dutch banking association

Sector Industry Baseline

Sex workers

strong banks
strong society

Context

Introduction

In the Netherlands prostitution is a legal profession and sex workers chose their profession for various reasons. However, sex workers may encounter difficulties when opening and maintaining a bank account due to the perceived risks associated with the sector. Access to financial services is a prerequisite for participation in modern day business and society.

Financial institutions such as banks, payment service providers and life insurers have an important role as gatekeepers to the financial system. The 'Wet ter voorkoming van witwassen en financieren van terrorisme (Wwft)' describes the responsibilities and legal obligations of gatekeepers to prevent misuse of the financial system for money laundering (ML) and terrorism financing (TF). These encompass Client Due Diligence (CDD), ongoing monitoring and reporting of unusual transactions.

Various international reputable sources point out the higher risks of cash-intensive sectors. For instance, annex III of the revised 4AMLD identifies cash-intensive businesses as a risk increasing factor. The EBA Risk Factor Guidelines also state that a cash-intensive operation is an increased risk factor. In this context it is worth noting that cash only becomes a high risk indicator when its origin is not clear. Sex work is one of the sectors where cash transactions are prevalent. This sector is also in some cases associated with sexual exploitation and human trafficking. [1]

Banks are obliged to apply enhanced due diligence (EDD) measures when a business relationship or transaction poses a higher ML/TF risk, according to Wwft article 8 sub 1. Performing EDD measures can often and recurring lead to requests for information and documentation towards the client. When CDD cannot be completed or potential ML/TF risks cannot be adequately mitigated, this may lead to restricted access to financial services or even blocked accounts.

It is essential that the client risk assessment is performed proportionate to the identified ML/TF risks and taking into account the specific circumstances of the business relationship or transaction. The risk-based approach allows banks to adjust the extent and depth of CDD on a risk-sensitive basis. Obtaining additional information or evidence is only needed if it can be used to mitigate perceived risks. Thus striking an effective balance between managing and mitigating ML/TF risks while minimising client impact and unintended consequences.

The NVB Industry Baseline describes the risk-based Dutch banking practice to implement the CDD requirements regarding (independent) sex workers in the Netherlands for various risk factors. The risk factors should be assessed case specific and interpreted in the full context of the client.

Industry overview

There are various types of sex workers. The first distinction to be made is between sex workers working completely independent and those working via an agency or in a club. Almost all sex workers that work via a club or agency operate via an opting-in arrangement. Under this arrangement the owner of the club or agency pays value added taxes on behalf of the sex worker and is responsible for the administration and filing of value added taxes for the sex workers. The independent sex workers manage their business and payment methods themselves. This group is by far the largest group of sex workers.

1 FATF Report on Financial Flows from Human Trafficking, July 2018

Various types of independent sex workers exist.

- **Window sex workers**
  Window sex work is present in several Dutch areas. These sex workers are sometimes subject to licensing by the local municipality.
- **Home-based sex workers**
  These sex workers operate from their own home. Clients usually find them through online advertisements.
- **Escorts**
  Independent escorts are sex workers who operate without an intermediary and visit clients at their home or in hotels. The sex worker decides whom to meet with and how they provide their services.

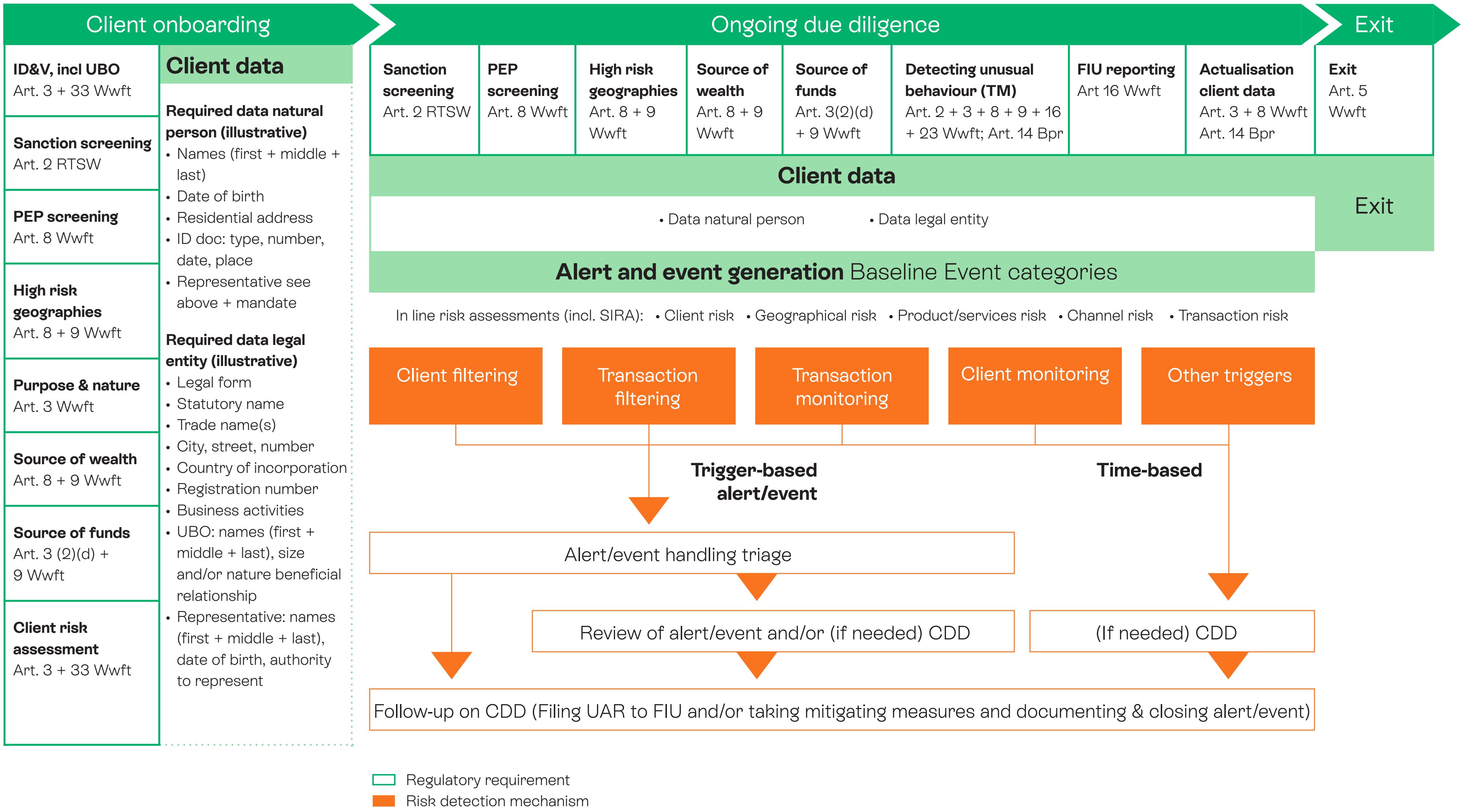
The predominant method of payment in these subcategories of the sector is cash, with less frequent use of debit or credit card payments or bank transfers. Clients often prefer to pay in cash for privacy reasons. However, the sector is diverse, and the nature of the payment methods can vary depending on the type of sex work.

Positioning within the Financial Crime Framework

CDD processes to assess client risks are applicable to all clients of banks, including sex workers. Only when a business relationship or transaction poses higher ML/TF risks, EDD measures need to be applied to mitigate the risks of the individual client.

Financial Crime Framework

Risk-based



Sector Industry Baseline

1 Industry Baseline

For both banks and sex workers, it is important that risks are assessed and controlled where needed. Risk awareness is a crucial starting point for both to achieve a proportionate risk-based approach. This means that where a risk is detected, the mitigating measures should focus on that specific risk bearing the purpose of the legislation in mind within the context of the sector.

Wwft article 8 requires banks to conduct EDD in case a transaction or business relationship by its nature poses a higher risk of ML/TF. When assessing the risks of a (prospective) client that is a sex worker, banks should ensure sufficient understanding of the sex worker's business type and activities to establish an expected transaction profile.

2 Risk factors

The following table provides information on characteristics and client behaviour that banks can take into account as risk reducing or risk increasing factors for the risk assessment of a client that is a (independent) sex worker with a business account. This information also provides (independent) sex workers with more clarity on the relevant risk factors and contributes to further awareness of possible risk mitigation.

These risk reducing and risk increasing factors are to be assessed in the full context of the client. Therefore, the presence of one risk factor should not solely determine the risk classification of the client. Clients always have the opportunity to provide relevant information and documentation to elaborate on the context of specific characteristics or behaviour. Additionally, the risk classification of the client is dependent on the individual bank's policies, risk appetite and integrity risk assessment.

Risk factors	Risk reducing	Risk increasing
Transparency	• Disclosure of financial statements • Transparency of financial flows • Registered with CoC • Regularly filing tax returns	• No (appropriate) clarity on or insight into the origin and destination of financial flows • No administration or financial reporting • Use of intermediaries without a license
Reputation	• No adverse media related to financial economic crime and/or predicate offences	• Adverse media related to financial economic crime and/or exploitation
Funding	• No cash deposits and/or high denominations	• Cash deposits and/or high denominations
Geographies	• Works in the Netherlands	• High risk countries which pose a greater risk of economic predicate offences
Transactions	• Payments are made through traceable, digital means (e.g. credit cards, online payment services) • Maintains clear, comprehensive records of financial transaction data	• Transactions without plausible and logical explanation • Unusual or excessive cash withdrawals without plausible and logical explanation • Transactions via unrelated third parties

3 Information and documentation

The following information and documentation contribute to an adequate risk assessment when establishing a business relationship with a sex worker and can be used to substantiate effective risk mitigating measures. Important to note that this list is non-exhaustive. Some of this information and documentation may not yet be available when establishing a business relationship with a new client and should be provided by the sex worker for the risk assessment when it becomes available.

- Information on client activities
- Expected transaction behaviour, including in- and outflow, type, size, frequency
- Dutch Chamber of Commerce (CoC) registration
- Income tax return and/or VAT return
- Licenses (incl. APV, operating-, residence- or work permit)

4 Risk assessment

The abovementioned risk reducing and risk increasing factors should be considered by banks when conducting CDD. These risk factors should be assessed in the full context of the client. Thus, ensuring effective mitigation of ML/TF risks while safeguarding access to financial services. The risk assessment results in a risk profile of the client based on the identified risk factors. The decision to enter into a business relationship with a client should be based on the ability to manage identified ML/TF risks.

Some criteria to consider when conducting CDD for sex workers and assessing the obtained information.

- If the client is registered with the CoC, their business description will likely be classified under ‘other services’ rather than ‘sex work’. The lack of a specific business description cannot be the sole reason to refuse a business relationship. Information on business characteristics should be provided in response to specific questions from banks.
- The nature of the profession can prompt further inquiries about the purpose and nature of the business relationship, the source of funds, and expected transaction profile.
- Demonstrable and explainable transaction patterns and payment flows in line with the expected transaction profile. When necessary, research can be performed based on annual figures or tax return.
- Willingness to submit tax returns and VAT returns (e.g. when an income tax return is not yet available). Tax returns and VAT returns can be used to substantiate the source of funds where necessary.
- Licensing requirements apply to the place of work rather than the individual persons. The absence of a license can therefore not be the sole factor to consider when deciding to accept or refuse a business relationship with a sex worker. Where a licence has been granted by local government, banks may rely on the fact that conditions for that licence have been met.
- The following range for the expected use of cash has been discussed and aligned with the sector. For the individual sex worker, income in cash does not exceed €10k per month nor €80k per year.

5 Reporting obligation

Some parts of the sex industry carry a higher risk of exploitation and human trafficking. Banks play an important role in preventing ML and TF. However, banks do not have the competence, capabilities or means to identify, establish or rule out these predicate offences. Exploitative situations are often only spotted after numerous and extensive interactions with the victim. For which banks, in their role as gatekeeper, are not the appropriate nor responsible party to detect or prevent exploitation of individual victims.

It is not the banks’ responsibility to detect human trafficking nor to independently determine whether money flows result from illicit activities. The responsibility for detecting these predicate offences are with law enforcement and prosecution. Banks are expected to report unusual transactions to FIU-NL, but even with elaborate CDD measures, ML/TF risks cannot entirely be prevented. In case banks do receive signals of forced prostitution, they will report this to the appropriate government channels.

6 Impact

For most CDD processes regarding sex workers, client outreach by banks is necessary to obtain the required information and documentation. However, by focusing on relevant risk factors, the outreach can be proportionate to the level of potential ML/TF risks. Moreover, a focused risk-based approach is crucial to avoid unnecessary client outreach and provide access to financial services. Also, the use of information retrieved from open sources and observed transaction behaviour of the client can limit the administrative burden.

Overcompliance for and de-risking of this sector should be avoided. The outlined risk factors in this NVB Industry Baseline, can be implemented by banks in their policies, processes and controls. This enables effective management of relevant ML/TF risks while ensuring that conducting CDD does not result in the blanket refusal or termination of business relationships with an entire category of clients.

7 Use cases

Please note that the use cases below are examples to illustrate a practical application of this NVB Industry Baseline and not intended to be exhaustive.

Individual sex worker

Example

A sex worker who operates independently, is registered with CoC, regularly files tax returns and does not use intermediaries. Financial transactions are mostly traceable and explainable, and the sex worker maintains financial records. The turnover on the account and VAT payments are consistent.

NVB Industry Baseline

- Open sources and where available, internal information on the client and transactions are consulted.
- Client outreach is focused on risk relevant information, e.g. tax returns.
- Client is responsive to questions of the bank
- Ongoing monitoring based on the expected transaction behaviour.

Sex worker via a club or escort agency

Example

A sex worker works through an escort agency that maintains clear, comprehensive records, including engagement contracts and financial transaction data. Payment execution through the agency.

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- Open sources and where available internal information on the client and agency are consulted.
- Assessment of adverse media on related financial crime.
- Client outreach is focused on risk relevant information, including a description of the relationship between sex worker and agency.
- Ongoing monitoring based on the expected transaction behaviour.

Webcam sex worker

Example

A sex worker offering services such as webcam shows and adult content creation for websites. Payments are made through traceable digital means (e.g. credit cards, online payment services).

NVB Industry Baseline

- Open sources and where available, internal information on the client and transactions are consulted.
- Client outreach is focused on risk relevant information, e.g. tax returns.
- Ongoing monitoring based on the expected transaction behaviour.

Context

Regulatory framework

The regulatory context for this topic is described in relevant parts of applicable laws, regulations and guidelines from various authorities, such as: FATF, EBA, Ministry of Finance and DNB. Below an overview of the current regulatory framework with reference to sex workers.

- **FATF Interpretive Note to Recommendation 10**
  "There are circumstances where the risk of money laundering or terrorist financing is higher, and enhanced CDD measures have to be taken. When assessing the money laundering and terrorist financing risks relating to types of customers, countries or geographic areas, and particular products, services, transactions or delivery channels, examples of potentially higher-risk situations include the following:
  (a) Customer risk factors:
  (...) Businesses that are cash intensive."
- **FATF Report on Financial Flows from Human Trafficking of July 2018**
  "Human trafficking for sexual exploitation (HTSE) can be a major source of income for individual criminals and organised crime networks operating at local, national and international levels. Given the profitability of the offence, individuals perpetrating the HTSE crime, as well as laundering the proceeds of that crime, may be identifiable by observing financial transactions and information obtained by financial institutions in the course of conducting their customer due diligence and the behaviour of offenders. Many of the typologies and indicators in this subgrouping are common to laundering the proceeds of other cash generating crimes and are generally not unique to laundering the proceeds of HTSE as observed in the following cases."
- **Revised 4AMLD, annex III**
  "The following is a non-exhaustive list of factors and types of evidence of potentially higher risk referred to in Article 18(3):
  (1) Customer risk factors:
  (e) businesses that are cash-intensive;"
- **EBA Risk Factor Guidelines, paragraph 9.6**
  "The following factors may contribute to increasing risk: The nature of the customer, for example: the customer is a cash-intensive undertaking."
- **EBA Guidelines on policies and controls for the effective management of money laundering and terrorist financing (ML/TF) risks when providing access to financial services**
  "Credit and financial institutions should set up their policies, controls and procedures in a way that enable them to identify relevant risk factors and to assess ML/TF risks associated with a business relationship in line with the EBA ML/TF risk factors guidelines. As part of this, credit and financial institutions should differentiate between the risks associated with a particular category of customers and the risks associated with individual customers that belong to this category.
  Credit and financial institutions should ensure that the implementation of these policies, procedures and controls should not result in the blanket refusal, or termination, of business relationships with entire categories of customers that they have assessed as presenting higher ML/TF risk. As part of this, institutions should put in place appropriate and risk-sensitive policies and procedures to ensure that their approach to applying customer due diligence (CDD) measures does not result in unduly denying customers' legitimate access to financial services."
- **Wwft article 8(1)**
  "An institution shall, in addition to Article 3(2) to (4), conduct enhanced customer due diligence in at least the following cases:
  a. if the business relationship or transaction by its nature poses a higher risk of money laundering or terrorist financing."

Alignment between ‘DNB Good Practices’ and ‘NVB Sector Industry Baseline’

DNB aims to illustrate its supervisory practices to the benefit of supervised entities by, for example, providing an interpretation of regulatory requirements (Q&As) and examples on how regulatory requirements can be met (Good Practices). It is important to note that neither the DNB Q&As nor Good Practices are legally binding.

The NVB Industry Baseline describes the application and execution of the risk-based approach in more detail. Additionally, it provides more practical examples with risk factors and mitigating measures for various scenarios.

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