

AML 10-step plan

March 2023

In 2018, we developed a 10-step plan to guide practitioners on compliance obligations as established by the Dutch Money Laundering and Terrorist Financing (Prevention) Act (AML Act).¹ Since its introduction, the Ministry of Finance has embraced the 10-step plan, which also serves as a roadmap.

The 10-step plan is divided into two parts: (A) risk analysis and risk policy, and (B) the ten steps. An AML compliance and audit 10-step plan has been prepared to accompany the 10-step plan.

A Risk analysis and risk policy

(art. 2-2c, 3, 8 and 9)

Conduct a risk analysis and create a risk policy for your organisation. Make use of the latest National Risk Assessment on money laundering and terrorist financing and apply it to how you provide services and to your client base. Determine which clients pose a risk, no matter how great, and determine – risk based - which measures to take in order to verify the identity of the ultimate beneficial owner (UBO). Determine client risk profiles (simplified, normal, enhanced) and record them. When profiling the risk, look at the type of client, product, service, transaction, and delivery channel, as well as at countries or geographical regions. Examine, if appropriate, the general and specific AML compliance guide or your supervisory body's manual, and your professional body's publications. Pay attention to legislation on sanctions.

An institution as referred to in art. 1a(4)(a)(tax consultant), (b) (auditor), (c) attorney, (d) civil law notary, (e) lawyer, and (h) (broker), must provide a certificate of good standing for the policymakers (art. 35a) if the supervisory body requests this.

Be aware of unusual transaction patterns and of transactions that intrinsically involve a higher risk of money laundering or terrorist financing. Tailor customer due diligence (CDD) to risk sensitivity for money laundering or terrorist financing (art. 2a and art. 3(5) and (6)). Take appropriate measures against this by using new technologies (art. 2a(2)).

The institution establishes procedures and takes measures to limit the risks and manage them effectively (risk management) based on its risk policy. Demand further information to better understand the purpose and nature of the transaction. If necessary, examine the FATF's risk-based approach publications for accountants² or legal professionals³ to enhance your risk management.

On the basis of article 8 and 9 of the AML Act, determine when and how enhanced CDD should take place. Take risk-based and effective measures to keep the risk policy up to date.

Record data in a retrievable form and keep it for five years (art. 33). This retention period also applies to data that relates to reports disclosing unusual transactions (art. 34 in conjunction with art. 16).

If appropriate to the nature and size of your organisation, appoint an AML compliance officer and an auditor for that officer (art. 2d) (consult your supervisory body for more information). See also the AML Compliance and audit 10-step plan.

If you are required to appoint an AML compliance officer, draw up internal regulations that allow the anonymous internal reporting of unusual transactions (art. 20a).

Provide periodic (preferably annual) training to employees and day-to-day policymakers; screen them to meet AML obligations (art. 35).

- ¹ The last versions of this plan are dated October 2020 and September 2018. 'Ten-step plan for AML Act compliance' included for the first time in "Nieuwe anti-witwaswetgeving van kracht! Veel nieuws onder de zon?", D. Kaya, D.S. Kolkman, B. Snijder-Kuipers and A.T.A. Tilleman, TOP, September 2008, p. 205-211 and developed further in, among other publications, "Strengere eisen door nieuwe witwaswetgeving per 1 januari 2013", B. Snijder-Kuipers, A.T.A. Tilleman and N. Roetert-Steenbruggen, TOP May 2013, p. 98-103. B. Snijder-Kuipers and A.T.A. Tilleman published a subsequent version in "Aandachtspunten bij uitbesteding CDD", Tijdschrift voor Compliance, February 2015, p. 9-17. This plan is a summary aid for compliance with obligations arising out of the Netherlands' AML Act. Obviously, the statutory obligations prevail. The authors do not accept any liability arising out of the use or reference to this plan.
- ² [www.fatf-gafi.org/documents/riskbasedapproach/documents/rba-accounting-profession.html?hf=10&b=0&s=desc\(fatf_releasedate\)](http://www.fatf-gafi.org/documents/riskbasedapproach/documents/rba-accounting-profession.html?hf=10&b=0&s=desc(fatf_releasedate)).
- ³ www.fatf-gafi.org/publications/fatfrecommendations/documents/rba-legal-professionals.html.

B AML 10-step plan

Step 1 Which institutions have obligations under the AML Act (ART. 1A)

For AML purposes, the performance of certain professional activities results in certain persons, companies, organisations or legal entities qualifying as “AML institutions”. This includes acting in the capacity of an accountant, “administration office” or tax advisor, and of a civil law notary or attorney (for certain activities).

If there are two or more day-to-day policymakers at the institution, appoint one of them as the person responsible for compliance with the AML Act (art. 2d).

Step 2 Identify the customer (ART. 3 and 8); record DATA (ART. 33)

Arrange for the customers to identify themselves before providing services.

Step 3 Verify the customer’s identity (ART. 3 and 8); record DATA (ART. 33)

Verify the customer’s stated identity on the basis of original proof of identity.

Step 4 Establish ownership and control, identify and verify UBOs and check UBO register (ART. 3 and 8 and ART. 3 of the 2018 AML Implementing Decree); record data (ART. 33)

Take reasonable measures to obtain insight into the customer’s ownership and control structure; for example, by having the customer show you an organisational chart. The UBOs should be identified, with verification of their identity (on a risk-based approach), including the nature and size of their interest.

Who are the natural persons who hold more than 25% of the shares, voting rights or economic benefit or has control? The same applies to partnerships: is there an ownership interest or voting interest of more than 25% or control?

Each entity must have one or more UBOs. If an entity does not have a UBO on the basis of the criteria listed above, the senior managing officer is considered a “pseudo UBO”. For Dutch entities, all managing directors or all partners (in a partnership - except for those in a limited partnership (CV)) are considered a “pseudo UBO” (art. 3(6) of the 2018 AML Implementation Decree). The UBO or pseudo UBO must be determined on the basis of two sources (art. 4(2) AML Act): (i) a UBO declaration by the client; and (ii) a UBO register extract. In a high-risk situation, the client’s UBO declaration will not be sufficient to determine the UBO. Additional documentation will be required.

Collect an extract from the UBO register when entering into a new business relationship with a client (art. 4(2)). An AML institution has a reporting obligation, to the UBO register held at the Chamber of Commerce, in the event of a discrepancy between the information received from the AML institution and the UBO register (art. 10c).

There is no reporting obligation if an unusual transaction has been reported to the FIU (Financial Intelligence Unit (FIU- the Netherlands) (art. 10c (3)).

Step 5 Check for PEPs (ART. 8 and ART. 2 of the 2018 AML Implementing Decree); record data (ART. 33)

Investigate whether the customer or the UBO is a politically exposed person (PEP); that is, a person who holds (or has held in the past year) a senior position in a public body. If a partner, parent, child, partner of a child, or relation associated with the customer or UBO fulfils such an exposed position, the customer or UBO will be considered a PEP. Check the national and international PEP lists, the internet or other reliable sources.

Step 6 Conduct a risk analysis and create a risk policy (see section A)

Form an opinion on the purpose and nature of the business relationship; the nature of the transaction; the origin and destination of funds; and the risk of money laundering or terrorist financing taking place. This is the most important step in the AML Act.

Step 7 Monitor and investigate the origin of funds (ART. 3); record DATA (ART. 33)

Pay ongoing attention to the customer’s risk profile. Monitoring may not be outsourced. Investigate the origin and destination of the funds used in the transaction.

Step 8 Take responsibility for customers that have been introduced (ART. 5 and 10); record DATA (ART. 33)

If another institution introduces the customer, the AML institution may copy the identification and verification data, but it remains responsible and must collect data.

Step 9 Address unusual transactions (ART. 15 and 16)

Does an objective or subjective indicator apply to the intended transaction? Does the CDD not lead to the desired result or has the customer relationship ended? Are there any indications that the customer in question is involved in money laundering or terrorist financing (art. 16(4))? Consult your colleagues, confidential adviser or compliance department. Record and save all considerations related to making a final decision. If the conclusion is that there is an intended unusual transaction, go to step 10.

Step 10 Report unusual transactions (ART.16); record data (ART. 34)

Immediately submit any unusual transaction and all relevant data to FIU- the Netherlands. Keep a copy of the report and confirmation of receipt (print straight after reporting and recording).

Prof. mr. B. Snijder-Kuipers,
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AML compliance and audit 10-step plan

In September 2018, we developed an AML 10-step plan to guide practitioners on compliance obligations as established by the Dutch Money Laundering and Terrorist Financing (Prevention) Act (AML Act). The AML 10-step plan – last updated in March 2023 - focuses AML institutions' obligations towards their clients.

This additional AML compliance and audit 10-step plan focuses on the institutions' internal organisation and includes compliance and audit requirements under the AML Act. It should serve as a roadmap for ensuring that your organisation has an effective AML compliance and audit function in your organisation.

We want to remind you that if there are two or more policymakers in your organisation, one of them must be appointed as the manager responsible for AML compliance (ART. 2d(1)).

In addition, tax consultants, auditors, attorneys, civil law notaries, lawyers and brokers must submit a certificate of good standing if the supervisory body requests this (ART. 35a).

Step 1 Appoint a compliance officer (ART. 2d(2)(3))

Depending on the nature and size of your organisation, you may have to appoint an independent compliance officer. Check your supervisory body's guidelines for more information.

If you are required to appoint a compliance officer, you must also set rules for reporting unusual transactions internally (ART. 20a).

If you are not required to appoint a compliance officer, we recommend that you appoint an individual in your organisation to oversee AML compliance. This recommendation should not be confused with the requirement to appoint an AML policy-maker (ART.2d(1)).

Step 2 Appoint a compliance auditor (ART. 2d(4))

Depending on the nature and size of your organisation, you may have to appoint an independent auditor. Check your supervisory body's guidelines for more information. In practice, the audit function is often outsourced.

If you are not required to appoint a compliance auditor, it is advisable to appoint an individual in your organisation to perform regular audits.

Step 3 Determine the compliance officer's duties and powers (ART. 2d(2)(3))

The compliance officer's task is to ensure the organisation's compliance with and implementation of the AML Act. The compliance officer is responsible for reporting unusual transactions to FIU - the Netherlands. The compliance officer monitors adequate and proportional compliance with internal procedures, measures and arrangements, and with statutory rules.

Step 4 Determine the compliance auditor's duties and powers (ART. 2d(4))

The auditor's task is to monitor compliance with the statutory and internal rules of the AML organisation. The auditor has to monitor the compliance function, and should review several of the compliance officer's individual files to establish if the officer is adequately performing the duties in question. The auditor should also look at the officer's reasons for not reporting an unusual transaction to FIU - the Netherlands.

Step 5 Adopt a compliance programme

Prepare a compliance programme annually, including topics such as content and validity of risk assessment and policy; acceptance of high risk by clients; internal reporting (including anonymous reporting) of unusual or potentially unusual transactions; confidentiality; maintenance of adequate files; education and screening; implementation of new legislation and evaluation of the organisation's AML policy. If applicable, check if a certificate of good standing has been issued (ART.35a).

Step 6 Adopt an audit programme

Monitor if the organisation's policies and processes in relation to the AML Act are effective and comprehensive. Topics to be monitored are: client due diligence; monitoring; reporting obligation (internal reporting procedure); risk policy; risk management; education and screening. Monitor the compliance function on the basis of files, and include this in the annual audit programme. Prepare an annual audit programme. Lawyers and notaries should keep in mind that some (but not all) activities fall within the scope of the AML Act.

Step 7 Ensure an effective and independent compliance function (ART. 2d(2))

Make sure that roles are sufficiently separated. This means that individuals involved in the compliance function should not be involved in the activities that they supervise.

It is also important that the compliance officer have a sufficient mandate, authority and budget to perform this function adequately and with the necessary authority.

Step 8 Ensure an effective and independent audit function (ART. 2d(4))

Make sure that roles are sufficiently separated. This means that individuals involved in the audit function should not be involved in the compliance function and are not responsible for the business (first line). A situation where auditors de facto monitor themselves, should be avoided.

It is also important that the auditor's mandate, authority and budget is sufficient to adequately perform this role. The audit function may be outsourced.

Step 9 Set up an educational programme

The compliance officer and auditor must have sufficient knowledge and expertise. Ensure that they receive adequate training in relation to the AML Act to ensure they perform their tasks well.

Step 10 Record all steps/reports

The compliance officer and auditor's findings must be reported to the organisation's policymakers. If shortcomings become evident, the organisation's policies, procedures and measures must be updated.