out a large number of investigations. According to an interviewee of the ART, goals (number of cases) are set annually for the ART, but the whims of the day, other priorities and a lack of capacity determine whether these are ultimately met. The interviewee is however of the opinion that the goals set would be realistic if the ART consisted in practice of team members of all the designated organizations. The fact that this is not the case means that the current approach is ineffective and that a signal is being given off that money laundering is not being combated by authorities.

The smuggling of drugs, weapons and people are possible sources of financing for terrorist acts. By continuously combating these, the KWCarib makes an (indirect) contribution to the fight against terrorism. The KWCarib sees its biggest contribution as it comes to combating these, the information that they provide/share via the various platforms. As indicated earlier in paragraph 4.3 the KWCarib does not conduct investigations into money laundering or terrorism financing and as such does not set targets related to these. The resources of the organization (financial, personnel, equipment) are however currently not adequate to achieve all the objectives set.

Furthermore, the OM/PPG considers the approach to combating money laundering insufficient and that much more can and should be done e.g., more results can be achieved. Financial gain is a major criminal motive, so the focus should be on seizing proceeds, also as part of the prevention. A bottleneck here as indicated earlier is that the procedure for seizures is not in order, specifically with regards to the storage and management of goods. This was also indicated in an earlier inspection report of the Council⁷⁵.

Lastly, while the combating of money laundering and the financing of terrorism can lead to convictions, the Council concluded in its earlier mentioned report relating to illegal firearms that the enforcement of sentences is a major bottleneck for authorities. To manage overcrowding in the prison, namely serious offenders receive priority. Other offenders are granted early release based on the gravity of the offense and the circumstances of their case.

⁷⁵ Law Enforcement Council, (2019) Criminal seizures in Sint Maarten. A follow-up inspection.

5. Analysis, conclusion, and recommendations

5.1 Analysis

Introduction

In this investigation, the Council examined to what extent the judicial approach contributes to combating money laundering and the financing of terrorism in Sint Maarten. To answer this question, the Council formulated an assessment framework, and an analysis was performed based on the central question and sub-questions.

5.1.1 Nature and scope

As it regards the nature and scope of money laundering and terrorism financing in Sint Maarten, the Council concludes that the local authorities still lack concrete insight into the actual nature and scope of money laundering and terrorism financing. This mainly because it is usually not the sole objective of a crime as it is usually related to or derives from other serious forms of cross-border crimes. Thanks to relevant reports such as the crime analysis (2011) and the regional crime analysis (2019), as well as the knowledge of the local authorities some insight however is afforded into the phenomenon. The same forms of money laundering as mentioned in the 2011 crime analysis are still being utilized, only now more complex. Also, the same bottlenecks and risks mentioned in earlier reports are still present.

The perception of the authorities is that money laundering takes place on a large scale in Sint Maarten, namely because it is known that they cannot provide proper oversight. This lack of oversight is known internationally and creates the image of Sint Maarten as a country that facilitates money laundering and where this type of crime can be conducted with impunity. The possibility of large-scale money laundering taking place is of great concern as it can facilitate the growth of transnational criminal networks and further transnational/cross-border crime. Money laundering and terrorism financing are namely not isolated phenomenon and can often be directly related to other forms of cross-border crime such as the smuggling and trafficking of drugs or human smuggling and trafficking. The focus should therefore not be laid solely on these criminal acts but should be broad in scope whereby money laundering should form a financial component of a criminal investigation if signs of this are also present.

As indicated, the manner in which money laundering takes place in Sint Maarten is weighed as complex by the authorities. The lack of resources such as capacity and expertise at the responsible authorities is therefore worrying as it hampers the execution of investigations into money laundering. Terrorism financing is of a lesser concern to authorities as they indicate that there are currently no signals of such taking place in Sint Maarten and as such no investigations have been carried out. The fact that there is little information regarding terrorism financing available however is no guarantee that it is not taking place.

The core message in various reports by a range of organizations over the years about money laundering and terrorism financing in Sint Maarten has remained the same, namely that the approach

to combating money laundering and terrorism financing by the judicial authorities in Sint Maarten is insufficient. This due to the various issues that will be highlighted in the following paragraphs.

5.1.2 Legal framework and policy

What are the applicable laws, regulations and policies regarding criminal money laundering and terrorism financing?

The national AML/CTF laws and regulations have been drafted and implemented in accordance with, amongst others, recognized international conventions such as the convention for the suppression of the financing of terrorism and the convention on transnational organized crime, as well as the recommendations of the FATF/CFATF.

However, the Council notes that full compliance is not yet achieved. To fully comply with international demands the Ministry is currently reviewing which AML/CTF laws and regulations are still required. The Council stresses the importance of completing this review in a timely manner to achieve the intended goal. Enhancing Sint Maarten's legal framework to combat money laundering and terrorism financing will help to protect the community from (cross-border) organized crime and terrorism.

Money laundering and terrorism financing are included in various Kingdom laws and interregional agreements within the Kingdom as topics on which cooperation is sought. The protocols and policy programs stemming from these have led to support from the Netherlands in combating various forms of cross-border crime, to include money laundering. Specifically, as it regards the deployment of six (financial) detectives to lend support to the local investigative authorities such as the KPSM (major crimes unit) and the LSM and implementing measures to strengthen the border. Strengthening the border is of great significance because as stated earlier money laundering can be associated with other cross-border crimes such as drug smuggling and trafficking and human smuggling and trafficking, which flourish when border control is lacking.

The Council is therefore – just as the stakeholders - of the opinion that by focusing on the borders a positive impact can be achieved and cases of money laundering can be reduced. As Sint Maarten does not have a wealth of resources (e.g., data, tools, capacity, technology) that can be used to combat these crimes it is essential that where possible cooperation is sought in the approach by authorities.

The earlier mentioned policy program of the PPG outlines the requirements necessary for a successful approach to combating money laundering and terrorism financing in general, however these are either not present in Sint Maarten or are present in a limited form which then hampers the effectiveness of the overall approach. This is discussed further in the following paragraphs.

Sint Maarten does not currently have a policy plan in place specifically to combat money laundering and terrorism financing in accordance with current legislation. The Council finds this problematic as this is also important to combat the phenomenon. However, the country package is considered the policy framework for the coming years by the Ministry of Justice, which contains reforms to tackle financial-economic crime. The completion of an NRA is also considered by authorities as an important pre-condition for an effective policy plan. The fact that this is scheduled to take place in 2022 is therefore encouraging and the Council is of the opinion that it should lead to a specific concrete policy

plan for combating money laundering and terrorism financing in the short term.

The inspection reveals that while the existing laws and regulations include various provisions, the ability of the authorities to execute their tasks effectively is proving challenging due to certain laws being outdated and inadequate. Specifically, as it regards the implementation of a new and updated Criminal Code of Procedures.

The Council finds that this should be addressed as soon as possible. The Council also observed that the regulatory framework in place for the operation of casinos is still weak (the absence of a centralized gaming regulatory body) and allows for significant risks, such as money laundering. The Council is therefore of the opinion that the requirements by the CFATF to have sufficient safeguards and mechanisms in place to counter money laundering and terrorism financing need to be addressed, that steps need to be taken in the short term to comply with international standards and that at the same time the mentioned bottlenecks are resolved.

5.1.3 (C)FATF recommendations

Which FATF recommendations are relevant for the judicial organizations in the context of supervision, investigation, and prosecution?

While the Council identified four specific recommendations crucial to the judicial approach (supervision, investigation, and prosecution), the 40 recommendations of the C(FATF) are all intertwined, and relevant to a stronger financial system in Sint Maarten. For example, the execution of an NRA, while not specific to law enforcement, is still crucial in order to guide strategic choices by law enforcement authorities. Even though Sint Maarten has made progress over the years, concerns have been uttered by interviewees with regards to continued/improved compliance with CFATF recommendations. The Council is of the opinion that these concerns are valid, because of the structural lack of resources available to authorities.

Recommendation 29/26: The FIU

Sint Maarten was found to be compliant in 2020 by the CFATF in several areas related to the FIU, specifically the outreach to service providers and the number of reports presented to the OM/PPG as well as the production of annual reports, current findings however present a different view. The FIU has indicated that the outreach to service providers could possibly come under threat if initiatives such as the “non-reporters project” are not repeated. The lack of capacity at the FIU, including within the supervision department, as well as at the other authorities, is the main reason for this. Furthermore, while reports are being submitted by the FIU to the OM/PPG, the capacity at the investigative agencies to carryout investigations based on these reports is insufficient. Lastly, the annual reports of the FIU have not been publicized since 2015, even though statistics are technically available upon request.

The Council therefore encourages the FIU and the Minister to take the necessary steps to improve

compliance in these areas.

Recommendation 30/27: Responsible authorities under AML/CTF policies

The various stakeholders responsible for combating money laundering and terrorism financing within the chain are clear. Investigations into money laundering are carried out by the KPSM, the LSM and the RST-TBO. The RST-TBO and LSM are not tasked with carrying out investigations into terrorism financing. Based on the interviews the Council concludes that investigations into terrorism financing have not been carried out by the KPSM.

Specific AML/CTF policies by the Ministry of Justice to substantiate strategic choices with regards to the approach by the responsible authorities in combating these types of crimes is absent. Additionally, even though the OM/PPG has made a policy program available, its execution is hampered due to a lack of resources by the investigative authorities in Sint Maarten.

The Council finds that a strategic policy is essential for the realization of objectives by the authorities and that this should be made a priority by the Ministry.

One of the reasons Sint Maarten was listed as partially compliant in relation to this recommendation was due to a lack of information regarding training programs that were provided for law enforcement to combat money laundering and terrorism financing. This inspection revealed that training programs specific to this topic are few, a specific course related to financial economic crime (FINEC) took place in 2021 which was attended by the relevant authorities, and far between. This mainly due to a lack of budget and availability.

The Council notes that more training regarding money laundering and terrorism financing is necessary to fully comply with the mentioned recommendation (30/27). The Council believes that such specific training programs could also be a part of the policy with regards to training in general for law enforcement that the Ministry is currently drafting. The Council is looking forward to the new training curriculum.

Recommendation 31/28: Access to documentation and information

This recommendation was found to be compliant in 2013 and was therefore not evaluated by the CFATF in 2020. Based on the interviews the Council however notes that the relevant authorities are not able to freely access all the necessary documents and information for use in their investigations, prosecutions, and actions. This for various reasons, amongst which the lack of a central database in which information from the various institutions such as Cadastre and Civil registry can be readily accessed. The ART specifically, suffers from direct access to fiscal information due to the Tax Administration not being provided with a dispensation from the Minister of Finance in order provide a team member. The Council is of the opinion that this should be addressed. In various of its reports the Council stresses the importance of and made recommendations regarding information and databases. These recommendations are still valid. As there are (still) bottlenecks regarding this recommendation 31/28 the Council finds it important that a solution is found.

Recommendation 32/SR.IX:

Travelers are required to declare amounts above 25.000 ANG in accordance with legislation. Customs and KWCarib have both indicated that controls often do not yield findings. It cannot be distinguished if this is because cross-border transportation of monies is not taking place or that controls are insufficient. The protocol to strengthen border control has provisions in place to provide for budget, personnel and training. According to the Council this will undoubtedly have a positive impact on the number of controls to detect physical cross-border transportation of currency and bearer negotiable instruments and the manner in which these are executed by the authorities.

To comply fully with this recommendation a process for confiscating currency or negotiable instruments for persons listed under the UNSCR 1267 is however still required.

Last evaluation CFATF

During the last evaluation by the CFATF Sint Maarten was found to be largely compliant or compliant with regards to core and main recommendations. However, for the following evaluation round in 2024 steps have to be taken in order to ensure further compliance with all recommendations. The Council shares the concerns of stakeholders that Sint Maarten might not be able to successfully complete all the necessary steps before then. The minimal execution of financial investigations by local authorities, the insufficient collection of data, and the lack of resources at the various organizations responsible for combating money laundering and terrorism financing are but a few of the impediments. The Council stresses the importance of addressing these recommendations by the responsible authorities in the short term.

5.1.4 Combating money laundering and terrorism financing

<i>What is the role of the judicial organizations in combating money laundering and terrorism financing?</i>
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<i>What mechanisms are available to these judicial organizations to combat money laundering and terrorism financing?</i>
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The Council found that the local authorities involved directly and indirectly (FIU, Customs, KPSM, KWCarib, and LSM) in combating money laundering and terrorism financing are all familiar with their roles in this context and are also cognizant of the issues that hamper them from being able to combat money laundering and terrorism financing effectively. The role of KWCarib, Customs, and the multidisciplinary Alphateam in executing controls for example, contributes directly (cross-border money transfers) and indirectly (drug smuggling and trafficking/human smuggling and trafficking) to combating money laundering and terrorism financing.

The reporting mechanism in place at the FIU is crucial, according to the Council. The FIU is namely tasked with identifying suspicious transactions which are then processed and made available to the OM/PPG for further investigation and eventual prosecution. The Council is therefore glad to conclude that in contrast to the situation described in the crime analysis (2011), the FIU has been executing its role regarding the forwarding of suspicious transactions to the OM. Their ability to produce reports

related to suspicious transactions has however come under pressure due to a lack of capacity. The OM/PPG is tasked with selecting and prioritizing investigations, however the lack of investigative capacity of the organizations makes this difficult. Nonetheless, money laundering is often a vehicle for legitimizing money from criminal proceeds and as such it should receive the necessary priority. The Council notes that not all reports of suspected money laundering are investigated by the OM, partly because of the aforementioned lack of resources, but is of the opinion that as many reports as possible should be investigated, in order to tackle money laundering and terrorism financing more effectively. The Council has determined however that cooperation between the OM and the FIU, suffers from a lack of structure which hampers the proper management of reporting by the FIU and the best use of its limited capacity.

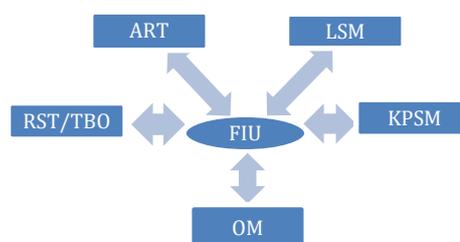
The non-reporters project organized in 2017 was declared successful by those involved; however, a similar action hasn't taken place since. This is cause for concern by the authorities as well as the Council. The Council understands the considerations involved in terms of capacity and how to implement the necessary follow-up, however it believes that a repeat should be contemplated.

One of the mechanisms in place to combat money laundering and terrorism financing is the ART. This team is currently the only example of a multidisciplinary approach to money laundering whereby use can be made of the respective disciplines and powers of the authorities involved. This approach however has proven unsuccessful in its form. This is not due to the concept, but due to qualified personnel being unavailable.

The fact that the Tax Administration has never participated, and that Customs is also no longer participating is considered by the Council as unacceptable. The Council finds that all the agreed upon personnel should partake in the ART.

At the KPSM the fraud department and major crimes unit can be tasked with investigations into money laundering. However, at the major crimes unit, crimes related to murders and drugs are high priority and the fraud department is severely understaffed. This means that investigations into money laundering tend to receive a low priority as they are often not the main offence, but a related component. Also, in-depth investigation and the analysis of (financial) information often does not take place because of the aforementioned reasons. This then prevents authorities from obtaining the necessary insight into the phenomenon.

Figure 2. Overview investigative authorities and the FIU.



Administrative measures and controls by the government administration can be indispensable mechanisms in successfully erecting barriers to reduce the opportunity for serious (cross-border) crimes, as criminal justice approaches alone cannot achieve the desired result. To this end a workgroup has been created to research the options available and what is necessary to successfully implement administrative measures. The Council is optimistic of this development as it can possibly unburden the justice authorities to some extent.

Therefore, while the Council is enthused that there are control mechanisms in place, it would like to emphasize that the lack of resources within these control mechanisms severely limit their effectiveness and hampers authorities from reaching the desired objectives. The Council considers this a serious loss and a great risk.

5.1.5 Judicial approach

What approach is taken in practice to combat money laundering and terrorism financing?

The various approaches listed in the earlier mentioned policy program by the PPG were reviewed and this led to the Council concluding that the Financial Top X strategy has not been applied in Sint Maarten as such due to amongst others a lack of analysis capacity at the local authorities. This lack of capacity makes the importance of a qualitative and quantitative information-driven deployment of investigative work even more crucial. Expertise (financial) has also not been built up within the authorities, this due to insufficient training and personnel and despite investigative expertise made available by the RST. The RST has achieved many of its goals since inception and has been able to contribute to the apprehension and prosecution of various key figures that played a role in subversive crimes in Sint Maarten, to include money laundering. As it pertains to the organization of a confiscation and repossession team, the ART is no more than a paper tiger due to the lack of participation by the various authorities and the Council therefore questions the future intentions regarding this team. Lastly, while there are measures in place (reporting FIU) to counteract movements of funds suspected to be intended for terrorist purposes, the financing of terrorism has received little to no attention from the authorities.

The fact that investigations into cross-border crime such as money laundering are being insufficiently addressed and being put on hold was already the case in 2017. The OM/PPG noted that this would undoubtedly be a challenge for the coming years. This inspection has revealed that little has changed with regards to this anno 2022. The serious lack of resources (capacity, expertise and so forth) at the authorities creates a situation whereby money laundering as a stand-alone offence, in practice does not enjoy a high priority. The Council is of the opinion that financial information related to possible criminal acts should be screened and examined as much as possible. Important hereby is also that there is also sufficient specialist expertise available within the OM/PPG to lead the investigation to a successful outcome.

As indicated earlier, considering that most crimes often have a money laundering component, the Council is of the opinion that the combating of money laundering should receive a higher priority and that more resources should be allocated to it. The Council is however cognizant that because of the severe shortage of resources tough choices often must be made by the authorities.

As reported earlier the regional crime analysis reports that transnational crime is considered one of the biggest threats in the region and suggests that one of the methods that can be utilized by authorities, such as the police and the RST, to gain insight into the whole network is a bottom-up approach which entails tackling intermediaries, coordinators, facilitators, and executors. The KPSM has indicated that due to the complexity of (financial) investigations these often only lead to low hanging fruit being prosecuted, because proving the involvement of key figures is problematic. This would mean that a bottom-up approach is not being applied, as the KPSM lacks the (financial) expertise to investigate further. This despite the current expertise provided for by the RST. The Council therefore notes that even though additional capacity/expertise from the RST has proven to be indispensable, due consideration should be given to increasing the amount of personnel being made available via the protocol detective cooperation to support local authorities further.

The earlier mentioned RST policy program refers to the regional crime analysis as a basis for its strategic approach which focuses on coordinators and facilitators that are being used by key figures. The 2019 annual report of the OM/PPG clearly shows that a bottom-up approach was applied as the TBO had attention for tackling facilitators and key figures were investigated. The specialized approach allowed for attention to be paid to not only the criminal approach but also the approach by the government administration. In this manner an extra impulse could be given to combating money laundering, resulting in convictions in criminal cases, at times these contained a component of money laundering. The Council is pleased that the efforts by the Dutch government in supporting the local government in combating undermining crime have been successful and stresses the importance of the continuation of such for the coming period.

Even though judicial authorities such as the RST are being strengthened by funding provided for by the Dutch government, this does little for the (integral) approach on a national level. As long as local authorities such as the FIU, the KPSM and the LSM do not receive an increase in budget from the government administration they will continue to suffer from a lack of resources and will not be able to make structural improvements to their approach. The operations of the FIU for example should be supported by new technological advancements as soon as possible. The current situation namely has a negative effect on their intelligence position and that of law enforcement in general. The Council finds this discouraging and a source of concern.

5.1.6 Results

To what extent are the objectives achieved?

The Council is of the opinion that effective management is necessary for the achievement of objectives and requires not only the development of a specific policy plan, but also its application. The earlier mentioned policy program of the PPG is a good example of this. In the current situation the available financial, human, and material resources are not sufficient to achieve the objectives of the various authorities. The objectives set by international conventions and the CFTAF are therefore also not being met. This lack of resources has been cited repeatedly by the Council and other institutions over the years and many recommendations were made to help remedy this. The absence of an integral approach to maximize these limited resources is for this reason unfortunate.

The financial difficulties of the country due to the passage of hurricanes Irma and Maria and the Covid

19 pandemic have led to the budget of the relevant authorities not being increased despite taking into account the importance of the fight against money laundering and terrorism financing. The Council is however of the opinion that the Minister must ensure that the necessary priority is given to the budget of the Ministry to guarantee improvements in the short and long term.

The lack of investments in materials at the FIU, KPSM and LSM are cause for concern. The same can be said of these authorities where it pertains to capacity (personnel), especially when it comes to financial investigative capacity. While the recruitment and training of personnel can make a difference, here once again the Council has observed that the financial constraints of the country play a negative role.

Lastly, the Council is of the opinion that increasing the knowledge base of the relevant authorities within the judicial chain as well as providing awareness programs for the public is also necessary for a more effective fight against money laundering and terrorism financing.

5.2 Conclusion

To what extent does the judicial approach effectively contribute to combating money laundering and the financing of terrorism in Sint Maarten?

The Council inspected to what extent the judicial approach contributes to combating money laundering and the financing of terrorism in Sint Maarten. The Council has concluded that the judicial approach is (still) insufficient, and it is therefore of great importance that the abovementioned issues are addressed by the Minister in the short term and the belief of the rule of law in Sint Maarten is promoted as well.

There are currently various bottlenecks that impede an effective approach to money laundering and terrorism financing. To tackle these the legal framework has to be completed and updated in certain areas in order to provide sufficient measures. Investments need to be made to improve the information position of the authorities by for example providing technological updates and access to the information of various institutions. The government administration should also play a bigger role where it pertains to prevention, and enforcement of the administrative measures and controls available to them. The creation of policy and an integrated approach whereby the administrative and criminal justice domains reinforce each other could namely yield greater results. Therefore, the Ministry of Justice seeking collaboration with other ministries for the purpose of an integrated approach in which administrative action and alternative interventions are used to combat money laundering and terrorism financing is to be lauded and the Council hopes that these will lead to concrete results in the short term.

Within the judicial chain positive results can also be gained from authorities making more use of each other's expertise, capacity and authority as this will allow for their limited resources to be used more effectively. The ART is in this case a prime example. However, the Council has concluded, as in previous reports that, multidisciplinary approaches often lack continuity. The Council therefore once again advocates strengthening the cooperation among the relevant authorities involved to not only improve the judicial approach to combating money laundering and terrorism financing, but also other forms of

cross-border crime. Considering the cross-border nature of money laundering and terrorism financing the current focus on the strengthening of the borders can also contribute to combating this form of crime more effectively. Just as in previous reports by the Council, the Council welcomes the focus on cooperation at the border.

The fact that few criminal investigations into money laundering are taking place means that other transnational/cross-border crime such as drug smuggling and trafficking can continue to be financed. By cutting off this source of capital, the growth of the transnational networks involved can in other words be curbed. The Council has seen in its previous reports regarding cross-border crime that these forms of crime have a large impact on Sint Maarten's small society, also as it regards the youth. Additionally, the Council emphasizes the importance of acting on the recommendations in these reports. The Council once again reiterates its belief that even greater results could be achieved by combining efforts. The Council is therefore a proponent of addressing the problem in an integral fashion as the problem is multifaceted and it is important to not just focus resources (as limited as they are) on just one form of crime as this creates loopholes.

Raising awareness and providing insight to the public of the nature and severity of the phenomenon is also important. It is therefore positive that investigations related to money laundering are often publicized by the authorities whereby the methods used and the consequences of such are highlighted.

Not addressing the abovementioned issues in a timely fashion will result in putting the financial system of Sint Maarten at risk.

5.3 Recommendations

To reinforce the approach to money laundering and terrorism financing, the Council recommends the following to the Minister of Justice of Sint Maarten:

Table 4. Recommendations

	To the Minister of Justice
1	Ensure full compliance with the recommendations of the CFATF no later than the following evaluation round in 2024.
2	In accordance with a strategic vision of the Ministry, develop a concrete policy plan for the Ministry to specifically combat money laundering and terrorism financing.
3	Strengthen the working relationship with the other ministries to ensure that administrative measures are enforced in the field of combating money laundering and terrorism financing.
4	Promote activities such as the non-reporters project by authorities regularly to stimulate the reporting obligation of entities.
5	Ensure that an integral approach, necessary for the success of the ART, is supported and executed by all the participating authorities.
6	Following other recommendations made by the Council in this field, facilitate where possible an increase of the budget allocated to the relevant authorities to provide for the necessary resources to combat money laundering and terrorism financing.
7	Be instrumental in facilitating a possible increase in the number of personnel deployed by the RST to further support local authorities with (financial) expertise.
8	Include trainings in anti-money laundering and terrorism financing in the education policy set to be developed by the Ministry for the various law enforcement authorities to increase their knowledge base.
9	Follow up on the recommendations previously made by the Council to combat the various forms of cross-border crime.
	To the Minister of Justice to the attention of the OM
10	Ensure that a money laundering and or terrorist financing specialist can be called upon if necessary.
11	Discuss with the investigative authorities how a higher priority for cases of money laundering could be achieved and act accordingly.
12	Continue to seek cooperation with the FIU in the benefit of combating money laundering and terrorism financing and in any case cooperate to improve the management of its reports.

Colophon

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