



Mediator Ms M.I. Hamer  
c/o House of Representatives of the States General  
PO Box 20018  
2500 EA The Hague

Date: 12 July 2021

Re: Letter from ABN AMRO regarding the formation of a new cabinet and the fight against financial crime

Dear Ms Hamer,

The installation of a new cabinet is imminent. You and other party negotiators are currently working to roll out plans for a safer and more prosperous Netherlands in the next cabinet session.

In the Netherlands, an estimated €16 billion – about 2.5% of the gross national product – is laundered every year. Money earned through criminal activities perpetrated in the Netherlands as well as money laundered by foreign criminals in the Netherlands. Profits from drug trafficking and other criminal activities are usually laundered. But criminal money is also used to fund illicit activities such as terrorism, human trafficking, illegal animal trade and many other criminal activities, all of which create significant costs for prevention and detection. Only a very small fraction of the estimated €16 billion is recovered from criminals.

ABN AMRO takes society's concerns about financial crime very seriously. We see it as our duty to contribute to the fight against crime *in a broader context*. ABN AMRO is committed to playing an effective gatekeeper role within the meaning of the Money Laundering and Terrorist Financing (Prevention) Act (*Wwft*) and it cooperates with other banks and government authorities on various crime-related matters. As such, ABN AMRO would like to offer a number of recommendations for you and the new government to take into consideration as part of promoting and sustaining a strong and effective fight against financial crime. After all, banks are a link in a larger network that must work together to make the Netherlands safer.

ABN AMRO calls for strengthening cooperation and enhancing effectiveness, on the one hand, and for continuous assessment of the proportionality of measures that cut off access to banking services for people and sectors/businesses, on the other.

ABN AMRO calls on the new government to consider:

*Promoting and sustaining a strong and effective fight against financial crime in a European context, where:*

1. **Oversight is organised at EU level** and it includes a scope that extends beyond financial institutions; this is the only way we can effectively combat international crime.
2. There is scope to create additional opportunities for **public-private partnerships and interbank cooperation**, including in the European/international context.
3. Due regard is given to the **proportionality of regulations** that affect clients/citizens/businesses (e.g. in terms of privacy aspects), so that everyone can continue to participate in social and economic life.
4. **It is necessary to keep learning**, including from studies and assessments conducted by independent bodies and scientists.

#### 1. Organising oversight at European level

Money laundering and terrorist financing have a significant cross-border aspect. A money launderer will almost always look for the weakest link within the EU. That is why it is important to have in place a uniform EU AML/CFT policy (in the form of a regulation) that is enforced by a single regulator.

A uniform policy and a single regulator will also simplify the work practices of banks operating in different EU countries. However, it is important that the regulation allow leeway for a risk-based approach and that it not lead to more rules. Although this risk-based approach (open standards) creates enforcement challenges in practice, it is still the best approach, given the nature of the problem. A uniform AML/CFT policy and a single regulator will allow for a more uniform enforcement of AML/CFT legislation. Currently, different (European) regulators interpret the law in different ways, in the area of both AML/CFT regulations and privacy regulations.

The scope of oversight should therefore be extended to other sectors as financial crime crosses not only national borders, but also business sectors. It is the only way that networks and broader phenomena can be brought to light. This approach should ultimately lead to a more effective and efficient oversight of financial crime. This includes not only oversight of the AML/CFT policy, but also oversight of predicate offences such as fraud, corruption, and tax evasion.

However, harmonisation of the regulations in Europe must not be allowed to undermine the progress that the Netherlands has made in the risk-based approach.

#### 2. Maintaining and strengthening the scope for public-private partnerships and interbank cooperation



Cooperation leads to better results. Internationally, the Netherlands ranks among world leaders in efforts to counter financial crime through public-private partnerships and interbank cooperation. Transaction Monitoring Netherlands (TMNL) is an example of a unique partnership between five Dutch banks – ABN AMRO, ING, Rabobank, Triodos Bank and Volksbank – that collectively monitor payment transactions for suspicious activity. In addition, banks have been working constructively and successfully with investigative agencies and other public entities for a number of years.

Authoritative experts and publications have been positive about this cooperation. The partners are currently in the process of further developing their joint activities, thereby focusing on privacy issues and assessing how partnerships can be effective while processing less personal data.

The partnership has made much progress within the Netherlands in recent years. European regulation on this matter can help promote and strengthen public-private partnerships and interbank cooperation within Europe. Thus, the forthcoming European regulation should allow sufficient scope for these types of partnerships and cooperation.

### 3. Due regard to proportionality

#### *Unbankables*

As part of its gatekeeper role, ABN AMRO critically reviews existing and prospective clients and, where necessary, discontinues client relationships that pose unacceptable integrity risks. The bank assesses these risks against its Risk Appetite, which provides the framework for the bank's internal policy.

The fact that certain client groups/sectors no longer fall within the risk profile of an institution creates a social problem that is expected to worsen over time: a large, very diverse group of clients who can no longer open a bank account. Most banks have a risk profile that does not correspond to the inherently high risks posed by such client groups/sectors.

Banks want to help (bona fide) entrepreneurs wherever possible, but given the regulation as written, increasingly more clients are at risk of being denied access to the regular banking system simply due to the regulatory obligations under the Wwft. As a result, these clients will become 'unbankable' in the Netherlands, with all the consequences that this entails, such as creating space for a shadow banking system with no oversight or resorting to alternative solutions that are less desirable from the perspective of consumer protection. Think, for example, of online service providers outside the EU.

It is therefore imperative that this problem is addressed through a timely and effective solution. Certain client groups/sectors are at risk of losing access to resources that allow them to fully participate in society, which not

only leads to personal suffering, but potentially also to stagnation of developments in sectors that may be of economic importance to the Netherlands in the future.

In its role, ABN AMRO – together with other banks, the Dutch Banking Association (NVB) and public entities – will try to determine how it can prepare certain client groups – e.g. in the charitable sector – for the processes associated with the Wwft. The provision of information, periodic meetings about obstacles experienced by the sector and raising awareness about the bank’s internal processes play an important role in this regard. To that end, ABN AMRO would welcome the opportunity to engage with the new government (together with public and private partners) on the broader issues of unbankables, which hopefully will lead to meaningful and effective solutions to said issues. This can include identifying current best practices and considering opportunities for extension to other sectors. Ultimately, the broader goal is to ensure that client groups/sectors have and/or see opportunities for (continued) participation in economic and social life.

#### *Data sharing*

ABN AMRO is a strong advocate of public-private partnerships in the security domain. This kind of partnership is increasingly seen as one of the more effective approaches to fighting financial and economic crime.

To fulfil its role as gatekeeper more effectively, ABN AMRO needs to have the ability to share information directly with investigative agencies, municipalities and the Tax and Customs Administration (within specific constructs). The existing chain for reporting suspicious transactions is not equipped for this, especially where high priority cases and exploratory investigations are concerned. The Data Processing by Partnership Act (WGS) provides a basis for this. It is currently under parliamentary review. In addition, access to a number of government databases, such as the Personal Records Database, would strengthen the gatekeeper role. The bottlenecks in this area have been communicated to the ministries. Once in effect, we expect that these measures will significantly strengthen our role as gatekeeper and the effectiveness of the entire reporting chain.

#### *Privacy: compliance with Wwft obligations vs privacy*

First and foremost, ABN AMRO wishes to emphasise that privacy regulations need not affect compliance with the Wwft. In practice, however, tension might sometimes arise between the two.

The fundamental privacy principles of data minimisation, proportionality and subsidiarity must be adhered to in transaction monitoring or KYC research. The expectations of regulators and interpretation by various stakeholders may vary with regard to what is necessary and proportionate in relation to these Wwft obligations, all of which leads to confusion and sometimes misunderstanding.

Privacy regulators indicate that the Wwft currently imposes on banks significant obligations that present a number of privacy-related challenges.<sup>1</sup> However, non-compliance with these obligations is not an option for banks. The

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<sup>1</sup> See for example [https://edpb.europa.eu/sites/edpb/files/files/file1/edpb\\_statement\\_20201215\\_aml\\_actionplan\\_en.pdf](https://edpb.europa.eu/sites/edpb/files/files/file1/edpb_statement_20201215_aml_actionplan_en.pdf)

large-scale and structural exchange of (personal) data between banks, and between banks and public entities, for Wwft purposes requires a more robust legal basis with the necessary privacy protections. This is not yet enshrined in law.

#### 4. The need to keep learning

For a chain to operate properly, it must learn from the past. ABN AMRO does so internally by continuously evaluating its processes and implementing the results of external (regulatory) investigations and assessments. This is necessary, among other things, to enable the bank to respond to the changing methods criminals apply to avoid detection. In view of the broader social importance, it is important to incorporate the results of lessons learned from oversight and science into new regulations and government policy. We will cite a number of relevant investigations and assessments that are currently underway and will be published in the coming period.

##### *Netherlands Court of Audit*

The Netherlands Court of Audit states on its website that it is currently assessing an important element of the Dutch anti-money laundering approach: identification and monitoring of reports of suspicious transactions that may indicate money laundering. To that end, the Court will assess the ability and approach of public entities to monitor these types of transactions and identify the potential risks in the approach that might compromise the effectiveness and efficiency of the process.

ABN AMRO expects the assessment to have broad impact across the reporting chain and provide lessons that we can learn from going forward. We believe that the effectiveness of the chain cannot be considered in isolation from the effectiveness of its constituent parts.

##### *FATF evaluation*

This autumn, the Financial Action Task Force (FATF) is expected to conduct an evaluation of the Netherlands. Although COVID-19 might affect the lead time, the evaluation is expected to produce new insights about the Dutch situation in 2022. ABN AMRO looks forward to the results of this evaluation.

#### 5. Conclusion

ABN AMRO believes that the fight against financial crime must remain a priority during the next cabinet session and that Europe must take a strong oversight role. Regulations must be proportionate and allow scope for public-private partnerships. We at ABN AMRO are fully committed to doing our part in the fight against financial crime.

Kind regards,



Robert Swaak  
CEO, ABN AMRO Bank N.V.