

Berenschot

Re-investing confiscated criminal assets in institutions and society: towards an anti-organised crime fund

This abstract is based on policy research on whether it is possible to create an 'anti-organised crime fund' in the Netherlands. The study was carried out by Berenschot together with the Rand Cooperation on behalf of Bureau Regioburgemeesters¹

Introduction

Organised crime undermines societies and their democratic legal systems and therefore attracts an increased public interest in countries all over the world, including the Netherlands. It forms a tenacious and hazardous problem because it creates a sense of 'government absence' in communities. The idea that crime might pay off and no or insufficient measures are taken to reduce and deter crime puts public faith in governments and the rule of law at stake.

In the Netherlands, fighting and preventing so-called undermining organised crime has a prominent position on the political agenda. Increasingly, the confiscation of criminal assets is seen as a powerful means to do so. Moreover, there is an increased awareness that not only confiscating assets as such has value; the way in which criminal assets are redirected and communication about the confiscation and reinvestment of assets can have a positive effect on the affected communities.

The confiscation of criminal assets is part of a broader development towards putting effectiveness at the core of crime prevention and repression. There is a simple logic behind it: hit criminals where it hurts, which is their bank account and the loss of status that comes with confiscating their criminally obtained assets. Besides having a direct effect on perpetrators, asset confiscation, when made visible, may also trigger a preventive effect of much broader social value: the notion that crime does not pay off. The core of fighting undermining crime by confiscating assets does not merely lie in financial effects, but possibly even more so in the social effects and associated public value. Confiscating criminal assets in a way that is visible to the community confirms the rule of law. criminal activities.

An anti-organised crime fund

Combating undermining organised crime is an important theme in the Dutch coalition agreement of 2017. In the agreement, the decision was made to create an 'anti-organised crime fund', to be filled once - thus *incidentally* - with the amount of €100 million. Our research focused on how to create an anti-organised crime fund that is being filled *structurally*. Such a fund supports an integral approach towards confiscation and redirection of the assets, by reinvesting them in society and/or by reinforcing the authorities involved. This can evolve into a fund that is to some extent revolving, in a sense that confiscated criminal assets are used to help fund preventing and fighting undermining organised criminal activities.

An anti-organised crime has an important *financial effect*: alongside and in cohesion with other means and instruments it can co-fund the prevention and combat of crime. It may reinforce the authorities that work on prevention, detection, prosecution and conviction of crime.

Furthermore, the fund has an important *social effect* as it increases the visibility of the efforts of national and local authorities in fighting undermining organised crime. The fund thus has symbolic value. But it can also sort a direct preventive effect when means are reinvested in such a way that affected communities *see it and truly feel* they benefit from it. When redirecting non-monetary confiscated assets such as cars, properties and luxury goods directly for this purpose, it is important to do so in close range of the area in which they were confiscated to make visible the link between the crime and the effects (the criminally obtained assets were confiscated - crime doesn't pay off).

¹ This bureau supports the regional mayors in all their security tasks.

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International cases

The idea of an anti-organised crime fund is not unique to the Netherlands. To the contrary, some other countries in and outside of Europe serve as good practices when it comes to visibly reinvesting the proceeds of confiscated criminal assets in society. These countries have structural funds in place from which confiscated criminal assets (monetary as well as non-monetary) are used to fund crime fighting efforts as well as initiatives to reinforce positive social structures.

The cases of Italy, Spain, the UK (specifically: Scotland), France and Luxembourg are examples that demonstrate the feasibility of establishing a process of seizing and redirecting the proceeds of crime. A shared sense of urgency between stakeholders is a determining factor for the success of such an effort. With that in mind, it may not be a coincidence that Italy, with its extensive history of undermining organised crime, has the most advanced confiscation system in place. These cases also demonstrate that different options are available when arranging the confiscation and redirection process. That said, it appears to be common practice in Europe to coordinate the process and aggregate confiscated assets at the national level whilst redirecting funds at both the local and national level. Governance structures and chosen legal frameworks for aggregating and redirecting seized assets vary by country and do not always have the form of a fund.

Key challenges and determinants for success

The European cases show that there is no 'magic bullet' when it comes to setting up a system of confiscating and redirecting criminal assets. A trial and error process may help an original setup develop incrementally towards a sustainable model to be used over the long term. Systematic monitoring and evaluation of how the fund works in practice is key to enable learning from experiences and improving the fund over time: a necessary condition to allow for successful incremental development. Setting up learning environments in which stakeholders frequently exchange knowledge and expertise regarding both the confiscation and redirecting of assets will likely help to further improve chances for success.

An important consideration when designing such a fund is whether or not (part of the) confiscated assets are assigned directly to the authorities that confiscate them. In some countries, we find incentive schemes in which authorities (the police, district attorneys) can re-invest a certain percentage of what they help confiscate in reinforcing their organisations and approaches. This brings along a perverse incentive: the risk is that these parties focus (too) strongly on criminal cases that may result in direct financial benefit for their organisations instead of on an integral approach to combating various forms of crime. We argue therefore to avoid a direct relationship between how much confiscated assets authorities seize and how much of the proceeds they receive. Rather, potential benefits for authorities should be fixed or otherwise be decided on by independent bodies.

Public value is more important than the financial business case

It is legally and financially possible to create and effectively govern an anti-organised crime fund. In many countries, including the Netherlands, very little needs to change from a legal perspective (e.g., new laws, orders in council etcetera) to make such a fund possible. What is required is the political will and sense of urgency for this type of initiative to succeed.

An anti-organised crime fund cannot be fully revolving. For practical reasons – the more successful confiscation attempts and general combat of crime becomes, the less assets there are to seize – and for ethical reasons – the wrong kind of incentive – to make it revolving should not be the goal of the fund. What matters mostly is that the fund can generate public value through the symbolic message that it sends and by making targeted reinvestments in affected communities. When installing an anti-organised crime fund, we recommend incrementally developing it towards a sustainable model that works over the long term.

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