6 Conclusion and discussion

Empirical research on organized crime policies is scarce. The aim of this thesis 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. In chapters 2 and 3, we presented empirical evidence on a specific method of criminal investigation: undercover policing. Chapters 4 and 5 centred on the financial approach; chapter 4 looked into what organized crime offenders actually do with their money and chapter 5 analysed the efforts of law enforcement agencies to confiscate criminal earnings. In this final chapter, we will summarize the main empirical results (section 6.1), we will discuss the methodological strengths as well as the weaknesses (section 6.2), we will explore the possible implications of our results for organized crime policies (section 6.3), and we will make suggestions for further research (section 6.4).

6.1 This thesis: research questions, data and summary of the empirical results

6.1.1 The criminal justice approach

For the criminal justice approach, we focus on undercover policing. Undercover policing is one of the most controversial policing methods. Furthermore, undercover operations lay at the heart of the IRT affair (see chapter 1), which defined the course of the legislative debate. Both the first and the second sets of research questions of this thesis relate to the use of undercover police officers (the use of civilians in undercover operations is not included).

Undercover policing: general overview of undercover operations in 2004

The first set of research questions focuses on undercover policing in general, i.e. on Dutch criminal investigations in 2004 in which an undercover operation was considered:

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

These research questions are addressed (chapter 2) by using various data sources. From specialized police undercover units, we retrieved information with regard to Dutch criminal
investigations in 2004 during which these units were consulted and in which the deployment of an undercover operation was considered. Furthermore, for all criminal investigations in which an undercover operation was actually deployed, we interviewed (by telephone) the public prosecutor and/or the detective in charge of the criminal investigation. Finally, we examined Dutch case law regarding undercover operations.

In 2004, the deployment of an undercover operation was considered in 89 Dutch criminal investigations. In 52 cases, it was eventually decided that such an operation was not possible or unnecessary. In 37 cases, it was decided to set up an undercover operation, yet in 3 of these cases, the operation was abandoned even before the start. Thus, in 34 cases, one or more undercover agents were actually deployed. By way of comparison: in 2008, 26,425 Dutch telephone numbers were tapped (Tweede Kamer, 2008-2009, 30 517, no. 13). So, at least in the period we studied, undercover policing is not often applied. One reason may be that especially the more controversial forms of undercover operations (infiltration) are mainly used when other investigative instruments have failed, although legislation does not prescribe that undercover operations in general are only to be used as a last resort. Other possible reasons are: a lack of need for a more frequent use (due to the use of other methods); a limited knowledge of and experience with undercover operations at the Public Prosecution Service and in the police force; a reluctance to use undercover operations due to the IRT affair and its aftermath; and a reluctance to opt for this method because of the required authorization procedures, especially in the case of infiltration (see the following section).

Undercover operations vary greatly with regard to their duration, intensity and the sort of contact between the undercover agent and the subject (chapter 2). Some undercover operations consist of no more than a brief business contact with a suspect and only take a day. However, an undercover operation may also last more than a year, encompassing many meetings between undercover agent and suspect. The nature of the contacts varies as well. Contacts may be mainly businesslike, such as in many investigations targeting drugs or weapons. Yet, in cases in which an undercover agent befriends a suspect in order to get information about his involvement in a seriously violent crime, for example the murder of his wife, the undercover agent sometimes has to establish a quite intensive personal and emotional bond with the suspect.

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

Undercover operations within the context of international legal assistance were not included. We retrieved information from the five specialized undercover units with regard to all 37 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 46 investigations in which the consultation ended in a decision not to deploy an undercover operation. 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 to (37 + 52 =) 89 (see chapter 1).
Furthermore, we looked into how many and what sort of results undercover operations generate. In 7 of the 34 cases, the undercover operation generated evidence that has been used in convicting one or more suspects (inclusion); in 4 cases, the investigation team decided based on the information gathered by the undercover agent(s), that the suspicion against a suspect was (partly) untrue (exclusion), in 1 case, the undercover operation resulted ‘only’ in steering information; and in 22 cases, the operation did not contribute anything to the investigation or trial (see chapter 2).

Besides contributions made by undercover operations to investigations and trials, the ‘legal tenability’ of this instrument might also be understood as a ‘result’. To find out how judges respond to pleas put forward by the defence regarding undercover operations, we studied more than 60 court decisions. In these court cases, the defence argued, for example, that the undercover operations involved entrapment and/or that the operations were incompatible with the principles of proportionality and/or subsidiarity. It turned out that the vast majority of these pleas was dismissed by the judges. Transparency seems to be of great importance in this context, i.e. the extent to which the police and the Public Prosecution Service provide insight into the decision to use an undercover operation, its actual deployment, and the findings the operation has generated. In the great majority of cases, the information provided to the judges convinced them of the legitimacy of the undercover operation. In the small number of cases in which judges accepted a plea, the reason has often been the inadequate reporting of and poor insight given into the undercover operation.

The most striking feature of the undercover operations we studied is the unpredictability of how the meetings between the undercover agent and the suspect, and thus the entire operation, will work out. This unpredictability manifests itself most clearly during operations involving undercover buys. During an undercover buy, an undercover agent poses as a fellow criminal, for example, who is interested in buying drugs or weapons. In undercover operations that target profit-motivated crime, such as the drug trade, an undercover agent often poses as a criminal ‘entrepreneur’ who is not averse to making a profit. Criminal ‘entrepreneurship’ suffers from (at least) three risks (cf. Reuter, 1983: 113-117): the unregulated nature of the environment in which offenders operate; the fact that the chain of the criminal ‘business’ process may be disturbed at any time by seizures and arrest; and the ‘colleagues’ of an offender, i.e. his fellow offenders, who might turn out to be untrustworthy or incompetent. Because the undercover agent acts on the criminal market, he has to deal with the unreliable and unpredictable behaviour common to that market. Most of the undercover buys in the cases we studied did not work out according to plan. Either an undercover buy did not take place at all, e.g. because the suspect in the end turned out to be unable to deliver, or the undercover buy did take place but the suspect delivered less than initially agreed. Unexpected developments such as these do not necessarily mean that the undercover operation fails entirely but, in general, they do cause operations to last longer or to fail in getting the intended results. The great frequency with
which commitments are not kept, trade qualifications turn out to be false or undercover buys do not meet the expectations in other ways, indicate that it is not easy to ‘do business’ with criminals efficiently.

This finding constitutes the flip side of an assumption present in academic discourses concerning undercover policing. Part of these discourses focuses on the manipulative nature of this method of investigation. This discourse centres on the undercover agent, who leads the suspect into a ‘trap’ and who, in the contact between both actors, is attributed an active, directive role, while the subject is (implicitly) attributed a passive, following role. It is certainly true that deception is an essential feature of undercover operations. However, the idea that the undercover agent is the one who completely dominates the course of the operation passes over the fact that, in many cases, the practical course taken by an operation is to a large extent determined by the unpredictable behaviour of other actors.

**Undercover policing: infiltration operations 2000-2005**

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 (see chapter 1). Legally, infiltration is the most serious undercover power in the Dutch code of criminal procedure and is mainly deployed in organized crime cases. The undercover operations mentioned in the previous subsection all concerned systematic intelligence gathering and/or undercover buys; none of them concerned infiltration. To gain insight into the investigative practice of infiltration, which is the focus of the second set of research questions, we gathered information over the 2000-2005 period (chapter 3). The legal requirements as well as the authorization procedures with regard to the use of infiltration are stricter than they are with regard to the other two undercover powers. One of the research questions therefore specifically looks at 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 data cover all infiltration operations in the Netherlands during the 2000-2005 period. A public prosecutor who wants to deploy an infiltration operation has to submit a proposal before the Central Assessment Committee (in Dutch: Centrale Toetsingscommissie (CTC)). If the CTC concludes that the operation is permissible, the proposal goes to the Board of Procurators General, where the ultimate decision is made about allowing the infiltration operation or not. For all Dutch criminal investigations in which an infiltration operation was proposed during the 2000-2005 period (and in which the infiltration operation was finalized at the time the research was conducted), we studied the files at the CTC and/or
the actual police files (see chapter 3). The police files contain the results of all police activities deployed in a case, such as testimonies of undercover agents, reports of wiretaps, bugging and police observations, reports of interrogations of offenders and witnesses, and the results of financial investigation and seizures. In addition, we conducted face-to-face interviews with 35 people, 20 of whom were involved in the infiltration cases we studied. The other fifteen respondents were selected on grounds of their involvement in other cases in which undercover operations were used.

In the 2000-2005 period, approval to deploy an infiltration operation was requested in 23 Dutch criminal investigations. In sixteen cases, the Board of Prosecutors General authorized the use of infiltration. However, only in fourteen cases, the infiltration operation was actually deployed.

In six of those fourteen cases, the infiltration operation produced evidence on the (partial) basis of which suspects were convicted. Four operations `only' generated steering and/or residual information (see chapter 3). The remaining four operations did not contribute to the investigation or trial at all. In the previous subsection, we described the unpredictable course of undercover operations, especially those focusing on bringing about one or more undercover buys. The course of infiltration operations proves to be equally or even more erratic. Of the thirteen infiltration operations in which the undercover agent actually established contact with the targets, twelve focused on bringing about one or more undercover buys, among other things. None of these worked out as planned.

Besides the infiltration operations as such, we also looked into how the regulatory procedures worked out in practice. We focused on features of the regulatory framework that do not always fit the investigative practice.

The Dutch legislator, as mentioned earlier, distinguishes between three types of undercover powers: systematic intelligence gathering, undercover buys and infiltration. Infiltration is assumed to be more risky than the deployment of an undercover buy, which, in turn, is assumed to be more risky than systematic intelligence gathering. The legal requirements for the deployment of the undercover powers differ accordingly; the legal

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144 Infiltration operations within the context of international legal assistance were not included.

145 In fact, during the 2000-2005 period, authorization for an infiltration operation was requested in 24 investigations. However, one case was not included because the infiltration operation was still ongoing at the time the research was conducted.

146 The results of infiltration operations, i.e. their contribution to investigations and trials, should not be compared in quantitative terms with the results of systematic information gathering and undercover buys. First, although the Dutch Code of Criminal Justice clearly distinguishes between the three undercover powers, in their actual deployment, the distinction is not always as clear. Second, several infiltration operations we studied included the preceding deployment of systematic information, and in most infiltration operations, undercover buys were deployed (or planned) as well. Third, systematic information gathering and undercover buys may be deployed in investigations targeting only one suspect, whereas infiltration is always deployed in the context of a criminal group, which increases the chance that the operation will yield evidence or other relevant information with regard to at least one suspect.
conditions stipulated for infiltration are stricter than those stipulated for undercover buys, while the conditions for this latter power are stricter than those for systematic intelligence gathering. In the investigative practice, however, the application of systematic intelligence gathering can prove to be more invasive than infiltration is (Beijer et al., 2004: 103-104). The reason for this is that in some cases of systematic intelligence gathering, for instance when an undercover agent is deployed to find out whether a man has killed his wife, the undercover agent needs to get very close to a suspect, he has to see to it that the suspect trusts him personally, like a friend, in order to get him to talk. Building such a friendly relationship, and subsequently betraying this ‘friendship’, may be more psychologically taxing to an undercover agent (and the subject) than playing the role of a criminal entrepreneur in a drugs investigation, such as is the case in several infiltration operations.

Furthermore, the centralized authorization procedures that apply to infiltration may produce unwanted outcomes. A public prosecutor who wants to deploy an infiltration operation has to comply with several authorization requirements. Ultimately, he has to get the approval of the highest level of authorization within the Public Prosecution Service, the Board of Prosecutors General, an approval which, if granted, has to be renewed on a regular basis. Some public prosecutors may fear that they will lose control if they choose to use infiltration. Because of this fear, or ‘interference aversion’, they might avoid this investigative method or choose to use a combination of systematic intelligence gathering and undercover buys, in which case approval of the Board of Prosecutors General is not required (see also Beijer et al., 2004: 109).

Finally, to test in advance for subsidiarity, clashes to a certain extent with the fundamental unpredictability that characterizes investigations into organized crime. When testing a proposed infiltration operation for subsidiarity, the Board of Prosecutors General has to judge whether it is likely that the goals of the criminal investigation can be achieved by deploying other policing methods. The test for subsidiarity has a retrospective as well as a prospective element, the latter of which means assessing the probability that other methods than infiltration will produce any decisive results in the weeks and months to come. However, criminal investigations into organized crime are unpredictable due to the erratic behaviour of criminals, the relatively large number of suspects included in an average organized crime case, as well as the fact that, usually, different policing methods are deployed simultaneously. In several cases in which the Board of Prosecutors General authorized an infiltration operation, it turned out that, after the authorization was given, other methods of investigation did in fact generate decisive results, although they were deemed ineffective.

### 6.1.2 The Financial approach

The third and fourth sets of research questions concern the financial approach to organized crime. The financial approach consists of two main parts: anti-money laundering measures,
which aim at criminalizing the handling of ‘dirty’ money and preventing criminals from using the legal financial and economic infrastructure; and confiscation laws, which aim at taking away criminals’ assets (Gallant, 2005: 11).

**Investments of organized crime offenders in the legal economy**

The third set of research questions focuses on what organized crime offenders actually do with their money (chapter 4). The main point of interest concerns offenders’ investments in the legal economy, because these kinds of investments seem to be the most important reason for concern among policymakers.

- 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 empirical data consist of cases from the Dutch Organized Crime Monitor. The Dutch Organized Crime Monitor is an ongoing research project on the nature of organized crime in the Netherlands. In four data sweeps, during the 1996-2011 period, 150 criminal investigations were analysed, covering a broad range of types of organized crime. For each case, the police files are extensively analysed and a case report is written. To answer this third set of research questions, all 150 case reports were checked for available information on offenders’ assets. For 124 of the 150 cases, information was available on investments in real estate objects and/or companies in the Netherlands or another country. These 124 cases account for a total of 1,196 individual assets.

The real estate investments of offenders in cases of drug trafficking, human smuggling/trafficking and illegal arms trade consist in large part of residences. This involves houses and flats, varying from modest dwellings to very roomy and luxurious villas, used by the offenders themselves or their relatives, but also houses and flats rented out to others.

The companies these offenders invest in frequently concern wholesale and retail businesses (for example fruit importing companies, shops), hotels and restaurants, transportation companies, brothels, and ‘management’ or ‘investment’ companies, the main purpose of which is to hold other assets (real estate, for example). Some cases of fraud and money laundering show a different pattern. Among such criminals’ real estate ‘portfolio’, we more frequently find commercial real estate. The companies they own are more often real estate companies or the aforementioned ‘management/investment’ companies. In general, investments in the sectors agriculture and fishing, mining, manufacturing and energy are absent or strongly underrepresented. For more than half of the companies offenders invest in, the case reports we studied include information indicating that the company is used for criminal activities, i.e. for money laundering purposes, logistics, and/or legitimization.
With regard to companies offenders invest in, in many cases the offender is somehow personally involved, i.e. an offender (partially) controls the company directly or indirectly, and the company is used for criminal purposes and/or actual economic activity takes place on behalf of the offender. Offenders do not frequently invest in purely financial assets, i.e. bonds, options and stocks in companies in which offenders are not somehow personally involved, such as stocks in companies noted on the stock exchange. Those assets were found in only a small number of cases.

As far as the place of investment is concerned, offenders predominantly invest in their ‘home country’ (82% of individual investments). This ‘home country’ can be an offender’s country of origin, i.e. the Netherlands for indigenous Dutch offenders, Turkey for offenders originating from Turkey, et cetera, or his country of residence, i.e. the Netherlands for offenders originating from Turkey but living in the Netherlands, et cetera. Looking at specific countries where offenders invest, 64% of all assets is located in the Netherlands, while 36% is located in other countries.

We used the results to post-hoc evaluate the tenability of different theoretical perspectives and assumptions that are present in the literature on organized crime and investments in the licit economy. One such perspective is the standard economic approach. It assumes that offenders make cost/benefit efficient investments in a globalized economy. Profitability is assumed to be the main determining factor and offenders are assumed to be very flexible when it comes to switching between countries or economic sectors. However, the geographical scope of offenders’ investment portfolios turns out to be rather limited, since most investments are located in the offenders’ home country. Furthermore, in particular in cases of drug trafficking, human smuggling/trafficking and illegal arms trade, offenders mainly invest in houses and other real estate (which limits the ability to swiftly withdraw money and move it to another country), as well as in companies they are familiar with from everyday life (retail, hotels, restaurants et cetera), which are used in many cases for criminal purposes. Investments in purely financial assets, on the other hand, were found in only a small number of cases. These results indicate that the standard economic approach is probably not the most adequate perspective to describe and understand the investment choices of organized crime offenders.

Nor does the criminal infiltration approach fit our empirical results. This perspective emphasizes that investing in the licit economy brings power and influence to offenders. However, no examples were found of investments that would allow offenders to reach for powerful legitimate positions in the Netherlands from the ‘underworld’, at least not on a national level. We did find a small number of offenders with very well established positions in the licit economy, but (some of) these are illustrations of, one might say, ‘infiltration the other way around’; ‘legitimate’ businessmen and professionals without a criminal record who utilize their position in the licit economy to set up criminal activities.
Instead of *profitability* (the standard economic approach) or *power* (the infiltration approach), *proximity* seems to be a better suited label to describe the investments of the offenders we studied. After all, the results showed that the distance between the offender and his assets is often small, comprising both physical and social distance. This ‘proximity’ fits pretty well with the *social opportunity approach* regarding organized crime. Kleemans and De Poot (2008) used the term ‘social opportunity structure’ to explain involvement in organized crime: criminal opportunities depend on social ties, which in turn depend on one’s age, social, geographical and ethnic background, occupation, et cetera. This social opportunity structure also proves to be useful to understand the choices offenders make when they invest the profits of crime: their options for investment are defined and limited by the opportunities offenders find in their direct social environment.

**Investigating and confiscating the profits of organized crime**

The fourth set of research questions focuses on the efforts of law enforcement agencies to confiscate criminal earnings (chapter 5). It looks into one specific instrument to take away offenders’ money: the confiscation order. The empirical data consist of cases from the Dutch Organized Crime Monitor, confiscation order court files, and data from the Central Fine Collection Agency (CJIB), responsible for the execution of confiscation orders. 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. Furthermore, they provide insight into the problem of attrition, i.e. the gap between estimated criminal profits on the one hand and the actually recovered assets on the other. 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?

With regard to the 102 convicted offenders for which we were able to provide a complete picture of the confiscation order court procedures as well as the collection of those orders, the initial public prosecutor’s claims total €61,928,210. At the end of the court procedure, this amount has been reduced to €27,463,899 (44 percent), of which, until July 2015, €11,325,036 (41 percent of €27,463,899; 18 percent of €61,928,210) has been paid (in 26 cases the collection was still ongoing).

So, attrition is substantial, both during the court procedures and during the collection of confiscation orders. An important factor with regard to this attrition is how ‘criminal profit’ is defined (determined) in law and practice. There is no strict legal definition of what constitutes ‘criminal profit’ or how it should be estimated. Furthermore, solid data on criminal earnings are by definition limited. This creates a huge potential for different views
on actual criminal profits. In a majority of the cases we studied, the court did not agree with the criminal profit estimated by the prosecutor and decided that a (much) smaller confiscation sum was appropriate. How ‘criminal profit’ is defined in law and practice probably also plays an important role with regard to attrition taking place during the collection of confiscation orders. Spending behaviour of an offender and losses during criminal transactions are partially ignored when estimating the amount of money he should pay. This may be well justified on legal and ideological grounds, but it also increases the chance that offenders are unable to pay the confiscation amount in full.

Another, obvious factor causing attrition boils down to a problem all follow-the-money initiatives suffer from: the fact that (sensible) offenders hide their assets, sometimes abroad, and law enforcement agencies simply do not succeed in tracing them all.

Furthermore, in some cases, the court applies a reduction to the confiscation order because the procedure has exceeded the ‘reasonable time’ within which trials should take place. Also, in some cases, the court decided that the financial capacity of the convict justified a lower confiscation amount, or there were legal reasons to stop collecting before a confiscation order was paid in full.

### 6.2 Scope of this research and methodological considerations

This thesis focuses on counterstrategies to organized crime. Our aim is to give insight into partly hidden instruments (undercover operations) that are deployed against persons who, in turn, probably do everything they can to stay out of sight. This limits the possibilities for a researcher by definition. Methods chosen and data used always have limitations, and this is even more so in the case of research on the fight against a hidden phenomenon such as organized crime. In this section, we will elaborate on the limitations as well as the strengths of the research design.

#### 6.2.1 Scope and limitations

**Undercover policing**

Our study on undercover policing is one of the very few that gives empirical insight into the investigative practice as well as the results of this policing method. Furthermore, the data collection that took place for this study is comprehensive. We gathered information for all 89 undercover operations that were considered in one year, 2004 (chapter 2).\(^{147}\)

\(^{147}\) From the five specialized undercover units, information was retrieved with regard to all 37 criminal investigations in 2004 during which an undercover unit was consulted and in which the decision was made to deploy an undercover operation. Four of the five undercover units could also produce information with regard to 46 investigations in which the consultation ended in a decision not to deploy an undercover operation. 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 to \((37 + 52 =) 89\) (see chapter 1).
For infiltration, which is (even) less often used than systematic information gathering and undercover buys, we gathered information with regard to all 23 criminal cases during the 2000-2005 period in which a proposal for an infiltration operation was submitted to the CTC (chapter 3).\footnote{In fact, during the 2000-2005 period, authorization for an infiltration operation was requested in 24 investigations. However, one case was not included because the infiltration operation was still ongoing at the time the research was conducted.} Taken together, we used the following data sources: files of the Central Assessment Committee (in Dutch: Centrale Toetsingscommissie (CTC)), police files, information of the specialized police undercover units, interviews, and case law.

The research design, however, also has its limitations. For one thing, we did not interview undercover agents. Undercover agents were excluded mainly for security reasons. Undercover agents’ security is a top priority when undercover operations are deployed. The circle of people familiar with their identity or appearance is kept as small as possible. We did, however, interview the agents’ immediate supervisors, the heads of the special police undercover units.\footnote{There are studies focusing on the (psychological) effects of working undercover on police officers, e.g. Girodo, 1991; Girodo et al., 2002; Macleod, 1995; Miller, 2006.}

Another limitation relates to the fact that the cases we studied concern either 2004 or the 2000-2005 period. Has the investigative practice changed since then and, perhaps more importantly, are these changes of such a nature that they affect the validity of the results of our study? Institutional changes did take place. Whether these institutional developments actually changed the investigative practice cannot be determined, simply because there is no recent study with which to compare our results. We will discuss these as well as other possible changes below.

In 2005, there were five active, specialized undercover units within the Dutch police - one national and four regional teams. 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. This ‘new’ unit aimed, among other things, at the diversification of undercover agents, in terms of expertise and background, as well as the type of cases in which undercover operations are deployed. The undercover unit WOD consists of highly specialized police officers. In 2009, internal police guidelines\footnote{Brancherichtlijn Pseudokoopbasis, which translates as Sector Guideline regarding the Undercover Buy Basis.} were created for the deployment of regular police officers (i.e. not working in the WOD unit) for small, ‘simple’ undercover buys, such as the purchase of stolen property being on offer on the Internet. These police officers still have to be trained, but their training is far less intensive than the training required for members of the WOD unit. Whether and which effect the creation of the WOD unit and the accompanying changes have had on the investigative practice is not clear at this point. It is possible, however, that it has led to an increase of the use of undercover operations. In the
very month this last chapter of this thesis was finished, May 2016, a newspaper published information indicating that the use of undercover operations has indeed increased. In 2011, 2012 and 2013, according to the published information, the specialized undercover police unit (WOD) deployed operations in 55, 82 and 68 cases, respectively (Voskuil, 2016). The newspaper acquired this information as a result of a successful appeal to the *Wet openbaarheid van bestuur* (WOB), which translates as the Freedom of Information Act. Other factors might also have contributed to an increase in the use of this policing method. The possible reluctance among police officers and public prosecutors to use undercover operations may have decreased compared to fifteen years ago, for example, because the chronological and mental distance to the IRT affair has increased.\(^1\) Furthermore, the use of the Internet has probably become more important during the past decade, for offenders as well as for the police. Online undercover operations may be less laborious than offline operations are, possibly resulting in a rise of the total number of undercover operations.

A final remark, with regard to the scope of this study, concerns the interpretation of our research findings. Our research explored the results the police obtained by deploying undercover operations. We described the contributions these operations made to investigations and trials. One might wonder how the results of undercover policing should be judged: how good or bad are these results? Such a question cannot be answered (at this moment). First of all, since research on methods of criminal investigations is scarce, we cannot compare these results with results produced by other methods. Second, comparing results of methods of investigation is hard because, in general, the investigative practice differs greatly from a (classic) experimental setting in which the influence of a specific factor can be isolated from the influence of other factors. This applies in particular to investigations into organized crime. Methods such as undercover policing, the use of informers, wiretapping and/or bugging, are often used in combination with other methods. Information generated by one method is often used on behalf of (a more effective) deployment of another method. Furthermore, the circumstances under which methods are deployed differ and are not easy to control, e.g. regulation and its interpretation, and the reasons and goals guiding the choice of specific methods.

*Investments of organized crime offenders in the legal economy*

Empirical research on investments of organized crime offenders in the legal economy is scarce, too. Our study, discussed in chapter 4, gives insight into assets of offenders found in 150 cases from the Dutch Organized Crime Monitor. We argued that ‘proximity’ seems to be a better label for the investment choices offenders make than ‘profitability’ or ‘power’

\(^1\) The change in regulation with regard to the use of criminal civilian infiltrators (see chapter 1) might be seen as an illustration of a decreasing reluctance towards the special methods of investigation that were highly criticized during the IRT affair and its aftermath.
are. Above all, our results point to the importance of social embeddedness if we want to understand investment patterns, as opposed to, for example, economistic approaches (see also section 6.3.2). We do not pretend, however, that our results should be seen as a completely unequivocal or ‘final’ answer to questions concerning investments of organized crime offenders. Our study has its limitations.

Our research is mainly based on police files. As a consequence, our study only involves cases that were prioritized by the police and in which offenders were caught, just as it only includes assets about which the cases could produce some information. Using police files poses the risk that certain results remain undisclosed, not because the facts are not there, but simply because the police could not find them. A possible consequence may be that the importance of some types of assets or certain methods of money laundering are underestimated, such as investments in foreign countries. Furthermore, we focused on de facto ownership (control) instead of formal ownership, and we did not include cash money and deposits in our analyses. If formal ownership and cash money and deposits were included, the results might be different. Finally, our study involved organized crime in the Netherlands, which in large part boils down to transit crime (international illegal trade). Research on offenders who participate in other kinds of organized crime, such as racketeering, might produce (partially) different results, as is indicated by research on Mafia investments (e.g. Riccardi, 2014).

Investigating and confiscating the profits of organized crime

In chapter 5, we empirically examined financial investigations and confiscation. By combining three data sources, i.e. case reports of the Dutch Organized Crime Monitor, data from the Central Fine Collection Agency (CJIB) and court files, the study contributes to the knowledge of the practice and results of ‘following the money’. For a sample of 102 cases, we analysed data on the confiscation order court procedures as well as the collection of those confiscation orders. For those 102 cases, we presented a complete picture: from public prosecutors’ claims and rulings of the initial court, the appeal court and the Supreme Court, to what offenders actually pay. Because by studying the court files, we also gathered information about 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), we were also able to give a

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152 One may argue that police files by definition do not cover assets, obtained with crime money, that were successfully laundered. However, this limitation is somewhat mitigated by the fact that, when checking the police files for available information on offenders’ assets, every source of information was used, i.e. not only confiscated assets were taken into account but also, among other sources, intelligence from informers and monitored telephone conversations (see chapter 1).

153 Riccardi analysed companies confiscated in Italy. He argued that the investment portfolios of Mafia participants are determined by, among other factors, the possibilities to maximize territorial control and expand political and social support (Riccardi, 2014; Savona, 2015; see also Kleemans, 2015).
qualitative interpretation of the numbers we delivered. Most of the relatively small number of other empirical studies do not provide a complete picture for the cases studied and/or lack qualitative insight into the different phases of confiscation.

We do not know whether or not our sample of 102 cases is representative of all cases of organized crime in which confiscation orders were used. However, the main results we found in our sample do correspond with what is known from other sources: a skewed distribution of confiscation orders (many ‘small’ and few ‘large’ confiscation orders) (Van Duyne et al., 2014); high levels of attrition during the court procedures (Openbaar Ministerie and Politie, 2015: 13-14); and high levels of attrition during the collection of confiscation orders (Minister van Veiligheid en Justitie, 2015: 3; requested data of CJIB, unpublished; Van Duyne et al., 2014; for England and Wales, see Bullock et al., 2009).

Our results only pertain to confiscation orders. The confiscation order, as an instrument to recover crime-related money, has received the most attention in the Dutch public debate on asset recovery. There are, however, other instruments, such as seizures and forfeitures and settlements out of court. In recent years, the total amount of recovered money has grown considerably, which is to a large extent due to settlements out of court. In section 6.3.3, we will elaborate on this.

Finally, the legislation with regard to confiscation has been changed several times (see chapter 5). In addition, the budget available for taking away criminals' money increased in 2011 as well as in 2013. Whether and, if so, what kind of effect these changes will have on the confiscation results (in the longer term), is unknown.

6.2.2 Value of this study

Grasping the complexity of criminal investigations

This study aimed, among other things, at producing a broad as well as deep insight into the use of undercover operations in criminal investigations. We studied actual cases, used an open, qualitative approach, and combined different data sources: police files (as well as CTC files), administrative information of police undercover units, interviews, and case law. This enabled us, not only to present information on the nature and number of undercover police operations in the Netherlands, but also to give insight into how this method contributes to investigations and trials, how the unpredictable interaction between undercover agents and their targets determines the course of undercover operations, and how regulation works out in the investigative practice.

Criminal investigation is a relatively neglected field of research for criminologists, especially when organized crime cases are concerned (e.g. De Poot, 2010: 102; Grabosky, 2010: 364). This does not mean that research on policing is entirely lacking. There is a growing number of evaluations of police activity, in the United States and the United Kingdom, for example. These studies fuel evidence-based policing as a method for
making decisions about ‘what works’ in policing: which practices and strategies accomplish policing objectives most cost-effectively. Evidence-based policing studies centre on the quantitative measurement of processes and effects of policing, ideally by means of randomized controlled trials. Effects of policing are measured, using indicators such as victimization, recorded offences, recidivism, number of arrests and number of convictions. The evidence-based policing movement has generated an impressive number of evaluative studies on a broad range of topics, such as police approaches to domestic violence, the effects of the prosecution of juvenile offenders on repeat offending, and neighbourhood watch programmes (Sherman, 2013). Furthermore, it has contributed to the acknowledgement that research is important and that effort should be put into providing an empirical knowledge base for the use of police strategies.

However, not all relevant aspects of criminal investigations, nor all ‘results’ of specific methods of investigation, can be grasped by using a completely prestructured research design. Some topics of interest are too complex or under-researched to allow for such an approach. To gain insight into the investigative practice and results of undercover policing, for example, it was necessary to engage in in-depth analyses of actual cases in order to take into account the context in which this method is deployed, in terms of type of offenders and criminal activity, the offender-agent interaction, other methods deployed, choices made with regard to the undercover operation, and the outcome of the case. Because of our design, we were able to interpret the results of an undercover operation in relation to the specific characteristics of the criminal investigation in which it was used (De Poot, 2010: 102-104). In the existing literature on undercover policing, the ‘results’ of undercover operations are generally discussed in terms of arrests, seizures and convictions. However, as we illustrated in chapters 2 and 3, the reality of criminal investigation is less linear, and less simple, than seems to be assumed. Undercover operations may also contribute to criminal investigations in other ways. They can yield the insight that a suspicion is probably untrue and lead to the exclusion of a person from further investigation. Besides convictions (inclusion) and exclusion, an undercover operation may also generate steering information. Such information may be used, for instance, to deploy another method (more effectively), such as when information is gathered about the means of communication or the smuggling methods used by suspects.

Furthermore, the value of research into the deployment of methods of criminal investigation is much broader than exploring the results that these methods may produce. Methods of investigation, and counterstrategies to organized crime in general, are likely to involve a breach of fundamental human rights and are often the subject of legal and academic debate. To prevent these debates from being mainly based on untested assumptions, insight is needed into the way in which these methods are used and into how regulation works out in the investigative practice. Such an insight, at least when previous empirical
research is scarce, requires an open, more qualitative approach and the use of various
data sources, such as police files, interviews and case law.\textsuperscript{154}

\textit{Discussion: using police files in research}

Police files were an important data source for the empirical studies that are the basis of
this thesis. Using police files for scientific purposes has certain limitations. The most
fundamental limitation concerns the fact that the researcher depends on police processes
for the selection of both persons (suspects) and topics. A police file is the result of many
choices and factors that are beyond the researcher’s influence: the choice of which offender
or criminal group is to be targeted; the choice of which methods of criminal investigation
are to be deployed; the choice of the topics information gathering should focus on; whether
or not the police are successful in collecting that information; and the choice of how the
results should be written down by the responsible police officer. Ultimately, police files
only include persons who have come to the attention of the police and about whom the
police were able and willing to collect information, and the same applies to activities these
persons participate in. This could lead to biased research results. Activities of organized
crime offenders that stay beyond the scope of the police remain hidden for the researcher as
well. Furthermore, police reports of investigative activities are by definition written from a
‘biased’, i.e. criminal justice, perspective (see also Hobbs, 2013: 5-7).

However, from a researcher’s point of view, police files also have important strengths.
Everyone who wants to look into criminal phenomena, be it a journalist, a researcher or a
police officer, is confronted with the ‘walls of secrecy and silence’ surrounding criminal
activities, especially where organized crime is concerned (Van de Bunt, 2007, 2010). But
only the police have exclusive powers to use far-reaching investigative methods to break
through these ‘walls’. A researcher who has access to police files benefits from these
exclusive powers and may gain equally exclusive insights into the activities offenders
participate in, or into the way they relate to each other and their environment.

A researcher may, of course, engage in interviews with offenders to talk about the
same or other topics. Interviews with offenders can produce valuable insights (e.g. Van
Koppen, 2013; for an overview, see e.g., Bernasco, 2010), may prove to be worthwhile
and are necessary in relation to certain research aims. Yet, this means of data collection
comes with its own fundamental problems, such as how to select respondents and get
them to participate, how to create a natural environment for respondents and how to
stimulate them to speak freely and truthfully. A researcher using transcripts of a bugged
conversation between two drug traffickers in a ‘safe’ house, for example, does not have to

\textsuperscript{154} Quantitative approaches have very strong advantages of their own, just as studies at the other end of the spectrum,
i.e. ethnographic N = 1 studies. Other aspects of organized crime policies are in fact suited for the application of
quantitative methods (see section 6.4).
deal with such problems.\textsuperscript{155} Policing methods are forced upon suspects; they are deployed without offenders’ permission and sometimes, as is the case with bugging, wiretapping and undercover policing, even without them knowing. This ‘unobtrusive’ way of collecting data is very valuable for empirical research into topics that are hard to address through other empirical methods.

The value of police files for research purposes not only depends on whether or not a researcher has access to them, but also on the type of methods the police use and the amount of information the police write down in reports. In the Netherlands, the police are relatively open to researchers. In addition, Dutch police have to mention every method they have used in an investigation and write down the results (as far as relevant) in a report, whether it concerns undercover policing, bugging, wiretapping, the use of informers or any other method.

6.3 Implications
Given the empirical results, what lessons can be learned with regard to counterstrategies to organized crime? We will elaborate on this in three separate sections. In section 6.3.1, we will focus on the control and transparency of methods of criminal investigation. Section 6.3.2 will centre on the investments of organized crime offenders in the legal economy. In the last section, 6.3.3, we will discuss implications with regard to the investigation and confiscation of illegal profits.

6.3.1 Controlling the use of special methods of criminal investigation
The current Dutch legislation with regard to special methods of investigation was developed in the aftermath of the IRT affair. This affair, which took place roughly twenty years ago, centred on special investigation squads that used ‘experimental’ investigative methods to target organized crime groups. These special operations were deployed without (adequate) supervision and, since there were no specific sections in the Dutch code of criminal procedure that covered these methods, in a legal vacuum. The Parliamentary Inquiry Committee (PEO) that looked into the IRT affair concluded that, overall, criminal investigation in the Netherlands suffered from fundamental flaws (PEO, 1996, Eindrapport; see chapter 1).

The committee’s report provided the foundation for the Act on Special Investigative Police Powers (in Dutch: Wet bijzondere opsporingsbevoegdheden (BOB Act)), which came into force in 2000. The BOB Act is built on three basic principles. First, special methods of criminal investigation should have a statutory basis, i.e. they should be covered by specific sections in the code of criminal procedure. With regard to undercover operations,

\textsuperscript{155} Although this example shows that drug traffickers might have very sound reasons to refrain from speaking their mind even in their own homes.
the act distinguishes between three undercover powers. 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. Third, the use of methods of criminal investigation should be verifiable and, therefore, transparent; reports have to be made of the methods of investigation used and, in principle, these methods have to be accounted for at trial (Beijer et al, 2004: 277-278; Bokhorst et al., 2002: 185-186; Kleemans, 2007: 164-165).

The introduction of the BOB Act fits within a broader, international trend. Internationally, the past decades have shown a growth in instruments and measures strengthening the control of police activities (Cockcroft and Beatty, 2009; Hale et al., 2004; Newburn et al., 2007: 547-548; Neyroud and Disley, 2007: 552; Terpstra, 2011). Policing is increasingly subjected to formal, statutory regulation. This has occurred in continental law jurisdictions such as Belgium and the Netherlands, but also in common law jurisdictions such as England and Wales (Conway and Walsh, 2011: 241-242; De Roy and Van Dromme, 2004; Kruisbergen, Kleemans et al., 2012; Roberts, 2007: 97-102; Traest and Meese, 2000). Legislation has transformed a method such as undercover policing from an ‘arcane and unregulated’ means of investigation into a ‘highly regulated process’ (Neyroud and Disley, 2007: 553). Besides regulation with regard to specific methods of investigation, other, more general developments contributed to a strengthening of the control of police activities as well.156 One such development concerns a centralization (and standardization) process. Both the Dutch police and the Public Prosecution Service have been centralized (to a certain extent) and there is a body of (national) guidelines and standards regarding the conduct of criminal investigations (see also Hale et al., 2004; Terpstra, 2011: 101; Terpstra and Van der Vijver, 2005; Van de Bunt and Kleemans, 2007: 163-166, 182; Van de Bunt, 2004: 711-712). Performance management can be seen as another instrument to control police activities (Neyroud and Disley, 2007: 558-561). Due to the rise of performance management, policing as well as other public services are regarded as businesslike production processes; they are expected to be efficient and accountable (Manning, 2008: 284). In order to assess and manage performance, policing is centrally monitored on the basis of quantitative results.157

156 Neyroud and Disley commented on the growing supervision of criminal investigations in the United Kingdom. They stated that, today, ‘every role is defined, every action logged and every decision externally accountable’ (Neyroud and Disley, 2007: 568).

157 In 2003, the Dutch government introduced performance contracts, including measurable results that regional police forces had to achieve. In 2007, the system was altered: less emphasis was placed on quantitative performance indicators. However, according to Terpstra, police forces internally often retained fixed production targets (Terpstra, 2011: 91-96). Furthermore, quantitative performance indicators, e.g. with regard to the number of criminal collaborations targeted and the amount of crime money recovered, are central in recent policy documents on the fight against organized crime (e.g. Openbaar Ministerie and Politie, 2015).
Regulation, performance management, and centralization and standardization all seek to rationalize what is, in reality, a highly complex, “messy” task (Neyroud and Disley, 2007: 553). The potential invasiveness of police activities justifies the attempts to rationalize and control criminal investigations. The ‘need to have control’ is especially strong where a controversial method such as undercover policing is concerned. Thanks to the BOB Act, methods of investigation such as undercover policing are subjected to specific rules in the code of criminal procedure; the legal vacuum within which the police operated before the introduction of this act no longer exists. Furthermore, the act has improved the transparency of the use of special methods of investigation and it has strengthened the public prosecutor’s authority (Beijer et al., 2004; Bokhorst et al., 2002). However, not every aspect of legislation and other control-strengthening instruments is perfectly attuned to the investigative practice. First, detailed regulation and judicial distinctions may not always fit the investigative practice. The execution of the type of undercover operation for which the legislator has stipulated the lightest conditions (systematic intelligence gathering), may in practice be more invasive than the execution of the legally most serious undercover operation (infiltration) (chapter 2). Second, centralized authorization procedures with regard to infiltration may lead to ‘interference aversion’ (chapter 3). Third, testing proposed infiltration operations prospectively for subsidiarity, clashes to a certain extent with the fundamental unpredictability that characterizes investigations into organized crime (chapter 3). Fourth, it can be argued that the complex and unpredictable nature of criminal investigations into organized crime also relates badly to the increased need for controllability that goes with a focus on performance management.

The need to regulate and control police operations has been soundly justified, as we just explained. Furthermore, the fact that regulation and authorization procedures, for example, can in some cases produce unwanted outcomes, does not imply that the BOB Act or authorization procedures as such are inadequate. Our results do indicate, however, that the investigative practice is unpredictable and complex and less malleable than regulation, authorization procedures, performance management and other control-strengthening instruments would suggest. Policing in general and investigations into organized crime in particular will probably continue to be the subject of debate. These debates should not focus on further strengthening the (illusion of) direct control of the process of criminal investigation. Rather, effort should be put into enhancing the transparency of the investigative practice, the most essential principle of the BOB Act. Criminal investigations are ‘controllable’ (steerable) only to a limited extent, yet they can and should be made ‘verifiable’ and ‘evaluable’.

According to Walsh and Conway (2011: 61), the rise of proactive policing strategies is one of the reasons for the growing attention for questions regarding police governance and accountability.

Our own empirical research did not centre on the application of performance management with regard to criminal investigations. For a review of the side effects of management guided by output, see, for example, Van Thiel and Leeuw, 2002 (see also Cockcroft and Beattie, 2009; Garland, 2002: 119-120; Pollitt, 1993; Ross, 2007: 520-521).
Transparency

Obviously, the investigative process, let alone undercover policing, can never be fully transparent. Transparency, however, can and should be enlarged (Walsh and Conway, 2011: 71; Kruisbergen, Kleemans et al., 2012). The BOB Act certainly has improved the transparency of the use of methods of investigation. The act requires that a report is made of the methods of investigation used and that the deployment of special police powers will, in principle, be accounted for at trial (Beijer et al, 2004: 277-278). Before the introduction of the BOB Act, judges were often not even informed about the fact that an undercover operation had been used (Van Traa, 1997: 16). An evaluation of the BOB Act showed that Dutch judges seem satisfied with the reporting of and insight given into the use of investigative methods (Beijer et al., 2004: 282). This also shows when court decisions regarding undercover operations are examined (chapter 2). However, there is more to transparency than accountability in court. Methods of criminal investigation should also be subjected to other types of critical evaluation, other than from a purely judicial perspective that focuses mainly on singular cases, as takes place in court.

Methods of criminal investigation, and organized crime policies in general, should be the subject of debate, and they are. Unfortunately, both the academic and the legislative debate are for an important part based on normative grounds and untested assumptions, simply because sufficient empirical information is lacking. In the current situation, in the Netherlands, there is almost no publicly available information that provides basic insight into the investigative practice of undercover policing. Recently, in May 2016, a newspaper published information on the number of undercover operations in three consecutive years. The newspaper received the information as a result of a successful appeal to the Freedom of Information Act (see section 6.2.1). Yet, in general, information on matters such as the number and the form of undercover operations deployed each year, the crimes these operations target, and the results they generate, is not available. The same is true for many other methods of investigation. Furthermore, research on how and when certain methods are used and how regulation is actually implemented, is scarce.

A larger knowledge base would provide a stronger foundation for academic and legislative debate. A stronger empirical foundation would also improve the possibilities of regulatory bodies to monitor the use of investigative methods and to make well-informed decisions regarding these methods. As a result, regulatory quality may benefit. To realize this foundation, information on the topics as mentioned should be generated, and made available, on a regular basis. Furthermore, criminologists and other researchers should choose, and be allowed, more often to study the investigative practice.

The affair that resulted in the appointment of a Parliamentary Inquiry Committee on Criminal Investigation Methods (PEO) (and ultimately led to the BOB Act), took place roughly twenty years ago. Due to its thorough fact-finding work, the committee could feed the legislative debate with information. The transparency that was realized by the
committee’s work, should, to a certain extent, be continued and should not be dependent on an ‘affair’ or specific request to initiate such openness.

6.3.2 Crime money and the legal economy

In chapter 4, we concluded that, as a theoretical approach to organized crime, a social opportunity approach is useful to understand offenders’ investments in the legal economy. An offender’s options for investment are defined and limited by the opportunities he finds in his direct social environment. A social opportunity approach (proximity) turned out to be better suited to describe these investments than a standard economic approach (profitability) or an infiltration approach (power) would be. Our ‘rejection’ of the standard economic approach, or perhaps we should say an economistic approach, does not imply, of course, that we believe that offenders object to making a profit when they invest their money in the legal economy. Nor does our rejection of the infiltration approach mean that influence and power in regular society are completely irrelevant where offenders’ investments in the legal economy are concerned. Although power might not be the main driving force when an offender invests his money, these investments could ultimately lead to such influence, especially when an offender or criminal group remains beyond the scope of the police for a long time. The prevention of criminal infiltration in legal society is, therefore, one of several reasons why the investigation and confiscation of criminal earnings is so important.

Results of the analysis of the investments of organized crime offenders, as well as other studies, showed that real estate is a popular investment category (Webb and Burrows, 2009: 27; Matrix Knowledge Group, 2007: 39; Malm and Bichler, 2013). For an offender, investing in real estate has several benefits. First, real estate is often seen as a safe and profitable investment. Second, real estate can absorb a lot of money. Third, real estate markets lack price transparency. A fourth advantage lies in the fact that the ownership of property can be concealed. In the fifth place, criminals need a place to live, just like everyone else (Soudijn and Akse, 2012; WEF, 2011: 9-11; Van Gestel, 2010; KLPD, 2008: 141; Kruisbergen, Van de Bunt et al., 2012: 214). The real estate market is of great importance for the legal economy as well. This implies that it may be difficult to take effective measures against the influx of crime money in the real estate market, that will not have any effect on legal actors at the same time. It may be worthwhile, however, to invest in such measures and to (further) intensify the focus of law enforcement agencies on real estate.

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160 The drawback of investing money in real estate (at least when you actually buy a house, for example, instead of investing your money in real estate-related financial products), is that it may be hard to transfer your investment into cash, especially during a period when the volume of transactions is low (Soudijn, 2011: 44-45).

161 Recently, various measures have been (are being) developed to limit the vulnerability of the property market to money laundering. At the moment when this thesis was finalized (summer 2016), it was not yet clear how these measures, such as the implementation of the fourth EU anti-money laundering directive (Directive (EU) 2015/849), will work out (see also Minister van Veiligheid en Justitie, 2016).
6.3.3 Investigating and confiscating the proceeds of organized crime

Since the confiscation legislation came into force, there have been several initiatives to enhance the legal possibilities for asset recovery. These initiatives are often born out of the desire to solve perceived problems in the existing legislation or in its implementation. However, some of these initiatives seem to be more inspired by indignation over disappointing results, than by adequate insight into the practice of confiscation (see also Borgers and Simmelink, 2005b; Borgers et al., 2007). Looking at the parliamentary debate, some initiatives suggest that attrition is mainly caused by legislation or its implementation that is too lax.

An example is the legislation that came into force January 2015.\textsuperscript{162} The amendment is intended to limit the actual deduction of costs when the amount is determined of the criminal profit that has to be confiscated. The parliamentary debate on this topic showed that there was discontent about the fact that, in some cases, judges deduct criminal business costs when they determine the criminal profit an offender has made. Although the explanatory memorandum to the confiscation law, as it was introduced in 1993, explicitly mentions the possibility of deducting costs (Tweede Kamer, 1989-1990, 21 504, no. 3: 16), which has been explained further in case law that came into being since then, the deduction of costs appears to be interpreted as an unjustified favour done to offenders. The amendment that became effective in January 2015 is meant to undo the perceived imbalance in the implementation of the confiscation law (Tweede Kamer, 2011-2012, 29 911, no. 56, 57; Tweede Kamer, 2012-2013, 33 685, no. 3; Kooijmans and Borgers, 2012).

The question is, however, whether this initiative is based on a sound problem analysis. The amendment itself is in line with the legal practice before it came into force; costs can only be deducted under certain conditions. This would render the amendment somewhat redundant, although the explanatory memorandum makes clear that the amendment is intended to limit the actual deduction of costs (Kooijmans and Borgers, 2012; Borgers and Simmelink, 2005b). Furthermore, it seems that the interpretation of this legal practice as being too lax, is more an expression of the opinion that deduction of costs is wrong in itself, than it is the result of a thorough analysis of case law. More importantly, the assumptions underlying initiatives such as this - ‘offenders are getting away too easily’ - are preventing a clear picture of the real problems.

The results presented in chapter 5 indicate that an important factor causing attrition is how ‘criminal profit’ is defined (determined) in law and practice. With regard to attrition during the court procedures, this concerns the fundamental difficulty of unambiguously determining the amount of ‘criminal profit’. The definition of ‘criminal profit’ in law and

judicial practice probably also plays an important role in the attrition taking place during the collection of confiscation orders. Precisely because spending behaviour and losses during criminal transactions are in part not taken into account when estimating the amount of money an offender should pay, a part of the confiscation orders is likely to remain not fully paid.\textsuperscript{163}

The policy and debate with regard to ‘follow the money’ should be fuelled more by pragmatism, facts and analysis. Members of Parliament and members of government are very productive where new policy initiatives are concerned. Debate and legislative initiatives may be improved by increased insight into the practice of financial investigation and confiscation, as well as a sound analysis of the goals to be achieved, instruments to be used, and problems to be solved. Further debate on ‘follow the money’ should include the following points of departure.

First, a financial investigation is much more than a necessary condition for the confiscation of assets. The debate seems to be focused on taking away criminals’ money, but financial investigation has a much broader function for fighting crime. The non-financial value of financial investigations is perhaps underestimated. Financial investigation may help identify new suspects, provide information on suspects’ movements, and give new insights into the role of different suspects (Brown et al., 2012: 5-9; Levi, 2013; see also Slot et al., 2015). When financial investigation succeeds in discovering money flows, it may also help to prove an offender’s involvement in the crime that generated the money. This is the case, for example, in cases of human trafficking and extortion, where the transfer of money from a victim to an offender can be used to sustain a suspicion against the latter (Nationaal Rapporteur Mensenhandel en Seksueel Geweld tegen Kinderen, 2014: 145-146).\textsuperscript{164}

\textsuperscript{163} Attrition is also caused by the fact that offenders successfully hide their assets. Tracing and seizing assets, for example, is complicated by the fact that a part of offenders’ assets is located abroad (chapter 4). A more adequate international cooperation may facilitate a more effective financial investigation and confiscation of assets abroad, which in turn would reduce attrition during the collection phase and contribute to counter international organized crime.

\textsuperscript{164} An aspect of financial investigation that is certainly not underestimated, perhaps the opposite, is its financial value. Investments in financial investigation are expected to result in significant increases in the amount of recovered money. Financial investigations are assumed to ‘pay for themselves’, and (much) more. Whether the financial benefits generated by ‘follow the money’ indeed exceed the costs, is questionable, as research in the United Kingdom indicates (Levi, 2013: 10; Sproat, 2009; Collins and King, 2013; Bullock, 2014: 63) (furthermore, the cost-benefit ratio probably differs greatly among the different instruments used to take away criminals’ money, as is explained in this section). Financial profitability is not - or should not be - the main issue involved in the confiscation of crime money. In addition to reinforcing the ideological standpoint that ‘crime should not pay’, it may serve to prevent future criminal activities. The fact that confiscation orders are not paid in full, does not mean that they - let alone other measures - are completely ineffective in producing the intended effects. It is due to confiscation orders and other measures that money is indeed taken away from offenders. That should at least have some impact on them.
Second, those involved in the debate on ‘follow the money’ should recognize the distinction between different instruments used to take away criminals’ money. Taking away criminals’ money is often discussed as if it is a homogeneous activity. Yet, the possible costs and benefits as well as the applicability of instruments such as confiscation orders, settlements out of court, and cash seizures, differ greatly.

In recent years, the value of recovered money has grown considerably. Taking together confiscation orders, settlements out of court, and cash and other seizures and forfeitures, the total value of assets taken away from offenders has risen each year during the 2012-2015 period: €50 million in 2012, €90 million in 2013, €136 million in 2014 and €144 million in 2015. In 2012, the collection of confiscation orders generated €19.6 million, almost 40% of the total value of recovered assets, whereas in 2015, the collection of confiscation orders generated €22.8 million, a near 16% of the total amount (rounded numbers). The impressive rise of the total value of recovered assets is caused for a significant part by a few ‘white-collar’ crime cases that have been settled out of court. In 2013, the First Curacao International Bank N.V. (FCIB), which was convicted for acting in contravention with financial regulation, paid a settlement of €35 million. In 2015, SBM offshore paid €61 million as part of a settlement for involvement in bribery (Minister van Veiligheid en Justitie, 2013, 2015; Openbaar Ministerie, 2014, 2015, 2016; requested data of CJIB, unpublished). Another relevant factor concerns the focus of the police in recent years on underground banking and money couriers, which results in the seizure of considerable amounts of cash money (Openbaar Ministerie and Politie, 2015). Instead of bringing all the arrested money couriers (and bankers) to court, the Public Prosecution Service chooses to settle some cases out of court, especially where first offenders are involved. In those cases, the couriers lose the money they carried and have to pay an additional sum.

In the white-collar crime cases just mentioned and the cases against (the first offenders among the) money couriers, the cases were settled out of court. In this way, although large sums of money are recovered, long-lasting court procedures, which confiscation procedures can turn into, are avoided. Furthermore, the collection of the money is realized with relative ease: the parties involved in settlements agreed to pay (and they really do (Minister van Veiligheid en Justitie, 2015)). As far as the couriers are concerned, their money is seized the moment they are arrested. With regard to the cost-benefit ratio of asset recovery, settlements and seizures and forfeitures are probably more efficient than confiscation orders are. However, efficiency is not the only criterion, nor is it perhaps the most important one.

The instruments also differ significantly from one another in their applicability. Settlement out of court, for example, is only feasible in cases in which both the Public Prosecution Service and the suspect are willing (and able) to settle (pay). Seizing cash,

165 Except, of course, for the additional sum they have to pay.
obviously, is only possible in cases in which there is cash to be found. The distinction between these different instruments, in terms of their applicability and possible costs and benefits, should play an important role in debates on asset recovery.

Third, and most fundamentally, thoughts have to be spent on what we hope to achieve with financial investigation and confiscation. There are significant functional and economic differences between the instruments to recover assets, as was just explained. If recovering a maximum amount of money for the lowest costs is a target, settlements out of court and cash seizures are perhaps more appropriate instruments than confiscation orders are. If, on the other hand, authorities uphold the general principle that they should at least try to recover every illegally obtained euro, then they should accept that the financial costs might very well be higher than the financial returns. And in so far as the main priority of follow-the-money efforts is not asset recovery in itself but rather the disturbance and prevention of organized crime, this might again lead to different choices, choices that should be based on adequate analyses of financial aspects of different types of organized crime.

6.4 Research on counterstrategies to organized crime

In this final section, we will discuss some directions for further research on counterstrategies to organized crime.

6.4.1 Why should we do research on organized crime policies?

Why should we do research on organized crime policies? The scientific importance of a study is determined by the extent to which it produces empirical ‘evidence’ regarding research questions that have not yet been adequately addressed. It is also determined by the extent to which it contributes to the theoretical understanding of the topic of interest. In this respect, it is not hard to make a case for more research on organized crime policies and related phenomena, simply because empirical research in this area is relatively scarce. Many questions have still to be answered. These questions relate to issues such as the choices made, methods used and results produced during criminal investigations into organized crime; how offenders handle the financial aspects of their activities; and the interaction between organized crime policies and the way offenders operate.

Besides its scientific importance, research may also be judged in terms of societal relevance. Will research on organized crime policies lead to a greater number of arrested and convicted organized crime offenders, and will it produce an increase in the amount of money taken away from criminals? Such direct effects should neither be the aim nor the justification of research in this area. Practitioners such as police officers and public

166 In May, 2015, the Minister of Security and Justice complied with a request of Parliament for an overview of the amounts of money that were recovered as a result of the respective instruments (Minister van Veiligheid en Justitie, 2015).
prosecutors know how to catch offenders (Kleemans, 2014a). The societal relevance of research on organized crime policies lies primarily in its ability to provide an empirical basis for debate, policymaking and democratic control. The results of this thesis indicate that some implicit assumptions underlying the legal and/or academic debate might be flawed and that some regulatory procedures might produce unwanted outcomes. This does not mean that certain policies are completely erroneous or that actors involved in the debate are incapable. Because of the scarcity of empirical information, it is simply inevitable that organized crime policies and debates are based on untested assumptions. That is exactly why empirical research is important (Kleemans, 2014a; see also Leeuw, 2003, 1991).

6.4.2 Suggestions for further research

As far as undercover policing is concerned, future research should focus on, among other topics, online undercover operations (as compared to undercover operations in the offline world). The Internet offers possibilities for criminals as well as for law enforcement agencies. The Internet offers offenders possibilities, for example, to reach customers, co-offenders or victims who might remain out of reach in the offline world. Likewise, police officers can exploit the possibilities to set up online cover identities and front stores. Online undercover operations relate to issues concerning transparency as well, since online interactions between an undercover agent and his target can, at least in principle, be logged with relative ease. How are these possibilities used in practice, does the dynamic of online interactions differ fundamentally from offline interactions between undercover agents and their targets, and are there any specific risks involved in online undercover operations?

Empirical research on the use of methods of criminal investigation is relatively scarce. So far, some studies have been done on, for example, the use of specific methods of investigation such as undercover operations (the present study; Kruissink et al., 1999) and wiretapping (Odinot et al., 2012; Reijne et al., 1996). Bugging of face-to-face conversations and the use of crown witnesses are two other methods that, because of their perceived invasiveness, the perceived risks attached to them, and/or because they are heavily debated, deserve to be the subject of in-depth study (see Beune and Giebels, 2013). However, there is more to criminal investigation than choosing which investigative method to use. Police officers and public prosecutors targeting organized crime have to make other choices as well: who are the main suspects; how many suspects should be targeted; should the focus be on leading figures, lower-level suspects and/or facilitators; and should investigative efforts focus on gathering as much evidence as possible regarding the most serious criminal activities, or should the aim be to intervene as soon as possible? Case studies might shed light on how these and other choices are made, enlarging our understanding of the investigative process (see also De Poot et al., 2004). Such studies should focus specifically on the extent to which the course of a criminal investigation is determined by strategic and tactical considerations of the investigation team or by
factors beyond its control, such as incidents in the criminal environment. This last issue brings us to perhaps one of the most interesting questions in this area: how do offenders interact with the counterstrategies law enforcement agencies deploy against them (e.g. Spapens, 2006)? Studying interaction more or less implies that a researcher follows his research subjects for a longer period of time. That makes this question as interesting as it is methodologically hard to address. However, using data such as reports of wiretapping, bugging and observation operations, and transcripts of interrogations, might produce some answers to questions such as how offenders anticipate police activities, how they react to seizures and arrests of fellow offenders, and how adaptable their modus operandi is.

With regard to the financial approach to organized crime, there are also many topics of interest that are currently not sufficiently addressed. Empirical research on how offenders actually spend their money, for example, is still relatively scarce. Qualitative as well as quantitative methods can and should be used to reach a higher level of knowledge. Qualitative, in-depth research is necessary to gain insight into the mechanisms and considerations that shape the spending behaviour of organized crime offenders. To gain these insights, effort should be put, among other sources, into getting information from the ones who know best, the offenders themselves (e.g. Matrix Knowledge Group, 2007; Webb and Burrows, 2009). This might also partially compensate for the bias resulting from relying on police data, although we realize that interviewing offenders has its own difficulties. The insights generated by qualitative research can, in turn, give direction to quantitative analyses on casefiles and databases of seized assets. Those analyses may focus on the type, magnitude and place of investment as well as on possible differences on these issues between different types of offenders.

Another topic of interest concerns money laundering methods, digital methods specifically. The use of crypto currencies such as bitcoin for money laundering purposes, for example, raises some interesting questions. How do offenders handle their illegally obtained bitcoins; do they transfer most of it into traditional currencies or is part of it spent or stalled as bitcoin? Do bitcoin-related money laundering services mainly concern the transfer of bitcoins into traditional currencies or does it also work the other way around, i.e. offenders who exchange their illegally obtained euros or dollars for bitcoins? What are the main bottlenecks for offenders to use bitcoin for their operations? And does the illegal use of this ‘new’ payment method also bring with it a new type of facilitators?

Furthermore, researchers should focus on increasing insight into the practice and results of financial investigation and confiscation (see also chapter 5). The financial approach is based on the idea that taking away their money ‘hits them where it hurts most’. Yet, little is known about the effects of this approach. To what extent and how are offenders and the criminal activities they engage in affected? Different methods should be explored to address these matters. Databases with criminal records can be used for a quantitative analysis of levels of recidivism of offenders who were ‘hit’ financially, compared to those
who were not. Qualitative methods can contribute to understanding how financial sanctions may work out. Studying police sources such as recorded conversations between offenders, and interviewing offenders, can shed some light on how offenders anticipate and react to these sanctions (e.g. Vruggink, 2001).

6.4.3 Concluding remarks
In this chapter, we argued for more research and more transparency with regard to organized crime policies. More research and transparency will generate a more thorough insight into how organized crime policies work out in practice. This, in turn, allows for more rational discussions on this topic. This is not to be confused with a plea for the further rationalization of police activities in the sense of more regulation, more controllability, et cetera. A greater insight into how organized crime policies work out in practice might, in fact, for some be reason to plead for new or adjusted regulation. For others, however, such an insight will be a reason to adjust one’s image of ‘organized crime’ or to make comments on existing policy theories. This is up to policymakers and others involved in the organized crime debate. Providing a foundation for debates on and democratic control of organized crime policies, is what researchers should aim for.

Recently, the call for societal relevance and the valorisation of research is intensifying. It is not so hard, compared to other fields of interest, to point to the potential societal value of research on crime-related issues. When discussing this societal value, one readily comes across the argument that more knowledge leads to more effective crime policies and hence to less crime. Working from this perspective on policy-relevant research, research often focuses on what works and best practices. The societal relevance of research that actually does generate answers to questions with regard to what type of instruments are most effective in reducing crime, is beyond dispute. A focus on what works, however, ignores a preceding question that, given the current level of empirical knowledge as well as the complexity of organized crime and its control, is perhaps more essential: How does it work?