1 General introduction

This thesis presents empirical evidence on two counterstrategies to organized crime in the Netherlands: the criminal justice approach and the financial approach. For the criminal justice approach, it focuses on a specific method of criminal investigation: undercover policing. For the financial approach, it looks into what organized crime offenders actually do with their money as well as the efforts of law enforcement agencies to confiscate criminal earnings.

1.1 The rise of organized crime on the political agenda

According to Paoli and Fijnaut, the term ‘organized crime’ was coined in the United States at the close of the nineteenth century (2006: 308-309). Although organized crime flourished in the early decades of the twentieth century - when criminal groups were active in the liquor trade and had control over unions and legitimate businesses - it was not until the 1950s that the phrase became really popular in the United States. Since that date, several U.S. congressional bodies have put the issue on the political agenda. These bodies viewed organized crime mainly as the work of a nationwide, centralized, Italian mafia organization. The Kefauver senate investigating committee stated in its final report: ‘The public now knows that the tentacles of organized crime reach into virtually every community throughout the country’ (U.S. Senate, 1951). Mafia leaders were believed to be in control of the most lucrative criminal activities. In 1963, former Mafioso Joe Valachi testified before the Senate Permanent Subcommittee on Investigations. Because his testimony was broadcasted on television, this awareness of - or view on - organized crime became popularized among the American public (Paoli and Fijnaut, 2006: 308-309; Fijnaut, 2014: 72-74).

From the 1960s onwards, illegal drugs gave an impulse to organized crime. The popularity of cannabis, heroin, cocaine and synthetic drugs have fostered a trade in drugs and stimulated the rise of distribution networks on a national as well as an international level. It brought lucrative chances for those who are capable of bridging the distance between regions where these drugs are produced and regions where consumer markets are located (Paoli and Fijnaut, 2006: 315; Van Duyne and Levi, 2005).\(^1\)

\(^1\) For a historical overview of ‘organized crime’, such as banditry in seventeenth- and eighteenth-century North-western Europe, see Fijnaut, 2014. For a history of the concept of organized crime, see Paoli and Fijnaut, 2004a.
1.1.1 Organized crime in the Netherlands

Until the 1970s, the term ‘organized crime’ was almost exclusively used in the United States. For a long time, Dutch criminologists and policymakers considered organized crime to be a predominantly foreign problem, similar to what their colleagues in most other European countries thought. It was not until the early 1990s that organized crime reached the political agenda in the Netherlands. Authorities had become more aware of the huge profits made by offenders who engaged in trafficking cannabis, cocaine and heroin. The fact that, on several occasions, these criminals used deadly violence to deal with threats or to solve other problems with ‘colleagues’, also helped to raise the sense of urgency. On an international level, two bomb attacks in Italy in 1992, killing the prominent judges Giovanni Falcone and Paolo Borsellino, produced huge shock waves and played a significant role in putting organized crime on the European crime control agenda. In the Netherlands, in particular the killing of alleged Mafia don Klaas Bruinsma in 1991 served as a ‘wake-up call’ (Kleemans, 2007: 163-164; Paoli and Fijnaut, 2006: 308-309; Paoli, 2014: 1; Van Duyne and Vander Beken, 2009: 265-266).

The organized crime problem became a hot topic on the Dutch political agenda. In the early 1990s, the dominating view on organized crime was that of the Mafia-type organizations that existed in Italy and the United States. The problems with the mafia in Italy and the United States, where mafia organizations controlled certain economic sectors or regions, functioned as a powerful symbol of what could happen to the Netherlands as well. Empirical research showed, however, that this picture actually contradicted the phenomenon of organized crime in the Netherlands. Mafia-type organizations were found to be the exception rather than the rule. The concept of criminal networks turned out to be a better-fitting description of the flexible structures within which offenders operate. Furthermore, no evidence was found of criminal organizations controlling economic sectors or regions (Kleemans, 2007: 163-164; Kleemans, 2004, 2014b; Van de Bunt, 2004: 689).

Many forms of organized crime in the Netherlands can be described as ‘transit crime’, i.e. criminal groups are primarily involved in international illegal trade. The major business

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2 Following the work of Fijnaut et al. (1998: 26-27), organized crime is defined as crime committed by groups that primarily focus on illegal profit, systematically commit crimes that adversely affect society, and are capable of effectively shielding their activities, in particular by being willing to use physical violence or eliminate individuals by way of corruption. One of the main sources of information for this thesis, the Dutch Organized Crime Monitor, uses a wide interpretation of shielding of activities. Besides (the threat of) violence and corruption, it includes the use of cover businesses, code language, counter-surveillance activities, and the misuse of certain occupational groups, such as notaries, public lawyers and accountants (Kleemans et al., 1998: 22-23; Van Koppen, 2013a: 1).

3 The same is true for many other European countries with the exception of Italy.

4 This view was clearly present in a memorandum issued by the Dutch government in 1992. According to the memorandum, titled ‘Organized Crime in the Netherlands: An Impression of Its Threat and a Plan of Action’ (Ministerie van Justitie/Ministerie van Binnenlandse Zaken, 1992), organized crime posed a major threat to the integrity of Dutch society; economic sectors and political institutions were at risk of being infiltrated by organized crime (Kleemans, 2007: 163-164).
of organized crime groups in the Netherlands boils down to international smuggling activities. In these activities, the Netherlands can be a country of destination, a transit country or, in the case of cannabis and synthetic drugs, a production country. In these types of crime, offenders simply make use of the legal opportunities, such as the economic and physical infrastructure, instead of trying to monopolize it. The Netherlands is an important logistical node in Europe, which brings good opportunities for international trade, be it legal or illegal. The logistical attractiveness is probably one of the causes of the Netherlands being a major transit country for drugs. Besides the physical infrastructure, the Netherlands also provides a good social opportunity structure for international drug trafficking. Migration has created strong social ties with drug-producing or exporting countries (or islands) such as the Antilles, Morocco, Surinam and Turkey (European Monitoring Centre for Drugs and Drug Addiction, 2015; Fijnaut et al., 1998; Kleemans, 2007: 163-164; Kleemans, 2004, 2014b; United Nations Office on Drugs and Crime, 2015; Van de Bunt, 2004: 689).

1.2 Combating organized crime

The rise of organized crime confronted authorities with challenges, challenges that were met with ‘new’ strategies in crime control. On the one hand, a shift took place within the criminal justice approach. The criminal justice approach was - and perhaps still is - the most dominant where fighting crime is concerned. It basically boils down to policing, arresting and prosecuting offenders. Because of the consensual nature of several types of organized crime, traditional, reactive policing methods became less adequate. This led to a shift from reactive methods of criminal investigation to proactive methods (Harfield, 2008: 64; Roberts, 2007: 99; Maguire and John, 1996: 316-318; Fyfe and Sheptycki, 2006: 319-320; Paoli and Fijnaut, 2004b: 1043). Furthermore, policymakers and others involved in the crime debate became convinced of the need for an additional approach to organized crime, a financial approach. This was fuelled by growing concern with regard to the money made by offenders and the effects ‘dirty money’ could have on society as a whole. As a result, an array of anti-money laundering policies and confiscation laws were introduced worldwide (Gallant, 2005: 11). The rise of (certain kinds of) proactive methods of criminal investigation as well as the introduction of a financial approach, were in large part instigated by U.S. policies. Both approaches will be elaborated upon below.5

5 Later on, a third approach to organized crime emerged; the so-called administrative approach. This approach, inspired by initiatives of New York authorities in the 1990s, is now a widely accepted and acclaimed counterstrategy to organized crime in the Netherlands. The administrative approach involves local governments and other partners in fighting and preventing organized crime. On a national level, the approach was manifested in 2003, when the Bibob Act came into effect. Bibob stands for the Wet bevordering integriteitsbeoordelingen door het openbaar bestuur, which translates as the Public administration probity screening Act (Stb. 2014, no. 445). The act provides a legal basis for authorities to refuse or withdraw permits, licenses, grants and subsidies in case of a serious threat of criminal abuse (Van de Bunt and Van der Schoot, 2003; Ayling, 2014; Beare and Woodiwiss, 2014: 565; Paoli and Fijnaut, 2006: 326; Kleemans, 2007; Van der Vorm, 2016).
1.2.1 The criminal justice approach

Roughly from the 1960s onwards, as was explained in the first section, drug trafficking gave a powerful impulse to organized crime activities around the world. People involved in these activities (often) participate with mutual consent. The wholesale drug trafficker, the truck driver who transports the drugs from a port to a stash, the street-level drug dealer and his customers, and the money mule who moves ‘dirty’ cash; they all benefit from their participation. The same holds for people involved in the illegal arms trade, illegal gambling and underground banking, among other organized crime(-related) activities. Therefore, unlike traditional crimes such as burglary, robbery or rape, for that matter, organized crime does not generate victim reports. This means that reactive policing is becoming increasingly inadequate, as it is primarily instigated by victim reports, and criminal events and behaviour in the past. For this reason, policing organized crime (also) requires the use of proactive investigative methods. Proactive policing focuses on gathering evidence about the current and future behaviour of offenders. It includes methods of investigation such as wiretapping, surveillance, the use of informers and undercover policing.

Undercover policing

Wiretapping, surveillance, the use of informers and undercover policing have a common feature; they are all covert methods of investigation. Subjects are unaware of their use, as opposed to police activities such as arrests, house searches and interrogations, which cannot be deployed without subjects knowing it. However, in contrast to wiretapping and surveillance, undercover operations are not only covert but also deceptive (as is the use of informers). An undercover agent hides his true identity, poses as a ‘fellow criminal’, for example, tries to gain the subject’s trust, and uses his cover to gather information on the subject or people in his surroundings. Another distinctive characteristic of undercover operations is that, in some cases at least, undercover agents participate in the very crimes that are under investigation (Marx, 1988: 11-13; Ross, 2008: 239). Such is the case in operations, for instance, in which an undercover agent participates in a criminal group involved in drug trafficking. These specific features bring with them certain investigative opportunities as well as certain risks. They are probably also an important reason why

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6 Some people might be forced to cooperate. However, due to the opportunity to earn ‘quick money’ (or, as is the case for customers, the opportunity to satisfy the need for drugs), there are many willing perpetrators.

7 These methods of investigation are also applied in reactive criminal investigations. Undercover operations, for example, have been used to elicit confessions from suspects in investigations regarding murder and missing people, among other crimes (see chapters 2 and 3).

8 Strictly speaking, the use of the phrase ‘proactive’ is incorrect since, in many cases of proactive investigations, there is information indicating that crimes already have been committed. However, in a proactive investigation, the police (also) focus on criminal activities that are still ongoing or still have to be committed, for instance on offenders who have probably participated in drug trafficking operations in the past and are expected to continue these crimes (see also Tweede Kamer, 1996-1997, 25 403, no. 3: 4).
undercover policing is one of the most controversial methods of criminal investigation and has been the subject of heated legislative debate.\footnote{Historical, social or cultural characteristics of a country may also result in a critical attitude towards undercover operations. In post-war Europe, for example, undercover methods were initially discredited, due to the intensive use the national-socialist Third Reich and the communist Soviet Union had been making of government espionage against their own populations (Marx, 1988: 22-32).}

Undercover methods are certainly not a twentieth-century invention. Undercover tactics, in different manifestations and with different purposes, have been used for centuries (see chapter 3 for a brief historical overview). However, their deployment became more prominent when, in the 1960s, the fight against drug trafficking rose on the agenda. Law enforcement agencies in the United States deployed undercover operations on a large scale, mainly in the form of so-called buy-bust operations. In such an operation, an undercover agent poses as someone who wants to buy drugs (for example). As the ‘war on drugs’ became part of U.S. foreign policy, the American Drugs Enforcement Administration (DEA) exported these operations to Western Europe (Ross, 2008: 241; Fijnaut and Marx, 1995a: 15-16; Van Duyne and Levi, 2005: 19).

Accompanying this criminal justice approach to organized crime, institutional reforms were implemented in many countries. These reforms concerned setting up new police units and the regulation of methods of investigation such as undercover policing (Paoli, 2014: 2; Paoli and Fijnaut, 2006: 325-326; Van der Tak, 2000: 1). On the one hand, these changes were introduced to facilitate the fight against organized crime. On the other hand, they are meant to enhance the control of police activities, as policing is increasingly being subjected to formal statutory regulation (Newburn et al., 2007: 547-548; Roberts, 2007: 97-102; Groenhuijsen and Kooijmans, 2011: 62). Specific criminal cases, incidents and outright scandals often served as driving forces behind the legislative debate on investigative powers.

In the United Kingdom, the Khan case played an important role in the regulation of police powers (see chapter 2), while in Belgium, undercover policing became discredited as a result of the so-called François scandal, and in the United States a controversy emerged around the Abdul Scam (see chapter 3). The course of the legislative debate in the Netherlands was defined by the IRT affair. Undercover operations gave cause for this affair, which in turn ultimately resulted in a major legal reform with regard to investigative powers.

**Undercover policing in the Netherlands**

*Interregional investigation squads (IRTs), joint investigation teams put together from several regional police forces, were established in response to growing concerns about organized crime in the 1990s. The IRTs deployed ‘experimental’ investigative methods against criminal groups involved in large-scale international drug trafficking. Informers*
imported several tons of drugs under the supervision of the police. The informers, themselves criminals, were assisted by the police and customs to pose as trustworthy and successful criminal entrepreneurs, in the hope that they would move to the top of criminal organizations. Internal disputes, however, led to the sudden dismantling of the Amsterdam-Utrecht IRT in 1993. This ‘IRT affair’ resulted in the appointment of fact-finding committees and, eventually, in a full-fledged Parliamentary Inquiry Committee on Criminal Investigation Methods (in Dutch: Parlementaire Enquêtecommissie Opsporingsmethoden (PEO)).

The committee concluded that some of the new policing methods were unacceptable. It questioned whether the police were running the informers or vice versa. Overall, criminal investigation in the Netherlands, according to the committee, suffered from three fundamental flaws. First, the committee concluded that there was a legal vacuum regarding certain investigative methods. In continental European jurisdictions belonging to civil law systems, such as the Dutch one, the exercise of police powers requires a formal basis in the national police law or code of criminal procedure (Roberts, 2007: 96). However, until 2000, there were no specific sections in the Dutch code of criminal procedure that covered investigative methods such as undercover policing and surveillance. Second, the organization of the criminal justice system was found to be inadequate. Third, the command and control of criminal investigations was poor (PEO, 1996, Eindrapport).

The committee’s report, published in 1996 (PEO, 1996, Eindrapport), provided the foundation for the new Act on Special Investigative Police Powers (in Dutch: Wet bijzondere opsporingsbevoegdheden (BOB Act)), effective as from 2000 (Kleemans, 2007: 164-165). The BOB Act - addressing the aforementioned fundamental flaws regarding criminal investigation - is built on three basic principles. First, methods of criminal investigation that are likely to involve a breach of fundamental human rights or pose a risk to the integrity of the officers conducting the criminal investigation, should have a statutory basis. The BOB Act regulates several methods of criminal investigation. Since the act came into effect, most investigative powers are covered by specific sections in the code of criminal procedure. Second, the public prosecutor has the authority over a criminal investigation. The BOB Act enhances the role of the public prosecutor in the criminal investigation process. The public prosecutor formally decides on the use of investigative powers (Bokhorst et al., 2002: 185-186). Third, the deployment of methods of criminal investigation should be verifiable and therefore transparent. The BOB Act prescribes that a report is made of the used methods of investigation. Furthermore, in principle, the

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10 Act on Special Investigative Police Powers (Wet bijzondere opsporingsbevoegdheden, complete reference in Dutch: Wet van 27 mei 1999 tot wijziging van het Wetboek van Strafvordering in verband met de regeling van enige bijzondere bevoegdheden tot opsporing en wijziging van enige andere bepalingen (bijzondere opsporingsbevoegdheden), Stb. 1999, no. 245).

11 The deployment of some methods of investigation also requires authorization of an examining magistrate.
deployment of a special investigative method has to be accounted for at trial (Beijer et al., 2004: 277-278). Before the BOB Act was introduced, judges were often not even informed about the fact that an undercover operation, for example, had been deployed (Van Traa, 1997: 16).

Since the BOB Act came into effect, it is, in principle, not allowed to ‘supervise’ the importation of drugs, as the IRT did. Illegal goods or substances that constitute a risk to public health or public safety, such as drugs or weapons, have to be confiscated.\(^ \text{12} \) Furthermore, participation in criminal activities by police officers or by civilians working under police supervision has to comply with laws and regulations (Beijer et al., 2004: 278).

With regard to undercover operations, the Dutch legislator chose to distinguish between three powers in the BOB Act: systematic intelligence gathering, the purchase of illegal goods or substances or the rendering of illegal services (undercover buys), and infiltration.\(^ \text{13} \) Infiltration is assumed to involve more risks than the deployment of an undercover buy does, which in turn is assumed to be more risky than the use of systematic intelligence gathering. During an infiltration operation, the undercover agent actually becomes a member of a criminal group. Joining a criminal organization is a crime. Furthermore, as the legislator argues, it entails the risk of moral contamination of the police officer by the criminal environment, as well as risks concerning the physical safety of the undercover agent and his relatives. During an undercover buy, an undercover agent buys illegal goods or substances from a suspect, such as weapons, child pornography or drugs.\(^ \text{14} \) When an undercover agent buys such goods or substances, he also participates in a crime. However, according to the legislator, that criminal participation is less far-reaching and less sustained than is the case with infiltration. Systematic intelligence gathering is assumed to involve fewer risks than the other two undercover powers, because the undercover agent ‘only’ collects information and does not participate in any crimes. The legal requirements for the deployment of undercover powers correspond to the assumed level of risk attached to them. Infiltration is only allowed in investigations targeting the most severe crimes (proportionality) and only if other policing methods have proven (or are expected to be) ineffective (subsidiarity). Undercover buys and systematic intelligence gathering, however, may be deployed against a (much) broader category of crimes and without an exhaustive exploration of alternative methods of investigation.

In addition, where infiltration is concerned, further authorization requirements have to be met. After deliberation with the regional chief public prosecutor, a public prosecutor who wants to deploy an infiltration operation has to submit a substantiated proposal to the

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\(^ \text{12} \) Under certain conditions, seizure may be delayed.

\(^ \text{13} \) Infiltration operations may involve one or several undercover buys.

\(^ \text{14} \) Instead of buying illegal goods or substances from a suspect, an undercover agent may also render services to a suspect, such as when he provides transportation for a drug trafficking operation.
Central Assessment Committee (in Dutch: Centrale Toetsingscommissie (CTC)). The CTC tests the proposed operation for proportionality and subsidiarity, among other factors. If the CTC considers the operation permissible, the proposal goes to the Board of Procurators General, where the ultimate decision is made whether the infiltration operation is allowed or not. If an infiltration operation is allowed, continuation of the infiltration operation requires the prosecutor to submit a plan for continuation on a three months’ basis.

At the moment that the empirical data on undercover policing was collected for this thesis, there were five active specialized undercover units within the Dutch police - one national and four regional teams. Civilians may be used in undercover operations. However, in undercover buys and infiltration operations, civilians may only be used if police officers are incapable of deploying the operation. In the case of infiltration, the use of civilians who are themselves criminals was initially forbidden. Later on, in the aftermath of 9/11, the ban on criminal civilian infiltrators was slightly loosened when the Dutch Minister of Justice deemed the use of criminal civilians permissible in terrorism investigations (Tweede Kamer, 2002-2003, 27 834, no. 28). In 2013, the ban was loosened still a bit further. In ‘very exceptional cases’ of organized crime, and only if police officers and non-criminal civilians cannot be used, criminal civilians may be used in an infiltration operation (Tweede Kamer, 2012-2013, 29 911, no. 83: 4).

1.2.2 The financial approach
From the mid-1980s onwards, organized crime control policies became supplemented with another type of approach: a finance-related strategy. Instead of ‘just’ investigating, arresting and prosecuting offenders, the focus shifted to attacking them financially. The financial approach basically consists of two parts: anti-money laundering measures, which aim at criminalizing the handling of ‘dirty’ money and preventing criminals from using the legal financial-economic infrastructure; and confiscation laws, which aim at taking away criminals’ assets (Gallant, 2005: 11).

The United States played a decisive role in putting this strategy on the agenda. This dominance in setting the international agenda on the control of organized crime, similar to what we saw with regard to undercover policing, is closely linked to the exportation of the ‘war on drugs’ (Andreas and Nadelmann, 2006: 241-244; Beare and Woodiwiss, 2014: 545-548; Van Duyne and Levi, 2005: 19; Gelemesova, 2011; see also Paoli and Fijnaut, 2006: 325-326). Whereas the United States was a driving force behind the crime money control policies as a tool to combat drug trafficking, since the 1990s, the scope has

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15 As the result of a reorganization that took place in 2008, the various undercover teams have been joined into one centrally controlled unit: the Unit Werken Onder Dekmantel (WOD), which translates as the Working Undercover Unit (see chapter 6).

16 The BOB Act itself did not specifically forbid the use of criminal civilians in infiltration operations, but such a prohibition could be inferred from the legislative debate (Beijer et al, 2004: 277-278).

Anti-money laundering measures and confiscation of criminal earnings

As stated earlier, the financial approach consists of two elements: anti-money laundering measures and the confiscation of criminal earnings.

From an offender’s point of view, the aim of money laundering is to conceal the criminal origin of funds while still retaining control over them (Levi, 2014: 426). Generally, offenders participate in organized crime to gain financial (or other) benefit. Success in organized crime, however, brings its own problems for a criminal. Spending his criminal earnings carelessly might catch the attention of law enforcement authorities and could result in the offender getting arrested and losing his assets. Basically, money laundering refers to the measures an offender has to take to solve this problem. Laundering can involve various types of action. An often used but also criticized description of the laundering process identifies three sequential elements: placement of ‘dirty’ cash into the financial system; the layering (or structuring) of transactions to obscure the money trail by using several (foreign) accounts and shell companies, for example; and integration into the economy, which comes down to the criminal being able to consume or invest his money (Levi, 2014: 421). 17

This integration, or rather ‘infiltration’, of criminal groups into the economy and into the licit society at large, is one of the biggest worries ever since organized crime came to be taken seriously (e.g. Barone and Masciandaro, 2011: 116; Europol, 2006; see also Verhage, 2011; Naylor, 2002: 34). The perceived threat of criminals earning and spending huge sums of money and gaining influence in economic, social and political spheres is one of the driving forces behind anti-money laundering measures (see for a review, e.g. Levi and Reuter, 2009). U.S. anti-money laundering legislation started in 1970, when the Bank Secrecy Act was introduced. The act, by establishing rules regarding record keeping, for

17 The model implies that money laundering requires all three elements. Also, by using the model, money laundering is often represented as quite complex (e.g. Schneider and Windischbauer, 2008: 394). However, investigative practice shows that laundering might also take place via rather simple methods, and without having to complete all three steps. An offender might, for example, simply smuggle his cash to a foreign country where financial supervision is poorly developed, or he keeps his money within the national borders and spends (a part of) it on an expensive car and a house registered in somebody’s else’s name (Akse, 2003; Kleemans et al, 2002: 108; Kruisbergen, Van de Bunt et al., 2012; Kruisbergen and Soudijn, 2015; Soudijn and Akse, 2012; PEO, 1996, Bijlage X: 135-136).
example, required U.S. financial institutions to assist authorities in detecting and preventing criminal money flows. In the 1980s and 1990s, several other laws followed, such as the Money Laundering Control Act (1986), which established money laundering as a federal crime. Starting in the 1980s, the financial approach to the United States’ ‘war on drugs’ became increasingly linked with international crime control policies. The 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances established anti-money laundering provisions. The convention emphasizes the danger of crime money enabling ‘criminal organizations to penetrate, contaminate and corrupt (...) society at all its levels’ (United Nations, 1988: 1). In 1989, the Financial Action Task Force (FATF) was set up, an intergovernmental body that develops and promotes anti-money laundering policies, issues ‘international standards’ and recommends countries to adopt measures to enable the confiscation of the profits of crime, among other things. Today, international organizations such as FATF, EU, UN, IMF and the World Bank, promote the implementation of finance-related crime control policies (see also Gelemerova, 2011).

The confiscation of criminal earnings is the second major element of the financial approach. It entails the enforcement of the ideological notion that no one should be allowed to profit from a crime; ‘crime should not pay’. Furthermore, it is assumed that confiscation acts as a deterrent because it reduces its profitability and therefore the motive for crime. Confiscation is also meant to remove the financial means to participate in criminal operations and/or to ‘infiltrate’ in licit society. Finally, confiscated assets compensate society for the impacts of crime (Bartels, 2010: v; Lusty, 2002: 345; Naylor, 2002: 247; Nelen, 2004: 523-526). With its aggressive confiscation regime, the United States is a forerunner, but efforts to take away criminals’ money are made in many countries around the world. To facilitate the confiscation of criminals’ assets, legislation has been introduced, specialized organisations have been set up, and available resources have been increased (Bartels, 2010: v; Brà, 2008; Hofmeyr, 2013; Levi, 2013; Vettori, 2006: 113; Cabana, 2014: 17-18; Freiberg and Fox, 2000: 239-240; Kennedy, 2007: 33-34; Kilchling 2014: 663; Lusty, 2002: 345, 351).

Although the value of recovered assets is growing, many jurisdictions are confronted with attrition, i.e. a gap between estimated criminal profits on the one hand and the actually recovered amount of money on the other. Attrition may take place during various steps of the confiscation process, e.g. regarding the number of cases in which asset recovery is applied, the court procedures, or the collection of confiscation orders. In several countries, disappointing results lay at the heart of new legislation to further enhance the possibilities for confiscation (Nelen, 2004: 520-522; Cabana, 2014: 17; Freiberg and Fox, 2000: 253; Levi, 2013: 3; Lusty, 2002: 345, 351; Van Duyne et al., 2014; Bullock et al., 2009: ii; House of Commons, 2014).
**Anti-money laundering measures and confiscation of criminal earnings in the Netherlands**

In 1991, the council of the EU formulated its *Directive on Money Laundering*. This so-called ‘first pillar’ anti-money laundering directive obliges the member states to put effort into the fight against money laundering. In line with the 1991 EU directive, the Dutch legislator issued two laws in 1993: the *Identification Act* and the *Disclosure of Unusual Transactions Act*. The first requires clients to identify themselves before financial services are provided to them. The latter requires financial service providers to report unusual transactions to the authorities. Over the years, the sectors falling under this disclosure obligation were broadened. Furthermore, the Dutch legislator introduced a special article in the Criminal Code (article 420bis to quater) in 2001 that established the penalisation of money laundering as a crime in itself (Van der Schoot, 2006: 33-96).

Although Dutch policy does not focus on specific types of crime, the anti-money laundering measures are explicitly presented as tools to target organized crime (Van der Schoot, 2006: 33-96). Just like its international counterparts, Dutch policy emphasises the dangers of large amounts of crime money entering the legal economy. Large-scale money laundering activities, according to the explanatory memorandum to the legislation penalizing money laundering, could allow organized crime groups to achieve powerful positions in the legal economy. For this reason, money laundering poses a serious threat to society (Tweede Kamer, 1999-2000, 27 159, no. 3: 5).

The possibility of depriving offenders of illegally obtained profits - which constitutes the other cornerstone of the financial approach - was introduced in Dutch general criminal law.

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19 The directive focused on the laundering of proceeds of drug crimes. In 2001, a new directive was formulated (Directive 2001/97/EC). The new directive noted that fighting money laundering is an important tool to combat more types of organized crime and that the list of predicate offences should be adapted accordingly. With this new directive, therefore, money laundering applied to a broader range of crimes. Later on, a third (Directive 2005/60/EC) and a fourth directive (Directive (EU) 2015/849) followed.


23 Money laundering became a criminal offence without the necessity of proving a specific predicate offence. Furthermore, the new article made it possible to prosecute somebody for laundering the proceeds of a crime he himself committed. Before 2001, money laundering could be prosecuted by the penalization of fencing. However, a person who committed a predicate offence could not be prosecuted for fencing with regard to the goods obtained by that offence (Van der Schoot, 2006: 33-96).
law in 1983.\textsuperscript{24} New legislation was adopted in 1993.\textsuperscript{25} The new law introduced the possibility, once a defendant had been convicted, not only to claim the confiscation of the earnings resulting from the facts for which he was convicted, but to claim the confiscation of profits in relation to other crimes as well.\textsuperscript{26} In the next decades, the legislation was further amended, such as in 2003 and 2011, for example. In 2003, new legislation introduced the instrument of coercive custody of a maximum of three years in case a convict does not pay a confiscation order (after which the offender still has to pay).\textsuperscript{27} The 2011 legislation made it possible, among other things, to deploy special methods of criminal investigation such as wiretapping for the purpose of executing a confiscation order.\textsuperscript{28} Furthermore, the budget available for efforts to take away criminals’ money increased in 2011 as well as in 2013 (Borgers, 2001: 270-272; Nelen, 2004: 517-520; Van Duyne et al., 2014).\textsuperscript{29}

A prosecutor who wants to claim a confiscation order against a person who has been convicted of a crime has to start a separate legal procedure. At first, a district court decides on this claim, after which both the convict and the prosecution can go to the appeal court, and ultimately to the Supreme Court.\textsuperscript{30} In order to claim a confiscation order, the volume of criminal profits has to be determined by means of a financial investigation. The public prosecutor has authority over the financial investigation. The confiscation order is not the

\begin{itemize}
\item \textsuperscript{24} It was already introduced in Dutch economic criminal law in the 1940s (Borgers, 2001: 51-67).
\item \textsuperscript{25} Complete reference in Dutch: Wet van 10 december 1992 tot wijziging van het Wetboek van Strafrecht en het Wetboek van Strafverordening en enkele andere wetten ter verruiming van de mogelijkheden tot toepassing van de maatregel van ontneming van wederrechtelijk verkregen voordeel en andere vermogenssancties, Stb. 1993, no. 11.
\item \textsuperscript{26} The offender’s involvement in these ‘other crimes’ does not have to be proven to a criminal standard.
\item \textsuperscript{27} Complete reference in Dutch: Wet van 8 mei 2003 tot wijziging en aanvulling van een aantal bepalingen in het Wetboek van Strafrecht, het Wetboek van Strafverordening en enige andere wetten met betrekking tot de ontneming van wederrechtelijk verkregen voordeel (aanpassing ontnemingswetgeving), Stb. 2003, no. 202.
\item \textsuperscript{28} Complete reference in Dutch: Wet van 31 maart 2011 tot wijziging van het Wetboek van Strafrecht, het Wetboek van Strafverordering en enige andere wetten ter verbetering van de toepassing van de maatregel ter ontneming van wederrechtelijk verkregen voordeel (verruiming mogelijkheden voordeelontneming), Stb. 2011, no. 171.
\item \textsuperscript{29} In 2014 and 2015 new changes in the law came into force. Since 2015, the confiscation law contains a section that stipulates that judges can deduct costs directly linked to the criminal activities under consideration. This is in line with legal practice before this amendment came into force. However, as is clear from the explanatory memorandum, the amendment is intended to limit the actual deduction of costs (complete reference in Dutch: Wet van 19 november 2014 tot wijziging van het Wetboek van Strafrecht, het Wetboek van Strafverordering en de Wet op de economische delicten met het oog op het vergroten van de mogelijkheden tot opsporings-, vervolging-, alsmede het voorkomen van financieel-economische criminaliteit (verruiming mogelijkheden bestrijding financieel-economische criminaliteit), Stb. 2014, no. 445; see chapter 6).
\item \textsuperscript{30} A case can be settled out of court when both the prosecutor and the defendant settle for an agreement on an amount of money the defendant will pay.
\end{itemize}
only available way to recover crime money.\footnote{Other instruments are: a \textit{fine}, which in some cases is used for the purpose of confiscation; the \textit{seizure and forfeiture} of objects that are directly linked to a crime, e.g. when offenders involved in underground banking are arrested carrying tens of thousands of euros in cash; a \textit{transaction}, stating conditions such as the payment of a sum of money, under which the right to prosecute the crime that generated the profits is cancelled (an \textit{agreement} only cancels the confiscation procedure); \textit{compensation for victims}; and \textit{fiscal measures} (Nelen, 2004: 517-520).} However, as opposed to instruments such as fines, seizures and forfeitures, or fiscal measures, the confiscation order was introduced for the specific purpose of depriving criminals of their illegal earnings, and as such it has received the most attention in the Dutch public debate on asset recovery.

Nelen and Sabee evaluated the amended Dutch confiscation law of 1993 and found that the total sum of recovered money was way below the government’s expectations (Nelen and Sabee, 1998; Nelen, 2004). In recent years, the amount of recovered money has grown considerably, especially when the results for confiscation orders, settlements out of court, and cash and other seizures and forfeitures are taken together (Openbaar Ministerie, 2014, 2015, 2016).\footnote{For a significant part, the rise of the total sum of recovered money is caused by a few cases in which offenders settled out of court and paid tens of millions of euros (Openbaar Ministerie, 2014, 2015, 2016; see also chapter 6).} However, the confiscation process still suffers from attrition, as is clear from available data on the actual collection of confiscation orders, for example (Van Duyne et al., 2014).

1.3 Research on counterstrategies to organized crime

Organized crime is considered to be a threat to society. Counterstrategies to organized crime, such as the deployment of special methods of investigation or the confiscation of assets as discussed above, not only require the use of substantial amounts of public funds, they are also likely to involve a breach of fundamental human rights. These are important reasons why these counterstrategies are the subject of, sometimes heated, debate - and they should be. To provide a basis for debate and to validate underlying assumptions, organized crime policies should be a topic of empirical research. If there are no publicly available sources that provide empirical insight into organized crime and into the practice and results of counterstrategies, it is impossible to debate publicly in a rational way (Kleemans, 2014a).

When it comes to methods of investigation that are used against organized crime, empirical research is scarce. Criminal investigation is a relatively neglected field of empirical research for criminologists. One reason for this might be the simple fact that, historically, criminal investigation is just not a main point of interest within the criminological society. Another reason is the reluctance of authorities to open up to scientists and give them access to police files, for example. Scholars who do want to make an effort studying criminal investigation, therefore, often have to rely on sources such as court records, media accounts or reports of a scandal (De Poot, 2010: 102; Grabosky, 2010: 364; Marx, 1995: 329; see also Kleemans et al., 2014).
Looking specifically at undercover methods of investigation, there certainly is literature on the subject. In most of the literature, undercover policing is looked upon from a critical perspective; it is often problematized as a (un)necessary evil (Ross, 2008: 240; Ross, 2007: 493; Fijnaut and Marx, 1995a: 1; Wachtel, 1992: 145). However, little empirical research has been done on undercover operations (Marx, 1988: 108-128; Brodeur, 1992: 108; Langworthy, 1989: 30; Smith et al., 2009; Giacornantonio, 2011: 453). Because of this criminological gap, very little is known about the results that undercover operations yield for criminal investigations and how regulatory procedures actually work out in investigative practice. As said, one reason concerns the fact that researchers are denied access to police files, which is perhaps even more so when a covert and deceptive method such as undercover policing is the topic of interest (Loftus and Goold, 2011: 276-277, 286).

Police agencies in the Netherlands are relatively open to social science researchers. This openness is a characteristic of a progressive police force, but, in part, it is also produced as a response to the ‘IRT affair’. Yet, in the Netherlands, too, empirical knowledge regarding methods of investigation such as undercover policing is limited. Besides the efforts of the Parliamentary Inquiry Committee on Criminal Investigation Methods (PEO, 1996, Eindrapport; Bijlage V), one empirical study has been done on undercover policing in the Netherlands (Kruissink et al., 1999). However, this research was conducted in the late 1990s, before the introduction of the BOB Act, which significantly changed the regulation of methods of criminal investigation.

The finance-related strategy of crime control has also been the subject of academic and political debate, but once again, the empirical research literature is very slight. There are many publications available that provide reviews of anti-money laundering policy. Yet, there is only limited empirical insight into the practice and results of policy measures (Kilching, 2014: 666; Levi, 2014: 422; Malm and Bichler, 2013; Van Duyne and Levi, 2005; Levi and Reuter, 2009: 359; Suendorf, 2001: 9; Verhage, 2011: 172; Van Duyne, 2003: 68-69; Fernández Steinko, 2012: 909; Levi, 2012). The same holds for efforts to confiscate criminal earnings. Although asset recovery as a tool to fight organized crime has received a lot of applause as well as criticism, knowledge of ‘the law in action’ is limited (Collins and King, 2013; Fleming, 2008: 9, 10, 21; Freiberg and Fox, 2000: 239-242; Vettori, 2006: 20).

33 The Research and Documentation Centre (in Dutch: Wetenschappelijk Onderzoek- en Documentatiecentrum (WODC)) plays a major role in research on organized crime and criminal investigation. Because of its position as part of the Ministry of Security and Justice, researchers of the WODC have access to confidential data sources, such as police files (Kleemans, 2007; Van de Bunt, 2004: 678-679; De Poot, 2010; see also Marx, 1995: 329).

34 A number of studies have been carried out in the United States on specific types of so-called sting operations (Roberts, 2000: 272), such as on the efficacy of police anti-fencing operations (see chapter 2). However, there is almost no research that deals with the practice and results of undercover operations as an investigative instrument in general.

35 Yet, what is clear from existing literature and data is that, in several confiscation regimes, the amount of money actually collected contrasts (sharply) with the criminal profits initially estimated (see section 1.2.2).
So although counterstrategies regarding organized crime are heavily debated, they are not often subjected to empirical research (see also Paoli, 2014: 6). As a consequence, debates and policies lack a firm empirical basis and are mainly based upon normative grounds and untested assumptions.

1.4 Purpose and research questions of this thesis

The aim of this study is to contribute to the empirical evidence by giving insight into the practice and results of two counterstrategies to organized crime in the Netherlands: the criminal justice approach and the financial approach.

For the criminal justice approach, we focus on a specific method of criminal investigation: the use of undercover police officers, one of the proactive policing methods on which the police rely to investigate organized crime. As was explained before, it is also one of the most controversial methods. Furthermore, undercover operations lay at the heart of the IRT affair, which defined the course of legislative debate. In the first empirical piece of this thesis (chapter 2), data are analysed on Dutch criminal investigations in 2004, in which an undercover operation was considered. The following research questions will be addressed:

- How often are undercover operations deployed?
- What different types of undercover operations exist?
- What results have these operations produced?

The results produced by undercover operations are mainly explored by assessing the contribution an operation has made to the criminal investigation and/or trial. Such a contribution may consist of: inclusion, i.e. evidence generated by the operation that is subsequently used to get a suspect convicted; exclusion, i.e. the insight that a suspicion is probably untrue; and steering information, i.e. information that is useful for a criminal investigation in a more indirect manner, such as when the undercover operation produces information about the means of communication used by suspects. However, in addition to the contributions made by undercover operations to investigations and trials, the ‘legal tenability’ of these operations might also be understood as being a part of the ‘results’. In order to explore how courts judge on legal issues regarding undercover operations, such as alleged entrapment, for example, Dutch case law is examined.

The answers to the stated research questions provide insight into investigative practice and results of undercover policing in the Netherlands. Furthermore, the empirical results are used to discuss the validity of some of the assumptions underlying the legislative and academic debate (which are also explored in chapter 2).

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36 The use of civilians in undercover operations is not included.
As was explained earlier, the Dutch code of criminal procedure distinguishes between three undercover police powers: systematic intelligence gathering; the purchase of illegal goods or substances or the rendering of illegal services (undercover buys); and infiltration. All of these three undercover powers are used in organized crime cases, but they may also be used to solve other types of crime. However, infiltration, the legally most serious undercover power in the Dutch code of criminal procedure, is mainly deployed in cases focusing on organized crime-related activities (or terrorism). The second set of research questions focuses on this specific type of undercover operations (chapter 3). The analysed data cover all infiltration operations in the Netherlands during the 2000-2005 period (the use of civilians in infiltration operations is not included). The legal requirements with regard to the use of infiltration are stricter than they are with regard to the other two undercover powers. In addition, a public prosecutor who wants to deploy an infiltration operation also has to comply with internal authorization procedures within the prosecution service (see section 1.2.1). One of the research questions therefore specifically looks into how regulatory procedures work out in practice.

• How often are infiltration operations deployed?
• What results have these operations produced?
• What outcomes do the regulatory requirements produce in the investigative practice?

The third and fourth sets of research questions concern the financial approach to organized crime. They focus on what organized crime offenders actually do with their money and on the efforts of law enforcement agencies to confiscate criminal earnings, respectively.

The financial approach mainly comprises of anti-money laundering policy on the one hand and confiscation or criminal forfeiture laws on the other (Gallant, 2005: 11). An important driving force behind anti-money laundering measures is the perceived threat of criminals earning and spending huge sums of money and gaining influence in the economy and in licit society at large (for a review, see e.g. Levi and Reuter, 2009; see also Barone and Masciandaro, 2011: 116; Europol, 2006; Verhage, 2009, 2011; Naylor, 2002: 34). However, there is relatively little empirical research on how offenders actually spend their money. This thesis, therefore, focuses on offenders’ spending behaviour (chapter 4). The main point of interest concerns offenders’ investments in legal economy, because these kinds of investments seem to be the most important reason for concern among policymakers. The empirical data consist of 150 cases from the Dutch Organized Crime Monitor. The data are used to address the following set of research questions.
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- What do offenders in organized crime invest their money in?
- Where do they invest their money?
- What can be inferred from offenders’ investments about underlying strategies and motives?

The fourth and final set of research questions looks into the efforts of law enforcement agencies to confiscate criminal earnings (chapter 5). It concentrates on one specific instrument to take away an offender’s money; the confiscation order. As was explained in section 1.2.2, this instrument was introduced for the specific purpose of depriving criminals of their earnings and it has received the most attention in the Dutch public debate on asset recovery.

As was explained earlier, the focus in combating organized crime has shifted from merely putting offenders in prison to taking away their money. Although the amount of recovered money is growing, many jurisdictions are confronted with the problem of attrition, i.e. the gap between estimated criminal profits on the one hand and the actually recovered assets on the other (Nelen, 2004: 520-522; Cabana, 2014: 17; Freiberg and Fox, 2000: 253; Levi, 2013: 3; Van Duyne et al., 2014; Bullock et al., 2009: ii; House of Commons, 2014). This thesis provides insight into this common but scarcely researched problem. It uses empirical data from the Dutch Organized Crime Monitor, confiscation order court files and the Central Fine Collection Agency. Together, the data sources shed light on financial investigation in practice and give a complete picture of the confiscation order court procedures as well as the execution of those orders for 102 convicted offenders; from public prosecutors’ claims and rulings of the initial court, the appeal court and the Supreme Court, to what offenders actually pay. Two research questions are addressed.

- How do the investigation and confiscation of criminal profits work out in organized crime cases?
- What explanations can be offered for the phenomenon of attrition?

In the next section, the empirical data will be explained in more detail.

1.5 Empirical data
The first two sets of research questions, on undercover operations, are addressed, among other things, by using data on these police activities retrieved from the police and the public prosecution service.37

37 All the data used to address the research questions on undercover policing derive from a comprehensive research project that was conducted by the WODC (Kruisbergen and De Jong, 2010).
Information was retrieved from the five operational specialized police undercover units with regard to all 37 Dutch criminal investigations in 2004 during which an undercover unit was consulted and in which it was decided to deploy an undercover operation. Four of the five undercover units could also produce information with regard to the investigations in 2004 during which an undercover unit was consulted, and in which an undercover operation was considered as a possible method of investigation, but where the decision was made not to deploy such an operation (46). The fifth undercover unit could not produce information on ‘negative decisions’. Assuming that the ratio of positive decisions to negative decisions for these four units is also valid for the fifth unit, the total number of negative decisions comes down to 52, which brings the total number of criminal investigations in which an undercover unit was consulted for the possible deployment of an undercover operation to \((37 + 52 =)\) 89.

For each deployed undercover operation we interviewed the public prosecutor and/or the detective who was in charge of the criminal investigation. All these interviews, except one, took place by telephone. Furthermore, we gathered information on the undercover operations from the archives of the undercover units. Together, these sources produced insight into the sort of criminal investigations in which undercover operations are used, the length and intensity of these operations, their course and their results. Information regarding undercover operations that were not actually carried out was derived from the archives of four of the five undercover units. This information mainly concerned the reason why the operation was not executed.

The 37 (planned) undercover operations mentioned above all concerned systematic intelligence gathering and/or undercover buys; none of them concerned infiltration. To address the second set of research questions, on infiltration, we gathered information over a longer period of time, from 2000 to 2005. In general, cases in which infiltration is deployed are more complex than cases in which ‘only’ systematic intelligence gathering or an undercover buy is deployed; their duration is longer, they involve more suspects and/or more other methods of criminal investigation are used. Thus, in this research design, the data collection with regard to infiltration operations is more extensive.

38 Undercover operations within the context of international legal assistance were not included.

39 The year 2004 refers to the moment in which an undercover unit was first consulted with regard to a specific criminal investigation.

40 With regard to the four undercover units that could produce information on positive as well as negative decisions, the numbers are: 79 criminal investigations in 2004 during which they were consulted, 33 (41.8%) times of which it was decided to deploy an undercover operation, and 46 (58.2%) times of which it was decided not to deploy an undercover operation. With regard to the fifth undercover unit, it is known that in four investigations, it was decided to deploy an undercover operation. Applying the same percentages as just mentioned, the estimated number of negative decisions for this undercover unit is six.

41 However, the combination of systematic intelligence gathering and several undercover buys, for example, could result in a relatively complex operation.
A public prosecutor who wants to deploy an infiltration operation has to submit a proposal before the CTC, as was explained in section 1.2.1. During the 2000-2005 period, such a proposal was submitted with regard to 24 Dutch criminal investigations.\textsuperscript{42} One of these cases concerned an infiltration operation that was still ongoing at the time the research was conducted. This case was excluded. For all of the remaining 23 criminal investigations, the files at the CTC were analysed, using a checklist that focused on (among other things) the grounds on which the public prosecutor wanted to deploy an infiltration operation and the decision of the CTC and the Board of Procurators General regarding the requested approval. Subsequently, for 19 of those 23 cases, we analysed the actual police files at the public prosecutor’s offices. For three cases, none of which went to trial, the police files could not be traced. For one case, the public prosecutor requested the exclusion of the file.\textsuperscript{43} The police files contain the results of all police activities that were deployed in a case, such as testimonies of undercover agents and reports of wiretaps, bugging, police observations, interrogations of offenders and witnesses, financial investigation, and seizures. The files were analysed by using an extensive checklist that mainly focused on the strategy and tactics of the infiltration operation, the course and results of the operation, and the course and results of other investigative methods.

In addition, we conducted face-to-face interviews with 35 people, 20 of whom were involved in the infiltration cases we studied. The other 15 respondents were selected on grounds of their involvement in other cases in which undercover operations were used. The 35 respondents consisted of: the (former) heads of the special police undercover units (8), detectives of the National Crime Squad (6), detectives of regional crime squads (5), public prosecutors (11), staff members of the CTC (2), a procurator general (1), and other specialist members of the police (1) and Public Prosecution Service (1). Included in the interviews was the following range of topics: the kind of criminal cases and circumstances that are (not) suitable for deployment of an undercover operation; the planning, preparation and strategy of undercover operations; contacts between the undercover agent and the target; results of undercover operations; risks related to undercover operations; and the implementation of regulatory procedures.

Furthermore, we have examined Dutch case law with regard to undercover operations (systematic intelligence gathering, undercover buys and infiltration).

The third and fourth sets of research questions cover the financial approach to organized crime. The third set focuses on what organized crime offenders spend their money on, in particular their investments in the legal economy. Here the empirical data consist of a

\textsuperscript{42} Proposed infiltration operations within the context of international legal assistance were not included.

\textsuperscript{43} Information on this case was gathered by means of an interview with detectives who were involved in the investigation, and by analysing the CTC file.
dataset of 1,196 individual assets of (suspected) participants in organized crime. To build this dataset, all 150 cases of the Dutch Organized Crime Monitor were analysed.

The Dutch Organized Crime Monitor is an ongoing research project that originated in the aftermath of the ‘IRT affair’. A positive side effect of the Parliamentary Inquiry Committee that looked into this affair was its encouragement of empirical research on organized crime. The committee appointed an external research group, chaired by Professor Fijnaut, to make an inquiry into the nature, seriousness and scale of organized crime in the Netherlands (see Fijnaut et al., 1998). After the Fijnaut group’s report was published, the Minister of Justice promised the Dutch Parliament to report periodically on the nature of organized crime in the Netherlands. To meet this need for information, the Research and Documentation Centre (in Dutch: Wetenschappelijk Onderzoek- en Documentatiecentrum (WODC)) started the Organized Crime Monitor, a systematic analysis of police investigations of criminal groups (Kleemans, 2007: 165-166). The main sources of information for this research project are closed Dutch criminal investigations into criminal groups. In four data sweeps, during the 1996-2011 period, 150 criminal investigations were analysed, covering a broad range of types of organized crime, such as different sorts of drug trafficking/production, human smuggling, human trafficking and illegal arms trade, but also (large-scale) fraud and money laundering. Since each case focuses on a criminal network, together, the 150 case reports contain information on many hundreds of suspects.

The selection of case studies takes place following a survey of criminal investigations of the police force and special investigative policing units. The selection is not random. In fact, a random sample is inconceivable in organized crime research, because police priorities - highlighting certain criminal activities and certain suspects - provide the basis for any sample researchers should want to construct. The researchers therefore opt for a strategic sample that incorporates the heterogeneity of criminal activities and offenders (for more information, see: Kleemans, 2007). When selecting cases, richness of information is an important selection criterion. Furthermore, efforts are made to avoid focusing solely on, for example, drug trafficking. Some types of organized crime are ‘oversampled’ on purpose, as they add more knowledge to what we already know (Van Koppen, 2013b: 11). Each case study starts with an interview with a police officer and/or public prosecutor. Subsequently, using an extensive checklist, the police files are analysed and a case report is written. The checklist elaborates upon: the composition of the group and how offenders cooperate; the illegal activities they participate in and the modus operandi used; the interaction with the licit as well as the criminal environment; the criminal earnings and how these earnings are spent; the criminal investigation itself; the criminal court case; and opportunities for prevention.

44 Major reports to Parliament were published in 1998, 2002, 2007 and 2012 (Kleemans et al., 1998, 2002; Van de Bunt et al., 2007; Kruisbergen, Van de Bunt et al., 2012).
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(Van Koppen et al., 2010: 108; Kleemans and De Poot, 2008: 70; for more information, see: Kruisbergen, Van de Bunt et al., 2012; Kleemans, 2007).

To answer the third set of research questions, all 150 case reports were checked for available information on offenders’ assets. This resulted in a database of 1,196 individual assets, which were entered in SPSS. When checking the case reports, every source of information available was used, i.e. not only confiscated assets were taken into account but also statements of suspects and witnesses, intelligence from informers, seized bookkeeping and records, and monitored telephone conversations, among other sources. As said, the focus is on investments in the legal economy, such as real estate objects, companies, bonds and options, leaving aside investments in criminal activity as well as any form of consumption, such as money spent on nightlife and cars. Cash money and deposits are also excluded from our analyses. For the purpose of this thesis, keeping money in cash is not considered as an ‘investment’.45

The fourth and final set of research questions focuses on financial investigation and confiscation orders applied in organized crime cases. Three sources of empirical data were used. The first source consists of cases from the Dutch Organized Crime Monitor. At the moment a case is studied for this monitor, the court procedures are often not completed, let alone the execution of measures such as confiscation orders. Therefore, a second data source was used; the Central Fine Collection Agency (CJIB), responsible for the execution of sanctions such as fines and confiscation orders. From the 120 cases of the first 3 data sweeps of the Dutch Organized Crime Monitor, we retrieved the names as well as date and place of birth of more than 1,600 suspects.46 This dataset was sent to the CJIB to be matched with their confiscation database. The matching procedure produced 119 convicts for whom it could be established that their involvement in one of the cases resulted not only in a criminal conviction but also in a confiscation order. The CJIB sent back a database with information on the actual collection of those 119 confiscation orders. The third data source consists of court files. These were analysed to retrieve information on court procedures preceding the final confiscation order, the grounds on which a court decided whether or not to diverge from the prosecutor’s claim (and/or from the decision of lower courts), and the facts and assumptions used to estimate the criminal profit. For 102 convicts information was found on all phases of the court system; the district court, the appeal court and the Supreme Court (not all cases went to higher courts). The information on these 102

45 Furthermore, if cash money and deposits would be included in the analyses, consequently, some ‘investments’ would be entered twice in the dataset. This would be the case if, for example, information in a case report indicates that an offender has smuggled cash to a foreign country to buy a house. In such a case the house is entered in the dataset as a real estate object; also entering the cash would produce a double entry.

46 Because court procedures as well as the execution of confiscation orders can take a long time, the fourth data sweep was not included.
confiscation cases was entered into SPSS. Seventeen convicts for whom the information was not complete were excluded from the database. These combined three data sources give insight into the financial investigations in organized crime cases and give a complete picture of the confiscation order court procedures as well as the execution of those orders for 102 convicted offenders; from public prosecutors’ claims and rulings of the initial court, the appeal court and the Supreme Court, to what offenders actually pay. The strengths and weaknesses of the methods and data used will be elaborated upon in chapter 6.

1.6 Outline of this thesis

In chapter 2, all the undercover operations deployed in the Netherlands in 2004 are analysed. Furthermore, the academic and legislative debate on this policing method are discussed. Chapter 3 focuses on the regulation, practice and results of the legally most severe undercover power in the Netherlands, infiltration. All the infiltration operations during the 2000-2005 period are analysed. Chapters 4 and 5 address the financial approach to organized crime. Chapter 4 looks into the investments of organized crime offenders in the legal economy. This chapter holds the outcomes of analyses of a database of 1,196 assets of offenders. Chapter 5 focuses on the practice and results of financial investigation and confiscation in organized crime cases. For 102 convicted offenders, it gives a complete picture of the confiscation order court procedures as well as the execution of those orders. The final chapter (6) provides a summary of the results of the previous chapters, as well as an integration of those results and a discussion of the possible implications with regard to counterstrategies to organized crime. Furthermore, the methodological strengths and weaknesses of this thesis are discussed and some suggestions are made for further research.

Chapters 2, 3, 4 and 5 were previously published as articles in journals. As a consequence, certain information, on the history and regulation of undercover operations, for example, may be found in more than one chapter.