Organised Crime Prevention in the Netherlands

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Organised Crime Prevention in the Netherlands

Exposing the Effectiveness of Preventive Measures

Preventie van georganiseerde criminaliteit in Nederland

Beoordeling van de effectiviteit van preventieve maatregelen

Proefschrift

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Cathelijne Rosalie Annemarie van der Schoot

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Promotor:
Prof.dr. H.G. Van de Bunt

Overige leden:
Prof.mr. H. de Doelder
Prof.dr. N.J.H. Huls
Dr. J.M. Nelen

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I started this study on the prevention of organised crime in 2000. Just previously, I worked for the police department in Rotterdam (the Netherlands) where I was charged with the evaluation of large investigations related to organised crime. For me these investigations exemplified the weakness of the repressive approach to fighting crime. Each investigation took up enormous amounts of time and manpower, while the successes were limited to the dismantling of specific criminal organisations. These were readily replaced from the pool of criminal organisations still operating outside the police's purview. The success of criminal investigations, I saw, hardly seemed to affect the problem of organised crime as such.

With these ideas in mind, I am grateful to professor Henk van de Bunt for introducing me to the research field on prevention of organised crime, which offers new starting points from which to control this kind of crime. I also thank Henk for supervising this PhD study.

Furthermore, I am indebted to professor Hans de Doelder and Vincent Mul who introduced to me the international PhD programme on criminology of transcrime, currently of the Joint Research Centre on Transnational Crime at the *Università degli Studi di Trento* (Italy) and *Università Cattolica del Sacro Cuore* of Milan (Italy). This international PhD programme offered me a stimulating research climate. In particular the first year in which various experts taught different criminological issues contributed to my education. I thank professor Ernesto Savona for initiating this programme and for organising the interesting meetings. This programme resulted in a first edition of this dissertation which I defended before the exam commission in Milan in March 2005.

In addition, I would like to thank the *Research School Safety and Security in Society* for providing me a similar stimulating environment in the Netherlands. Moreover, I am grateful that this research school offered me a framework in which this dissertation could be published.

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Cathlijne van der Schoot
Rotterdam, 5 November 2005

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Chapter 1 Introduction

The preventive approach against organised crime has gained much attention since the early 1990s. On an international level as well as on a national one various preventive measures against organised crime have been developed. This is certainly true in the European Union and the Netherlands. This introduction chapter is divided into three sections. The first looks at the developments that led to the preventive approach to organised crime, focusing on the growing enthusiasm for the prevention of crime. Subsequently, it highlights the rise of the problem of organised crime on the political agenda, in particular in the European Union and in the Netherlands. Together these sections illustrate that at the beginning of the 1990s the merger of these developments led to enthusiasm for a preventative approach to organised crime.

The second section provides insight into the content of organised crime prevention. This section introduces actual preventive measures taken to hinder organised crime, at least as European Union and Dutch authorities applied them. In an attempt to define organised crime prevention, the main characteristics of these measures are highlighted.

The third section introduces the aim of this research. Here, the enthusiasm about the merger between crime prevention and the containment of organised crime is questioned. Moreover, this section details the research questions and methods.

1.1 Towards a preventive approach against organised crime

1.1.1 Growing enthusiasm for crime prevention

In the course of the twentieth century it emerged that the traditional criminal justice system was unsuccessful in handling crime. In this system, the sovereign state is equipped with a strong police and justice apparatus focused on arresting and processing offenders. However the control and punishment authoritatively prescribed has not had the desired effect on the motivation of potential offenders. The constantly increasing crime rates in western countries were a clear indication of the system's failure to control crime. As a result, governments had to acknowledge the limitations of the criminal justice system. Garland (1996: 448) views this development as the erosion of the myth that sovereign states themselves are capable of providing security, law and order. Moreover, rehabilitation, which is aimed at influencing the motivation of potential offenders, proved with few and isolated exceptions to have no effect on recidivism (Martinson, 1974: 25). The resulting *nothing works* slogan of Martinson speaks for itself and was widely approved in that period.

In the 1970s, the limits of the criminal justice system became a part of criminological common sense. With the acceptance that a strong state apparatus

has appeared insufficient, Garland (1996: 449) notes a two-path development. On the one hand he observes the efforts of sovereign states to act with more punitive pronouncements in a kind of hysterical denial of their inability. On the other hand pragmatic new strategies have been put forth as new modes of governing crime. Among these new strategies a key role is reserved for prevention.

In the 1970s in the United Kingdom, Clarke (1980) developed such a pragmatic preventive strategy against crime. This strategy was based on a renewed interest in classical economic ideas of rational choice. Originally, these ideas derive from Beccaria who went beyond the prevailing idea of predestination to argue that people are born as rational individuals free to choose to commit crime or not. Based on the rational choice of individuals Cornish and Clarke (1986) advocate that potential offenders make decisions and weigh choices to seek to themselves benefit from their criminal behaviour.[1] This means that offenders commit crime when they reach the decision that a valued goal will be achieved more easily using criminal means rather than non-criminal means.[2] In this new rational choice perspective the decision-making process of criminals is traced to two types of decisions (Cornish and Clarke, 1986: 8). First there are involvement decisions. These are strategic decisions regarding the readiness to get involved in crimes. Second are the event decisions, which are more tactical choices focusing on the *modus operandi* of specific criminal events. Based on this perspective, controlling crime involves influencing the decision-making of potential offenders.

Inspired by the interaction between the offender and the environment laid down in the routine activities theory of Cohen and Felson (1979), Clarke (1997: 2) distinguishes two possible perspectives to interfere in this interaction: one can focus on the criminal and one can focus on the crime. Whereas Clarke is convinced that these two perspectives represent different strategies, he argues that explaining crime (the act) should not be confused with the problem of explaining the criminal (the person). Moreover, he states that the problem of controlling crime should not be confused with the problem of dealing with the criminal. Clearly, he differentiates the presence of a motivated offender from the circumstances in which crime occurs. With regard to controlling crime, Clarke distinguishes the motivational approach aimed at motivated offenders and the situational approach focusing on circumstances. Because of the disillusionment concerning the ability to influence the motivation of possible offenders – clearly illustrated by the *nothing works* attitude prevailing at that time – it is no surprise

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[1] This is based on an economic perspective that people strive for maximal pleasure at a minimum of costs. Cornish and Clarke (1986) applied this rational choice perspective to committing crime. The rational choice perspective is also applied in sociology (Hechter and Kanazawa, 1997).

[2] Contrary to classical rational choice, Cornish and Clarke are aware of the fact that individual's rationality has some limits. They claim that decisions are neither fully rational nor thoroughly thought through as the decision-making process is constrained by 'limits of time and ability and the availability of relevant information' (Cornish and Clarke, 1986: 1). For this the renewed rational choice perspective encompasses terms such as *limited* or *bounded rationality.*

that Clarke was oriented towards influencing the circumstances in which offences occur.

Based on environmental criminologies such as the pattern theory of Brantingham and Brantingham (1984), the concept of *defensible space* of Newman (1972) and the *crime prevention through environmental design* of Jeffery (1971), Clarke (1980: 138) posits that the decision to commit crime depends on immediate situational variables. In other words, he argues that some situational opportunities make certain circumstances attractive for committing crimes. As such, Clarke reasons that intervening in these criminogenic situations can influence the decision-making process and prevent crime. Thus, instead of influencing the motivation of potential offenders by making enforcement visible and by executing punishments certainly and fast, as Beccaria phrased, this new rational choice approach starts from the circumstances, situations and opportunities that could affect the decision to commit crime.

The role of the environment in the decision-making process is the basis of the situational crime prevention approach. Clarke assumes that the level of crime not only depends on motivated offenders but also on the presence of facilitating situational factors. Simply phrased, the presence of attractive targets, a low level of supervision or a low risk of apprehension results in a higher crime level.[3] Therefore, this approach encompasses strategies to intervene in the environment to make criminal action less attractive. With the role of the environment central, situational crime prevention only involves event decisions. The involvement decisions would take place in an earlier phase, meaning the offender's motivation is seen as a given.

In practice, strategies related to situational crime prevention encompass a range of opportunity-reducing measures that involve the manipulation of the immediate environment to hinder or prevent crime. At first, Clarke (1980) distinguished two strategies: reducing the physical opportunities for offending and increasing the chances of an offender being caught. Subsequently, based on case studies of successful situational crime prevention Clarke (1992) introduced a classification of twelve opportunity-reducing techniques categorised in three strategies: increasing the risk, increasing the effort and reducing the rewards of crime. In the framework of the rational choice perspective the first two strategies affect the costs while the third strategy negatively influences the rewards. For example, increasing natural or formal surveillance by installing street lighting or employing security guards would increase the perceived risk of committing offences. Furthermore, target hardening is a strategy to increase the perceived effort required and related costs. For example, installing steering locks in cars complicates car theft. Finally, regarding reducing the rewards, it is possible to deny offenders their expected benefits. Ink merchandise tags and removable fronts on car radios are two means to prevent offenders from enjoying stolen products.

[3] These three elements clearly correspond with the three variables of the routine activities theory of Cohen and Felson (1979): the presence of suitable targets, the absence of capable guardians and the attendance of motivated offenders.

Over the years such strategies and concrete opportunity-reducing techniques have undergone constant change resulting from developments in practice and technology. Innovative case studies in which new forms of crime are addressed by situational crime prevention have uncovered new techniques. Similarly, technological developments have offered new possibilities for interventions. In addition, Clarke (1997: 14) adjusted his classification of opportunity-reducing strategies and techniques in order to encompass changes in the underlying theory. These changes were nourished by concerns about situational crime prevention raised by Wortley (1996, 2001) and Newman (1997). The first concern involves the excuses that offenders supply for their behaviour and the disinhibitors that undermine the usual social or moral inhibitions of offenders. For example, income tax evasion and exceeding the speed limit have become common offences for which people neutralise feelings of shame and guilt. The acknowledgement that the very frequency of these opportunities can reduce moral standards resulted in Clarke's (1997: 16) introducing a fourth opportunity-reducing technique: removing excuses. Under the strategy of removing excuses Clarke tries to restore feelings of shame and guilt. The resulting modification of the previous classification left eight techniques untouched, modified the remaining four and added four new ones. With this modification Clarke certainly did not intend to include long-term changes in dispositions of offenders, as that would conflict with the basic fundaments of the situational crime prevention approach. Therefore, the measures to induce guilt or shame apply only to highly specific categories of offending and to highly specific situations in which criminal event decisions are made (Clarke, 1997: 17).

In 2001, Wortley expressed a second concern, which involves situation-generated motivation. According to Wortley, offenders act not only upon perceived costs and benefits – the basis of Clarke's classification – but situational precipitators may induce individuals to commit crimes that they would not have otherwise considered (Wortley, 2001).[4] In this latter point of view offender's motivation can be provoked or prompted by the situation itself. For example, erotic stimuli can trigger sexual arousal and intrusion into personal space can elicit thoughtless and even offending behaviour. Therefore, Wortley concludes that controlling these precipitators is as important as regulating opportunities and establishes a classification of relevant strategies. With this concern Wortley argues that not all offenders are beforehand motivated to commit crime, which weakens the situational crime prevention's core assumption of a motivated offender. In particular it conflicts with the involvement decision that supposedly takes place beforehand. In this new view the involvement decision can be made in the crime setting itself, just like the event decision. Nonetheless, Cornish and Clarke see substantial agreement between the two approaches, as both are based on the interaction between persons and situations. While their techniques are directed on the opportunity

[4] Wortley distinguishes four types of precipitators – prompts, pressures, permissions and provocations – that can arouse immediate motivation to commit crime.

side, Wortley's techniques are directed to the motivational side (Cornish and Clarke, 2003: 91).

Though Cornish and Clarke cannot yet determine whether this new view on crime-control techniques provides the missing half of the situational response, they acknowledge that the techniques offer an exciting new direction in the theory and practice of situational crime prevention. Moreover, Cornish and Clarke are convinced that these new techniques can provide a more nuanced view of the settings in which crime occurs and of the types of offender. Moreover, controlling precipitators could provide better insight into the effects of crime-reducing strategies. Based on Wortley's theory, Cornish and Clarke acknowledge that some crime-reducing techniques can be obtrusive and can thus provoke criminal reactions. Obviously, such counterproductive measures should be avoided. In an attempt to fit in techniques to control precipitators, Cornish and Clarke (2003) once more adjusted their classification of existing crime-reducing techniques and strategies. They (2003: 89) added one more strategy, namely reducing provocations, in order to influence the decision-making of provoked offenders. To this end they introduced some new techniques and rearranged the existing ones. As shown in table 1.1, the result is a new classification involving five strategies that arrange 25 techniques.

According to Clarke (1997: 3) these techniques are as simple as taking routine precautions. Like individuals lock their doors in order to prevent burglary, retailers must secure their valuables in order to prevent theft, vehicle dealers should install immobilisers to hinder car theft and providers of telecommunications services should be able to disable cell phones to prevent their being stolen. For Clarke such routine precautions are logical, as crime is a normal aspect of society. As such, crime requires no special motivation or pathologies, but rather is caused by social and economic structures. This reasoning is characteristic of the pragmatic new strategies which are also designated as the 'criminologies of everyday life' (Garland, 1996: 450). These everyday criminologies have led to new discourses. One of these involves the fact that the new criminologies do not seek to eliminate criminal tendencies or the root motivational causes of crime. This certainly applies to situational crime prevention, which passes over the problematic issue of offenders' motives and accepts them as given. Due to the lack of attention to the issue of offenders' motives some practitioners do not always take these approaches seriously. According to these critics the situational crime prevention approach merely suppresses the impulse to offend; it does not attempt to remove the root motivational causes. This discussion not only involves a philosophical and ethical dimension, it has direct consequences for practice. Namely, in the view of the critics these root motivational causes have to be removed otherwise the offending will manifest on some other occasion. This possible effect is called the displacement of crime.

Early on in the development of the situational crime prevention approach, Clarke (1980: 140) acknowledged the problem of displacement. In fact Clarke posits that displacement could occur in four ways: time, place, method and type

of offence. This means that in reaction to the reduction of certain opportunities an offender may choose another moment or another place, develop a new method or turn to another form of crime. Nonetheless, Clarke (1987: 934) argues that displacement is far from inevitable. In fact he views displacement as depending on various aspects, such as the strength of the offender's motivation. For example, for opportunistic offenders who only operate when they see a chance, opportunity-reducing measures will likely reduce offences. Regarding professional offenders, reducing crime opportunities will probably be less effective. Based on the rational choice perspective the potential offender will reach a point at which the costs, such as trying out new places or inventing new methods, will exceed the benefits, which will cause the potential offender to refrain from committing offences. Another important aspect of displacement involves knowledge of alternatives (Clarke, 1980: 140-141). Protecting a whole class of property makes it more difficult to turn to alternatives. To illustrate this reasoning Clarke refers to the introduction of the steering column locks in West Germany in 1963 and in the United Kingdom in 1971. In Germany steering column locks were made compulsory in all cars, which resulted in an enormous reduction of car theft.

In the United Kingdom the steering column locks were introduced only in new cars, which resulted in a displacement of car theft to older cars. Obviously the problem of displacement is generally viewed with disapproval. However, literature illustrates that displacement often is beneficial. First of all, evaluation research shows that displacement never amounts to 100% (Hesseling, 1994: 43). There are always some offenders who refrain from committing offences. Moreover, crime-reducing strategies can result in a displacement to less undesirable offences (Hesseling, 1994: 60). Therefore, Clarke (1997) concludes that an effect as obvious as displacement does not make the approach less worthy; on the contrary, evident success in practice already illustrates the value of this pragmatic new approach.

A second aspect of the discourse on criminologies of everyday life concerns the reponsibilisation of all members of society. Various members of society offer situational opportunities for crime. These members should assume their own responsibility in taking precautions. As a result, every economic sector has to protect their economic dealings from misuse, every shopkeeper should secure their merchandise and each individual must guard their possessions. Therefore, the situational crime prevention approach not only focuses on the criminal justice system, but also addresses agencies beyond the state apparatus – private organisations and institutions as well as individuals in civil society. Thus, the police is not exclusively responsible for controlling crime; the responsibility is shared. Nonetheless, governments have an important role to fulfil because they must create the possibilities and promote the development of precautionary measures (Clarke, 1997: 3).

Table 1.1 Twenty-five techniques of situational crime prevention (Cornish and Clarke, 2003: 90).

Increase the effort	**Increase the risk**	**Reduce the rewards**	**Reduce provocations**	**Remove excuses**
1. Target hardening • steering column locks and immobilisers • anti-robbery screens • tamper-proof packaging	6. Extend guardianship • take routine precautions: go out in group at night, leave signs of occupancy, carry phone • 'cocoon' neighbourhood watch	11. Conceal targets • off-street parking • gender neutral phone directories • unmarked bullion trucks	16. Reduce frustrations and stress • efficient queues and police service • expanded seating • soothing music/muted lights	21. Set rules • rental agreements • harassment codes • hotel registration
2. Control access to facilities • entry phones • electronic card access • baggage screening	7. Assist natural surveillance • improved street lighting • defensible space design • support whistleblowers	12. Remove targets • removable car radio • women's refuges • pre-paid cards for pay phones	17. Avoid disputes • separate enclosures for rival soccer fans • reduce crowding in pubs	22. Post instructions • 'no parking' • 'private property' • 'extinguish camp fires'
3. Screen exits • ticket needed for exit • export documents • electronic merchandise tags	8. Reduce anonymity • taxi driver IDs • 'how's my driving?' stickers • school uniforms	13. Identify property • property marking • vehicle licensing and parts marking • cattle branding	18. Reduce emotional arousal • control violent • enforce good behaviour on soccer field • pornography prohibit racial slurs	23. Alert conscience • roadside speed display signs • signatures for customs declarations
4. Deflect offenders • street closures • separate bathrooms for women • disperse pubs	9. Utilise place managers • CCTV for double-deck buses • two clerks for convenience stores • reward vigilance	14. Disrupt markets • monitor pawn shops • controls on classified ads • license street vendors	19. Neutralise peer pressure • 'idiots drink and drive' • 'it's OK to say NO' • disperse trouble-makers at school	24. Assist compliance • easy library checkout • public lavatories • litter bins
5. Control tools/weapons • 'smart' guns • disabling stolen cell phones • restrict spray paint sales to juveniles	10. Strengthen formal surveillance • red-light cameras • burglar alarms • security guards	15. Deny benefits • ink merchandise tags • graffiti cleaning • speed bumps	20. Discourage imitation • rapid repair of vandalism • V-chips in TV's • censor details of *modus operandi*	25. Control drugs and alcohol • breathalysers in pubs • server intervention

According to Garland (1996: 452), this so-called *responsibilisation strategy* towards private agencies is the result of authorities' acknowledging that governmental control itself is not an effective answer to crime. Therefore, they devolve part of this responsibility on to agencies, organisations and individuals. Thus, while the repressive approach remains the sole responsibility of the criminal justice system, the preventive approach attributes the responsibility to both state and private agencies (Garland, 1996).

Notwithstanding the criticisms of situational crime prevention, its logical assumptions, its apparent validity and its success in practice have attracted policy-makers' attention (Van Dijk, 1985: 333). According to Van Dijk (1985: 335), the attractiveness of situational crime prevention can be found in the rather uncomplicated application of the approach. It is much easier to install technical protection and provide various means of supervision than to adjust the social and economic structures of society that provoke criminal behaviour. Moreover, Van Dijk argues that situational crime prevention is attractive due to its positive cost-benefit relation (Van Dijk, 1985: 336). Examples illustrate that preventive projects can reduce the crime rate and citizens' feelings of insecurity at relatively little cost. By devolving part of the responsibility to private agents, part of the costs are devolved as well.[5] Finally, the success of this new paradigm in controlling crime could be explained by its elements that appeal to political parties on the right as well as the left; situational crime prevention offers immediate effect without ignoring long-range requirements. On the one hand it offers possibilities for fast intervention that focuses on direct results. For example, the introduction of steering column locks in Germany had a direct impact on vehicle theft and electronic article surveillance resulted in a decrease of shoplifting. On the other hand, the approach attaches significance to the continuing role of society as a whole in crime-control policy. In this view the integrity of various state and private agencies could have an enormous impact on crime rates. Such structural interventions in society could have a positive effect on the long-term crime rate. In addition, the situational crime prevention approach does not include aspects of underlying social-economic justice on which there is no consensus on how goals should be achieved.

Based on these reasons, it is no wonder that governments now seem to be promoting a range of preventive or precautionary measures. First, in the 1980s the situational crime prevention approach was promoted by the national government in the United Kingdom, where Clarke and Cornish were working, respectively, as director and co-worker at the Home Office Research and Planning Unit. From then on other governments – among which the Netherlands – invested in the preventive strategy (Clarke, 1997: 40). In the Netherlands like in the United Kingdom the preventive approach was a reaction to a steep increase of crime rates. Disbelief in the effectiveness of the criminal justice system urged the Dutch government to lay down new principles for the future of crime control. The resulting policy document entitled *Society and Criminality*

[5] For a matter of fact, the general public profits from this approach as well. The costs of the private agencies are less than the enlargement of the police force would be.

(*Samenleving en Criminaliteit*) of 1985 introduced the preventive strategies. With this document the Dutch government clearly devolved the responsibility for crime prevention to private agents. This was a real revolution in crime control policy. The policy document stated:[6]

> 'maintaining law and order is not exclusively the task of the police and the justice system. In the judgment of the government, the rise in petty crimes, mostly committed by minors, could and should be halted by inducing an increased sense of responsibility in parents, local residents, local authorities and other social organisations with a view to crime prevention.'

At that time the preventive approach was only focused on petty crime. Regarding more serious offences and organised crime the government was convinced that only a tough repressive approach could work. According to Garland (1996: 449), this predilection for a strong repressive approach can be seen as a form of denying the limits of the sovereign state. However, the punitive pronouncements are also a logical reaction towards a threatening form of crime that in fact was still unknown. At that time the Dutch authorities lacked clear empirical evidence of the extent and nature of organised crime. As a matter of fact, in crime-fighting practice organised crime was neither an important issue before the 1985 policy document nor directly after.

1.1.2 Organised crime on the political agenda

Organised crime was formerly only a problem in Italy and the United States, both of which dealt with mafia-structured organisations from the early twentieth century. The media offered other western countries insight into this sort of crime, in particular with movies on Italian and American mafia families. Although these movies appealed to people's imagination, it was generally agreed among European countries that except for Italy they had no problem of organised crime. This continued for some time. Only in the course of the 1980s did international organisations as well as European countries start to acknowledge the problem of organised crime in their own territories. What caused the sudden rise of the problem of organised crime in Europe? Fijnaut and Paoli (2004: 3) extensively describe this development, giving three aspects main importance: the process of globalisation, the process of economic liberalisation and the fall of the Iron Curtain.

The globalisation process improved trade between various parts of the world. Obviously, criminal organisations benefit from this development as well. In particular the illegal drugs industry expanded its markets to other parts of the world. At the same time, the process of economic liberalisation reduced governments' ability to interfere and regulate markets and promoted legal economic exchange. Criminal organisations make use of this *global economy*

[6] Samenleving en Criminaliteit; een beleidsplan voor de komende jaren. *Kamerstukken II* 1984-1985, 18 995, no. 2.

too as it also facilitates illegal economic operations with or within foreign countries. The threat of this development is best formulated by the United Nations, which argues that the globalisation process has had a large influence on organised crime as the evolution of *a global village* offers unprecedented opportunities for criminal organisations, such as increased ease in crossing borders (Williams and Savona, 1996: 8). Consequently, the United Nations developed countermeasures against trade in drugs, which was still seen as the most important activity of the illegal international trade. The first anti-drugs measures were established in 1970. Later the United Nations developed a convention against all kinds of transnational organised crime.[7]

In Europe the same processes took place and were even strengthened by the fall of the Iron Curtain in 1989. This historic event paved the way for further economic trade as it opened the border to eastern countries where democracy and capitalism were just starting to develop. With these changes a whole new world opened for illegal trade as well. Two years later the potential trade activities were once again enlarged when the Soviet Union collapsed.

The rise of the problem of organised crime was particularly important for the European Union, which was in the middle of the unification process that included the completion of an internal market and the abolition of internal border controls. This process was started in the 1950s with the creation of the European Coal and Steel Community (1951), the European Economic Community (1957) and the European Atomic Energy Community (1957). In the 1980s negotiations took place on the further unification of Europe, which resulted in establishment of the modern European organisation. With the *Treaty of Maastricht* (1993) and the *Treaty of Amsterdam* (1999) the latest steps of the unification process were made and the three-pillar structure of the European Union introduced.[8] The most important aspect of this process was establishment of the single market with its four basic freedoms: the free movement of goods, persons, services and capital. The European Union guarantees these freedoms by formulating directives regarding economic and monetary affairs to promote fair competition in a wide range of policy areas. The European Council, aware of the direct relation between the unification of Europe and the fight against organised crime, argued that it also has a responsibility to undertake action in the latter area. In other words, it refers to the unification and open borders as opportunities for organised crime.

The threat that criminal organisations could abuse these freedoms urged the European institutions to compose directives with actions to prevent or limit the penetration of organised crime in the legitimate environment. First of all, action was undertaken in the first pillar, the Community Pillar.

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[7] United Nations Convention against Transnational Organized Crime. Resolution adopted by the General Assembly on 8 January 2001, *A/RES/55/25*, article 31.

[8] The three pillars of the European Union are, respectively, the European Community, the cooperation on the Common Foreign and Security Policy and the cooperation on justice and home affairs. See for a complete insight into the pillar-structure for example Kellermann and De Zwaan (2001).

The European Council realised that the free movement of capital could be abused by organised crime:[9]

> '…whereas, in order to facilitate their criminal activities, launderers could try to take advantage of the freedom of capital movement and freedom to supply financial services which the integrated financial area involves.'

As a result the Council drew up the anti-money laundering directive to prevent the abuse of the financial sector. Furthermore, the European Council and Parliament turned their attention to the possible abuse of the free movement of people and services, establishing directives regarding tendering procedures and the possibility to exclude certain untrustworthy bidders.[10] Thus, although the first-pillar measures concentrate first on protecting the internal market, some can be brought into action against organised crime activities as well.

Further measures against organised crime were taken under the third pillar, which involves cooperation on justice and home affairs. This focuses on establishing the European Union as an area of freedom, security and justice. According to the Treaty of the European Union (articles 29 and 30) such an area will be achieved by:

> 'preventing and combating crime, organised or otherwise, in particular terrorism, trafficking in persons and offences against children, illicit drug trafficking and illicit arms trafficking, corruption and fraud.'

In other words, the third pillar of cooperation is the most suitable environment to invoke structural attention for fighting organised crime. This was first pronounced in 1996, when the Stockholm conference examined the prevention of crime connected with European economic integration and social exclusion. This conference resulted in the *Action Plan to Combat Organised Crime* adopted by the Council of the European Union (also referred to simply as the *1997 action plan*).[11] This plan is the first, and still the main, policy document in the European Union on this subject.

Organised crime has been an issue on the agenda of the European Union since 1997, and different actions and policy plans have been followed over the course of time. In 1998, the Council of the European Union established a *council resolution* that emphasised the importance of finalising the 1997 action plan.[12] That same year, a joint action pact was agreed to make 'the participation in a criminal organisation' a formal criminal offence in the member states of the

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[9] Council Directive on the prevention of the use of the financial system for the purpose of money laundering of 10 June 1991. *OJ L 166*, 28/06/1991, pp. 77-83.

[10] European Parliament and Council Directive 97/52/EC of 13 October 1997 amending directives 92/50/EEC, 93/36/EEC and 93/37/EEC concerning the coordination of procedures for awarding public service contracts, public supply contracts and public works contracts. *OJ L 328*, 28/11/1997, pp. 1-59.

[11] Action plan of 28 April 1997 to combat organised crime. *OJ* C251, 15/08/1997.

[12] Council Resolution of 21 December 1998 on the prevention of organised crime with reference to the establishment of a comprehensive strategy for combating it. *OJ C 408*, 29/12/98, pp. 1-4.

European Union.[13] This was important as it provided a definition of organised crime which presumes that the problem of organised crime had been seriously analysed at the European level (article 1):

> 'Within the meaning of this joint action, a criminal organisation shall mean a structured association, established over a period of time, of more than two persons, acting in concert with a view to committing offences which are punishable by deprivation of liberty or a detention order of a maximum of at least four years or a more serious penalty, whether such offences are an end in themselves or a means of obtaining material benefits and, where appropriate, of improperly influencing the operation of public authorities.'

In the following years the European Council stimulated further research on this problem as well as on possibilities for containing it. In 2000, the Council of the European Union published a new action plan in which it urged finalisation of the 1997 action plan and recommended that information on successful approaches and best practices be made available at a local and national level.[14]

Finally, it should be emphasised that policy against organised crime has had a new urgency since the terrorist attacks in 2001. According to the Financial Action Task Force on Money Laundering (FATF), the fight against organised crime and terrorism should go hand in hand. In a recent report the FATF states that criminal organisations and terrorist groups basically use the same methods in hiding and obscuring the links between the source, destination or purposes of their finances (FATF, 2003: 3). Although it is questionable whether organised crime and terrorism should be connected, the focus on terrorism has accelerated the implementation of certain measures against organised crime, like the new and more extensive directive against money laundering.[15]

Obviously, the European directives and action plans have had important influence on member states. Directives established in the framework of the Community Pillar apply directly in the EU member states. This supranational authority does not apply for third-pillar policies. Characteristic of third-pillar action plans is that member states retain their national sovereignty.[16] Here the decision-making process is placed outside the procedures of the European Union and are based on cooperation between individual member states. Accordingly, the success of third-pillar plans depends on the readiness of member states to quickly and carefully implement the agreed recommendations. Obviously, such implementation depends on consciousness-raising about the threat of organised crime in particular member states. Furthermore, this threat is not obvious, as

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[13] Joint action of 21 December 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union. *OJ L 351*, 29/12/1998.

[14] The prevention and control of organised crime: a European Union strategy for the beginning of the new millennium. *OJ C 124*, 03/05/2000.

[15] Directive on money laundering of 2001. Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering. *OJ L 344*, 28/12/2001, pp. 76-82.

[16] The same goes for the second-pillar policy that handles the cooperation on the EU Common Foreign and Security Policy.

illustrated by the fact that as recently as the 1980s European countries, except for Italy, were convinced they were exempt from the problem. Nonetheless, by the mid-1990s most European countries had recognised the problem and were developing measures against it.[17]

In the Netherlands the problem of organised crime arose in the 1970s with the emergence of the drugs trade (Kleemans, 2004: 303). Nonetheless, the first signs of political interest in this problem derive only from 1985, with the drafting of the policy document *Society and Crime*. Though this document involves mainly the preventive approach towards petty crime, in it the authorities also point out that criminal organisations are entering Dutch society. In fact the policy plan states that a large-scale underworld is trying to root in society.[18] However, due to a lack of empirical evidence on the threat of organised crime in the Netherlands – at that time many criminologists referred to the problem as a foreign phenomenon – this insight was mainly based on problems and experiences in the United States. Neither did this revelation shock the general public; at that time, ideas on organised crime in the Netherlands were laughed off as myths. Therefore, it is not surprising that no immediate action was initiated.

Yet the experiences of the Amsterdam police in the late 1980s called renewed attention to the organised crime problem. Their empirical findings that foreign and Dutch criminal organisations were involved in international trafficking of drugs was the first breakthrough on the organised crime problem in the Netherlands. As a result, a first nationwide quantitative overview of criminal organisations was drawn up.[19] Via questionnaires police departments throughout the country gave information on possible criminal organisations[20] in an initiative meant to outline the real threat in the Netherlands. Nonetheless, rather than providing a clear overview, this quantitative sketch caused confusion on definitions and criteria regarding criminal groups.[21]

Remarkably, it was this confusion that transformed the problem of organised crime into a major topic on the political agenda as well as in the media. Shortly after the publication of the results of this first quantitative overview, organised crime was given a definitive place in national policy with the 1992 *Organised Crime in the Netherlands: Threats and Plan of Action* (*De Georganiseerde Criminaliteit in Nederland: Dreigingsbeeld en Plan van Aanpak*). This new policy plan heralded a real change of attitude towards organised crime. Instead of the repressive approach, as put forward in 1985, the

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[17] For an extensive overview of the problem of organised crime in a large range of European countries as well as policies against this specific crime problem see Fijnaut and Paoli (2004).

[18] Samenleving en Criminaliteit; een beleidsplan voor de komende jaren. *Kamerstukken II* 1984-1985, 18 995, no. 2.

[19] See for more information Fijnaut *et al.* (1996: 15) and Van de Bunt (2004: 682).

[20] It was left to the police forces to answer the questions per group. It later turned out that different police forces answered the questions differently and there were also problems with non-response and double counting.

[21] As listed in Fijnaut *et al.* (1996: 15; 1998: 12) 36 groups did not answer to any of the criteria, 61 groups met one criterion, 54 groups met two, 18 groups met three 3, 17 groups met four and only three groups met all five of the criteria. Could all these groups be counted as organised crime?

Dutch government now initiated a preventive approach towards organised crime. This preventive approach was largely based on the American experiences of the New York Organised Crime Task Force, presented at the Dutch-American Conference on Organised Crime (Fijnaut and Jacobs, 1991). The disappointing results of a tough repressive approach by New York City authorities towards mafia-structured organisations forced the New York Organised Crime Task Force to develop other measures. Mafia-structured organisations had acquired significant power in unions and legitimate industries (Jacobs, 1999: 121). Individual criminals were not only to be sentenced, the mafia organisations were to be driven away from legitimate economic sectors as well. This resulted in an integrated approach in which the public administration and the criminal justice system closely cooperated to fight organised crime with various strategies. Based on the New York task force's experiences the Dutch authorities made firm statements on organised crime, arguing:[22]

> 'Modern criminal organisations and the legal economy are interwoven to a much larger degree than in the past.'

The reasoning that the interaction between criminal organisations and the legal economy offered opportunities for organised crime to subsist and even increase, indicates the Dutch authorities' early interest in the situational prevention approach towards organised crime. Remarkably, there was little empirical evidence on which to ground these statements. In this case the lack of empirical evidence was drawn on to strengthen the statement of the problem:[23]

> 'It goes without saying that all we know about organised crime is merely the tip of the iceberg.'

In the mid-1990s attention to the problem of organised crime reached a peak. Possible irregularities in investigative methods and corruption in one of the special investigative teams that had been established to act against organised crime caused a crisis in the Dutch criminal justice system. Widespread media attention to the issue had a great impact on the public. In this period the public debate shifted. Whereas earlier threats of organised crime were seen as myths, organised crime was now felt to be a severe problem that affected even the criminal justice system.

To repair the confidence in the criminal justice system the *Parliamentary Inquiry into Investigative Methods* (*Parlementaire Enquêtecommissie Opsporingsmethoden*) was set up. This parliamentary inquiry was mandated to examine the legal basis of the investigative methods being used and their effectiveness in tracing organised crime (Enquêtecommissie Opsporingsmethoden, 1996: 11). This inquiry in the mid-1990s emphasised the

[22] De georganiseerde criminaliteit in Nederland; dreigingbeeld en plan van aanpak. *Kamerstukken* 1992-1993, 22 838, no. 2: 2.

[23] De georganiseerde criminaliteit in Nederland; dreigingbeeld en plan van aanpak. *Kamerstukken* 1992-1993, 22 838, no. 2: 3.

need for accurate insight into the actual threat of organised crime in the Netherlands (Enquêtecommissie Opsporingsmethoden, 1996: 23; Fijnaut *et al.*, 1996: 8; Fijnaut *et al.*, 1998: x). To obtain such insight an external research team,[24] named the 'Fijnaut research team' after its chairperson Cyrille Fijnaut, was charged to carry out the first systematic study on organised crime in the Netherlands (Fijnaut *et al.*, 1996; Fijnaut *et al.*, 1998). This research team first composed a new definition of organised crime not based on the hierarchical mafia-structured characteristics. Instead, the researchers came to a definition under which networks and fluid social groups could also be placed (Fijnaut *et al.*, 1996: 24-25; Fijnaut *et al.*, 1998: 26-27):

> 'Organised crime can best be formulated as what ensues when groups primarily focused on illegal profits systematically commit crime that adversely affects society and are capable of effectively shielding their activities, in particular being willing to use physical violence or eliminate individuals by way of corruption.'

This new definition enabled the Fijnaut research team to analyse the problem of organised crime from a different point of view. In fact, the researchers were able to reassure the Dutch authorities as well as the public, as they could find no indicators that modern criminal organisations had penetrated the public administration or the political decision-making process (Fijnaut *et al.*, 1996: 141-142; Fijnaut *et al.*, 1998: 203-204). They concluded that there was no evidence of criminal groups having used corruption or intimidation to gain control over any important government services (Fijnaut *et al.*, 1996: 139, Fijnaut *et al.*, 1998, 200). Thus, notwithstanding some incidents of corruption in the police there was no decline of the criminal justice system. Nonetheless, they observed a rather thin dividing line between public administration and criminal groups, at least at the local level. Therefore, the authors recommended that this line be carefully guarded.

With regard to the idea that organised crime is to a large extent interwoven with the legitimate environment, the researchers concluded that no criminal organisations had gained control of sectors of the legitimate economy by taking over crucial businesses or trade unions neither at the national nor at the local level (Fijnaut *et al.*, 1996: 142, Fijnaut *et al.*, 1998: 203-204). Instead, the research team observed a kind of symbiosis, in which two parties both profit from working together. For example, the transport sector profits from transportation assignments no matter whether these shipments involve legal or illegal trade. Nonetheless, the Fijnaut research team did make one important exception: criminal organisations had acquired positions of power in the red-light district of Amsterdam (Fijnaut and Bovenkerk, 1996: 153). By investing in the hotel and catering sector including the related real estate, organised crime now controlled a large part of this district. The situation in Amsterdam could not be compared with the situation in New York, as in the Netherlands the positions

[24] This research team consisted of four professors of criminology – Bovenkerk, Bruinsma, Van de Bunt and Fijnaut –, which illustrates the great significance the parliamentary inquiry attached to this research.

of power were limited to economic dealings and did not involve political administrative influence. Still, the Amsterdam City Council as well as the national authorities were alarmed. Immediately the city government undertook action regarding the red-light district as well as the rest of the city. This was the start of a unique administrative approach in Amsterdam to prevent organised crime. This approach is characterised by the intervention of administrative services, with an integral and integrated enforcement of all rules. With this strict maintenance of rules the city council aimed to prevent any facilitation of criminal organisations.[25]

The findings of the Fijnaut research team calmed the nerves of the authorities as well as of the public at large. To prevent further myths and commotion concerning the threat of organised crime, the Research and Documentation Centre of the Ministry of Justice in the Netherlands was charged to monitor the problem of organised crime (Kleemans *et al.*, 1998 and 2002). Moreover, the police departments involved in fighting organised crime were entrusted to analyse specific organised crime activities. Their reports involved all kinds of activities, such as the logistic processes of Dutch criminal organisations (Huisman *et al.*, 2004) and characteristics of criminal organisations with special connection to foreign countries such as South America and Turkey (see, respectively, Dienst National Recherche 2004a and 2004b). In 2003, the National Criminal Investigation Service (*Nationale Recherche*) was mandated to analyse the future threats of serious crime and organised crime (Dienst Nationale Recherche Informatie, 2004).[26] Such analyses would enable authorities to anticipate possible future developments.

The calming of the public and political debate enabled the ministers in question to dress up plans and campaigns to contain the actual problems. Notwithstanding the finding that the Netherlands was not pressed by mafia-structured organisations that had penetrated legitimate society, the authorities nonetheless had to cope with fluid social groups and networks that made use of opportunities in the legitimate environment. Here again, based on empirical research it appears that the relation between the legitimate environment and the criminal organisations is characterised by a symbiosis (Fijnaut *et al*., 1998: 128; Kleemans *et al*., 1998: 62). Organised crime needs the legitimate environment for its logistics, while members of the legitimate environment known or unbeknown profit from dealing with criminal organisations. For example, the Netherlands has a good infrastructure for international trade. The Rotterdam and Amsterdam harbours, Amsterdam airport and the Dutch road and rail network are used as a gateway to the rest of Europe, not only for legal economic dealings but also for organised crime. This means that criminal organisations make use of

[25] This approach is one of the preventive measures that will be studied in this research on the prevention of organised crime (see chapter 4).

[26] This new national police authority embodies the organised crime departments that were located in several regions. By centralising the criminal justice system, the competent authorities hope to strengthen the nationwide understanding of the problem of organised crime. Moreover, the national body had to serve as a focal point for communicating with foreign police and had to improve international cooperation.

the logistics offered by the legitimate environment. In other words characteristics of Dutch society facilitate organised crime. Not surprisingly, this finding strengthened resolve to apply the situational approach.

More recently, research and analyses have led to the conclusion that organised crime in the Netherlands might best be described as *transit crime* (Kleemans *et al.*, 2002: 139; Zaitch, 2002; Dienst Nationale Recherche Informatie, 2004: 85). This means that a large part of the illegal goods are carried through the Netherlands to other countries. In particular, the harbours in Rotterdam and Amsterdam and Amsterdam Airport facilitate the transportation of goods. The positive aspect of the transit position of the Netherlands is that foreign criminal organisations have no interest in settling here. As a result there is less chance of these foreign organisations trying to attain positions of power (Kleemans *et al.*, 2002: 140). Nonetheless, Dutch criminal organisations do invest in Dutch society, and as described later (Chapter 4) Amsterdam has established a special approach to deal with such investments. This approach illustrates the importance of complementing international efforts to fight organised crime with local efforts. After all, the actual activities of criminal organisations, like the producing and storing of illegal goods, do take place at the local level.

1.2 Organised crime prevention

The popularity of the preventive approach towards crime came together with the rising attention to organised crime in the early 1990s. The increasing insight into organised crime uncovered opportunities offered by the legitimate environment to facilitate criminal activities. Therefore, interfering in these opportunities to hinder their abuse for criminal activities seemed to be a useful approach to control crimes. From then on, prevention became a new strategy in the containment of organised crime. From the Council of the European Union (1997 action plan, part I, article 5f) the fight against organised crime appears to balance repression and prevention:

> 'Prevention is no less important than repression in any integrated approach to organised crime, to the extent that it aims at reducing the circumstances in which organised crime can operate. The Union should have the instruments to confront organised crime at each step on the continuum from prevention to repression and prosecution.'

The Dutch authorities consider organised crime prevention not only as an important approach to contain organised crime, but in fact as an indispensable one. In the words of the ministers of justice and of the interior:[27]

> 'It is really unsatisfactory that the government on the one hand invests a lot of time, energy and money in the investigation and prosecution of criminal offences and on the other hand runs the risk of unintentional facilitation criminal organisations and activities, in a direct or indirect way.'

This clearly indicates the importance the authorities in question ascribe to the preventive approach against organised crime. But what does this preventive strategy look like in practice?

1.2.1 Preventive measures against organised crime

At the European level, the 1997 action plan lists the most important measures against organised crime.[28] Section II of this plan involves the preventive approach and sums up seven recommendations:[29]

1. developing an anti-corruption policy within the government apparatus;
2. making it possible to exclude persons convicted of offences relating to organised crime from tendering procedures;
3. collecting and the mutual exchange of information by member states on legal entities and natural persons – pursuant to regulations for the protection of personal information 'as a means to prevent the penetration of organized crime in the public and legitimate private sector';
4. devoting financial resources from various funds 'to prevent larger cities in the Union from becoming breeding grounds for organized crime';
5. developing closer cooperation between EU member states and the European Commission to combat fraud where the financial interests of the European Union are concerned;
6. establishing an action programme to invest in the training of individuals to fulfil a key role in formulating and implementing preventative policy measures in the area of organised crime;
7. introducing measures for the improved protection of certain vulnerable groups against the influence of organised crime, for example via codes of conduct.

These recommendations cover a wide spectrum ranging from proposals to facilitate preconditions for executing preventive measures (recommendations 3, 5 and 6) to proposals to adjust existing directives or introduce new ones (recommendations 1, 2 and 3). Recommendation 4 is of a totally different order, as it refers to larger social economic interferences to reduce crime.

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[27] Bevordering integere besluitvorming openbaar bestuur, letter from the ministers of the interior and of justice. *Kamerstukken II* 1996-1997, 25 056, no. 1: 1.

[28] Later, the Council of the European Union published new plans and joint actions, like the Millennium Action Plan registered in *OJ C 124*, 03/05/2000. However, these new plans mainly reiterated the general ideas of the 1997 action plan.

[29] Action plan of 28 April 1997 to combat organised crime. *OJ* C251, 15/08/1997.

In the meanwhile some of these recommendations have been codified in directive proposals and new policy plans. For example, the directive against money laundering is being enlarged to protect vulnerable groups like notaries, lawyers and accountants from being exploited by organised crime.[30] Furthermore, the new proposal on public contracts regarding supplies, services and works includes enlargement of the possibility to exclude persons who are related to organised crime.[31]

In addition, the Council of the European Union has undertaken action to foster knowledge and exchange information on organised crime prevention amongst member states. For this, the Council has adopted exchange, training and cooperation programmes to combat organised crime, namely the so-called Falcone programme[32] and the Hippocrates programme.[33] By means of these programmes the European Union offers financial support to initiatives by its member states to develop crime prevention strategies. Furthermore, the European Commission Forum on the Prevention of Organised Crime was established in the framework of the Hippocrates programme. This forum has two interests.[34] First, it consults interested parties on the acceptability and quality of preventive measures. Second, it offers a platform for interested parties to express their views. A look at the agenda of the Platform on the Prevention of Organised Crime illustrates the many activities being organised.[35] Meanwhile the Falcone programme and the Hippocrates programme are both enclosed in AGIS, the new programme on police and judicial cooperation in criminal matters.[36]

Through its recommendations and activities the European Union tries to provide necessary conditions for preventing organised crime, to develop instruments and to offer a platform for sharing best practices. Still, the council is aware that to execute measures at the national and local levels it depends on the political commitment of its member states. Unfortunately, such commitment has up to now been observed only in Italy and the Netherlands, as other member states have not yet adopted a preventive approach towards organised crime

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[30] Directive on money laundering of 2001. Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering. *OJ L 344*, 28/12/2001, pp. 76-82.

[31] Proposal for a directive of the European Parliament and of the Council on the coordination of procedures for the award of public supply contracts, public service contracts and public works contracts. COM(2000), 275 final and *OJ C 029 E*, 30/01/2001.

[32] Joint action of 19 March 1998 adopted by the Council, on the basis of Article K.3 of the Treaty on European Union, establishing a programme of exchanges, training and cooperation for persons responsible for action to combat organised crime (Falcone programme). *OJ L 099*, 31/03/1998, pp. 8-12.

[33] Council decision of 28 June 2001 establishing a programme of incentives and exchanges, training and cooperation for the prevention of crime (Hippokrates). *OJ L 186*, 07/07/2001, pp. 11-13.

[34] Communication from the Commission to the Council and the European Parliament. *COM(2000) 786final*, pp. 15.

[35] In 2003 there were 10 meetings organised on various subjects such as corruption, human trafficking, data protection and product proofing, see http://europa.eu.int/comm/justice_home/fsj /crime/forum/fsj_crime_forum_en.htm.

[36] Programme for police and judicial cooperation in criminal matters (Programme AGIS), annual work programme and call for applications for 2003. *OJ C 5*. 10/01/03, pp. 5-18.

(Fijnaut and Paoli, 2004: 1037). This involves third-pillar plans, which are not directly applicable in member states. All member states have implemented the 1991 first-pillar directive on money laundering.

The implementation of the preventive approach by the Dutch authorities has enjoyed success. As described before, the first preventive measures in the Netherlands were based on experiences of the New York Organised Crime Task Force. The 1992 policy document *Organised Crime in the Netherlands: Threats and Plan of Action* introduced the first measures to hinder the abuse of opportunities that facilitated organised crime.[37] The approach was two-sided.[38] On the one hand, a defensive approach concentrated on increasing the defensibility and integrity of the public administration against the threat of infiltration by criminal organisations, including cooperation with relevant professions such as lawyers and accountants to prevent their culpable involvement in organised crime. This strategy was incorporated in a campaign by the Dutch Ministry of the Interior to increase awareness of integrity at all levels of the public administration.[39] On the other hand, an offensive approach implied intensified efforts by the public administration to keep criminal organisations out of economic sectors by not granting them permits and subsidies and by excluding them from tendering procedures. However, administrative law at that time was not designed for such exclusion, and two general obstacles arose (Struiksma and Michiels, 1994). First, the law offered few legal grounds for refusal. Second, the public administrators had no legal basis on which to obtain the required information. To uncover the possible criminal history of persons, the public administration had to have police and judicial data at their disposal, data that are protected by privacy regulations. Consequently, a new legal framework to enlarge the instruments of administrative law had to be created. In 1996 the ministries of internal affairs and justice presented their plans for a new act (the BIBOB Act) to create grounds for refusal or withdrawal of permits and subsidies and exclusion of participants from tendering procedures.[40] After years of discussion amongst the political parties on the legitimacy and range of the screening procedure, the BIBOB Act came into force only in mid-2003.

In the second half of the 1990s there was a great deal of political support for the strategy of preventing organised crime in the Netherlands. In this climate the Minister of Justice established a special *Programme for the Prevention of Organised Crime* to invest in creating the preconditions necessary for crime prevention. This programme, established in 1998, focuses on two main subjects (Directie Jeugd en Criminaliteitspreventie, 2002: 6). First, the programme examines areas vulnerable for abuse by criminal groups. For example, the transport and the waste-disposal sector were screened. Second, the programme

[37] De georganiseerde criminaliteit in Nederland; dreigingbeeld en plan van aanpak. *Kamerstukken* 1992-1993, 22 838, no. 2.

[38] This distinction between the defensive and the offensive approach can be applied to the concrete proposals of the 1997 action plan of the European Union as well.

[39] Integriteit in de openbare sector. *Kamerstukken II* 1993-1994, 23 400, no. 11.

[40] *Kamerstukken II* 1996-1997, 25056, nr 1.

develops new instruments and methods for the optimal use and exchange of information. As a result, new bodies to prevent the improper use of public and private limited companies were set up within the Ministry of Justice (Seger, 2003: 21). With the new *Judicial Data Act* (*Wet Justitiële Gegevens*) coming into force in 2003 these new bodies deal with *certificates concerning good behaviour* not only for natural persons, but also for legal persons. Moreover, these bodies asses applications for a *certificate of no objection* when setting up limited companies or when company statutes are changed.

With this large body of political support it is no surprise that by the end of the 1990s the Dutch authorities had developed a range of preventive strategies. Consequently, by the turn of the century the Netherlands had developed an extensive preventive approach towards organised crime. Amongst other activities, this is evident from the active role of the Netherlands in establishing article 31 of the United Nations convention on transnational and organised crime. This article concerns the preventive approach and contains all Dutch suggestions (Directie Jeugd en Criminaliteitspreventie, 2002: 15). As such, article 31 presents the Dutch way of thinking about organised crime prevention.[41]

In addition to the political initiatives and plans, the idea of preventing organised crime is supported at the local level. The most obvious example is Amsterdam's preventive approach. In particular, the severe problems concerning the position of criminal organisations in the red-light district urged the city government to undertake action. In reaction the local government developed administrative measures to restore and maintain order. Furthermore, anticipating the national BIBOB regulations the city established its own screening strategies to bar criminals from the legitimate business environment. Over time various municipalities have initiated similar approaches. This goes for large cities, such as Rotterdam and The Hague, but also for medium-sized municipalities such as Almelo, Venlo and Gouda (VNG, 2002: 13). In addition, the Association of Netherlands Municipalities (VNG, 2002) supports the administrative approach based on the fact that organised crime occurs not just at the international level, but also locally. For example, the storage of illegal products and contacts with forwarders take place at the local level. These opportunities require local

[41] The most important part of *article 31* reads: 'States Parties shall endeavour, in accordance with fundamental principles of their domestic law, to reduce existing or future opportunities for organized criminal groups to participate in lawful markets with proceeds of crime, through appropriate legislative, administrative or other measures. These measures should focus on: […]
(d) The prevention of the misuse of legal persons by organized criminal groups; such measures could include:
(i) The establishment of public records on legal and natural persons involved in the establishment, management and funding of legal persons;
(ii) The introduction of the possibility of disqualifying by court order or any appropriate means for a reasonable period of time persons convicted of offences covered by this Convention from acting as directors of legal persons incorporated within their jurisdiction;
(iii) The establishment of national records of persons disqualified from acting as directors of legal persons; and
(iv) The exchange of information contained in the records referred to in subparagraphs (d) (i) and (iii) of this article with the competent authorities of other States Parties.'

interference. In accordance with the developments in Amsterdam, other cities have initiated similar approaches. For the municipalities that have not yet brought in administrative actions, the Association of Netherlands Municipalities illustrates that with correct application of existing measures, administrative authorities already have an arsenal of means to take action against organised crime (VNG, 2002: 30-35).

Finally, the police authorities in the Netherlands have promulgated the preventive approach since early 2000. This support is based on the idea that investigative efforts including financial investigations do not result in decreased organised crime. Aligned with the popularity of the preventive approach in Amsterdam, the Amsterdam commissioner of police introduced the concept of *stopping crime* (*tegenhouden*). Later the Board of Police Commissioners (2001) published a report entitled *Crime Can Be Stopped* (*Misdaad Laat Zich Tegenhouden*). In 2003 *stopping crime* became one of the tasks of the National Criminal Investigative Service. This strategy was designed to tackle facilitating circumstances and disrupt criminal groups' logistic operations (Korps landelijke politiediensten, 2003: 38). At this point, the preventive strategy was still being discussed by the competent authorities, as they did not agree on the role of the police in it.[42]

1.2.2 Characteristics of organised crime prevention

Prevention is of course no new concept. Traditionally it is related to the criminal justice system, which is supposed to deter the total population (general deterrence) as well as convicted offenders (specific deterrence) from involvement in criminal activities with the threat and fear of punishment. The pragmatic new preventive strategy in the recent crime-control policy has nothing to do with these deterrence practices. From the preventive measures described in the previous section and subsection it is clear that these measures cover a wide range of interventions. How can we define prevention in its modern application?

In criminological science there are various classifications and models by which to define this new type of prevention and to categorise its various aspects. The most common classification is based on the insights on prevention in the medical world: primary, secondary and tertiary prevention. This arrangement is often used in combination with a model that distinguishes the target of prevention: offender, victim and situation (Van Dijk and De Waard, 1991). The first classification is also combined with two other classifications: the content (defensive and offensive) and the object (person and structure) (De Cauter, 1984). Finally, Cohen and Felson classified preventive measures in their research according to the motivation of offenders, vulnerability of targets and adequacy of surveillance (Cohen and Felson, 1979). From these various classifications it appears that there is as yet no consensus among criminologists on how this new kind of prevention should be defined. The most import

[42] Naar een veiliger samenleving, letter from the Minister of Foreign Affairs, *Kamerstukken II*, 2003–2004, 28 684, no. 27.

criticism, however, involves the abstraction of these classifications. The classifications all have a theoretical basis that in practice has turned up as unusable. The demarcations of categories are often unclear; they are not exclusive but rather overlap. Moreover, the classifications are not comprehensive and do not enclose all preventive interventions.

Due to the lack of a clear theoretical framework of preventive measures, actual practice applies other distinctions. Often, preventive measures are distinguished from repressive measures by the moment of intervention. Whereas repressive strategies involve interventions that react upon an offence, preventive strategies imply interventions that precede possible offences in order to hinder their realisation. Thus, preventive interventions imply proactiveness. However, this apparently simple distinction is rather complicated, as criminal acts often encompass a chain of activities. Does prevention mean that intervention should take place before the first activity? Or may it take place anywhere in the chain as long as it precedes the last action. This complication is certainly relevant in the prevention of organised crime, which often involves chains of activities. The trade in illegal goods encompasses purchasing primary products, producing final products, transporting products and selling products. Moreover, the criminal proceeds of this illegal trade have to be laundered to invest the money in the legitimate environment. Laundering activities also imply various activities: displacing money, depositing money, criss-crossing money between numerous bank accounts, justifying money and finally investing it in legitimate endeavours. If preventive interventions imply only intervention at the beginning of such chains, then anti-money laundering measures could not be interpreted as prevention. Thus, regarding prevention one should concentrate on a specific part of the chain. The focus may be on preventing the transport of illegal products, preventing the offering of illegal goods and services or on preventing the investment of criminal profits.

Another distinction often applied to define preventive interventions is the application of instruments. This implies that interventions that are based on criminal law and executed by law enforcement authorities are seen as repressive interventions. From this point of view all other interventions such as the administrative approach, could be seen as preventive strategies. However, this distinction is not tenable as both kinds of measures can aim at exactly the same objective. For example, the Judicial Data Act and the BIBOB Act both aim at preventing the integrity of legal persons from being abused for criminal activities. While the first measure is an application of criminal law, the second involves administrative law. Obviously, it makes no sense to classify these measures differently.

So what is the common element of this wide range of measures? Based on the earlier discussion and description, the situational approach can be identified as the common aspect among them.[43] All aim at everyday life circumstances that

[43] Walgrave (1995: 251-283) defines the situational approach based on the opportunity theory as one of the important criminological prevention strategies. In addition to this approach he distinguishes the

offer opportunities for organised crime rather than at the dispositions of potential offenders. For example, the open borders in Europe and the well-developed infrastructure in the Netherlands, both installed to stimulate legitimate economic trade, facilitate trade in illegal goods and services as well. The situational approach to prevention encompasses proactive measures as well as reactive ones. Examples of proactive measures are those to increase the integrity of the government apparatus by preventing corruptive actions from taking place. Another example derives from the Dutch screening approach by which permits can be refused based on the likelihood of future criminal involvement. Examples of reactive measures are the disclosure obligation of financial institutions aimed at tracking criminal profits and the withdrawal of certain permits based on committed offences.

Situational prevention has two important consequences. Because the preventive approach focuses on circumstances and not on perpetrators it is difficult to derive specific measures for it. The focus on everyday circumstances can impact a large public. Interfering in everyday circumstances means that preventive measures can also affect people who are not involved in criminal activities. In fact, most people using the financial system are not criminals laundering criminal profits and most of those who apply for a permit are not criminals wanting to take advantage of these permits. Important in this reasoning is that for a preventive approach competent authorities should be aware of the invasion of the privacy of the larger public; a difficult aspect for policy-makers to deal with.

Second, the preventive approach addresses society as a whole, by which it ends the exclusive responsibility of the criminal justice system to control crime. Instead the preventive approach addresses governments, organisations, institutions, companies and civilians and tries to make them feel responsible for the prevention of organised crime. In order to combine the strength of the various partners the preventive approach implies a new multi-agency strategy by which public and private agencies cooperate. The European Council devolves responsibility for substantial preventive work to institutions and groups of persons in a community at the national, regional and local levels.[44] Moreover, the Council emphasises the responsibility of professions that might be confronted with organised crime and their interest groups in the prevention of organised crime.[45] At the national level in the Netherlands the multi-agency approach focuses on cooperation between the criminal justice system, the public administration and various private agencies.[46]

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punitive approach that aims at the individual benefit, the clinical approach that aims at the individual functioning and the societal approach that deals with the societal functioning.

[44] Council resolution of 21 December 1998 on the prevention of organised crime with reference to the establishment of a comprehensive strategy for combating it. *OJ C 408*, 29/12/98, pp. 1-4, consideration 4.

[45] Council resolution of 21 December 1998 on the prevention of organised crime with reference to the establishment of a comprehensive strategy for combating it. *OJ C 408*, 29/12/98, pp. 1-4, consideration 12.

[46] Samenleving en Criminaliteit; een beleidsplan voor de komende jaren. *Kamerstukken II* 1984-1985, 18 995, no. 2.

By emphasising the role of various parties in society the preventive approach clearly fits the responsibilisation strategy of Garland (1996). The success of such a multi-agency approach depends on the willingness of the various partners involved. In concrete terms, Garland (1996: 454) posits that governments must activate private agencies, set up a chain of cooperative action and coordinate the interests of the agencies involved. These three elements are essential. Nonetheless, these three elements can present more difficulties than bringing into action the traditional criminal justice system (Garland, 1996: 454). Obviously, the authorities involved must take these possible bottlenecks in consideration in developing and implementing preventive measures.

1.3 The research

1.3.1 The study of preventive measures

This research aims to evaluate preventive measures in order to determine whether policy-makers' enthusiasm about them is justified. To evaluate the preventive approach against organised crime, it is necessary to first determine the effects of the relevant measures. Literature, however, indicates the difficulty of determining the effects of policy measures, since it is often problematic to establish causality between measure and effect (Rossi, Freeman and Lipsey, 1999: 238). Is it the indicated programme that caused a particular effect? Determining the causality of an intervention implies that the evaluator must compare the outcome of an intervention with the outcome had the intervention not taken place. In order to ascertain such differences evaluators ideally must fashion a classic experimental design wherein information about impact or ouytcomes for participants is compared with that about nonparticipants. In other cases evaluators can use statistical approaches that include before and after measurements. However, often these ideal research designs are not (fully) applicable, especially where effects on criminal behaviour are concerned. As a consequence in most cases the causal effects cannot be directly observed, but a degree of plausibility is implied (Rossi, Freeman and Lipsey, 1999: 235).

This is certainly the case for preventive measures against organised crime, as criminal organisations do not announce their illegal activities in favour of experimental designs and there is no standard of the level of organised crime at certain moments. Moreover, with regard to organised crime it is hard to exclude rival causal factors or control for other variables that may influence the outcome. Levi and Maguire (2004: 405) argue that for organised crime it remains largely a matter of belief that there is some effect, as in this area of crime control one copes with the greatest difficulties in generating data. Various key problems complicate the measurement of organised crime. For example, most forms of organised crime are by their nature less susceptible to being counted than other crimes. Moreover, organised crime seems to be so complex

that one comes up against a host of definitional problems in any attempt to count it (Levi and Maguire, 2004: 406).

Because of these problems in determining the effects of measures taken against organised crime, this study is based on an alternative plan shaped by two alternative strategies. For the first alternative strategy, this research observes plausible outcomes based on a study of the measure in the abstract. For this the philosophy underlying the preventive measures is evaluated. This means that the evaluation focuses on the set of assumptions regarding the way the intervention is supposed to work. To achieve such an evaluation two steps are taken (Rossi, Freeman, Lipsey, 1999: 157). Firstly, the programme theory, which encompasses the set of assumptions, is explicated and expressed. In other words the programme theory underlying the concrete preventive measures is reconstructed. Secondly, the quality of the articulated programme theory is evaluated; is it reasonable and plausible? To evaluate the programme theory's reasonableness and plausibility, it is judged in the light of criminological perspectives that fit the pragmatic new strategies focusing on preventing crime and empirical knowledge on organised crime. If the programme theory lacks any such foundation, one speaks of a theory failure and the intervention will probably be unsuccessful. However, when the programme theory is valid, the intervention succeeds the plausibility test. In that case, it is plausible that the intervention meets the intended effects and consequently the expectations of the policy-makers seem justified.

The second alternative strategy is to examine the implementation and resulting outputs of the measure. Literature demonstrates that those who try to determine effects bring measurable elements to the task. Levi and Maguire (2004: 406) argue that evaluation should strive for proxy indicators to measure effects. La Spina (2004: 659) argues that from a quantitative point of view it is preferable to determine the observed outputs of a measure above assessing the outcome of the measure. In his contribution on the anti-mafia policies in Italy, observed or physical outputs imply, for example, the number of seizures, arrests and sentences, thus deriving a measure, while the outcome of the policies would enclose the eradication of the mafia in general (La Spina, 2004: 658). When determining the output of preventive measures it is important to realise that their functioning depends on their implementation. Is the measure being carried out as intended? If not, one can speak of an implementation failure due to which it is no longer obvious that the expected effects will be achieved. In short, the output of a measure can illustrate its success. And although it says nothing about the ultimate effect of the measure, it can strengthen the ultimate outcome's plausibility.

1.3.2 Research questions

To determine the effects of preventive measures taken against crime this research thus focuses on two strategies: observing the plausible outcomes that can be derived from the programme theory and determining the concrete outputs

of implemented measures. To reveal the concrete outputs and plausible outcomes this research responds to three research questions.

- What is the programme theory underlying the preventive measures?
- What is the content of the preventive measures and how are they implemented?
- What are the observed outputs and the plausible outcomes of the preventive measures?

Together these research questions encompass the main elements of a programme evaluation. A general definition of programme evaluation is 'the use of social research procedures to systematically investigate the effectiveness of social intervention programs' (Rossi, Freeman and Lipsey, 1999). This kind of evaluation is frequently used to analyse preventive programmes regarding common crime, youth delinquency and problem-oriented policing. In most cases the purpose of evaluation is to provide feedback that will generate corrections to and refinements of crime prevention (Tilley, 2002: 1). Moreover, programme evaluation is necessary for competent authorities to make choices between various programmes by which they would obviously prefer the most effective and efficient measures. As a result there is already a tradition of evaluating such programmes.[47] The current research involves a programme evaluation of three measures focusing on the prevention of organised crime. Because this research was not conducted under the authority of any policy-maker, it only describes the nature of the effects without broader purposes. The outcomes of this research may nonetheless prove useful in the development of new public programmes or the improvement of existing ones (Rossi, Freeman and Lipsey, 1999: 42).

This research is largely aligned with the theoretical framework of Rossi and Freeman (1993: 34), who distinguish three elements in programme evaluation: the programme conceptualisation and design, monitoring and accountability of programme implementation and programme utility.[48] In the more recent manual by Rossi, Freeman and Lipsey (1999), these elements are indicated as the assessment of the programme theory, the assessment of the programme process and the impact assessment. These elements clearly encompass the three research questions of this study.

[47] In the Netherlands there is also criticism on the programme evaluation regarding common crime, youth delinquency and problem-oriented policing. Wittebrood and Van Beem (2004: 58) conclude that there are still many programmes that go unevaluated and that the quality of the existing evaluations is insufficient to uncover the actual effects.

[48] In the more recent edition of their manual on programme evaluation, Rossi, Freeman and Lipsey (1999: 22 and 63) divide the programme evaluation into five elements: needs assessment, assessment of programme theory, assessment of programme process, impact assessment and efficiency assessment. Here, the authors attached more significance to perceived problems as this aspect is separated from assessing the programme theory described in the 1993 edition. Furthermore, in regard to the programme utility the impact assessment is separated from the efficiency assessment. In my research the efficiency assessment can be left out of consideration as it is not an aspect in my research questions.

Assessment of the programme theory. Every preventive measure has a programme theory which encloses the assumptions about the manner in which the programme relates to the expected effects and the strategy the programme has adopted to achieve its objectives (Rossi and Freeman, 1993: 154). In fact it provides the rationale for why the measures should have the expected outcomes. Reconstructing the programme theory reveals the justification of the measure. In addition, it ascertains the actual objectives and expectations and grounds the programme process and its outcomes. When the programme theory is faulty the intervention will fail, and the justification of the measure will fail as well.

Dutch literature on reconstructing programme theories distinguishes three sets of assumptions (Leeuw, 1989: 92). First are the causal assumptions, which indicate the relation between the causes and the outcomes. These relations represent the expectation that the programme will have the intended effects. The current study distinguishes between assumptions regarding the problems and assumptions regarding the outcomes. The realisation of a preventive measure usually starts with an apparent social problem and the resolve to undertake organised action to ameliorate it. Because the apparent social problem brings the measure into being, it is essential to have an adequate understanding of the problem's nature and scope (Rossi and Freeman, 1993: 58). This is particularly important as different interest groups and political parties make use of their position of power to influence ideas on the nature and seriousness of a problem. An incorrect or exaggerated assumption of the problem may lead not only to the acceptance of unnecessary or (too) radical measures; it can result in measures that are totally ineffective as well. Therefore, by assessing the programme theory, this research starts with the assumptions on the problem before going into assumptions on the measures to combat the problem. With regard to assumptions regarding the outcomes, Rossi, Freeman and Lipsey (1999: 104) distinguish proximal or immediate effects and distal effects. If public administrations refuse to give permits to criminal organisations, then these organisations cannot make use of certain opportunities in the legitimate environment (a proximal effect). If criminal organisations are hindered in use of opportunities in the legitimate environment, organised criminals have to stop certain activities (distal effects). Rossi, Freeman and Lipsey (1999: 104) acknowledge that managing the distal effects is impossible, as this part of the process takes place outside of the control of the programme. Consequently, it can only be assumed that the distal effect will follow.

The second set of assumptions involves the normative assumptions embodying the relations between the prevailing (political) standards and the intended situations. These assumptions refer to the apparent social problem and connect a value judgement to it. They often result in rather abstract argumentations, such as the belief that crime should not pay and that the legitimate environment should not facilitate organised crime. In many cases these value judgements make use of common sense argumentations. However, prevailing standards are not absolute as they can be the subject of debate and evolve over time.

The third set of assumptions implies the relations between aims and means. These assumptions involve final objectives and strategies to achieve them. Regarding the example above, the objective could involve the number of permits that the public administration refuses, while the means involve the screening procedures by which possible relations to organised crime can be uncovered.

Assessing the programme theory thus involves uncovering and articulating its underlying argumentations and conceptualising the various assumptions. Most of the time this is not as easy as it may seem, because in many cases the assumptions of the programme theory are not fully articulated and recorded. In this research the reconstruction of the programme theory is based on the articulated assumptions in official policy documents and on the more implicit assumptions distilled from the official policy documents.

Assessment of the programme process. The evaluation of the process focuses on the activities executed to implement a particular measure. Evaluating the process uncovers whether the activities did indeed take place as they were intended and whether the measure is in fact functioning. This part of the evaluation ascertains possible implementation failures, which can influence the output and expected outcome (Rossi and Freeman, 1993: 36). The evaluation of the process might involve a wide range of aspects including the organisations involved and their day-to-day activities as well as the appropriateness of the use of staff resources and funds (Rossi and Freeman, 1993: 164). The current research does not cover all of these aspects, but rather focuses on those that might affect the final output and outcome, in this case the prevention of organised crime. The evaluation involves two parts. First, the main activities deriving the measure in question are described. This description gives insight into how preventive measures in the Netherlands look and how they are realised. Second, the implementation of the measures is evaluated, therefore providing an indication of what has become of these activities. With a view to the crucial elements of multi-agency approaches, this study pays particular attention to possible problems in activating the new actors in question, in coordinating chains of cooperative action and in coordinating the interests of the various parties. Bottlenecks in these three elements can reveal possible implementation failures.

Impact assessment. The last part of the programme evaluation involves determining the effect of the measure or, put differently, the impact of the measure on the problem. As described before, ascertaining the effects is difficult due to the problem of causality and the complexity of the phenomenon of organised crime. Therefore, the impact assessment is limited to determining the observed output of the measures and the plausible outcomes. Essential to programme evaluation is that it should not be limited to the description of outputs. In addition, data should be gathered and judged to arrive at an assessment of actual impact (Rossi, Freeman and Lipsey, 1999: 21). In order to determine impact in this research the observed output is judged in relation to the posited objectives. This enables us to ascertain to what extent the objectives are

achieved and the expectations met. Furthermore, the plausible outcomes are judged in light of both the theoretical perspectives on which the new pragmatic strategies are based and empirical knowledge about organised crime. In this case the aim is to find out if the programme theory is congruent with evidence from research and practical experience. The impact assessment involves the estimation of whether, and to what extent, the measures produce the intended effects. Such an estimation cannot be made with certainty but only with varying degrees of plausibility depending on the instruments used (Rossi and Freeman, 1993: 215).

Whereas the effects refer to the objectives achieved, measures can also produce side effects. Side effects are additional effects of the measure in question. Usually side effects refer to unintended negative impacts of the measure. In some cases these effects are known beforehand, enabling authorities to try to deal with them. There are also intended or unintended side effects that can positively influence the impact of the measure. This research looks into the side effects that appear to have influenced the outputs or the outcome of the measure.

1.3.3 Methods of the research

In the developments regarding the prevention of organised crime in the Netherlands two important measures are evident at the national level: the Dutch anti-money laundering intervention and the Dutch screening and auditing approach. In addition, the Amsterdam City Council developed a unique local preventive approach towards organised crime. These three measures are the main preventive measures taken against organised crime in the Netherlands. Moreover, these measures illustrate that organised crime is a problem at all levels of society and that all of these levels – international, national and local – offer possibilities to fight the problem. Therefore, these three measures were chosen as the subject of this research. The anti-money laundering intervention was selected because it is the first measure to specifically focus on the prevention of organised crime. Because it involves the implementation of European directives, it is an example of an international strategy to address a global problem.[49] Notwithstanding the fact that this research concentrates on Dutch measures, this intervention clearly indicates that it is impossible to exclude international, in particular European, influences on the national scene. The screening and auditing approach was selected, because it is, along with the previous intervention, the most extensive preventive measure against organised crime in the Netherlands. Moreover, this intervention is an example of Dutch policy influencing European developments regarding the exclusion of criminal organisations from tendering procedures and refusing them permits and subsidies. Finally, the administrative approach of Amsterdam was selected because it is a project presented by local as well as national authorities as one of

[49] See the 1995 United Nations conference report on transnational organised crime (Williams and Savona, 1996: 167).

the most progressive and unique interventions in the Netherlands and, indeed, in the European Union.

The programme evaluations are the connecting thread in this research. Three chapters focus on the selected preventive measures. Chapter 2 looks at the Dutch anti-money laundering intervention; Chapter 3 describes the Dutch screening and auditing approach; and Chapter 4 looks at the administrative approach of Amsterdam. These chapters are composed of the three elements of the programme evaluation described earlier. After an introduction to the problem and the policy developments, these chapters go on to assess the programme theory. A third section concerns the assessment of the programme process. Finally, the fourth section comprises the impact assessment.

Answering the three research questions for each of these selected measures makes this research orderly, but also rather extensive. Consequently, it was necessary to limit the programme evaluation to its core elements. In order to reconstruct the programme theory and uncover the perceived problems of the selected measures, the most effort was put into studying the programme documents, such as the explanatory memoranda to the acts and the plans of action of the measures. The advantage of these sources lies in the fact that they are almost always available. Moreover, reasoning based on these documents is clearly verifiable. The disadvantage of this method is that the more implicit assumptions and various underlying objectives and expectations cannot be described. Consequently, the assessment of the programme theory is limited to evaluating the policy as it is officially written. As a result, the programme theory includes the assumptions explicitated in official documents as well as the more implicit theory as it is reconstructed.

Furthermore, the decision to select three preventive measures made it impossible to gather information first-hand or carry out data-aimed research. Instead, existing information is used to describe the implementation process and the measures' impact as much as possible. For assessing the process and for the impact assessment, the acts and plans themselves and the explanatory memoranda are studied, as well as other relevant literature. In general this includes technical literature and articles and opinions of persons and institutions involved in carrying out the measures. Annual reports and existing evaluative studies were drawn upon to determine the outputs of the measures. For the assessment of the measures, the programme development stage plays an important role (Rossi, Freeman and Lipsey, 1999: 44). The Dutch anti-money laundering intervention was established more then ten years ago, meaning its outputs and outcomes can be evaluated in order to determine the presumed effectiveness. The administrative approach of Amsterdam has been established but is still developing. This latter aspect makes it difficult to reach final conclusions. The Dutch screening and auditing approach is innovative. Due to its short time of implementation some problems in the implementation process have yet to be ironed out. The first two measures were recently evaluated. The last measure came into force only in mid-2003. Therefore, no evaluation has yet

taken place. In this case our impact assessment is mainly limited to general remarks and indications.

With the understanding that the evaluation of the three measures cannot be intensive, one might ask why this method was followed. The subject of this research is the preventive approach towards organised crime in the Netherlands and the aim is to judge the effectiveness of the preventive approach. Because of the wide variety of preventive measures, this study could not be limited to just one measure. Neither was delving into all the initiatives taken in the framework of organised crime prevention a feasible option. That led to the selection of the three main preventive measures taken against organised crime in the Netherlands. The systematic use of the same elements of programme evaluation gives not only good insight into the different measures, it also enables comparison of these insights and for general judgements to be made regarding the effectiveness of organised crime prevention in the country. Chapter 5 presents these general judgements. This final chapter revisits policy-makers' enthusiasm for the preventive approach against organised crime and looks at whether this enthusiasm is justified.

Chapter 2 The Dutch anti-money laundering intervention

The problem of money laundering was first recognised in the 1900s in the United States, where mafia organisations were mixing criminal proceeds with legal business. Since 1970, the problem has been actively fought, with the introduction of anti-money laundering legislation first in North America and then Europe. The United Nations provided the vehicle for Europe's first recognition of and response to the money laundering problem. The European Union drafted an anti-money laundering directive in 1991. Soon after, the Dutch government established its own anti-money laundering intervention. Thus, the expansion of preventive measures against money laundering operations in Europe can be typified as a truly top-down process.

This chapter focuses on the plausible effects of the Dutch anti-money laundering intervention on organised crime.[50] The purpose of the chapter, in other words, is to reveal whether it is correct to assume that the Dutch anti-money laundering intervention actually can prevent organised crime. In conformance with the methods described in Chapter 1, it responds to the three research questions:

- What is the programme theory underlying the Dutch anti-money laundering intervention? (Section 2.2)
- What is the content of the Dutch anti-money laundering intervention and how is it implemented? (Section 2.3)
- What are the observed outputs and plausible outcomes of the Dutch anti-money laundering intervention? (Section 2.4)

However, before answering these questions, a first section introduces the problem of money laundering and the related policy developments at the international and national levels. This section also defines what the term 'money laundering' entails, which is imperative, since the precise meaning of the concept varies from one authority to another. As we will see, this has influenced the purposes and effects of anti-money laundering interventions.

2.1 Money laundering

The concept of money laundering originated in the United States, and it likely refers to the launderettes that Italian mafia families ran in order to combine legal business profits with illegal gains from criminal activities (Stessens, 1997:

[50] Thus the chapter does not provide an extensive analysis of the history and content of anti-money laundering measures. For overall insight into the problem of money laundering and the anti-money laundering intervention see among others Savona (1993), Gilmore (1995), Van Duyne *et al*. (2003b) and Mitsilegas (2003).

102).[51] In this way illegal profits could be made to look like legally earned income. With the Watergate inquiry of the mid-1970s the term 'money laundering' entered popular usage and it has since been widely accepted internationally.

The main aspect of money laundering is the veiling or hiding of crime money and providing a fake but apparently legal origin for it. This is evident from various definitions of the term:

> 'Laundering is falsely claiming a legitimate source for an illegally acquired advantage (Van Duyne, 2003: 69).'
>
> 'Money laundering is an activity aimed at concealing the unlawful source of sums of money (Dini, 1997: 3).'
>
> 'Money laundering is the process of converting or 'cleaning' property knowing that such property is derived from serious crime for the purpose of disguising its origin (Sherman, 1993: 13).'
>
> 'Money laundering is the conversion of illicit cash to another asset, the concealment of the true source of ownership of the illegally acquired proceeds, and the creation of the perception of legitimacy of source and ownership (Gilmore, 1992: x).'

These definitions all allude to the main purpose of money laundering as acquiring an apparently legal source for profits gained by illegal activities. This justification of crime money is money laundering in its strict or narrow sense (Van Duyne, 2003: 79). All activities related to it, such as transferring money to foreign countries or between numerous bank accounts, can be seen as money laundering in the large or broad sense. The literature on money laundering acknowledges that it can result in a whole complex of activities. In general these activities can be categorised in three main phases (see e.g. the description of money laundering by the FATF[52]):

- *placement*, which is when the launderer introduces illegal profits into the financial system;
- *layering*, in which the launderer engages in a series of conversions or movements of the funds through a series of accounts at various banks across the globe to distance them from their source;
- *integration*, which is when the launderer re-introduces the funds into the legitimate economy, for example, by investing them in real estate, luxury assets or business ventures.

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[51] A short semantic analysis on the concept money laundering by Van Duyne (2003: 69) shows that the idea of washing dirty, criminally acquired money until it becomes white and it can be spent in the legal environment, persists in some main European language. See e.g. 'witwassen' in Dutch, 'waschen' in German and 'blanchissement' in French.

[52] See the FATF website: http://www.fatf-gafi.org/document/29/0,2340,en_32250379_32235720_33659613_1_1_1_1,00.html.

Gilmore (1995: 37), Savona and De Feo (1997:23-28), Van Duyne *et al*. (2001: 129-130) and Mul (1999: 7) contain extensive descriptions of and discussion on these phases.[53]

Besides the similarity in these definitions, there is also some vagueness. For example, all definitions refer to the criminal origin of money, but what is meant by *illegally acquired advantages* and the *unlawful source of sums of money?* What does *illicit cash* imply? Obviously, the crime money of mafia organisations has a completely different origin than the monies discussed in the Watergate inquiry. As this study deals with the Dutch anti-money laundering intervention it is necessary to determine how the Dutch legislator interprets this concept. However, before going into the Dutch situation we first look at international developments related to money laundering. This discussion enables us to conclude that the scope of interventions do indeed differ from one country or international organisation to the next.

2.1.1 Developments at the international level

The United States initiated its first anti-money laundering measures in the 1970s with the passing of several pieces of legislation against the laundering of money and organised crime.[54] Until the mid-1980s, however, the effectiveness of the legislation was rather limited because of the tenuous connection with organised crime and the limited attention paid to compliance (Mitsilegas, 2003: 36). The war on drugs which dominated US policy in the 1980s accelerated interest in anti-money laundering interventions. Drugs and money laundering became inextricably linked in the public eye. In this political environment the authorities assumed that organised crime used laundering operations to generate apparently legal income from drugs money and flourished as it did. This led the authorities to promise 'to do everything …necessary to end the drugs menace', including 'an all-out war on big-time organized crime' (Mitsilegas, 2003: 37). Thus the focused effort to combat money laundering in the United States was initially a result of its loudly proclaimed war on drugs.

When the United States in the 1980s reassessed the problem of money laundering – as a derivative of drugs trafficking – international and national legislators throughout the world obediently followed (Van Duyne *et al.*, 2002: 61). From then on, internationally too anti-money laundering interventions developed into a major thrust of the war on drugs. As a consequence, an intergovernmental organisation, the Financial Action Task Force on Money

[53] To emphasise the necessity of creating an apparently legal origin, Van Duyne (2003: 79) distinguishes two more phases: the justification phase in which the crime-money must be justified, and the embedding phase in which the money is woven into the upperworld economy.

[54] It concerns the Organized Crime Control Act 1970, the Bank Secrecy Act and the Drug Control Act 1970. See for more information on the development of the anti-money laundering intervention in the United States Mitsilegas (2003: 36).

Laundering (FATF), was established by the G-7 in 1989.[55] This chapter repeatedly mentions the role of the FATF.

Meanwhile, the United Nations, which had already directed its attention to the problem of narcotics, brought the anti-money laundering intervention from the United States to Europe. The issue of money laundering and drugs has remained prominent on the UN agenda ever since. The Commission on Narcotics Drugs prepared a convention to fight trade in narcotics and use of illegal drugs. This resulted in the Vienna Convention in 1988,[56] which introduced penalties for laundering illegal profits from the drugs trade. The Vienna Convention also had significant influence on the Council of Europe,[57] which in 1990 established its Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (also called the Strasbourg Convention).[58] While the Strasbourg Convention aims mainly at depriving criminals of the proceeds of illegal activities and at improving international cooperation in this respect, it is nonetheless also a key convention with regard to fighting money laundering, as the penalisation of money laundering subsequently appeared in the laws of many of its signatory states. The definition used in the Vienna Convention is broader than money laundering in its strictest sense – acquiring an apparently legal origin for profits gained by illegal activities – and in fact overlaps with activities such as fencing and receiving and handling stolen goods. In short, the Council of Europe interprets all property of profits from crime including advantages, such as saved taxes, as proceeds. According to the Council, laundering involves the receiving and handling of these proceeds. Serious offences such as drugs offences, illegal arms traffic, terrorist activities and human smuggling are also mentioned in the Strasbourg Convention. This is key in that money laundering is no longer exclusively associated with drugs trafficking, and anti-money laundering interventions are no longer solely connected with drugs offences.[59]

As a result of these international developments the Council of the European Union formulated its *Directive on Money Laundering of 1991* to oblige its

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[55] Nowadays the FATF consists of 31 countries and territories, including the Netherlands, and two organisations, under which the European Commission. The FATF intend developing and promoting policies to combat money laundering at the national and international levels. In 1990 the FATF published a report with 40 recommendations concerning the fight against money laundering, which was updated in 1996 and 2002.

[56] Vienna Convention. United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances Adopted in Vienna, 19 December 1988. In: W.C. Gilmore (ed.) (1992). *International Efforts to Combat Money Laundering*, Cambridge: Grotius Publications, p. 75.

[57] The Council of Europe stressed the importance of fighting money laundering in a recommendation adopted by the Committee of Ministers of the Council of Europe in 1980; Recommendation No. R(80)10 Adopted by the Committee of Ministers of the Council of Europe on 27 June 1980 and explanatory memorandum on measures against the transfer and safekeeping of funds of criminal origin, in: W.C. Gilmore (ed.) (1992), *International Efforts to Combat Money Laundering*, Cambridge: Grotius Publications, p. 169, Recommendation No. R(80)10.

[58] Strasbourg Convention. Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, Council of Europe, Adopted in Strasbourg 1990, in W.C. Gilmore (ed.) (1992), *International Efforts to Combat Money Laundering*, Cambridge: Grotius Publications, p. 177.

[59] For an extended discussion on delineating the concept of money laundering see Van Duyne (2003: 68-73) and Mul (1999: 39-120).

member states to put effort into the fight against money laundering.[60] The directive is enforced under the European Union's first pillar, as the integrity of businesses, in particular of the financial sector in EU member states, is deemed to be at stake. The Council of the European Union considered action at the EU level necessary for two reasons.[61] First, the EU recognised that criminal organisations could take advantage of the freedom of capital movement and the freedom to supply financial services within the single European market. Second, the EU felt that measures adopted by individual states could be inconsistent with the completion of the single market. Although the balance sought between the single market objective and the aim of combating organised crime was not made completely clear (Mitsilegas, 2003: 180), this did not hamper the establishment of the 1991 directive,[62] which is remarkable since policies against organised crime generally originate from the third pillar of the European Union. The first-pillar anti-money laundering directive affects the member states directly, since implementation of directives is obligatory.[63] The anti-money laundering directive is therefore of utmost importance to EU member states, including the Netherlands.

The European anti-money laundering directive refers to penalties described in the Vienna Convention. This means that the scope of the directive is limited to drugs offences. However, the directive does stimulate member states to look at proceeds of other criminal activities as well:[64]

> 'whereas for the purposes of this Directive the definition of money laundering is taken from that adopted in the Vienna Convention; whereas, however, since money laundering occurs not only in relation to the proceeds of drug-related offences *but also in relation to the proceeds of other criminal activities (such as organized crime and terrorism)*, the Member States should, within the meaning of their legislation, extend the effects of the Directive to include the proceeds of such activities, to the extent that they are likely to result in laundering operations justifying sanctions on that basis [italics by CvdS].'

As stated here, the directive goes beyond the war on drugs and aims at all sorts of organised crime. As can be seen here, like in the Strasbourg Convention, the Council of the European Union was aware of the threat of terrorism in 1991. However, as described further below, it was not until the terrorist attacks in New York in 2001 that terrorism actually began to influence the money laundering intervention.

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[60] Directive on money laundering of 1991. Council directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering. *OJ L 166*, 28/06/1991, pp. 77-83.

[61] Directive on money laundering of 1991, second consideration.

[62] In the next chapter concerning the screening and auditing procedures, finding a balance between first-pillar and third-pillar objectives appeared to be more difficult.

[63] According to article 249 of the Consolidated Version of the Treaty Establishing the European Community *a Directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods*.

[64] Directive on money laundering of 1991, consideration 9.

In the meantime, organised crime rose to the top of the European *third-pillar agenda*,[65] which resulted in 1997 in the action plan to combat organised crime at the EU level. In this action plan the Council of the European Union emphasised the importance of extending the definition of money laundering: 'the reporting obligation in article 6 of the Money Laundering Directive should be extended to all offences connected with serious crime' (recommendation 26). The action plan did not, however, clarify the concept of *serious crime*.

While the third-pillar action plan was binding, it did not affect the member states directly. Its effects therefore turned out to be minimal. However, it did launch a new discussion on money laundering at the EU level. The European Commission argued that 'the growing trend based on the dramatic increase in non-drugs based organised crime' was an important argument in favour of broadening the predicate offences. However, the Commission also advanced a side effect of such an extension. It anticipated a possible unwillingness of the financial sector, which according to the Commission had 'expressed considerable reticence concerning any reporting requirement that would extend to an excessively wide range of offences, even including relatively minor ones'.[66] Although this argument is perhaps debatable,[67] the Commission persisted in the idea that the anti-money laundering measures should not be based on serious offences, but rather should be limited to 'activities linked to organised crime or damaging the European Communities' financial interests'.[68]

Notwithstanding the Commission's arguments the EU Parliament and the Council of the European Union drew up in 2001 a new directive on money laundering in which the concept of *serious crime* is maintained.[69] With this new directive the penalisation for money laundering was no longer officially related to drugs offences but applied to all criminal involvement in the execution of a serious crime.

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[65] This pillar encompasses police and judicial cooperation in criminal matters. It does not concern Community law, as such third-pillar measures are binding but they shall not entail direct effect in the member states.

[66] Proposal for a European Parliament and Council directive amending Council directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering. *OJ C 177*, 27/06/2000, explanatory memorandum.

[67] It is not clear yet if such an enlargement really increases the efforts of financial institutions. Probably, focusing on money laundering activities irrespective of the nature of the predicate crimes is less complicated. As described below the Dutch legislator chose to encompass all predicate offences in the anti-money laundering intervention.

[68] Proposal for a European Parliament and Council directive amending Council directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering. *OJ C 177*, 27/06/2000, explanatory memorandum.

[69] Directive on money laundering of 2001. Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering. *OJ L 344*, 28/12/2001, pp. 76-82.

The directive defines serious crime as implying at least the following:[70]

- 'any of the offences defined in Article 3(1)(a) of the Vienna Convention;
- the activities of criminal organisations as defined in Article 1 of Joint Action 98/733/JHA;
- fraud, at least serious, as defined in Article 1(1) and Article 2 of the Convention on the protection of the European Communities' financial interests;
- corruption;
- an offence which may generate substantial proceeds and which is punishable by a severe sentence of imprisonment in accordance with the penal law of the Member State.'

Based on this definition one can conclude that European law-makers, influenced by policy originating in the third pillar, did not focus exclusively on organised crime in formulating the new directive. Moreover, European policy leaves spaces to be filled by the member states, giving them some freedom to address possible national interests.

Since the terrorist attacks in 2001, unravelling the financing of terrorism has taken on new urgency at the international level. According to the FATF the fight against organised crime and terrorism go hand in hand.[71] A 2003 report asserts that criminal organisations and terrorist groups basically use the same methods of hiding and obscuring the links between the sources of monies, on the one hand, and the purposes of their finances on the other (FATF, 2003: 3). This connection with terrorism has been accompanied by a subtle change in the definition of money laundering.[72] Money laundering seems no longer restricted to the criminal origin of proceeds, but now encompasses criminal purposes of funds as well. The European Parliament and the Council have adopted this changing view in proposing a new directive on money laundering that includes terrorist financing.[73] This proposal introduces terrorism as a separate element (article 3) that, next to other serious offences, should be hindered by the anti-money laundering intervention:

> 'The case of lawful property being diverted to finance terrorism is now envisaged as part of the definition of money laundering.'

Notwithstanding this changing view at the political level, the literature still indicates a great difference between the origin of crime money and the criminal purpose of money (Van de Bunt and Van Dijken, 2003: 55; Ping, 2004: 24). From this viewpoint, money laundering with regard to organised crime and terrorism appear to be opposite activities. Therefore, it is questionable whether

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[70] Directive on money laundering of 2001, article 1 under E.

[71] In 2003 the FATF enlarged its mandate and established eight special recommendations on terrorist financing.

[72] For example, Johnson defined money laundering as 'moving funds through financial institutions or accounts to disguise its origin and/or purpose' (Johnson, 2003: 10).

[73] Proposal for a directive of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering, including terrorist funding. *COM* (2004) 448 final, 30/06/2004.

these activities should in fact be connected. Insofar as the current anti-money laundering interventions all emphasise the predicate offences and the criminal origin of money, hiding the generating process of funds for terrorist activities should not be considered *money laundering* but as *terrorist financing* (Ping, 2004: 24). The differences between the process of terrorist financing and that of money laundering also imply that the two should not be placed in the same category. Nevertheless, the focus on terrorism has revitalised efforts put into the anti-money laundering approach at the European level and accelerated the implementation of measures against organised crime, both preventive and repressive ones.[74]

2.1.2 Developments in the Netherlands

In the Netherlands money laundering was a non-issue until the late 1980s. From then on, it was firstly associated with *black money* that ordinary citizens and companies tried to hide from the scrutiny of tax authorities. A few years later, as a result of the international discussion on the laundering of proceeds from drugs crimes, Dutch law-makers made the connection between money laundering and the fight against organised crime. While the Dutch anti-money laundering legislation was a direct consequence of the European directive, the Dutch government was in this period already addressing the issue of organised crime penetrating the legitimate environment.[75] Consequently, the implementation of the European directive met with little resistance.[76]

In 1993 the main obligations in the European directive were implemented by means of two acts: the Disclosure of Unusual Transactions (Financial Services) Act[77] and the Identification (Financial Services) Act.[78] These have since become a cornerstone of the fight against organised crime in the Netherlands. Though the Dutch adopted the objectives of the 1991 European directive on money laundering, whereas the European directive was formally limited to organised drugs crimes the Dutch took a more general approach to money laundering. The Dutch anti-money laundering intervention targets all financial transactions involving illegal proceeds, irrespective of the nature of the crimes connected with them.[79] The Netherlands thus broadened the anti-money

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[74] One of the main consequences of the terrorist attacks in 2001 is the ease with which the legal professionals were pulled under the anti-money laundering measures. See also section 2.3.

[75] De georganiseerde criminaliteit in Nederland; dreigingbeeld en plan van aanpak. *Kamerstukken* 1992-1993, 22 838, no. 2.

[76] It took however, until 2001 to make money laundering a criminal offence as only then was it penalised by a special article in the Criminal Code (article 420*bis* to *quater*). Before this, money laundering was punishable and could be prosecuted by the penalisation of fencing (Criminal Code article 416 to 417 *bis*).

[77] Wet van 16 december 1993 betreffende melding ongebruikelijke transacties bij financiële dienstverlening (Wet melding ongebruikelijke transacties). *Stb*. 1993, no. 705.

[78] Wet van 16 december 1993 houdende nieuwe bepalingen inzake identificatie van cliënten bij financiële dienstverlening (Wet identificatie bij financiële dienstverlening 1993), *Stb*. 1993, no. 704.

[79] European directives are binding with regard to the result to be achieved, but they leave to the national authorities the choice of form and methods. As a result member states implemented the directive differently. Unlike the Netherlands, Italy, France and the United kingdom initially established an

laundering measures to encompass all kinds of offences. Though the Dutch intervention is not aimed exclusively at organised crime, the Dutch policy explicitly states that the anti-money laundering measures are initially targeted at preventing different forms of organised crime.[80] As at the European level, the terrorist attacks of 11 September 2001 was an incentive to enlarge the anti-money laundering intervention, with the relation between organised crime and terrorism found in the integrity of the financial sector.

2.1.3 The scope of anti-money laundering interventions

The many directives, acts, conventions and policy documents by national and supranational authorities, as well as international organisations, illustrates that the scope of an intervention depends on the authoring authority and is influenced by the political climate dominant at the time of its formulation. Nevertheless, all of the anti-money laundering policies are aimed to prevent organised crime; while some are limited to a particular aspect of this crime, most operate on a larger scale. Over the years anti-money laundering interventions have been broadened. As mentioned, the American intervention was at first specifically aimed at drugs offences and its main focus was on organised crime. Europe expanded the scope of the intervention to all serious offences. Although the anti-money laundering directives were enacted under the first-pillar structure to protect the single market, the development of third-pillar rules for preventing organised crime led to the expansion of the first-pillar directive. At the national level, the Netherlands broadened its intervention to include not only serious offences, but also all predicate offences. While both the European and Dutch anti-money laundering interventions include organised crime, they are not aimed at it exclusively. Still, organised crime was the main reason for bringing the interventions into force.

It is clear that national and international authorities and organisations have focused on criminal proceeds. However, this is changing as well. Anti-money laundering interventions seem no longer restricted to the origin of crime money, but now encompass the criminal purposes of funds as well. The categorisation of terrorist funding within the scope of the anti-money laundering intervention is first and foremost a political move. It illustrates the government's perception that obtaining insight into money flows is the solution to stop criminal activities. But is it legitimate to assume that anti-money laundering interventions can prevent criminal activities? The next section looks at the assumptions and expectations on which the Dutch anti-money laundering intervention is based.

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intervention towards limited number of predicate offences, like the European Union did. By now these countries have recognised that it is impossible for the (bank) employee to determine the predicate offices and their anti-money laundering interventions are broadened to the proceeds off all predicate crimes.

[80] In different policy documents and in the explanatory memorandum of the Disclosure of Unusual Transactions (Financial Services) Act the anti-money laundering measures are described to be important for an effective fight against organised crime. Nieuwe bepalingen inzake identificatie van cliënten bij financiële dienstverlening. *Kamerstukken II* 1992/93, 23 009, no. 3: 1.

2.2 Programme theory of the Dutch anti-money laundering intervention

To answer our first research question this section analyses the programme theory, by which the assumptions and objectives of the Dutch anti-money laundering intervention are outlined. In accordance with the methods described in Chapter 1 this section involves two elements. First, the legislator's assumptions are uncovered. In order to do so attention is paid to causal assumptions and the normative assumption underlying the policy, as these together form the philosophy or the theory of the intervention. Revealing this theory is necessary, as the last section of this chapter judges the theory in the light of pragmatic new criminological theories and empirical knowledge of organised crime. Second, the objectives of the anti-money laundering intervention are examined, as well as the strategies to achieve these objectives. This overview of objectives is required for the final section of this chapter, on evaluation, as it provides the framework for assessing the intervention's outputs.

Explanatory memoranda of the various directives and acts provide clues as to the programme theory of the anti-money laundering intervention. Because the problems of money laundering and of reinvesting proceeds of crime were not yet actually manifest in the Netherlands in the early 1990s, the Dutch government based its policy on the expectations of the international authorities. Consequently, this section also includes many references to the reasoning of these international authorities.

2.2.1 Assumptions

Causal assumptions. Causal assumptions involve the reasoning of law-makers and policy-makers regarding a specific problem. Often this reasoning encompasses two kinds of assumptions: those regarding the problem and those related to the way the problem should be addressed.

In the explanatory memoranda of the international and Dutch anti-money laundering regulations the assumption appears to be that the main problem of organised crime relates to the large profits that criminal organisations can make. This is best phrased by the United Nations, which argues that people would not be attracted to commit crimes if they were unable to hide the profits from law-enforcement authorities. Consequently, action should aim 'to deprive persons engaged in illicit traffic of the proceeds of their criminal activities and thereby eliminate their main incentive for so doing'.[81] In other words criminal profits are key in fighting organised crime. This reasoning has resulted in extensive international legislation to interfere in criminal profits, such as international treaties regarding confiscation of criminal proceeds and prevention of abuse of the financial system for the purpose of money laundering.

[81] Vienna Convention, preamble.

But what threats and problems are actually caused by these proceeds? European and Dutch law-makers assert that criminal profits present a significant threat to the legitimate environment. This threat is said to be two-sided. First, illegal profits can be invested in new criminal activities, in which case there is a vicious circle in which crime results in illegal proceeds and these proceeds result in more crime. The Council of Europe acted in line with this idea in its recommendation R(80)10, 'to examine the serious problems raised in many countries by the illicit transfer of funds of criminal origin *frequently used for the perpetration of further crime* [italics by CvdS]'.[82] To protect society this vicious circle must be broken. For this, European and Dutch regulations focus on profits from criminal activities, with interventions to confiscate these profits. Although the anti-money laundering intervention is not primarily aimed at confiscating criminal proceeds, it can facilitate confiscation activities.

Second, the intertwining of illegal proceeds and legal activities could damage the whole of society. This is well stated in the Vienna Convention, in which the United Nations speaks of 'illicit traffic and other related organized crime activities which undermine the legitimate economies and threaten the stability, security and sovereignty of States'.[83] Dutch policy emphasises that by investing criminal proceeds in the legitimate environment, criminal organisations may be able to build up economic positions of power that could result in unfair competition.[84] Yet before criminal organisations can invest illegally obtained profits in the legitimate environment they must launder their profits to obtain an apparently legal origin for them. It is generally assumed that criminal organisations often make use of financial service providers for such laundering activities. This interaction with the legitimate environment is viewed as the Achilles' heel of criminal organisations, as it is a point at which law enforcement can interfere in criminal activities. Consequently, the interaction between financial service providers and criminal organisations is an essential aspect of the anti-money laundering intervention. In other words, European and Dutch legislators focus attention on financial service providers that might facilitate money laundering operations.

To intervene effectively, law-makers have closely examined the attractive elements of using these providers for money laundering. Two elements are believed to be key: the anonymity with which launderers can perform their activities and the ease of discrete and unnoticed operating. From the explanatory memorandum of the Dutch anti-money laundering intervention the assumption appears to be that intervening in these attractive elements would undermine money laundering operations. The intervention was based on increasing supervision of financial transactions – the idea being that increased attention for

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[82] Recommendation No. R(80)10 adopted by the Committee of Ministers of the Council of Europe on 27 June 1980 and explanatory memorandum on measures against the transfer and safekeeping of funds of criminal origin, in: W.C. Gilmore (ed.) (1992), *International Efforts to Combat Money Laundering*, Cambridge: Grotius Publications, p. 177.

[83] Vienna Convention, preamble.

[84] Wijziging van het Wetboek van Strafrecht en enkele andere wetten in verband met de strafbaarstelling van het witwassen van opbrengsten van misdrijven. *Kamerstukken II* 1999-2000, 27 159, no. 3: 5.

possible abuse of the financial system would limit launderers' ability to operate anonymously and discretely and therefore would deter laundering activities. This reasoning is predicated on a sort of deterrence, as the risk to be caught would be high. This is strengthened by the threat of the persons carrying out the transactions being identified. Thus, the assumption is that increased supervision of financial transactions will hinder launderers in money laundering operations and, as a consequence, will reduce money laundering activities.

Based on the crucial role of financial service providers, the authorities placed these providers at the centre of the anti-money laundering intervention. In fact they are ascribed two tasks. First they must be aware of possible abuse related to money laundering operations. Consequently, financial service providers are charged to pay special attention to complicated, unusual or large transactions and to any unusual patterns of transactions that lack economic or perceptible legitimate purposes.[85] Second, these providers must undertake action if they notice possible money laundering activities. Such action is two-fold. Providers can refuse to carry out transactions that seem to be related to money laundering operations or they can alert the competent authority to such transactions. In the latter case it is up to the competent authority to undertake further action to uncover any illegal money flows and the criminal organisation involved. Financial service providers can thus metaphorically be regarded as gatekeepers of the legitimate environment, as they have become active partners of the authorities in the fight against organised crime.

The programme theory of the Dutch anti-money laundering intervention can be said to encompass the assumption that hindering investment of criminal profits in the legitimate environment will make organised crime less attractive for criminal organisations. Moreover, by facilitating the confiscation of illegal profits the intervention contributes to remove the main incentive for committing organised crime. Or as the European Council argues, whereas money laundering has an evident influence on the rise of organised crime, combating money laundering is one of the most effective means of opposing these criminal activities.[86]

Normative assumptions. The importance of interfering in criminal profits is based not only on causal assumptions. From the various directives and acts and their explanatory memoranda, several normative assumptions can be found as well.

The assumed problems pointed out above already provide a clear incentive for undertaking action against money laundering. From a normative viewpoint two additional reasons can be added. First, there is the general assumption that crime should not pay. This adage, often invoked by governments in the fight against crime, is one of the pillars of national and international regulation

[85] FATF (1990) recommendation 15, also referred to by the Dutch government in the explanatory memorandum of the Disclosure of Unusual Transactions (Financial Services) Act. *Kamerstukken II* 1992/93, 23 009, no. 3: 2.

[86] See for this the third consideration the introduction of the directive on money laundering of 1991.

against money laundering.[87] The idea is that society will be harmed if crime pays. Governments clearly view criminal proceeds as funds with which new illegal activities can be organised and which can be invested in the legitimate environment and undermine the stability of societies. Obviously governments will be prepared to initiate new measures in the face of such threats.

A second argument is that nobody in the legitimate environment should profit from money laundering activities, intentionally or otherwise. Consequently, action must be undertaken to strengthen awareness within legitimate financial institutions and (later) other financial service providers about their possible involvement in money laundering. The argument here is that reliable and lawful agencies and individuals should not facilitate crime, since such involvement negatively affects the financial system in general, undermining public confidence in the system. In addition, participation in unlawful activities could affect the integrity of individual financial service providers, putting the integrity of other bodies at stake as well, since the availability of large profits creates a sphere of influence in which corruption might flourish.[88] The Dutch government is particularly sensitive to perceived threats to integrity, as questions concerning the integrity of public servants were brought to the fore in the early 1990s. It was in this period that integrity issues moved high on the Dutch political agenda.[89] Policy documents present new anti-money laundering measures first in light of the integrity of government agencies, and subsequently in view of non-public agencies, such as the institutions and individuals that could facilitate money laundering. The Dutch even took a step further, arguing that financial service providers who could facilitate money laundering had to take on some responsibility in the fight against money laundering. The resulting responsibilisation of the financial service providers implied a true change of attitude of these actors, who must maintain their activities as commercial businesses. It, moreover, marked the first time that non-governmental institutions and persons became integral in law-enforcement activities. In addition, it was the first time that banking interests were combined with social interests.

The financial institutions themselves also support increased attention to scrupulous performance. They do not want to be seen as partners in crime. The international financial sector in fact had already shown itself aware of its responsibilities. In 1988 the Committee of Basel, in which central banks and supervising authorities were represented, established a statement of principles (the *Basel Statement)*, which sets out their interests in protecting the financial sector. The awareness of their responsibility to act with integrity is based not

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87 Wijziging van het Wetboek van Strafrecht en enkele andere wetten in verband met de strafbaarstelling van het witwassen van opbrengsten van misdrijven. *Kamerstukken II* 1999-2000, 27 159, no. 3: 1.

88 Wijziging van het Wetboek van Strafrecht en enkele andere wetten in verband met de strafbaarstelling van het witwassen van opbrengsten van misdrijven. *Kamerstukken II* 1999-2000, 27 159, no. 3: 5.

89 See the 1992 policy document *Organised Crime in the Netherlands: Threats and Plan of Action*, which introduces the defensive approach concentrating on the defensibility of the public administration and other professionals against the threat of unwittingly cooperating with organised crime.

only on normative grounds but also on economic ones. In the period in which the anti-money laundering measures were developed the financial institutions became aware of the importance of their own public image. They were aware that any relationship with money laundering and organised crime would damage their reputation and subsequently harm their business.

2.2.2 Objectives and strategies

Following from these assumptions, the Dutch legislator formulated two objectives for its anti-money laundering intervention: *preventing the abuse of the financial sector for money laundering activities* and *fighting money laundering itself*.[90] The first objective implies a preventive approach in order to protect the integrity of all institutions and persons that provide financial services by hindering the abuse of their skills. The idea was to increase the awareness of the financial sector regarding their integrity and, subsequently, their willingness to bring their defensive capabilities into action. The second objective implies a more direct repressive approach focusing on gaining transaction information with which to start criminal investigations. This strategy is not limited to uncovering money laundering activities, but is rather aimed at detecting all kinds of predicate offences. Moreover, it was thought that insight into money flows could contribute to confiscation of criminal proceeds.

To achieve these objectives in both Europe and the Netherlands two main obligations were implemented: customer identification and the disclosure obligation.[91] The first requires clients to show identification before financial services are provided. The latter entails financial service providers' reporting to competent authorities any transaction that might be connected to money laundering.[92] The customer identification obligation is probably most important in relation to the preventive approach, as it prevents clients from acting anonymously. Moreover, with the adage *know your customer*, the measure obliges service providers to identify clients and, if necessary, refuse unreliable candidates. This is seen as contributing to preservation and recovery of confidence in the financial services sector. The second obligation, that of disclosure, entails the duty to report suspicions of money laundering to the authorities. This aims primarily at a repressive approach. Financial service providers must register information on transactions. Based on this paper trail money flows can be analysed. Financial investigations follow these money flows to uncover money laundering operations, the predicate offences and the criminals in question. In short, by following the money one should be able to find the criminal.

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[90] Nieuwe bepalingen inzake identificatie van cliënten bij financiële dienstverlening. *Kamerstukken II* 1992-1993, 23 009, no. 3: 2.

[91] These obligations are implemented in, respectively, the Identification (Financial Services) Act and the Disclosure of Unusual Transactions (Financial Services) Act mentioned in the first section of this chapter.

[92] The third section of this chapter elaborates on these two measures.

Because criminal proceeds are seen as threatening the integrity of financial service providers – and of society as a whole – the Dutch regulations assert that preserving integrity is its main priority.[93] The investigation of criminal offences is thus a secondary concern, whereas prevention is considered the more important one. At least, this was the intention upon the introduction of the anti-money laundering intervention. However, it is questionable whether the measures are still focused on this primary concern or whether interest has now shifted to the second concern. Notwithstanding the priorities of policy-makers, both the preventive as well as the repressive approach of the anti-money laundering intervention focus on the situational circumstances of organised crime, which means they can both be categorised as prevention of organised crime.

2.3 Evaluation of the process of the Dutch anti-money laundering intervention

In accordance with the methods described in the first chapter, this section evaluates the intervention's process. It involves two elements. The first subsection relates to the content of the intervention. Because the anti-money laundering intervention grew from a top-down process, the description of that process starts with the European directive. Subsequently, the Dutch intervention is outlined. The main sources for this part of the evaluation are the directives and acts in question as well as their explanatory memoranda.

The second subsection involves the implementation or functioning of the anti-money laundering intervention. This part answers the question, 'What has become of this intervention in practice?' Two evaluation studies on the Dutch anti-money laundering intervention provided this information. The first study was conducted two years after the intervention came into force and was aimed at providing the legislator with initial conclusions about the reporting system. The second study, which wound up in 2004, was aimed at improving the system's effectiveness.

As the success and effectiveness of an intervention largely depend on how it is implemented, a final subsection looks at a mid-term review that encapsulates the main findings so far. This subsection is important as it recapitulates the bottlenecks that can occur in preventive measures. These relate to the difficulties in activating third parties, in coordinating activities and in harmonising interests.

[93] Wijziging van het Wetboek van Strafrecht en enkele andere wetten in verband met de strafbaarstelling van het witwassen van opbrengsten van misdrijven. *Kamerstukken II* 1999-2000, 27 159, no. 3: 5.

2.3.1 Content

Because of the top-down development of the anti-money laundering intervention our look at the content of the intervention starts with an outline of the framework of the European directive. Subsequently the Dutch intervention is described, starting with the two main obligations of the intervention: customer identification and the disclosure obligation. Thereafter, the actors implicated in these obligations are described. Though they form a diverse group these actors are indicated by the generic name *financial service providers*. Finally, the main legal preconditions for fulfilling these obligations are highlighted.

2.3.1.1 The disclosure obligation

The disclosure obligation is set out in article 6 of the 1991 European directive on money laundering, revised in 2001. It requires financial institutions to report transactions for which suspicions of money-laundering operations arise.[94] The directive requires a compulsorily reporting system, and the European legislation excludes the possibility of a voluntary disclosure system in member states. A voluntary system existed in Great Britain before the European directive was implemented and involved a system in which the competence of reporting was granted to the institutions involved.[95] Voluntary systems are sometimes referred to as a 'carrot and stick' approach, since good reporting is rewarded and bad reporting punished (Peeman, 1995: 96). When it comes to reporting, the liability of institutions involved will be protected. However, when a transaction is wrongfully not reported, institutions are subject to prosecution. The European legislator viewed the voluntary system as too ambiguous in the framework of completing the internal market, and opted instead for compulsory reporting.

Generally speaking there are two reporting systems: suspicion-based reporting and objective-based reporting (Levi, 1997: 266). In the former, financial institutions must report transactions that arouse their suspicions to authorities responsible for combating money laundering. The reporting is concentrated on suspicious transactions and involves subjective indicators. In the objective-based reporting system, financial institutions report all kinds of unusual transactions irrespective of whether they are suspicious. As the name indicates, here authorities responsible for combating money laundering must establish objective indicators. The advantage of the objective-based reporting system is that the responsible authorities are informed of a much larger number of transactions, including a great number of clues for investigating criminal activities. However, a large proportion of the transactions reported do not involve money laundering at all. Suspicion-based reporting generates a much

[94] In 1991 the directive only involved financial institutions. As described later, in the course of time the disclosure obligation was enlarged to all kinds of financial service providers including dealers of high-value goods and legal professionals.

[95] Almost all western countries have established a disclosure and reporting obligation. However, Canada established an efficient system of voluntary cooperation between financial institutions and the authorities responsible for fighting money laundering.

smaller number of reported transactions. However, from these transactions it is likely that a much larger proportion actually does involve money laundering. The financial institutions and responsible authorities nonetheless risk missing certain money-laundering transactions that at first do not look suspicious.

The European system, like those of most countries (Levi, 1997: 226), follows the suspicion-based approach. This means that financial institutions must disclose any suspicion of money laundering. For this the European directive obliges member states to establish authorities responsible for combating money laundering to which financial service providers must report. These authorities are mostly referred to as financial investigation units (FIUs). The disclosure obligation implies a passive duty to furnish the national FIUs, at their request, all the necessary information (article 6). This obligation is similar to many pre-existing national laws, which require financial institutions to register information. The European directive stipulates that transaction data should be kept for a period of a least five years from the carrying out of the transaction (article 4). The registered information establishes a paper trail which aids the investigation of criminal offences. Moreover, the disclosure obligation implies an active reporting duty of the financial institutions towards the FIUs (article 6). This proactive reporting of suspicious transactions was certainly a novelty at the time of its inception (Mitsilegas, 2003: 73). Basically, the idea was that financial institutions should refrain from carrying out transactions that could be related to money laundering unless they were reported to the competent authority (article 7). However, since refraining from services could harm or hinder possible law-enforcement activities, the directive also dictates that institutions may report to the involved authority immediately after carrying out the service (article 7). To protect possible criminal investigations making use of transaction information, the directive contains a *tip-off prohibition*. Institutions may not disclose the transmission of information to FIUs to customers or to a third party (article 8).[96]

Characteristic of suspicion-based reporting is that the financial institutions are ascribed full responsibility for detecting and labelling suspicious transactions. They must report any fact that might indicate money laundering (article 6). The European legislator hereby assumes that these institutions are in the best position to recognise money laundering transactions.[97] To ensure their best efforts to uncover such transactions they must 'examine with special attention any transaction which they regard as particularly likely, by its nature, to be related to money laundering' (article 5). To support the financial institutions, the European legislation mandates the national FIUs to apply their experience to draw up indicators to assist in identification of suspicious transactions.

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[96] The secrecy regarding the disclosure of information is important as unreliable clients should not be alarmed of possible investigative activities as they can destroy evidence. In this case, the obligation of secrecy involves a prohibition to tip-off the client. However, towards reliable clients the secrecy is introduced to protect the privacy, nobody, except the authorities, should known which services are carried out. In this case the secrecy is in line with the banking secrecy and professional confidentiality.

[97] See *Commission Press Release*, February 1990, quoted by Stessens (1997: 204).

The European anti-money laundering directive leaves a great margin of freedom for its member states, though most member states established a similar suspicion-based disclosure system. In anticipation of the 1991 European directive, the Netherlands started its own informal reporting system, which could be categorised as a voluntary system. This system, like that adopted at the European level, was based on suspicious transactions. However, after implementation of the European directive the Dutch legislator decided to deviate from subjective reporting. The Netherlands first opted for an objective-based system by which financial institutions were required to report a large range of unusual transactions, mainly based on objective indicators. The clearest example of an objective indicator is perhaps the fixed sum above which all transactions must be reported. In the framework of this objective-based reporting, the Dutch FIU was the agency mandated to investigate all reported unusual transactions in order to detect the suspicious ones and tease out those related to money laundering operations. This proposition resulted in considerable opposition from banks predicated on the fact that the objective-based system was much more expansive than the system imposed by the European directive.[98] Moreover, the financial institutions, as represented by the Netherlands Bankers' Association, opposed the fact that it would give too little responsibility to the financial institutions themselves. They argued that the objective-based reporting system had burdened them with a supervisory task unsuited to commercial companies. They did not want to be used merely as an information source. The bankers emphasised the importance of their subjective judgement and the principle of 'knowing your customer'.[99] The financial sector perceived the Dutch reporting system as conveying a lack of trust towards the financial institutions. Furthermore, they argued that the Dutch FIU had insufficient financial expertise and banking experience to detect suspicious transactions (Terlouw and Aaron, 1996: 45).

In the interest of the financial sector, a consensus was reached and a mixed system finally created. Suspicion-based and objective-based reporting were combined in the Disclosure of Unusual Transactions (Financial Services) Act.[100] This system requires the reporting of unusual transactions (article 9), but defines such transactions using objective as well as subjective indicators.[101] The main objective indicator is the fixed sum of money above which all transactions must be reported. In the Netherlands, all cash payments above €15,000 must be

[98] This was possible, as the European directive left a great margin to the different member states with regard to this provision.

[99] In the explanatory memorandum the legislator issues the main protests and indicates which protests gave rise to adjusting the legislative proposal; Nieuwe bepalingen inzake identificatie van cliënten bij financiële dienstverlening. *Kamerstukken II* 1992-1993, 23 009, no. 3: 19.

[100] The mixed system of reporting is also followed in United States and Australia (Levi, 19997: 266).

[101] In order to improve the cooperation between the different parties, the Netherlands Bankers Association was added to the study group charged with indicating the objective and subjective indicators, where it could defend the importance of the sensitivity of banking employees and the subjective indicators. Moreover, in favour of a permanent consultation and good cooperation, a monitoring committee was established in which the different institutions and authorities involved in the disclosure obligation, such as the Netherlands Bankers Association, take part.

reported. The subjective indicators vary but concern mainly the peculiarity of clients and of transactions. With regard to clients, indicators relate to problems with the identification of a client, observation of strange of nervous behaviour and suspicions that a client may be acting as a front man. Indicators concerning transactions involve atypical transactions by a client, suspicion that cash payments are kept deliberately below the fixed sum quoted in the objective indicator and lack of related business activities or other purposes that can explain a transaction. The mixed system gives a bit more responsibility to the financial institutions, as they are charged to report transactions based on suspicions rather than by purely objective indicators. Still, the main responsibility for conducting analyses to reveal possible money-laundering operations is ascribed to the FIU.

Similar to the European directive, the Dutch disclosure obligation imposes an active and a passive duty to furnish information to the FIU (articles 9 and 10). Furthermore, following the European directive, the Dutch act imposes secrecy regarding the reports. The tip-off prohibition applies to the financial institutions (article 19) as well as to others involved in the reporting system (article 18).

The European directive left the establishment of national FIUs to the member states, and the member states vary in the kinds of agencies to which financial institutions must report. These authorities or FIUs can be categorised into three types: administrative units (as in the Netherlands, Belgium and France), police units (e.g. in the United Kingdom and Finland) and judicial units (as in Luxembourg and Portugal) (Mitsilegas, 2003: 155). Whereas the police and judicial units are, respectively, placed within the national law enforcement agency and the public prosecution office, the administrative units are independent, as in the Netherlands, or incorporated in the Ministry of Finance, as in France. As described later, the differences in units have led to problems in international information exchange.

The Dutch decision to establish an administrative unit (*Meldpunt Ongebruikelijke Transacties*), followed the policy decision to concentrate the reporting system on unusual transactions. This system generates a great number of reports on transactions that do not involve possible money laundering activities. The idea is that these benign reports should not be transmitted to police or judicial units, which is why the unit was created as an administrative agency placed outside the investigative authorities. The primary task of the unit is ‘to collect, register, process and analyse the data it obtains to establish if such data could be relevant to the prevention and detection of felonies’ (article 3). Only if the reported transactions indicate a criminal offence are they transmitted to the investigative services to start a criminal investigation. Thus, the administrative authority serves as a buffer between the financial institutions and the investigative services. Nonetheless, to guarantee cooperation between the FIU and the investigative law-enforcement authorities, the unit is physically situated inside the national Crime Investigation Service.

2.3.1.2 Customer identification

The obligation to identify customers is set out in article 3 of the 1991 directive on money laundering, revised in 2001. It requires financial institutions to identify their customers by means of supporting evidence when entering in business relations, in particular opening accounts and offering safe custody facilities (article 3.1). Similar to the disclosure obligation the financial institutions must keep records for a period of at least five years after the relationship with the customer ends (article 4).

The customer identification requirement differs in nature from the disclosure obligation in that it is not limited to suspicious transactions. In the mixed system of objective and subjective indicators it is an objective indicator. Identification is compulsory for all transactions of a sum of €15,000 or more, whether the transaction be made in one operation or more (article 3.2). In addition, identification is always called for when suspicions of money laundering arise (article 3.6). The directive suggests that customer identification take place before transactions are carried out, as there is no provision to ensure proper identification afterwards.

The customer identification requirement prevents people from acting anonymously. To preclude criminals from getting around the identification obligation, for example by using front men, institutions and persons must scrutinise the client's identity when necessary (article 3.5). Examining the identity is particularly important when transactions seem likely to be related to money laundering. In reality, the European directive warns financial service providers of clients using fictitious names, clients acting on behalf of a principal, clients that exist in legal persons and clients who are not physically present during the transaction. In these cases 'specific and adequate measures' should be taken, such as asking for supplementary documentary evidence (revised article 3.11).

As a result of the European directive on money laundering, the existing Dutch customer identification requirement had to be adjusted. Financial institutions were already obliged to identify all clients in order to provide relevant information to tax authorities. With the revised Identification (Financial Services) Act, financial institutions were additionally asked to provide information to the anti-money laundering authorities. The customer identification requirement applies to natural persons as well as legal persons (article 3) and the act explicitly states that sectors submitted to the law should refrain from services when the identity is not well established (article 8). Thus, it is not allowed to identify clients afterwards, an option that remained open under the disclosure obligation. Furthermore, records must be kept for a period of five years. Like the European directive the Dutch act imposes scrutiny of identity when suspicions as to the true identity arise. This is important, as this information must be included in reports of unusual transactions. As such, customer identification became a key element of the Dutch reporting system.

With regard to the possibility of acting anonymously it is noteworthy that neither the European directive nor the Dutch act contain measures against high-tech laundering or cyber-laundering, as this is an important way of acting anonymously. Indeed, the specific and adequate measures that must be taken when clients are not physically present seem insufficient to prevent cyber-laundering.

2.3.1.3 Financial service providers

During the last couple of years an enormous expansion has taken place of the sectors that must comply with anti-money laundering obligations. At first, the European anti-money laundering intervention was addressed only to the financial sector, comprised of financial institutions, credit institutions and to a certain extent insurance undertakings (article 1). However, European legislators wanted the measures to be open for possible extension to other subjects. As such, member states had to ensure that the obligations could be broadened to other professions or undertakings 'particularly likely to be used for money-laundering purposes' (article 12). Over time, member states made use of this provision and consequently a number of inconsistencies arose in national laws. This is remarkable, since such discrepancy is out of line with the determination to prevent inconsistencies in the completion of the single market in the European Union.[102]

In the Dutch intervention, the customer identification obligation is addressed only to financial institutions. The disclosure obligation, on the other hand, is not specifically aimed at the finance sector. Here, the Dutch legislation avails of the provision in the European directive that allows enlargement of the number of institutions and persons that must comply with the disclosure requirement. Instead of enumerating all institutions and persons, the Disclosure of Unusual Transactions (Financial Services) Act puts the activity of providing financial services first, regardless of the nature of the provider. This means that the Dutch legislation enforces the obligation for 'anyone who provides financial services as a professional or a trade' (article 9). Nine provisions define the concept of a *financial service* (article 9 paragraph 1):

> '1. taking into custody securities, notes, coins, currency notes, precious metals, and other assets;
> 2. opening accounts in which a balance of money, securities, precious metals or other assets may be kept;
> 3. renting safe deposit boxes;
> 4. effecting payment in connection with the cashing in of coupons or similar vouchers of bonds or comparable negotiable instruments;
> 5. concluding life insurance policies within the meaning of section 1, subsection 1 under b of the Insurance Business Supervision Act 1993 and to provide intermediary services thereto;
> 6. effecting payment under a life insurance policy as referred to in 5;

[102] See the second consideration of the directive on money laundering of 1991.

7. crediting or debiting of an account in which monies, securities, precious metals or other valuables may be held;
8. exchange of money;
9. providing other services, to be stipulated by Order in Council (article 1 under b Financial Services Act).'

The provision to address the anti-money laundering intervention to anyone that provides such services is a theoretical one. In practice various indicators define the transactions that must be reported. These are connected to various types of financial service providers. Not surprisingly these correspond more or less with those mentioned in the European directive of 1991. Next to the banks the most important category of financial institution that has to comply with the intervention are the exchange offices. Though exchanging money as such is not money laundering, exchanging money often precedes money laundering activities. An analysis of 80 criminal investigations shows that illegally gained money is often exchanged into other currencies or denominations. These transactions might involve large sums of money. One criminal organisation that specialised in money laundering exchanged some 114 million guilders (about €52 million) in less than a year, and another organisation exchanged 400 million guilders (€182 million) in two years (Kleemans *et al.*, 2002: 102). Often these laundering organisations work for more than one criminal organisation.

An advantage of the Dutch system is that the indicators, and thus the sectors that must answer to these indicators, are not enumerated in the act itself but by Order in Council. This makes it possible to expand the obligation to new sectors without an amendment to the act. Moreover, as indicated by the ninth provision of the definition of financial services (see citation above), new types of services can be added by Order in Council as well. The explanatory memorandum clarifies the necessity of this provision as follows: 'The anti-money laundering policy towards these [financial sector] institutions could even be so successful that money launderers have to turn to other vulnerable economic activities.'[103] In this way the Dutch legislator anticipates possible future displacement.

Over the years the Dutch have issued several Orders in Council to broaden the sectors coming under the disclosure obligation. In 1995, the anti-money laundering obligation was extended to providers of credit cards and to casinos.[104] Three years later, money transfers became a special category of transaction to report.[105] Empirical research has underlined the importance of money transfers in money laundering operations. FIU analyses showed that diverse institutions were providing money transfer services and the obligations were thus broadened to cover all of them.[106] Though tourists and migrants are the main users of such transfers, their advantages, such as the fast and rather

[103] Nieuwe bepalingen inzake identificatie van cliënten bij financiële dienstverlening. *Kamerstukken II* 1992-1993, 23 009, no. 3: 25.
[104] Wijziging indicatoren wet melding ongebruikelijke transacties, *Strct.* 1995, 134.
[105] Regeling Wet mekding ongebruikelijke transacties, *Strct*. 1998, 136: 5.
[106] Wet van 27 juni 2002, houdende bepalingen inzake de geldtransactiekantoren, *Stb.* 2002, no. 380.

anonymous operation, attracted criminals as well. Inclusion of money transfers under the anti-money laundering intervention reduced some of these advantages. Analysing cases on organise crime, Kleemans *et al.* (2002: 112) indicate that money transfers are often used in human smuggling and trafficking of women.

The European legislator has also acknowledged the displacement of money laundering activities in the course of the 1990s. This knowledge derives from the FATF annual reports on money laundering techniques and typologies and the 1997 action plan to combat organised crime. These documents report that tightened control of the financial sector has prompted money launderers to seek alternative methods. The FATF pointed out the possible (unwitting) involvement of the non-traditional system in money laundering operations as early as 1991.[107] To avoid checks, money launderers have displaced their activities to non-financial sectors such as dealers in high-value goods. For instance, criminals have tried to conceal their illegal gains by purchasing cars or jewellery and by operating restaurants and hotels. Furthermore, in their efforts to evade anti-money laundering measures, launderers have searched for new laundering methods, involving complex transactions that require the involvement of professionals such as notaries, lawyers, accountants or auditors (FATF, 1991: 10).[108]

The EU Parliament and the Council of the European Union addressed these issues in their new directive of 2001. This time, the directive clearly enumerated which institutions had to comply with the intervention in order to overcome further inconsistencies and discrepancies in subsequent national laws. The most remarkable aspect of the revised directive was the enlargement of its jurisdiction from financial institutions to non-financial sectors. This meant it was no longer possible to speak of 'financial institutions' with regard to the regulation. As a result, this study henceforth uses the concept 'financial service providers'. The new European directive reads as follows:[109]

> 'Member States shall ensure that the obligations laid down in this Directive are imposed on the following institutions:
> 1. credit institutions as defined in point A of Article 1;
> 2. financial institutions as defined in point B of Article 1;
>
> and on the following legal or natural persons acting in the exercise of their professional activities
> 3. auditors, external accountants and tax advisors;
> 4. real estate agents;
> 5. notaries and other independent legal professionals, when they participate, whether:[…]
> 6. dealers in high-value goods, such as precious stones or metals, or works of art, auctioneers, whenever payment is made in cash, and in an amount of EUR 15000 or more;
> 7. casinos.'

[107] FATF (1991: 10) refers to the involvement of casinos, lotteries, dealers in precious metals, real estate and the possible involvement of professionals such as lawyers, notaries and accountants.
[108] This remark was repeated by the 1997 action plan (recommendation 12).
[109] Directive on money laundering of 2001, article 1, paragraph 2.

To implement the new European directive both Dutch acts had to be adjusted. An act of 13 December 2001 enlarged the concept *financial institutions* in the Identification (Financial Services) Act to *institutions*. From then on, the concept of institutions has included credit institutions, insurers, investment institutions, security institutions, agents and sellers of high-value goods and certain professionals. That same act modified the concept of *financial services* into the concept *services* in the Identification (Financial Services) Act as well as in Disclosure of Unusual Transactions (Financial Services) Act. Now 'anyone who provides certain services as a profession or a trade' has to answer the disclosure obligation. Also, in the definition of these services the nine provisions were extended with a tenth:[110]

> 'Selling, or providing intermediary services with respect to the sale of, vehicles, ships, works of art, antiquities, precious stones, precious metals, pieces of jewellery, jewels, or any other goods of large value designated by Order in Council.'

After the establishment of a list of indicators addressed to these non-financial sectors, all sellers of these high-value goods were subject to the disclosure obligation. From the literature it appears that legal persons involving trade in diamonds, art and cars are suitable for exchanging criminal profits to other currencies, which as mentioned, is often the first step in a money laundering operation (Kleemans *et al.*, 2002: 105). These businesses are suitable because they often work with payments in various currencies. For example, Kleemans *et al.* (2003: 105) describe a case in which a launderer used a Belgian diamond dealer to exchange criminal monies. Because this dealer often exchanged foreign currencies the activities did not prompt a report to the Belgian FIU. Afterwards, at a fee the launderer collected the exchanged money. Obviously, in this case the dealer in diamonds knowingly facilitated the money laundering operation.

Finally, with the recent Order in Council in 2003 the new European directive on money laundering was fully implemented in the Netherlands, as all independent legal advisors, lawyers, (junior) notaries, (registered) accountants, tax advisors and real estate agents became subject to the acts as well.[111] In the course of the 1990s empirical research in the Netherlands had already indicated incidents of notaries' culpable involvement with criminal groups. For example, Van de Bunt describes a case in which a notary willingly facilitated money laundering by carrying out an A-B-C transaction (Fijnaut *et al*., 1998: 173). This involved the three-fold transfer of a deed for one and the same premises in a single day. With these transfers the value of the premises increased from seven to fourteen to twenty-one million guilders. This provided the criminal an

[110] Wet van 13 december 2001, houdende wijziging van de Wet melding ongebruikelijke transacties en de Wet identificatie bij financiële dienstverlening 1993 met het oog op het verplichtstellen van de identificatieplicht en van de meldingsplicht van ongebruikelijke transacties. *Stb*. 2001, no. 665, article 1 under D.

[111] Besluit van 24 februari 2003 tot aanwijzing van instellingen en diensten in het kader van de Wet identificatie bij dienstverlening en de Wet melding ongebruikelijke transacties. *Stb*. 2003, no. 94.

apparently legal origin for fourteen million guilders. Sometimes, the assumed involvement of independent advisors results in public outrage and intensive media coverage. This was the case, for example, of a financial advisor and real estate agent who was nick-named the 'underworld banker'. Since 1993 this real estate agent was connected to illegal practices and was the subject of several criminal investigations. Although, it was clear that he had tight relations with persons with serious criminal records, he was never convicted of a criminal offence. In recent years he was involved in several questionable businesses and in 2004 was slated to appear before a court concerning forgery and dealing in stolen property. However, in May 2004 he was shot dead in public, which might possibly confirm his involvement in criminal offences. Perhaps the investigation into this real estate agent's financial records will clear up his relation with criminals and criminal organisations.

Not surprisingly, the involvement of lawyers, notaries and accountants in the anti-money laundering intervention evokes debate on the privacy of citizens at both the European and national levels. With its new directive, the EU Parliament and the Council of the European Union have taken rights into account as set out in the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and the Treaty of the European Union. The expansion of the directive's coverage is in fact based on the idea that comparable services should be treated in the same manner no matter who provides them.[112] Where only a part of the services provided by notaries, lawyers and other independent professionals relate to the provision of financial services, the enlargement of coverage is partial as well. As such, legal professionals are compelled to follow the anti-money laundering obligations only when providing financial and business services. The obligation does not apply to activities concerning the legal position of clients and representation in legal proceedings. In this way the directive does not intrude on the essential secrecy provisions of this special category of actors. At least, this is how the legislators justify the extension of the directive to legal professionals. To determine what type of service is to be provided, the legal professional starts with an orientation meeting with the client. For this the legal professional does not have to answer the anti-money laundering obligations, and the content of the conversation remains confidential. The tipping-off prohibition does not apply to legal professionals' informing their clients during the orientation meeting of their duties in the framework of the anti-money laundering intervention. Notwithstanding the introduction of the orientation conversation, the legal professionals themselves disagree with their incorporation under the directive. The next subsection discusses this in more detail.

2.3.1.4 Legal preconditions

The anti-money laundering intervention imposes extensive and completely new duties on non-law-enforcement actors in the realm of crime prevention. These

[112] Directive on money laundering of 2001, consideration 18.

new duties have impacts on the liability of financial service providers and on the information they must and are allowed to pass on. The possibility of conscious facilitation of money laundering requires that the liability issue somehow be settled under criminal law. Furthermore, reporting transaction data to FIUs goes against banking secrecy and professional secrecy and also requires strong regulation regarding civil liability. Finally, transaction data includes personal data that cannot be shared without taking data protection regulations into account. This subsection provides insight into the legal preconditions towards these three aspects.

Liability under criminal law. The European anti-money laundering directive is resolute in protecting financial service providers against possible liability. It states, 'disclosure in good faith […] shall not involve the institution or person or its directors or employees in liability of any kind'.[113] This means that financial service providers have no liability under criminal law. This is not surprising, as the directive allows financial service providers to carry out transactions suspected of being related to money laundering, if they are reported in conformance with the act. This provision, aimed at supporting criminal investigations into offences and enabling law enforcement to pursue the beneficiaries of illegal gains, makes it necessary to release service providers from their liability under criminal law.

Despite an appeal by the Netherlands Bankers' Association, the Dutch legislation does not incorporate the European general release from criminal liability. Rather, the Dutch legislation gives more significance to the principle that those who are guilty of money laundering should be punished.[114] Therefore, article 12 of the Dutch Disclosure of Unusual Transaction (Financial Services) Act establishes only a limited release of liability under which transaction information received from financial service providers under the discloser obligation shall not be used for a criminal investigation or a preliminary judicial inquiry. However, this does not exclude criminal investigation or prosecution of the service providers based on information other than the transaction data. Thus, the Dutch act still imposes cooperation in money laundering activities as punishable; financial institutions can thus be held responsible for their involvement in money laundering operations.

Civil liability. With the general idea that disclosure in good faith releases financial service providers from any liability, the European directive guarantees that these providers are in a position to contribute to the fight against money laundering.[115] The financial institutions should not be hindered by banking secrecy. Because banks adhering to the disclosure obligation could risk damage

[113] Directive on money laundering of 1991, article 8.
[114] Since 2001 money laundering has been penalised by a special article in the Criminal Code (article 420*bis* to *quater*). Before this, money laundering was punishable as well and could be prosecuted by the penalisation of fencing (Criminal Code article 416 to 417 *bis*).
[115] Directive on money laundering of 1991, consideration 15.

claims from customers who disagree with the disclosure of information on their financial transactions, the directive includes a release from civil liability.

In the Netherlands, banking secrecy is not set out in any act or regulation, and the banking system has no privilege of nondisclosure. The concept 'banking secrecy' derives from general banking conditions which stipulate a contractual duty to maintain confidentiality. Obviously the disclosure obligation violates this confidentiality. Moreover, the tip-off prohibition can affect the bank's relation with its client as well. Giving in to an explicit demand of the Netherlands Bankers' Association, Dutch law-makers established a release from liability similar to the European one; disclosure in good faith shall not involve the institution, its directors or employees in liability of any kind.[116] The concept of *in good faith* is central in this provision. Obviously the release from liability does not apply when the plausibility of the disclosure is in question.[117] The release from civil liability is limited as well. Institutions or persons cannot be held liable unless it can be demonstrated that in all reasonableness the disclosure should not have taken place.

This limited release from civil liability is often seen as insufficient, because some risks remain that could affect commercial interests. In particular, the financial sector refers to the ease with which American clients institute legal proceedings and suggests reservation in reporting transactions of American clients (Terlouw and Aaron, 1996: 37).

The enlargement of the anti-money laundering intervention to legal professionals has required issues of professional secrecy to be dealt with, both in Europe and the Netherlands. Professional secrecy, in fact, implies a privilege much stronger and more sensitive than banking secrecy. Due to the special relationship between legal professionals and their clients, which is based on mutual trust, limiting professional secrecy has been deemed unacceptable. The European directive strives not to encroach upon the confidentiality of this relationship more than necessary. The scope of the release from the disclosure obligation was the subject of intensive debate between the Council of the European Union and the EU Parliament.[118] In the end, a conciliation committee reached a compromise, whereby the terrorist attacks of 11 September accelerated the process. The compromise consists of dividing the various services provided by legal professionals into the practice of legal proceedings and the practice of financial economic advice. On the one hand are services related to the legal position of the client. Because professional secrecy is of utmost importance in provision of these services, they do not come under the disclosure obligation. On the other hand, legal professionals increasingly act as advisors that handle businesses and financial services. As these services are

[116] Directive on money laundering of 1991, article 8.

[117] Wet van 13 december 2001, houdende wijziging van de Wet melding ongebruikelijke transacties en de Wet identificatie bij financiële dienstverlening 1993 met het oog op het verplichtstellen van de identificatieplicht en van de meldingsplicht van ongebruikelijke transacties. *Stb*. 2001, no. 665, article 13.

[118] The Council of the European Union was prepared to limit professional secrecy, while the Parliament of the European Union had greater concern for the relation of trust.

comparable with those provided by financial institutions, the European legislator decided that with respect to these services, legal professionals must comply with the reporting obligation. In fact, according to the European directive, the disclosure obligation for professions applies to the following:[119]

> 'notaries and other independent legal professionals, when they participate, whether:
> (a) by assisting in the planning or execution of transactions for their client concerning the
> (i) buying and selling of real property or business entities;
> (ii) managing of client money, securities or other assets;
> (iii) opening or management of bank, savings or securities accounts;
> (iv) organisation of contributions necessary for the creation, operation or management of companies;
> (v) creation, operation or management of trusts, companies or similar structures;
> (b) or by acting on behalf of and for their client in any financial or real estate transaction.'

With regard to protecting a client's privacy, the 2002 European directive on money laundering requires professionals to comply with the disclosure obligation for all services except:

> 'information they receive from or obtain on one of their clients, in the course of ascertaining the legal position for their client or performing their task of defending or representing that client in, or concerning judicial proceedings, including advice on instituting or avoiding proceedings, whether such information is received or obtained before, during or after such proceedings (article 3.6).'

In the Netherlands, legal professionals did not simply resign themselves to this provision. Indeed, the broadening of the anti-money laundering intervention led to intense discussion. The duty to maintain confidentiality and the professional privilege of non-disclosure is established in a number of acts and rules of conduct.[120] As such, violation of confidentiality may give rise to criminal, civil or disciplinary proceedings. Not surprisingly, the disclosure obligation for legal professionals raised serious objections in the Netherlands, in particular from the Netherlands Bar Association.[121] Some professionals have asserted that all legal advice should remain subject to professional confidentiality unless the counsellor takes part in money laundering activities (Van der Hoeven and Visser, 2003: 1124-1131; Baas, 2002: 21-23).[122] This would require a release for

[119] Directive on money laundering of 2001, article 2.

[120] In the Netherlands the privileged of non-disclosure is not absolute; the investigative services can under certain circumstances apply investigative powers against a lawyer, such as a search of the legal office.

[121] For more details on legal professionals in their professional relationship with criminal clients see Lankhorst and Nelen (2004).

[122] Some professionals refer to a decision of the Supreme Court which states that the free access to legal advise of individuals has priority over the social interest of a state. See Van der Hoeven and Visser (2003b: 1124) who refer to the HR, 1 March 1985, NJ 1986, p. 173. Mind you, this judgement is 20 years old.

the legal profession pertaining to almost all of their advisory activities.[123] Nonetheless, the Dutch legislation was implemented including the disclosure obligation and the partial release from it as described in the revised article 6 and consideration 17 of the new European directive. This means that the Dutch act enforces the disclosure obligation for all services provided by legal professionals except for activities concerning ascertaining the legal position of a client or representing a client in legal procedures and except for advising a client before, during and after judicial proceedings. Thus, all information must be reported except for that received on or obtained from a client in the course of ascertaining the client's legal position. Placing financial-economic advice under the disclosure obligation was justified by the fact that such advice did not require the special capacities of the legal professional.[124] Moreover, Dutch law-makers argued that this division fits the preventive approach to money laundering, as it counters possible displacement.[125]

The Dutch Bar Association was furthermore aggrieved by the fact that the national disclosure obligation was more stringent than the European one. For example, the Dutch legislation did not incorporate the European exemptions for legal professionals. It also passes on the possibility to exclude legal professionals from the prohibition to tip-off clients about disclosure. The European legislator deemed such an exoneration acceptable due to the trust-based relationship between legal professionals and their clients. No wonder that the lack of such an exoneration in the strict Dutch act is hard for the legal professionals to understand. They reproach the legislator as lacking insight into the activities of a lawyer and point out the repercussion of unfair competition in the European Union when other member states do exercise their right to release legal professions from the prohibition from providing tip-off information (Mens and Bouallouch, 2002: 77-87).

In addition, the Dutch act does not release the legal professional from liability, as the European directive proposes. The Dutch act in fact makes no exception for the legal profession. Like financial institutions and other service providers coming under the disclosure obligation, legal professionals are protected by only a limited release from liability under criminal law, as well as a limited release from civil liability, including disciplinary measures. Thus,

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[123] According to the bar association, the limitation of release results from the fact that the Dutch legislator wanted the extension of the anti-money laundering provision to come into force as soon a possible, after the terrorist attack of the 11th September. In the action plan to prevent terrorism recommendation 29 and 37 insist on quickening the establishing of the new European directive on money laundering and a quickened implementation of these directives. The Dutch legislator thus did not wait for the final version of the new directive, and in the final version exactly the consideration 17 was adjusted. During the preparation of the proposal for the new Dutch act (d.d. 2 November 2001), the Dutch legislator was probably unfamiliar with the 17th consideration (final version d.d. 24 October 2001).

[124] Besluit van 24 februari 2003 tot aanwijzing van instellingen en diensten in het kader van de Wet identificatie bij dienstverlening en de Wet melding ongebruikelijke transacties. *Stb*. 2003, no. 94.

[125] By the realisation of the extended disclosure obligation the legislator justified the extension by pointing out that criminal organisations will abuse legal professions for their financial services, because of the increased attention to the financial sector. The Dutch legislator assumes that there is a displacement of money laundering transactions and partly this is based on empirical knowledge. But as described later to a certain extant the empirical foundation for this assumptions is lacking.

lawyers cannot be held culpable unless it can be demonstrated that in all reasonableness the disclosure should not have taken place. Because the latter situation would imply that a violation of professional secrecy had occurred, it is not surprising that professionals might feel caught between two obligations. As a result, legal offices have often decided that data may be disclosed only after a judgment is made by a committee composed of the management and partners (Van der Hoeven and Visser, 2003a: 609). In addition, the professionals have agreed to consult a confidant of the profession when suspicious activities arise (Van der Hoeven and Visser, 2003: 1131). The expertise of the confidant helps to determine whether the activities should indeed be reported. This consultation should be regarded as protection against wrongful disclosure and against civil liability and disciplinary measures. Obviously, such protective measures cost the legal offices time and money.

The exchange of transaction data. In contrast to the liability issue, the passing on of sensitive information received less attention from the European legislator. Nowhere do the European anti-money laundering directives refer to data protection. Only in 1999, in a motion for a resolution, did the European Parliament make explicit reference to data protection with regard to the anti-money laundering intervention.[126] It states that data collection must be protected by full and correct application of the directive on personal data protection.[127] Article 1.1 of the directive on personal data protection states, 'Member States shall protect the fundamental rights and freedoms of natural persons, and in particular their right to privacy with respect to the processing of personal data'. However, it includes a series of exceptions as well (defined in articles 3 and 13).

The applicability of the directive on data protection for the anti-money laundering intervention is ambiguous in some respects. First, under the exceptions are 'activities that fall outside the scope of Community law, such as those provided for by Titles V and VI of the Treaty on European Union and in any case to processing operations concerning public security, defence, State security (including the economic well-being of the State when the processing operation relates to State security matters) and the activities of the State in areas of criminal law' (article 3.2). This means that the anti-money laundering directive, which involves a first-pillar Community law measure, would not fall under the exceptions. However, the anti-money laundering intervention does concern public security and the economic well-being of the state, which suggests that it would be within the scope of the exceptions.

[126] Motion for a resolution on the Second Commission Report to the European Parliament and the Council on the implementation of the money laundering directive, point 5. In *Doc. A4 0093/99*, 26.2.1999, as quoted in Mitsilegas (2003: 179).

[127] Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, *OJ L 281*, 23/11/1995, pp. 31-50.

This reasoning is strengthened by the exceptions mentioned in article 13 of the directive on data protection, which stipulates that member states may adopt legislative measures to restrict the scope of the protection to safeguard the following:

> '(a) national security;
> (b) defence;
> (c) public security;
> (d) the prevention, investigation, detection and prosecution of criminal offences, or of breaches of ethics for regulated professions;
> (e) an important economic or financial interest of a Member State or of the European Union, including monetary, budgetary and taxation matters;
> (f) a monitoring, inspection or regulatory function connected, even occasionally, with the exercise of official authority in cases referred to in (c), (d) and (e);
> (g) the protection of the data subject or of the rights and freedoms of others.'

The provision offers various arguments to justify non-compliance with the data-protection requirement. The proportionality of measures of the anti-money laundering intervention is of interest here vis-à-vis the scope of the need to fight organised crime. This question and an answer to it appear at the end of this chapter.

Dutch law gives more emphasis to the data-protection requirement. The explanatory memorandum to the Dutch disclosure obligation act even posits that the disclosure obligation should comply with article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) concerning respect for private and family life.[128] Although there is no clear definition of the concept of *private life*, the Dutch legislator asserts that the reporting of unusual transactions unquestionably encroaches on private life. Nonetheless, the they argue that this encroachment is permissible since it complies with the demands of the ECHR, article 8, second paragraph:

> 'There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.'

The disclosure obligation act provides the legal basis for encroaching on the data-protection provision. Establishment of an administrative FIU that functions as a buffer between financial service providers and the investigative services hinders direct access of investigative services to transaction information. This buffer should prevent undue attention, in particular, to unusual transactions that have nothing to do with money laundering.

[128] *Kamerstukken II* 1992-1993, 23 009, no. 3: 3-4.

Regarding the necessity of the disclosure obligation, the Dutch legislation refers to the European directive. Furthermore, it argues that regarding the pressing social need, the disclosure obligation is in proportion with its official goals. In particular the prevention of disorder and crime and the protection of the rights and freedoms of others are seen as justifying the collection of sensitive information.

2.3.2 Implementation

Together, customer identification and the disclosure obligation are the basis of the Dutch unusual transaction-based reporting system. This system involves a chain of activities starting with the financial service providers. The providers must record data on the identity of clients and on the transactions they carry out. Furthermore, they must report all unusual transactions to the Dutch FIU, which is responsible for combating money laundering. In this process, the FIU examines unusual transactions and when necessary labels them as suspicious. The last step in the chain is the transmission of information on suspicious transactions to law-enforcement agencies in order to investigate criminal offences. The next subsections describe what has become of these activities.

In accordance with the methods described in the first chapter of this study, our evaluation of the implementation of the system is limited to the aspects that are important with regard to the prevention of organised crime. This part of the evaluation is based on the annual reports of the Dutch FIU and the Bureau for Police Support of the National Public Prosecutor (BLOM). In addition, we draw on evaluation studies of the Dutch reporting system. The first such study was announced upon the establishment of the disclosure obligation and took place two years after the system entered into force. The second was completed in 2004. This second study focused on the bottlenecks of the reporting system and helps us to uncover some possible implementation failures.

2.3.2.1 Recording identification and transaction data

We can assume that the reporting system requires a lot of administrative effort from the financial service providers. Most of the effort involves customer identification, for which all kinds of personal details must be registered, such as address, residence or domicile, sort and number of the identity card, as well as the time, place and kind of service that is or will be extended. In addition, detailed information about the nature and characteristics of transactions are required. To encourage the financial service providers to comply fully with these requirements, the measures have been made as efficient as possible. For example, the European and Dutch legislators have tried to avoid unnecessary repetition in establishing identity.[129] These have enabled the identification of

[129] In certain circumstances, having established the identity in a foregoing transaction is sufficient for a subsequent service, and debiting an account opened by a financial institution that already comes under the regulation on establishing identity requires no new identification. See, respectively, article 3.8 and

clients to be conducted visibly more efficiently over the course of the years. Identification of clients, both natural and legal persons domiciled in the Netherlands, is mostly carried out without any problem. However, the identification of foreign natural and legal persons can give some problems and even lead to extra costs.

First of all, the identification of natural persons takes place on personal appearance and by means of a valid identity card. When foreign natural persons are involved, departments must build a certain expertise on foreign documents. A study on prevention of organised crime cited 'forged documents' as a main issue in the prevention of organised crime, as false documents pose a fundamental threat to all preventive strategies (Van der Schoot, 2003: 29). Though this study recommended investments be made in staff and technical instruments to check documents, it is unrealistic to assume that financial service providers could ascertain the validity of all kinds of national and international documents.

Another problem involves identifying clients who are not physically present. To facilitate their identification, the Dutch legislator amended the former Identification (Financial Services) Act to allow clients' identification to be derived from identification provided for previous transactions.[130] This less strict means of identification applies only if the client has an account at a financial institution in one of the EU member states and if the transaction does not meet the specifications of an unusual transaction. Neither is such second-hand identification allowed for transactions designated in European legislation as extremely vulnerable to money laundering operations.

Legal professionals argue that the means of identification for legal persons is too complicated. They complain that it is unclear what information constitutes a valid identification of legal persons (Van der Hoeven and Visser, 2003a: 609). In cases where a recent certified extract from the Dutch Chamber of Commerce does not suffice, supplementary data must be provided. Obviously, this involves time and effort. In addition, it is difficult to identify foreign legal persons that do not have a place of business in the Netherlands, as a statement of a notary or comparable official is needed. For legal persons from outside the European Union the statement must be verified by a notary accommodated in the Netherlands.[131] This procedure initially resulted in practical problems and unfair competition with institutions in other member states and was therefore replaced by a less rigid one. Nowadays, identity must be established by means of a certified extract of the official chamber of commerce in the foreign state in

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3.7 of the 1991 European directive on money laundering. The new directive on money laundering of 2001 extends the release from establishing the identity to foreign financial institutions that act as clients when that particular foreign country has measures similar to the European anti-money laundering measures, see article 1.9 under 3 of the new directive on money laundering of 2001. The Dutch acts contain more or less the same provisions, see article 2.4 and 4.1 of the Establishing of Identity Financial (Services) Act.

[130] Wet van 2 november 2000, houdende wijziging van de Wet identificatie bij financiële dienstverlening. *Stb*. 2000, no. 484, article 1 under C.

[131] Establishing of Identity Financial (Services) Act, article 3,3.

question or by means of a statement issued by a notary or official with similar qualifications in the foreign state.[132]

Notwithstanding the less strict identification, the bar association considers it almost impossible to properly identify foreign legal persons. Waiting for a certified extract from foreign chambers of commerce or a statement issued by a notary might take several weeks. In addition to the administrative costs, this involves economic costs as until such a time as the identification can be confirmed, no services can officially be provided, as no provision allows for identification of clients in retrospect. In practice, one might imagine that representatives of legal persons would always have such extracts with them, which puts the problem in perspective. Moreover, one could strive for standardisation of official documents (Boorsma, 2003: 67). Mul (1999: 161) proposed a European identity card for both natural and legal persons. However, the increasing commercial relations with all parts of the world means that one would need some worldwide standardisation, which again is unrealistic.

Another aspect of the discussion concerns the release to divulge the identification of a client where a fellow lawyer in an EU member state has already established the identity.[133] This release is not absolute, because the lawyer must verify that establishment of the identity was carried out correctly. On the other hand, this provision could undermine the customer identification rules, as it offers the possibility of derivative establishment of identity where clients cannot appear in person. For the lawyer or the authorities supervising compliance with customer identification, it would remain difficult to determine the validity of the original identification.

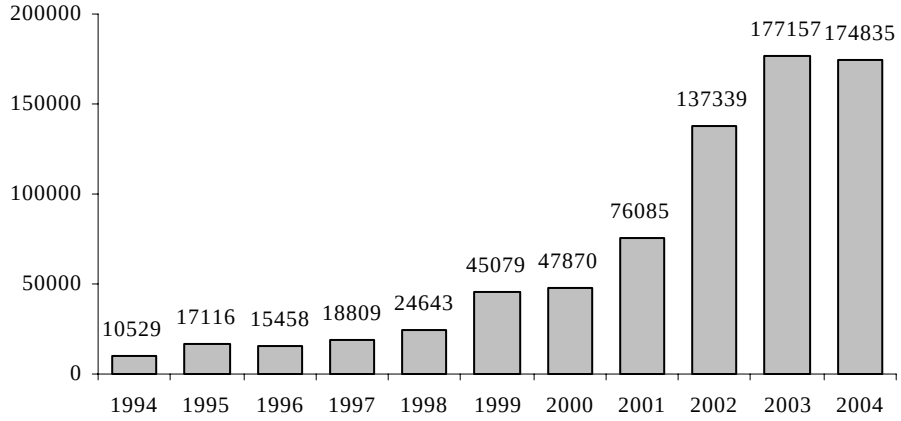
2.3.2.2 Dealing with large amounts of information

The decision to implement a reporting system based on unusual transactions resulted in a widening of the net of reported transactions with regard to the disclosure obligation of the European directive, which is focused on suspicious transactions. The fact that the Dutch FIU must deal with large numbers of transactions is clear from the FIU annual reports. These annual reports also show an overall increase of number of unusual transactions reported over time except for the last year (Graph 2.1).

[132] Wet van 2 november 2000, houdende wijziging van de Wet identificatie bij financiële dienstverlening. *Stb*. 2000, no. 484, article 1 under B number 3.

[133] Wet van 2 november 2000, houdende wijziging van de Wet identificatie bij financiële dienstverlening. *Stb*. 2000, no. 484: under B.

Graph 2.1 Unusual transactions reported to the FIU, 1995-2004



Source: MOT (2004: 56), MOT (2005: 72).[134]

The increase of reported unusual transactions is due to the simple fact that growing numbers of transactions that correspond with the indicators are being carried out. Moreover, over time new indicators have been established and more financial service providers are required to comply with the obligation. The real boom in reported transactions was, however, caused by the addition of money transfers to the intervention in 1998, from which time explosive growth of reported transactions was observed. This product appeared to be very popular; the reported money transfers increased from over 20,000 in 1999 to almost 43,000 in 2001 and almost 95,000 in 2002 (MOT, 2003: 34). In 2003 the reported money transfers reached 123,000 (MOT, 2004: 60). This increase accounted for much of the increase in unusual transaction reports, as in 2003 around 70% of all unusual transactions were money transfers.[135]

Computerisation is of utmost importance to handle these huge numbers of transactions. In the first two years, however, there was only limited automation (Terlouw and Aaron, 1996: 102). Later, all steps of the reporting system became computerised. From its inception, the FIU began developing MOTexplorer, a computer program which institutions and persons can use to report unusual transactions.[136] In 2002, 64% of suspicious transactions were reported through the MOTexplorer website, 28% were reported by diskette and only 8% on paper

[134] Because the numbers in the annual reports differ, I chose to rely on the latest annual report (MOT, 2004), which gives an overview of the years before, hoping that they include post-publication corrections.

[135] According to the FIU (MOT, 2003: 34) money transfers have been rediscovered as a commercial service and the financial sector advertises to promote these new services. In particular, currency exchange offices have an interest in this new market since, due to the adoption of the euro, they lost a large number of currency conversion transactions.

[136] From 1 July 2003 all institutions and persons were obliged to use MOTexplorer.

(MOT, 2003: 6).[137] Nonetheless, this 8% still represents 11,000 transactions that have to be registered by hand. Obviously, this is time consuming. Computerisation of the reporting process is therefore a positive development in processing reports of unusual transactions.

Notwithstanding the positive developments, the continuing increase of unusual transactions has exerted rising pressure on the reporting system. There could come a time when there is simply not enough time or staff to check all reports. Obviously, in this case a wide net is not the best option. Thus, it was for good reason that the financial sector in 1996 insisted that the effectiveness of the indicators be evaluated (Terlouw and Aaron, 1996: 44).

The evaluation found, first, that most transactions were reported according to an objective indicator. Some respondents cited a preference for the objective indicator since it involved less effort and risk than a subjective one (Terlouw and Aaron, 1996: 100). Reporting on automatic pilot is easier than reporting based on own insights. The fact that it is easier to fulfil objective reporting is illustrated by reports provided by dealers of high-value goods. In 2003, the first year of their reporting, 98% of the unusual transactions met the objective criteria. However, this makes the reporting of unusual transactions an end in itself. The objective of the reporting system, that is, the investigation of criminal offences, falls by the wayside (Terlouw and Aaron, 1996: 36; Faber and Van Nunen, 2004: 14).

Meanwhile, a shift from objective to subjective transaction-based reporting is perceptible, at least with regard to the banking system. FIU figures show that banks largely report on subjective indicators, up to 80% in 2002.[138] In 1997, 58% of the unusual transactions reported by banks were based on objective indicators. From the recent growth of use of subjective indicators, Van de Bunt (2004: 693) concludes that banks no longer report all transactions that should be reported. In other words, the transactions that correspond with the objective indicators are no longer always reported. This changeover from reporting according to objective indicators to subjective indicators is also perceptible in casinos, although the share of subjective indicators is still small.[139] In 2002, 36% of the unusual transactions were reported in response to subjective indicators, whereas this was only 20% in 2001 (MOT, 2003: 17).

This shift to a subjective indicators-based reporting system could be a positive development. Already in 1996, Terlouw and Aaron (1996: 102) concluded that the subjective indicators are three times more fruitful than the objective ones; they are three times more likely to yield information on suspicious activities. BLOM compared the effectiveness of objective and subjective indicators as well and also underlined the importance of subjective

[137] In 2003 reporting transactions on paper had increased to 13% (MOT, 2004: 56). This increase could be the result of the inexperience of the new agencies and professionals that came under the reporting obligation in 2003.

[138] The most used indicators involve the behaviour of the client and the type of transaction as well as the suspicion of smurfing and the suspicion of money laundering.

[139] On the contrary the exchange offices continue to report largely by objective indicators. In 2002 75% of the unusual transactions were reported as transactions exceeding €10,000.

indicators; suspicion of money laundering appeared to be the most effective indicator (MOT, 2003: 27). It is therefore no wonder that Dutch policy-makers have stimulated this changeover. In a white paper, the ministers of finance and justice announced the change from rule-based reporting towards risk-based reporting.[140] The new reporting system was to result in less but qualitatively better reports. As such, it might seem that that the proven effectiveness of the subjective indicators has influenced the attitude of the Dutch legislator. According to Faber and Van Nunen (2004: 22), however, this is not the case. The shift is not primarily based on reasons of effectiveness but rather on administrative effort. The reporting of fewer transactions lightens the burden on the reporting system. This line of reasoning is strengthened by the fact that the policy-makers have not yet deliberated on the advantages and disadvantages of the subjective reporting method.

What happened to the Dutch government's reluctance to adopt a purely subjective disclosure system and choose instead to institute an unusual reporting system based on both objective and subjective indicators? The government's reasons for combining the two types of indicators have not yet been refuted. Before a subjective-based reporting system is instituted new guidelines on suspicious transactions should be established to demarcate the responsibility of financial service providers. More attention should also be paid to information supply and training of the institutions and persons in question.[141] Moreover, enforcing and checking a disclosure obligation based on subjective indicators is much more difficult, in particular, as the financial institutions may have different interests from those of the regulating authorities. Finally, the liability of the reporting institutions and persons should be emphasised. The current shift therefore highlights the responsibility of the sectors asked to report unusual transactions, as they must deliberate on the risks and report based on their own insights. At least, this applies for the financial sector as until now the risk-based system concerns mainly them.

2.3.2.3 The converting process

The main task of the FIU is to analyse the reported unusual transactions to ascertain whether these transactions indicate criminal offences. This is named the 'converting process' as it *converts* unusual transactions into suspicious transactions. In this process the FIU applies a dual lens. First, it carries out an administrative analysis, which consists of a daily and, additionally, a monthly comparison of the subjects in the FIU database and those in the VROS police database. VROS records the subjects of police investigations as well as of all intelligence work. If a subject appears in the FIU database and in the VROS

[140] Integriteit financiële sector en de strijd tegen het terrorisme. *Kamerstukken II* 2001-02, 28 106, no. 2. As the title indicates, this new reporting system goes out to terrorism as well. In the future not only suspicious money laundering transactions, but also suspicious transactions regarding financing criminal activities should be reported.

[141] Integriteit financiële sector en de strijd tegen het terrorisme. *Kamerstukken II* 2001-02, 28 106, no. 2: 46-47.

database, then the transaction is labelled as suspicious. To avoid the label of suspicious transaction launders sometimes use front men who have no criminal record (Kleemans *et al.*, 2002: 104). Transactions carried out by front men might not be labelled as suspicious even if they met the objective or subjective indicators. Therefore, the FIU has another type of analysis. The second type is an FIU investigation of the subjects carrying out individual transactions, the nature of the transaction and the activity concerning a certain account. Furthermore, the FIU examines transaction patterns in its complete database. This can also lead transactions to be marked as suspicious. The transactions labelled as suspicious are transmitted to the investigative services entrusted with tracking down criminal organisations.

A secondary FIU task is to assist financial institutions in recognising money laundering activities. Its analyses of transactions have made the FIU specialised in recognising money laundering operations. By means of training programmes and formulating recommendations on new trends, the FIU informs financial institutions as well as the public prosecutor's department about progress in the repressive approach to combat money laundering.

Another FIU task is to maintain relations with foreign financial intelligence units. These units may be administrative, police or judicial departments, which has been considered a problem for efficient cooperation and information exchange. The question of whether the FIU has succeeded in such cooperation is one of the implementation aspects discussed later.

Two years after the disclosure obligation came into force, Terlouw and Aaron (1996: 102) asserted that the FIU had in fact carried out its primary task – the conversion of unusual transactions into suspicious transactions – in accordance with the ideas of the legislator. However, due to the explosion of the number of reported transactions, all staff was absorbed in the conversion process, so there was no time left to fulfil the other tasks – informing institutions of how to deal with unusual transactions in order to improve correct compliance with the disclosure obligation and examining advances in the area of money laundering and developing improved ways of detecting and preventing this offence. As such, the study said that the FIU had been unable to report on money laundering techniques and trends (Terlouw and Aaron, 1996: 50). The FIU was also criticised for its lack of feedback to the financial institutions (Terlouw and Aaron, 1996: 106). Since that report the situation has improved tremendously; the FIU now publishes numbers and statistics in annual reports and documents interesting cases in various newsletters. Moreover, the FIU website is being developed as a channel through which the different partners in the reporting system can communicate with one another.

However, the FIU is still criticised for its lack of financial expertise. Pundits say that it is not difficult to produce a huge number of suspicious transactions by comparing various databanks. The added value of the conversion process is the strategic analysis that should be performed by the FIU. As first, little attention was paid to 'promising' transactions, meaning they were seldom recognised as suspicious (Terlouw and Aaron, 1996: 103). Two years later, the

FIU had developed this area of expertise, by 1997 hiring external financial experts (MOT, 1997: 8) and over the years refining the automation of the conversion process (MOTION) as well.[142] Both aspects contributed to the improvement of the analyses carried out by the FIU to reveal suspicious transactions and conspicuous money flows. Another aspect of criticism involves the limited availability of the FIU database for external inquiries. It might be useful if the police, for example, could consult the database for information on the subjects of an investigation. Though requests for general information may be submitted – for instance, in line with an effort to map money laundering activities in a certain region – the response to such inquiries was lacking (Terlouw and Aaron, 1996: 95, 109). Annual reports, however, illustrate the increase of such inquiries from both national investigative services and foreign financial intelligence units.

According to Faber and Van Nunen the problem is not related to the number of analyses and inquiries, but to their nature. This is also evident from figures presented in FIU annual reports. In 2000, the FIU developed a special analysis program for uncovering large networks. This program helped reveal 1,100 suspicious transactions that year (MOT, 2001: 31). In 2001, the FIU's own analyses revealed 1,500 of the 1,584 suspicious credit card transactions (MOT, 2003: 20). Moreover, the analyses of the transactions reported by dealers of high-value goods – which led to 73% of the suspicious transactions – illustrate the importance of FIU investigations (MOT, 2003: 23). One of these strategic analyses involved a young woman from South America who in a short time bought at least three cars for €100,000 in cash (MOT, 2003: 23). The reports on these transactions led to a criminal organisation that traded in drugs. The purchase and export of cars was a cover for the movement of criminal monies. Moreover, this organisation made use of money transfers and couriers to channel criminal monies out of the Netherlands.

Thus, it could be argued that the FIU analysis capacity should be further developed. Faber and Van Nunen (2004: 19) argue that the FIU database is too micro-oriented. This means that transaction data are successfully used in concrete criminal investigations. Although the FIU analyses as they are currently carried out are useful in the framework of fighting crime, they are less suitable for uncovering new criminal offences, which requires more strategic knowledge. The added value of the FIU could be its power to detect patterns and uncover money laundering typologies and techniques. This is important, as the Dutch reporting system, based as it is on a mixture of subjective and objective indicators, results in large amount of information. Moreover, the FIU has yet to invest in strategic analysis related to important policy themes. Faber and Van Nunen (2004: 66) would even prefer the FIU database to be subject to data-mining analyses and free search. However, the functioning of the administrative

[142] From 1997 the office uses the MOT Information Online Network (MOTION) by which the comparison of the MOT-database with other databases is enlarged. The data is not only compared with police databases, but during the years other databases as VENNOOT (on legal persons), VIS (on stolen or false documents) and the Criminal Records Register.

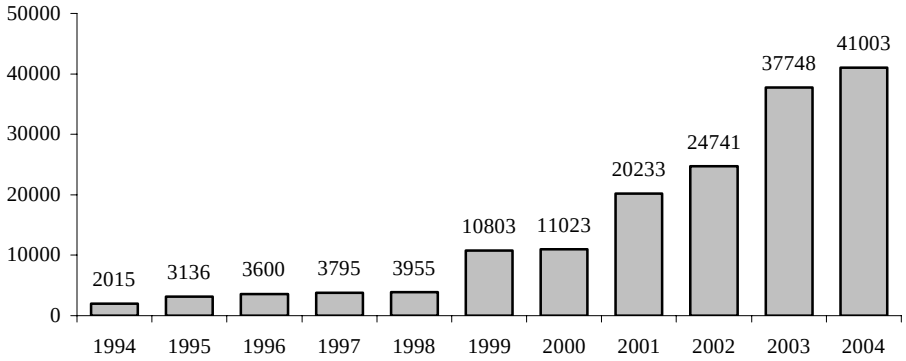
FIU as a buffer to protect personal information hinders such extensive use and analyses (Faber and Van Nunen, 2004: 19). The data protection requirement makes it impossible for other partners in the reporting system to access the information.[143] Thus, up to now the FIU's analyses have contributed to the investigation of criminal offences, but do not offer an alternative method of investigation.

2.3.2.4 Transmitting transactions

As a result of the large number of unusual transactions examined, the FIU has uncovered many suspicious transactions. In general, as the FIU states, 'the broader the net, the broader the catch', in other words, the more data collected the greater the amount of data that matches with the intelligence of the police databank (MOT, 2003: 7).

Over the past 10 years, over 100,000 suspicious transactions have been uncovered and information about them submitted to the investigative services (Graph 2.2). The FIU is proud of this large number of transmitted transactions (Faber and Van Nunen, 2004: 195).

Graph 2.2 Number of suspicious transactions, 1995-2004*



Source: MOT (2004: 57).

* Transactions are categorised on the converting date. The converting date differs from the reporting date of an unusual transaction. Thus a suspicious transaction could be based on a transaction that was reported a year or more earlier.

It points to the large amount of criminal proceeds that may possibly be laundered through financial service providers. Most of the reported transactions were carried through. In 2002, only 145 of the 24,741 suspicious transactions were aborted. This means that a large sum of possibly laundered money could have been injected into the legitimate economy. In 2001 the total amount of

[143] In this framework the developments regarding such analyses of the FEC, a new expertise centre in which all different partners cooperate is very welcome (Faber and Van Nunen, 2004: 19).

suspicious transactions hit a record €1.1 billion (MOT, 2003: 7). This amount was exceptionally high as the year's totals included two mega-cases. Nevertheless, only two years later, in 2003, a new record was set; that year the sum of suspicious transactions amounted to €1.5 billion (MOT, 2003: 7). To investigate these possibly laundered monies the FIU transmits transaction information to BLOM, which is dedicated specifically to the fight against money laundering, and to the investigative services dealing with organised crime in general. The problem with the huge amount of transmitted information, however, is that it cannot all be used by the investigative services. In practice a criminal investigation is seldom started based on transaction information. When transaction information is used, it is mainly applied for tactical reasons in an existing criminal investigation. Much transaction information goes unused. There is simply not enough capacity to process the information (Faber and Van Nunen, 2004: 240). Another reason for the limited use of the information is the rather small added value of information from mainly micro-analyses (Faber and Van Nunen, 2004: 240). BLOM was established in January 1999 to strengthen the reporting system. This supporting unit of the national public prosecutor carries out additional analyses of suspicious transactions. Moreover, to facilitate the use of transaction information in criminal investigations, BLOM established the HARM method (hit-and-run money laundering),[144] by which it aims to search out and prosecute money laundering activities without investigating the predicate criminal activities. To carry out these rather short police investigations, a special HARM unit was set up under BLOM's mandate. BLOM also works to interest investigative services in the HARM method. These efforts have served to increase the use of transaction information.

At first, all information on suspicious transactions was transmitted from the FIU to the investigative services through a special police unit, which refined and rearranged the information to stimulate its use by investigative services. Rather soon this link appeared superfluous and inefficient, for a lot of information was lost in this last phase (Terlouw and Aaron, 1996: 105). Later the transactions were directly transmitted to the investigative services, so that the chain could be traversed as quickly as possible. The transaction information was placed in the databases of the intelligence units of the investigative services. From there, it could lead to new investigations or be brought into existing investigations. If information was of no immediate concern, it remained in the database for possible later use.

Moreover, the FIU and BLOM established a new database, the *Intranet Suspicious Transactions* (IVT) (MOT, 2003: 52) operational from 1 February 2000. The IVT is a subject-oriented database in which all transmitted suspicious transactions are registered. As this database is digital, the FIU can transmit data on suspicious transactions electronically and has since stopped generating paper documents of transactions. Moreover, representatives of the various investigative services have direct access to this database enabling them to look

[144] In 2001, mobilisation of the HARM approach became more evident as money laundering became an independent criminal offence.

for interesting information. As this database is subject-oriented, it is much more attuned to the activities of the investigative services, as criminal investigations are related to persons. This simplifies access for police inquiries. Obviously, this database only encompasses the suspicious transactions. The reports on unusual transactions are still not accessible to the investigative services; the FIU remains the buffer to protect the private nature of this information.

The Dutch FIU is not only responsible for transmitting transaction information to investigative services in the Netherlands, it must also respond to inquiries from foreign investigative services. Because money laundering to some extent involves transnational activities, it is important that different states can easily cooperate. Through various conventions, the European Union has attempted to improve international cooperation in this regard. An important impetus was the 1997 action plan to combat organised crime, which recommended a maximum level of cooperation and a two-way information flow between the member states' financial and tax institutions and their law enforcement and judicial authorities (article 6g). To facilitate such cooperation the European Union argued in favour of a specific system for the exchange of information concerning suspected money laundering at the European level (recommendation 26a).

Over the years, the Netherlands has displayed a great interest in multilateral cooperation. Together with the United States and Belgium, it founded in 1995 the Egmont Group, a coordinating organisation for all financial intelligence units. In 2002, 11 new members joined the group, which now consists of 69 countries. The Egmont Group organises education for analysts and researchers to help them discern money laundering patterns. Moreover, the group advises on the judicial and legal issues involved in exchanging information at the international level. This is necessary, because international cooperation is hindered by the diversity of the financial intelligence units, as they may be part of the police, the judiciary or administrative departments. Despite the efforts of the Council of the European Union to ensure that the functioning of these units is not affected by their internal structures,[145] Mitsilegas (2003: 170) asserts that it is extremely difficult for an independent administrative unit to share information with a unit that is partially composed of police from another country. Moreover, the administrative units face problems in consulting foreign police units because they are not part of the international police communication system. To overcome this problem, the information exchange task is divided between the FIU and BLOM. The Dutch FIU, being an administrative unit, processes inquiries from foreign administrative units. BLOM, as supporting unit of the Dutch national public prosecutor, has information only on suspicious transactions at its disposal, and it maintains contact with police units in foreign countries. To keep things simple, the FIU and BLOM jointly established the Dutch FIU desk in 2001. This desk is a virtual window, accessible for all foreign inquiries.

[145] Council decision of 17 October 2000 concerning arrangements for cooperation between financial intelligence units of the member states in respect of exchanging information. *OJ L 271*, 2000, p. 5.

In the meantime, the Netherlands has taken the initiative to develop the FIU.NET network financed by the European Commission which should make the international exchange of information easier, faster, safer and more pleasant (MOT, 2003, 56). Possible problems with different languages are avoided because when a request is made the system registers the requesting parties and the request and sends the encrypted information on to the network. According to the Dutch FIU, the system is not only efficient it also increases mutual trust (MOT, 2003: 56).

2.3.3 Bottlenecks in implementation

The Dutch reporting system involves a chain of activities: reporting unusual transactions, deducing which of these transactions are suspicious and transmitting the suspicious transactions to investigative services. This reporting system is a multi-agency approach in which the united forces of financial service providers, the FIU and investigative services should help prevent money laundering and organised crime. The reporting system is a good example of a responsibilisation strategy, since it actively involves financial service providers, which are private agencies or professionals. The functioning of such a multi-agency approach depends on some essential elements such as activating the actors in question, coordinating chains of cooperative action and aligning the interests of the various parties. These requirements can present more difficulties than simply bringing the traditional criminal justice system into action (Garland, 1996: 454). This last subsection therefore looks into how these elements have been developed and implemented. Based on this review, we can assess whether the implementation of the anti-money laundering intervention includes some shortcomings that might influence its output.

Activating financial service providers. The Dutch reporting system is broader than the obligations set down in the European directive on money laundering. Instead of a system of reporting suspicious transactions based on subjective indicators, the Dutch system is based on the reporting of unusual transactions as defined by a mix of objective and subjective indicators. As a result of this broad reporting system, the Dutch FIU has received over 400,000 unusual transactions reports since the disclosure obligation came into force. This large number of transactions already indicates that the financial service providers have been successfully activated in the reporting system. At least, this applies for financial institutions, as they are responsible for the largest proportion of the reported transactions. In a couple of years it will be possible to ascertain the reporting behaviour of the non-financial sectors, such as legal professionals, as well. The large number of reports can also be ascribed to the authorities' enormous attention towards developing lists of indicators for the various actors as well as their supervising compliance with the obligations. Based on these findings, Terlouw and Aaron (1996: 102) evaluated the reporting system positively.

Coordination activities. A recent evaluation study by Faber and Van Nunen is less positive. They conclude that all the attention on the development of and compliance with the indicators has resulted in a reporting system stuck in its first phase (Faber and Van Nunen, 2004: 20). This is illustrated by the large number of reported 'unusual' transactions. During the system's first ten years much attention was paid to establishing indicators and supervising compliance, however, the converting process in which the suspicious transactions are culled from the unusual transactions received less care. Therefore, too much value has probably been attributed to the objective and subjective indicators. Perhaps more effort should be invested in the FIU's capacity to detect the real money laundering activities. Also, the large number of unusual transactions has snowed under the FIU, leaving it little time to develop solid financial expertise. Consequently, it performs mostly micro-oriented analyses and makes few efforts in the direction of strategic analyses in relation to important policy themes. These micro-oriented analyses enable the FIU to transmit a large number of suspicious transactions to investigative services. However, because little of this information aligns with the needs of the investigative authorities a lot of this data is left unused.

Because of the enormous number of reports and the lack of coordination for handling these reports, it looks like the Dutch reporting system is going to be transformed into a suspicion-based system concentrating on subjective indicators. Such a system would limit the number of reported transactions and perhaps give the FIU the space it needs to develop necessary skills and expertise. However, according to Faber and Van Nunen (2004: 22), such a change is not the solution for dealing with large amounts of information, as it also limits the possibilities for conducting extensive analyses. Administrative relief would not necessary yield improved results. On the contrary, these researchers posit that the huge amount of information that comes from all unusual transactions could actually provide far more detailed insight into money flows and money laundering activities, provided that strategic analyses are used (Faber and Van Nunen, 2004: 67). They argue that many of the possibilities offered by objective-based or rule-based reporting systems are yet to be discovered and there are sufficient reasons for developing these techniques before changing the nature of the Dutch reporting requirements. They suggest that it is too soon for a change from a rule-based to a risk-based reporting system and that instead the possibilities for analysing transaction information should be further developed.

Coordinating interests. A cooperative action problem related to the anti-money laundering initiative has also been identified, as the result of a lack of central management. According to Faber and Van Nunen (2004: 20), because the authorities were unable to strive for a single common objective, the various parties in the reporting system settled for their own objectives by which they focused on their own interests. The financial service providers concentrated on reporting large numbers of unusual transactions, preferably with as little effort

as possible. The FIU strived to uncover as many suspicious transactions as possible, regardless of whether this information could all be used by the investigative services. The investigative services continued their criminal investigations, as they did not see an interest in carrying out money laundering investigations. Most of their effort is in fact directed to criminal investigations of other organised crime activities, mostly drugs trafficking. Obviously, transaction information that fit these investigations was used. However, investigations were seldom started based on transaction information.

With all the attention paid to the first phase of the reporting system, the authorities seem to have lost sight of the objective. Goal displacement resulted, with the authorities losing sight of the actual aim concerning protection of the integrity of the financial service providers and contribution to the investigation of criminal offences. What are the consequences of these findings and how do they affect the results and outcomes of the anti-money laundering intervention? These questions are addressed in the next section.

2.4 Evaluation of the outcomes of the Dutch anti-money laundering intervention

This section deals with the last research question: what are the outcomes of the Dutch anti-money laundering intervention? In accordance with the methods described in Chapter 1 the evaluation of the outcomes involves an overview of the observed outputs and plausible outcomes. To observe the outputs we refer to the concrete objectives that were uncovered in section 2.2 and to the implementation process described in section 2.3. This subsection is based on the evaluation studies of Terlouw and Aaron and of Faber and Van Nunen as well as the annual reports of the FIU and BLOM. The plausible outcomes are based on the assumptions underlying the anti-money laundering intervention that were uncovered in section 2.2. These are judged in the light of the pragmatic new everyday criminological theories and empirical knowledge on organised crime. In addition, the outcomes include side effects to which the legislator must respond. Finally, an overall conclusion is drawn on the anti-money laundering intervention with regard to the prevention of organised crime.

2.4.1 Observed outputs

Based on its underlying programme theory, it is clear that the Dutch anti-money laundering intervention focuses on two main objectives. First, it tries to *prevent the abuse of the financial sector* by increasing the awareness and integrity of financial service providers. Second, the reporting system aims to support the *fight against* money laundering by providing investigative authorities insight into transactions and money flows. To what extent have these objectives been attained?

2.4.1.1 Increasing the awareness and integrity of the financial service providers

The first important outcome in preventing money laundering involves the increased awareness of the traditional financial sector and, more recently, of other vulnerable sectors that must answer the anti-money laundering obligations. The participation of some of the larger banks and exchange offices in an informal reporting system illustrated the early commitment of this sector. Nevertheless, first initiatives to establish an objective-based reporting system aroused resistance, and hard discussion was needed to come to an acceptable compromise. However, with the introduction of the mixed system of reporting unusual transactions defined by both objective and subjective indicators, the financial sector was successfully activated. This appears obvious from the dutifully reported transactions. Moreover, the organisation and communication structure within financial institutions has been adjusted and internal intelligence units established to facilitate reporting to the FIU. However, displaying commitment to the anti-money laundering intervention goes further than this. As early as two years after the disclosure obligation came into force, there was a real change in attitude which extended from bank employees to managers and accountants (Terlouw and Aaron, 1996: 78). Accountants in particular had to transform their working methods. They had to approach managers tactfully to clear up difficulties and vagueness in the books. Changes in attitude seldom come easily. However, with regard to the financial sector this posed no real difficulty, and one could even say that the anti-money laundering measures have been internalised (Hoogenboom *et al., s.d.*: 124). In other words, commitment is evidenced by the integration of the reporting obligations into normal activities. Faber and Van Nunen (2004: 58) considered the increased awareness to be a form of compliance. According to them, answering the standards of integrity, e.g. proper management of accounts and fast and quality-wise good reporting, is being rewarded with the change from the rule-based to the risk-based system, with which more responsibility is attributed to the financial sector. At the same time, however, if internalisation leads to acting on automatic pilot, the chance that institutions will actually become aware of possible money laundering activities plummets.

With regard to most of the other sectors that must comply with the disclosure obligation, e.g. casinos, providers of credit cards, stockbrokers, insurance brokers and smaller exchange offices, implementation proceeded relatively easily. However, in contrast with the financial sector, here, adopting the rules has been based on judicial reasons and not so much out of commitment (Hoogenboom *et al*., *s.d.*: 133). Because these sectors believe that their services are not really vulnerable for money laundering operations (Hoogenboom *et al.*, *s.d.*: 113), there is no real commitment.

The recent extension of the disclosure obligation to legal professions proceeded less smoothly. This sector, in particular the Netherlands Bar Association, considers the obligation an obstruction of their activities, by which

they mostly refer to the violation of their secrecy privilege. They disagree with the categorisation of their services into ascertaining the legal position of a client and providing commercial financial and business advice. Without the pressure of the terrorist attacks of 11 September 2001, these counterarguments would probably not have been so easily rejected. The lawyers' critical attitude, however, does not imply a lack of awareness of possible culpable involvement in criminal activities. As early as the 1990s legal professionals, including the Netherlands Bar Association, were attentive to such involvement. The possible displacement of money laundering activities resulting from increased attention to the financial sector prompted the bar association in 1995 to adopt new directives for the intensification of preventive measures. These directives were aimed especially at preventing lawyers' involvement with criminal activities. They were smoothly accepted, as the bar association itself had established them, though in some respects they were even stricter than the disclosure obligation. Despite their resistance to the rules, legal professionals have also reported unusual transactions.

From the large number of transactions reported it is clear that financial service providers are aware of the possibility of money laundering transactions. It is however, unclear how the reporting activities, regardless of the degree of internalisation of the anti-money laundering measures, have contributed to the integrity of the financial service providers.

2.4.1.2 Contributing to uncover criminal offences and prosecuting criminals

The second objective of the disclosure obligation is to alert authorities when unusual transactions are executed. Moreover, based on customer identification and the disclosure obligation, financial service providers create a paper trail that can be followed to investigate suspicious transactions. In general, this paper trail should lead to criminal offences and support the prosecution of the law-breakers involved. Transaction information is a particularly important source of information for financial investigators, who gather and analyse financial data in order to glean new insights into criminal activities.

The observed outputs of the anti-money laundering intervention with regard to criminal investigations and prosecutions are vital. After all, international agencies (e.g. the FATF) attach high importance to the fight against money laundering, and results of anti-money laundering interventions are expressed in the number of investigations and the amount of confiscated proceeds. Nevertheless, the quantitative question of outputs seems difficult to answer, at least for the Netherlands.

Criminal investigations. BLOM receives all information on suspicious transactions, analyses that information, then transmits it to investigative services as ready-made reports, or 'BLOM files' that are presented to the investigative services.[146] Of these, 47% resulted in the start of new investigations and 41%

[146] Most of these files are sent to the financial and economic investigative services.

were used in existing investigations (Faber and Van Nunen, 2004: 185). More generally, Faber and Van Nunen (2004: 202) concluded that 15% of 1,900 BLOM files had been used as burden of proof for predicate offences and 14% for managing or coordinating decisions in investigations and for other purposes.

To gain insight into the number of money laundering investigations, Faber and Van Nunen consulted the judicial registration system. Since the inception of independent penalisation of money laundering in 2001 (Criminal Code article 420*bis* to *quater*), the judicial registration system has recorded the number of money laundering investigations. In their study Faber and Van Nunen (2004: 286) counted 155 such investigations. In 52% of these investigations, money laundering was the principle charge. In the other cases, the public prosecutors concentrated on other offences and the money laundering activities were listed as alternative charges. This could indicate that public prosecutors sometimes doubt the effectiveness of money laundering cases and prefer to play it safe by charging suspects with predicate crimes. Faber and Van Nunen (2004: 286) assert that the number of money laundering cases up to now is too small to make firm judgements. Moreover, the registration of cases says nothing about the use of transaction information. In fact, many such cases had no relation whatsoever to transaction information (Faber and Van Nunen, 2004: 287).

Next to money laundering investigations, the results of financial investigations might provide information about the outcomes of the anti-money laundering intervention. Financial investigations centre on the confiscation of criminal proceeds and often run analogously with investigations of traditional offences, like drugs trafficking and human smuggling. Since 1999, 71 financial investigations have been registered (Faber and Van Nunen, 2004: 206). However, there are no figures for confiscated proceeds. Furthermore, though financial investigations imply an expectation to confiscate criminal proceeds, they tell us nothing about the successful use of transaction data.

In addition to the time-consuming criminal and financial investigations, BLOM established the HARM method (hit-and-run money laundering), mentioned earlier. HARM investigations, which aim at searching out and prosecuting money laundering without investigating the predicate criminal activities, are often restricted to a couple of weeks or months. In 1999 and 2000 17 HARM actions were executed; in 2001 52 HARM actions took place; and in 2002 there were 120 such actions. The HARM unit itself executed most of these actions,[147] which resulted in the arrest of several offenders, seizure of various sums of money and confiscation of several stores of drugs and weapons (Unit Financiële Criminaliteit i.o., 2001). Although the BLOM annual reports contain no systematic overview of results, the HARM method is seen as a success (Faber and Van Nunen, 2004: 23), a perception that has been strengthened by the establishment of the independent penalisation of money laundering (article 420 of the Dutch Criminal Code). Notwithstanding the disappointment in some of the judicial sentences, the HARM method seems useful for uncovering criminal proceeds.

[147] Cases can also be passed on to investigative services in the Netherlands or abroad.

Court verdicts. Because the independent penalisation of money laundering is rather recent, many cases have yet to reach final judgement. Generalisations about them are therefore impossible to make. Nevertheless, based on the study by Faber and Van Nunen (2004: 288), almost half of the cases seem to have resulted in imprisonment (17 of the 38 cases). Only in three cases was confiscation of criminal proceeds added to the imprisonment penalty.[148] Thus, although these preliminary figures should be interpreted with caution, it seems that proceeds have been confiscated in only a few cases. Neither are exact figures available for confiscated crime money.

The paper trail established by the anti-money laundering obligations facilitates means of fighting organised crime such as the confiscation of criminal proceeds. Although this is not part of the preventive approach to organised crime, client identification and the disclosure obligation can support efforts to confiscate criminal proceeds. A short overview of the profits confiscated over the last few years is therefore called for. According to Faber and Van Nunen, public prosecutors tried to use the act to confiscate proceeds of crime in approximately 9,000 cases between 1996 and 2001. In the majority of these cases the amounts of money involved were relatively low: in 84% of the cases the estimated amount of illegally obtained income did not exceed €45,000. In only 2% of the cases did the criminal profits exceed an estimated €450,000 (Faber and Van Nunen, 2004: 461-472). A large number of cases were settled out of court or are still awaiting a final ruling. Judges ruled on approximately 5,500 cases between 1995 and 2000. The sum of the monies that were actually confiscated during 1995-2001 amounted to no more than €27 million (Nelen, 2003b: 133). This result is small in relation to the sum of suspicious transactions. In 2001 alone suspicious transactions amounted to €1.1 billion (MOT, 2003: 7). Another striking result is the huge gap between the value of the deprivation orders passed by the courts (€129 million) and the execution of these orders (€9 million) (Nelen, 2003b: 133).

2.4.1.3 Conclusion on the outputs

The description above illustrates the different sources that can be used to reveal the scale of money laundering investigations. Because these various sources reflect different aspects of laundering activities, no unambiguous figures can be presented on outputs of the anti-money laundering intervention. The different sources base their figures on different definitions, by which they present different values that partially overlap. This means it is impossible to give a clear summary of the exact number and scope of money laundering investigations; and it is certainly impossible to determine the extent to which these investigations are based on transaction information. Consequently, our main

[148] In other cases imprisonment is accompanied by a penalty and/or a community service (6 cases) and in two cases there was only community service. Of the remaining 10 cases, 8 resulted in acquittal and in 2 cases the judge was found incompetent.

comment regarding the observed outputs is the lack of insight of the Dutch anti-money laundering authorities into the use of the transaction data gathered.

Furthermore, the two main evaluations of the Dutch reporting system indicate the likelihood that little has been done with the transaction data. According to Terlouw and Aaron (1996: 108), the limited use of transaction information is due to the limited expertise on financial investigations in the Netherlands.[149] Faber and Van Nunen (2004: 21) conclude that the bottlenecks of the reporting system are the result of its bad implementation, in that the system creates a gap between the Dutch FIU and the investigative services. First, this gap results from the fact that the FIU's micro-analyses offer little added value to law-enforcement agencies. Second, the gap is due to the failure of the FIU to align their analyses with the needs of the investigative services; FIU outputs do not correspond with policy themes, meaning they are not made to fit with investigative priorities. The reporting system, in fact, consists of two separate worlds instead of a coordinated chain of activities (Faber and Van Nunen, 2004: 195). There is an excess of transaction information provided by the FIU; yet this information fails to fulfil the needs of the investigative authorities, either in terms of content or quality. In short, the FIU does not offer what the investigative services need. As a result, transaction information seems to contribute only in a small part to the search and prosecution of serious offences. However, due to the limited insight into the direct and indirect results of the intervention it is impossible to reach a firm judgement. This is an important conclusion as well.

2.4.2 Plausible outcomes

The anti-money laundering intervention involves preventive measures against organised crime developed in such a way as to effectively contain crime. The question is to what extent is this intervention based on the pragmatic new criminological strategies that underlie many of today's preventive approaches. To answer this question we test the programme theory underlying the anti-money laundering intervention and the measures that arise from this theory against the assumptions and techniques of the rational choice perspective and of situational crime prevention.

2.4.2.1 Rational choice

As described in section 2.2 on the programme theory, the anti-money laundering obligations involve an intervention in the interaction between criminals and financial service providers. The intervention aims to prevent money laundering by increasing the costs and decreasing the benefits for the criminals involved.

[149] Nelen and Sabee (1998) and Faber and Van Nunen (2002) confirm the severe lack of knowledge about financial matters within the police and in the public prosecutor's office. Nelen (2003: 134) asserts that this is not unique to the Netherlands; studies from abroad also underline the difficulties of actually depriving criminals of their assets.

The causal assumptions of the programme theory start with a central problem of organised crime: the criminal profits. These profits are assumed to be the main incentive for criminal organisations. Criminals would not be attracted to organised crime if they could not enjoy the profits from their crimes. The uncovered programme theory assumes that by hindering investment of criminal profits in the legitimate environment organised crime becomes less attractive. Moreover, by facilitating the confiscation of illegal profits the anti-money laundering intervention contributes to remove a main incentive for committing organised crime.

Based on the rational choice perspective, removing the main incentive for committing crime can have a large impact on organised criminality. The knowledge that organised crime will not result in substantial criminal profits can influence the decision on whether to take part in it. Legislation to deprive criminals of their criminal profits perfectly fits this theory. Obviously, this also applies to the anti-money laundering intervention, which supports the uncovering of criminal activities and the confiscation of criminal proceeds by mandating a paper trail be created for all financial transactions. Simply phrased, with the intervention the legislator is trying to reduce the benefits of organised crime so that the possible benefits no longer counterbalance the risks. This reasoning is certainly congruent with the rational choice perspective.

The rational choice perspective is based on the assumption that criminals are free to make decisions on their own and that they are rational in their decision making. In particular, organised crime exemplifies rational thinking and calculated instrumental behaviour (Cornish and Clarke, 2002). Because organised crime is characterised by complexity, organisation, planning and economic motivation, it is illogical to think that criminal organisations do not act rationally. Levi (1998) seems to confirm this reasoning, as he indicates that organised crime should be examined as a business process. While empirical research has underlined that organised crime indeed involves rational thinking, it has also shown that some of the activities are not reasoned well.[150]

With regard to money laundering, one might wonder whether criminal organisations indeed make the large profits that legislators ascribe to their activities. The whole fight against money laundering is based on the assumption that criminal organisations earn large profits. According to national and international authorities, these large profits can damage the legitimate environment, whether they are invested in new criminal activities or in the legitimate economy. This rationale justifies the implementation of the anti-money laundering intervention. The legislators base their reasoning on police and judicial data, which attributes large profits to organised crime. However, it must be pointed out that the Dutch government does not have a long history of financial policing. Therefore, criminal proceeds can only be roughly estimated.

[150] Ruggiero (1996) gives various examples in which criminal organisations do not act rationally. More generally, the rationality of crimes is discussed in cultural criminology. In this approach, Ferrel (1999) looks at the interesting contrast between avoiding risks that can uncover criminal activities and the adrenalin rush that someone can get out of committing crime.

Nevertheless, the laundering phenomenon is portrayed as a global threat (Van Duyne, 2003: 68), though even at the international level the scope of the discerned problems is seldom based on facts. Different studies have illustrated the difficulties of determining the scope of the money laundering problem (Savona, 1997; Van Duyne *et al.,* 2003). Thus, there is a striking difference between the assumption that money laundering is a global threat and the difficulty of determining what size that threat actually is. It therefore seems necessary to confront the perceived problems with empirical data. If empirical studies illustrate that the intervention is based on wrong assumptions then the justification for the intervention falls apart.

Although the idea of organised crime having large profits at their disposal is widely accepted, some researchers believe the estimates may be exaggerated. In his evaluation study of the Dutch legislation for confiscation of illegal profits, Nelen states that in calculating the illegal profits police do not always take account of the difference between profit and turnover (Nelen, 2000, 57). Van Duyne (1995) argues that large profits are not as self-evident as people generally think: organised crime is, after all, an expensive business as well.

2.4.2.2 Situational crime prevention

Situational crime prevention is based on the rational choice perspective and includes techniques to influence the cost-benefit balance of crime in order to make crime less attractive. Table 2.1 illustrates that the anti-money laundering intervention involves techniques that can easily be categorised in Clarke's 25 techniques of situational prevention.

Increase the risk. A first technique of situational prevention is to increase the risk of the crime by extending guardianship to agencies and individuals beyond traditional law enforcement. In addition to their primary function, such agencies and individuals can perform a surveillance role by virtue of their position. The anti-money laundering intervention implies the guardianship of financial service providers. Specifically, the anti-money laundering intervention activates the employees who provide direct service to clients. This technique of activating the employee can be compared with the utilisation of place managers. These are employees who interact with the client and observe whether the client fits certain subjective indicators. For example, the employee should be aware of how money is offered to the institution or organisation. MOT reports (MOT, 1999: 31) suggest that criminal organisations still offer large amounts of money in unusual packaging, such as plastic bags or cardboard boxes. Employees should report such behaviour, since once money is deposited, the manner of its delivery might no longer be ascertainable.

Furthermore, reducing anonymity can increase the risk involved. Obviously, this technique is applied in the anti-money laundering intervention by requiring customer identification. The obligation to identify clients should

deter those involved in money laundering. Moreover, it helps formal surveillance agencies, as it makes it possible to link transactions to persons.

Strengthening formal surveillance such as that provided by police and security guards is another technique to increase the risk. According to Clarke, the presence of formal surveillance implies a threat that may deter potential offenders. The anti-money laundering intervention strengthens formal surveillance as it extends to financial service providers the duty to alert the authorities of possible money laundering operations. Moreover, the paper trail that results from the anti-money laundering measures facilitates criminal investigations while strengthening broader formal surveillance. This is based on the assumption that by following the money one should find the criminal.

Increase the effort. A second strategy of situational crime prevention is to increase the effort that potential offenders must make to accrue benefits. The more effort that is required the lesser the chance that offenders will turn to committing crimes. In this vein, the anti-money laundering intervention prevents anonymous acting and hinders discreet and unnoticed placement of crime money in the legitimate financial sector. In fact, anonymity and discrete operating are considered main features of money laundering – its very purpose being to hinder the creation of a paper trail. With the anti-money laundering intervention in place, money launderers must increase their efforts to whitewash criminal proceeds: front men and front stores must be brought into play and operations made more complex. This corresponds with the technique of deflecting offenders. Empirical research has shown the success of deflecting criminals, as criminal organisations often rely on a small group of people who facilitate all the necessary logistic elements. When plans must change, criminal organisations are made to rely on new modus operandi and new facilitators who might prove less reliable.

A case described by Kleemans *et al.* (2002: 98) shows how deflecting activities can break down criminal organisations. As a result of a police action a money launderer had to change his normal operations, and he took a chance with someone new. However, this second-best option turned into a worst-case scenario as this new person proved unreliable. Over the years the deflection approach has increased in popularity, and significant results have been achieved with relatively small efforts (Kleemans *et al.*, 2002: 156).

Another technique to increase the effort involved in laundering criminal proceeds is to control access to facilities. The anti-money laundering intervention at first focused only on financial institutions. However, over time more agencies and persons providing financial services were required to comply with the obligations. As such, access to these facilities became hindered on a wide scope.

Table 2.1 The techniques of the anti-money laundering intervention categorised in Cornish and Clarke's 25 techniques of situational prevention

Increase the effort	Increase the risk	Reduce the rewards	Reduce provocations	Remove excuses
1. Target hardening • hinder conspicuous elements as anonymity and discrete operating	6. Extend guardianship • examine transactions possibly related to money laundering	11. Conceal targets	16. Reduce frustrations and stress	21. Set rules • objective and subjective indicators offer a clear framework to comply
2. Control access to facilities • one can control the access to financial service providers	7. Assist natural surveillance	12. Remove targets	17. Avoid disputes	22. Post instructions
3. Screen exits	8. Reduce anonymity • identify clients	13. Identifying property	18. Reduce emotional arousal	23. Alert conscience • increasing awareness and integrity
4. Deflect offenders • by hindering the discreet and unnoticed placement of crime money, launderers have to turn to other methods	9. Utilise place managers • employees have to wonder whether clients answer to objective or subjective indicators	14. Disrupt markets	19. Neutralize peer pressure	24. Assist compliance • support compliance with rules by providing examples of and trends
5. Control tools/weapons	10. Strengthen formal surveillance • alarm specific authorities and provide them with information	15. Deny benefits • obligations and the resulting paper trail support the confiscation of crime monies	20. Discourage imitation	25. Control drugs and alcohol

Reduce the rewards. The third strategy of situational crime prevention is to reduce the rewards of criminal endeavours. One of Clarke's techniques involves denying criminals the benefits of their misdeeds. With regard to the anti-money laundering intervention, the legislator has focused on criminal profits. Although outputs cannot be quantified, it is clear that the intervention can result in the confiscation of criminal gains.

Based on the assumption that profits constitute the main incentive for participation in organised crime, people are likely be less attracted to commit crime if they are unable to hide illegal profits from law-enforcement authorities. Confiscation of criminal proceeds fits in with this strategy. If illegal profits cannot be laundered, they will be much more difficult to enjoy in the legitimate environment. This means that criminals would have difficulty using their profits as they wish. Moreover, the paper trail can lead authorities to criminal offences and their underlying money flows. Uncovering criminal activities and confiscating criminal profits thus helps reduce the rewards to a minimum.

Remove excuses. A final strategy of situational crime prevention involves the removal of excuses. In this case, this strategy is applicable not to the criminal organisations but to the financial service providers. First of all, with the established objective and subjective indicators the authorities have set clear rules with which financial service providers must comply. Integrity and awareness are two main concepts in this intervention, corresponding with Clarke's technique of appealing to the conscience of the institutions and individuals involved. To assist in compliance with the anti-money laundering obligations, the FIU provides information on trends in money laundering. With this information, financial service providers become better equipped to recognise and report possible money laundering activities.

2.4.2.3 Effects of the technique

The techniques involved in the anti-money laundering intervention correspond well with crime-reduction strategies of situational crime prevention. This enables us to conclude, in the abstract, that it is plausible that the anti-money laundering intervention leads to the presumed effects. Empirical research has also uncovered some successes of these techniques.

Table 2.3 shows that no techniques to reduce provocations have been applied. This is not surprising, since the money laundering intervention was designed to avoid confrontation between financial service providers and suspected launderers. The most obvious example is the fact that employees should not enter into a discussion with a possible launderer, but should carry out the transaction and then report it to the authorities, which then can start an investigation. Moreover, reducing provocations is a technique that was added to the existing scheme in order to include offences that were provoked by a situation. It would be illogical to assume that money laundering is provoked by a

situation, for it is a premeditated activity at the end of a chain of criminal activities.

Next to these techniques, Clarke looks at the role of people and institutes. Clarke (1997) argues that institutes and people can play two opposite roles: that of preventers (who make crime less likely) and that of promoters (who carelessly or deliberately make crime more likely). Obviously, preventive measures seek to bring into action all kinds of institutes and people as preventers. This is actually the essence of the reponsibilisation strategy. No long argumentation is needed to show that the anti-money laundering intervention involves a similar reasoning concerning the financial service providers. Whereas formerly there was nothing to prevent these providers from facilitating and thus promoting crime, now these providers are brought into action as preventers. To ensure their proactive involvement, the authorities appeal to the conscience of the financial service providers as well as monitoring their compliance with the rules. As such, financial service providers can metaphorically be regarded as gatekeepers and watchdogs of the legitimate environment. According to this reasoning it is of utmost importance that these providers are honest and unwilling to facilitate money laundering. Thus, the assumption that the integrity of these providers is essential to fight money laundering is based on a clear theoretical insight.

Based on this theoretical insight, according to both the rational perspective and the situational crime prevention approach, it is plausible that the anti-money laundering measures have had a positive impact in reducing organised crime. However, the main problem with situational crime prevention is possible displacement. In fact, it is this issue that makes or breaks the situational crime prevention approach. If displacement occurs, it means that people act out of a stronger motivation than just opportunism, in which case the situational approach to crime prevention would be less interesting. However, according to Clarke (1997: 28) the situational approach illustrates that few offenders are so driven by need or desire that they maintain a certain level of offending whatever the cost. On the contrary, for most people the elimination of easy opportunities for crime may actually encourage them to explore non-criminal alternatives. This reasoning implies that displacement will not be 100%, a fact confirmed by other studies (Hesseling, 1994). Nonetheless, the following subsection illustrates that displacement has played a role in the implementation of the anti-money laundering intervention.

2.4.3 Side effects

Next to the observed outputs and the plausible outcomes, any side effects must be taken into account in determining the effectiveness of the anti-money laundering intervention. Side effects may be positive or negative. We focus here on two main negative side effects. Firstly, as a consequence of the barriers put up to hinder the abuse of financial service providers, the anti-money laundering

intervention results in a displacement of activities.[151] Secondly, the emphasis on the repressive approach in the reporting system has led to a controlled delivery of crime money into the legitimate environment, which does not seem to correspond with the objective of preventing organised crime.

Displacement. As described in the introduction chapter of this study, most preventive measures face the problem of displacement. Displacement, in fact, is seen as a main bottleneck of fighting money laundering – at least, by the legislators who decided to broaden the scope of the disclosure obligation. The Dutch legislator anticipated the possible displacement of money laundering operations by incorporating the possibility to adjust parts of the acts by Order in Council.[152] In this way, the time-consuming procedure of amending the acts is avoided.

Some geographic displacement of certain financial activities has been observed to off-shore centres in countries outside the jurisdiction of the European Union. In such 'tax havens' criminals can set up corporations with an account at the local bank and transfer large sums of money with no supervision by authorities (FATF, 1990: 9). To counteract this displacement, the FATF (1991: 12) suggested a geographic extension of the anti-money laundering measures.[153] In turn, the Council of the European Union recommended in its 1997 action plan closer cooperation with the EU candidate countries of Central and Eastern Europe, and with other countries and international organisations, to encourage well-organised anti-money laundering interventions and to stimulate mutual assistance in criminal matters (recommendations 3, 4 and 16). Over time, the FATF began focusing on the vulnerability of the international financial system, maintaining a list of non-cooperative countries and territories. By addressing deficiencies, the FATF aims to stimulate these countries to adopt better regulations and implement the necessary supervision. When countries address the FATF recommendations they can petition to be removed from this list. For example, in 2004 Guatemala, Egypt and Ukraine were removed from the list. Regarding the countries remaining on the list, such as Indonesia, Nigeria and the Philippines, the FATF advises financial institutions in member states to pay special attention to transactions involving these countries or territories (FATF, 2004: 2).

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[151] Displacement is generally viewed with disapproval. Hesseling (1994: 57), however, argues that displacement as a result of barriers put up to hinder certain activities is not only negative. His study illustrates that displacement is never 100%. By intervening in an activity there are always people who refrain from the activities and those who look for ways to get around the intervention.

[152] For example, the definition of financial services to determine the object of the disclosure obligation has the provision that other services can be indicated by Order in Council (see Disclosure of Unusual Transactions (Financial Services) Act, article 1).

[153] One geographic area that could be used for laundering activities is the Caribbean. In order to prevent anti-money laundering developments in the Caribbean from lagging behind, the Caribbean Financial Task Force (CFATF) was established and 19 extra recommendations introduced. In the Netherlands, Terlouw and Aaron (1996: 78-79) mention the displacement to Eastern bloc countries that have a cash society.

There is also the possibility of displacement to other branches and institutions. Data in FIU annual reports confirm some displacement to other institutions. For example, FIU figures show a clear increase in the use of money transfers (MOT, 2003: 34). Furthermore, the FIU and FATF annual reports contain examples of displacement of money laundering activities to non-financial sectors. In reaction to this form of displacement, the scope of actors that must comply with the intervention was enlarged. The question is whether money launderers are already looking for new sectors that fall outside of the newest scope.

A third type of displacement involves *modus operandi*, specifically, the likelihood that increased control of the financial sector has resulted in more sophisticated money laundering constructions. The implementation of these complex constructions, however, requires the expertise and skills of legal professionals, and therefore not everyone agrees with the prominence given to this form of displacement. Van Duyne (2003: 82) argues that most criminal money is simply exported.[154] While he does not dispute the fact that loan-back methods and fake bookkeeping are used to launder money (2003: 83), he concludes that the actual cases display a lot of pragmatism and only a little strategy (Van Duyne, 2003: 94). He criticises the blind perception of the cases described in FATF reports as typical, since the reports aim to convey striking examples with educational value for the member states. They therefore cannot be regarded as a survey of general laundering practices (Van Duyne, 2003: 97). In the Netherlands, the possible involvement of legal professionals in organised crime has been a subject of debate since the early 1990s.[155] Several studies showed the culpable involvement of these professionals (Van de Bunt, 1996: 27; Kleemans *et al*., 1998 and 2002).[156] However, lack of empirical evidence (criminal investigation and prosecution of lawyers is rare) makes it impossible to assess the scale of the problem (Nelen and Lankhorst, 2003: 46).[157]

Another aspect of displacement regarding the *modus operandi* involves the use of modern technology, in particular cyber-laundering. Through the FATF, member states have expressed their concerns about the risks and potential use of Internet technologies (FATF, 1999: article 27). The computerised world offers great convenience for money laundering operations. Internet is easy to access, always available, depersonalised and cheap. Most of all, these features obstruct

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[154] Van Duyne's study is based on 52 cases involving criminal proceeds of €450,000 or more.

[155] It first came up in the 1992 white paper *Organised Crime in the Netherlands*.

[156] The concept of *culpable involvement* used by Van de Bunt (see also Fijnaut *et al*., 1998: 162) relates to involvement in both a narrow and a broad sense. The first exists in the compromising conduct of being involved in punishable acts in such a way that it can be prosecuted. The second encompasses compromising conduct by which professionals fail to exercise due care in preventing misuse. Thus, culpable involvement does not necessarily imply conscious and deliberate collaboration, but it may be reproached because of negligence.

[157] A media analysis of culpable involvement of professionals over the period 1999-2001 of Lankhorst and Nelen (2004) found five cases of misconduct of real estate agents of which four could be related with organised crime; three cases to misconduct of tax consultants and accountants related to organised crimes and other criminal activities. In 19 cases lawyers were related to criminal activities; eight cases which implied fraud and 11 related to organised crime. Eight cases were found of notaries related to criminal activities; three cases implied fraud and five were related to organised crime. These figures do not say anything about the possible threat to the society.

the identification of clients and record keeping as well as the reporting of suspicious transactions. Moreover, supervision of high-tech actions is hindered by the fact that the virtual world offers the possibility to encrypt information and that these transactions might fall outside of current legislative and regulatory definitions (FATF, 1999: article 27). When speaking of high-tech laundering, people often refer to the use of Internet, Internet banking, smart cards and electronic cash. However, the fact that most of these services are related to an existing bank account puts the problem into perspective. The banks do register the account activities. However, there is no way to verify the true identity of the person using the services.

To counter the risk of high-tech laundering and the rapid developments in this area, the FATF has established some countermeasures (FATF, 1999: article 34):

- limiting the functions and capacity of smart cards (including maximum value and turnover limits as well as the number of smart cards per customer);
- linking new payment technology to financial institutions and bank accounts;
- requiring standard record-keeping procedures for these systems to enable the examination, documentation, and seizure of relevant records by investigating authorities; and
- establishing international standards for these measures.

Surprisingly little has been done since the FATF presented these countermeasures in 1999. Contrary to other signs of displacement, the problem of cyber-laundering is not addressed in the 2001 revised European directive on money laundering. Nonetheless, as with more traditional financial service provision, identification is an important means of establishing a paper trail to support law-enforcement agencies in uncovering criminals and criminal offences.

Finally, there is the matter of displacement to informal value transfer systems or underground banking. Though underground banking is often associated with criminal activities, these activities often involve legal enterprises of communities from China, Pakistan and India. In these communities it is normal for family members in richer countries to financially support their kin in their country of origin. It is for this reason that such systems are more accurately referred to as informal value transfer systems (Passas, 1999: 9). However, launderers' desire to avoid governmental checks might push them to use these systems as well. For example, in the Netherlands an informal value transfer system that provides transfers to Jordan, Iraq, Pakistan and Turkey has been used to launder crime monies (Kleemans *et al.*, 2002: 118-121). The problem with such informal activities is that situational prevention is no longer possible. Van de Bunt and Van Dijken (2003: 55) address this issue with regard to money transfers provided by informal providers. For them, extension of the disclosure obligation could have two divergent effects. On the one hand, it could lead to a disadvantageous situation where clients avoid usage of the services as much as

possible. On the other hand, it could provoke providers to submerge even further.

Awareness of these possible effects is key for the prevention of organised crime. When crime money disappears in illegal environments the opportunities for the legislator to establish preventive measures disappears, for the authorities can no longer play a supervising role. Naturally, in such situations law enforcement can still intervene in the illegal environment with repressive measures, such as investigating criminal organisations.

Controlled or uncontrolled delivery of criminal money. Experience shows that the two objectives of the anti-money laundering intervention – prevention of abuse of the financial sector for money laundering activities and fighting money laundering itself – result in a field of tension. On the one hand, the anti-money laundering measures have to protect the integrity of the financial service providers. On the other hand, these providers are left to execute unusual transactions, even when they are convinced they are collaborating in money laundering, provided that these transactions are reported. The disclosure obligation exculpates them from any liability.[158] Thus, despite the fact that maintaining the integrity of the financial service sector was the legislator's primary stated concern, it was clear from the beginning that the reporting system was better prepared to provide information to investigative authorities rather than to facilitate the integrity of the financial sector.

The fact that almost all unusual transactions were in fact carried out has resulted in a disclosure obligation that could be said to assist the laundering of crime money under the watchful eye of the providers of financial services.[159] This is particularly visible because of the possibility to report immediately afterwards, which has become the basic rule. Terlouw and Aaron (1996: 36) speak of a *controlled* delivery of crime money. Van de Bunt (2004: 694) states that if it turns out that the reaction of the investigative services and the justice system is inadequate, we can speak of an *uncontrolled* influx of crime money. As described earlier, evaluation studies show that indeed too little is done with transaction data. This development sharply contrasts with the idea of facilitating the integrity of the financial service providers. Instead of refraining from service provision when there are suspicions of money laundering, the financial sector actively participates in the illegal activities. According to the financial sector, this leads to ethical problems for the institutions and worries considering their public image (Terlouw and Aaron, 1996: 37).

The implementation of the intervention seems to indicate that the legislator's priorities have changed and that the integrity of the sectors involved is now subordinate to the search and prosecution of offences. In other words, the repressive approach against money laundering seems to have gained precedence over the preventive one. This also appears from the broadening of the disclosure

[158] This does not apply for customer identification. The Establishing of Identity (Services) Act prohibits the execution of any transactions when the identification is not yet established.

[159] In 2002 only 145 of the 24,741 suspicious transactions were not carried out.

obligation to legal professionals. The Netherlands Bar Association had earlier established specific professional directives[160] that were stricter in preventing lawyers' involvement with crime money than the money laundering measures now mandated by law. In general their own directives required professionals to refrain from services when indications of money laundering arise. For the notary profession more or less the same remark can be made. These internal directives do not really differ from the anti-money laundering disclosure obligation, except for the fact that specific suspect transactions were not to have been carried out. As a consequence, the integrity of the professionals seems to have been better protected by the internal directives than by the legislative acts. Whereas the internal directives imply refraining from service provision, the reporting system allows these services, provided the transactions are reported. Nonetheless, it must be said that in the framework of the disclosure obligation reporting should take place at an earlier stage than the stage at which the professional would refrain from providing the services.

2.4.4 Conclusion

The Dutch anti-money laundering intervention was brought into force to hinder the use of financial service providers for money laundering. Whereas at the international level anti-money laundering interventions had focused on organised crime or serious crime, the Dutch legislator decided to enlarge the scope of its intervention to all kinds of offences. In the Netherlands, the anti-money laundering intervention was the first preventive measure taken against organised crime for which non-law-enforcement agents were brought into action. At the time of its establishment, it appeared that these agents were willing to comply with the intervention, at least those in the financial sector. The anti-money laundering intervention has since been characterised by a 'widening of the net' of subjects that come under is obligations. Recently, legal professionals were added to the list of professionals who must comply with the intervention. These recent entrants are not as willing to comply as the financial sector. This is probably due to the high costs of the intervention and the limited benefit as perceived by these professionals. The costs of the anti-money laundering intervention include not only the administrative costs of registering information, but also the limitations it poses on the privilege of professional confidentiality. According to the professionals, these high costs are out of proportion with the incidental involvement of professionals in money laundering activities. In addition, the benefits, which are mainly to provide starting points for criminal investigations, are good for the authorities but not for the professionals themselves. In short, the professionals argue that the costs do not counterbalance the benefits.

What about the effects of the anti-money laundering intervention? This intervention was considered a crime-reducing intervention based on the

[160] It implies the Bruynincks-directives (Richtlijnen ter voorkoming van betrokkenheid van de advocaat bij criminele handelingen).

assumption that hindering the abuse of financial service providers would prevent money laundering. Assuming that hindering money laundering hinders criminal organisations from spending illegal proceeds, the anti-money laundering intervention would affect organised crime as well. For this the legislator introduced two strategies. The first strategy can be called the preventive approach: increasing the awareness and integrity of financial service providers and hindering the placement of money in the legitimate environment. The second strategy is part of a repressive approach: information on suspicious transactions must be reported to the authorities so they can investigate, uncover and prosecute criminal offences. In theory, this dual strategy might be effective in that it aligns with today's pragmatic criminological theories. The anti-money laundering intervention encompasses various techniques that can be categorised in the crime-reducing techniques of the situational crime prevention approach of Cornish and Clarke. In particular, these techniques involve increasing the effort needed to benefit from crime, increasing the risks involved and reducing the rewards. This should make money laundering unattractive to criminals. In addition, the techniques involve removing excuses on the part of the financial service providers, dissuading them from facilitating money laundering.

In practice, the effects of the intervention are debatable. It is likely that up to now the intervention has had limited impact on organised crime, as its implementation is characterised by many shortcomings, particularly in the reporting system. Due to the lack of strategic management by the ministers of justice and of finance, the institutions involved (the FIU, BLOM and investigative authorities) have no mutual objectives at which to aim. As a result each has developed their own objectives, meaning that the aims at the various links in the chain of the reporting system do not align. For example, the number of unusual transactions is so enormous that the FIU cannot submit them all to strategic analyses; and the micro-analyses of the FIU bring in such a large amount of information on suspicious transactions that it cannot be processed by the criminal investigative services. Moreover, the authorities have focused on the most concrete aspects of the anti-money laundering intervention. They have concentrated on developing indicators to determine which transactions are 'unusual' and on enforcing compliance of the institutions and persons required to comply. The emphasis on reporting behaviour, the first phase of the reporting system, has led to goal displacement (Faber and Van Nunen, 2004: 20). Compliance of the financial service providers became an end in itself and the authorities lost sight of the actual objectives: protecting the integrity of financial service providers and contributing to uncover and prosecute criminal offences. As a result, we can conclude that up to now the anti-money laundering intervention has not lived up to the legislator's expectations.

However, as this conclusion is not based on the intervention as such, but on the shortcomings of its implementation the situation can be changed. Insights provided by evaluation studies can be a first step in the further development of the reporting system. It is striking that it took ten years to draw this conclusion. According to Van de Bunt (1993), goal displacement arises from a lack of clear

policy, as vague objectives offer little support and guidance. This means that first of all, the Dutch legislator has to recover the actual objectives and rethink the benefits of the preventive approach and take a clear position on protecting the integrity of financial service providers. With regard to the repressive approach, the legislator should invest in the last stages of the system. Investing in financial expertise and in cooperation between the anti-money laundering authorities and the investigative services could improve the results of the reporting system. A key step for the FIU and BLOM is to adjust their efforts to the demands of the investigative services. For this, the public prosecutor's office can play an important role. The national prosecutor concerned with the disclosure's act should consult more regularly with the Board of Procurators General, which sets the priorities for the Dutch National Criminal Investigation Service, which is charged with the fight against organised crime. In setting priorities, it should be clear that financial policing as such cannot be a priority: it is an instrument, a method, to handle offences. In other words, the anti-money laundering intervention is a means to contribute to the investigation of the criminal offences that are being given priority by the competent authorities. This is exactly the objective the Dutch legislator had in mind when it established the anti-money laundering intervention.

Chapter 3 The Dutch screening and auditing approach

The intertwining of organised crime with the legitimate environment became a problem first in countries where mafia organisations tried to infiltrate the legitimate world, particularly in Italy and certain parts of the United States, especially New York. To combat the problem these countries developed administrative measures to bar criminals from the legitimate environment. These administrative measures served as an example for law-makers in the Netherlands when, in the early 1990s, an encroachment of organised crime into legitimate Dutch society was suspected. The local and national measures that were then taken provided an incentive for international organisations to follow suit and also act against the interlinking of organised crime with legitimate society. In particular, measures not only in the Netherlands but also in Italy influenced EU policies. The creation of the Dutch screening and auditing approach is one such development. The approach developed in a bottom-up fashion, meaning that successful implementation of national screening initiatives led to their replication at the international level.[161]

This chapter concentrates on the Dutch screening and auditing approach as set out in the BIBOB Act.[162] In a nutshell, the BIBOB Act establishes grounds on which administrative authorities can refuse or withdraw permits and subsidies or exclude bidders from tendering procedures. For this the act establishes a bureau that, upon the request of an administrative authority, conducts a screening to come to an advice whether a permit, subsidy or public contract is likely to be abused for criminal activities.

In accordance with the general methods described in Chapter 1, this chapter answers the three research questions:

- What is the programme theory underlying the Dutch screening and auditing approach? (Section 3.2)
- What is the content of the Dutch screening and auditing approach and how is it implemented? (Section 3.3)
- What are the observed outputs and plausible outcomes of the Dutch screening and auditing approach? (Section 3.4)

The Dutch screening and auditing approach came into force in 2003. The discussion preceding its implementation resulted in a large body of literature on which this chapter is largely based. Due to the short period of time that the approach has been in place, it is difficult to describe its implementation in detail and even harder to present its outputs and outcomes. As a result the final section is rather summary.

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[161] The bottom-up development of the screening and auditing approach is opposite that of the anti-money laundering intervention, which was created through a top-down process enforced by the European Union and other international organisations.

[162] It thus does not give complete insight into all possible screening and auditing procedures.

3.1 The intertwining of the legitimate and illicit worlds

This chapter centres on the Dutch screening and auditing approach and its possible effects on organised crime. Screening implies the testing or examining of someone or something to discover whether there are irregularities. Screening can take place, for example, within organisations to check whether an employee is loyal. Auditing involves an official examination of the accounts of a business and generally has a more positive connotation, as investigators check whether certain activities were done correctly. The best known audits are probably those executed by accountants. Another difference between audits and screenings is that the first are usually executed by the subjects themselves or on their own initiative while a screening is conducted by a third party. This chapter looks at the screening and auditing activities enforced by the authorities to gain insight into possible involvement in organised crime. Via audits people must illustrate that they are reliable partners to work with, and screenings verify that prospective partners indeed are reliable. When involvement in criminal activities is discovered, people may be excluded from certain public functions, for example, they may be denied a permit to open a certain type of establishment or they may be excluded from public tendering procedures.

This first section deals with the problems and threats of organised crime that underlie the Dutch screening and auditing approach and the process of realising this intervention. As mentioned earlier, the approach came into being through a bottom-up process. This section firstly provides insight into the precursors of the Dutch screening and auditing approach. Subsequently, it moves to the national level and then to developments in the European Union. This is important because EU member states must adhere to certain rules for participation in EU tendering procedures. In describing these developments it becomes clear that screening and auditing strategies differ from one authority to the next.

3.1.1 Precursors to the Dutch developments

Italy. Italy is the first country in the European Union where investigations of the antecedents of companies, the so-called 'criminal audits', were regulated by law and systematically conducted on a national level. Since the 19th century Italy has had to deal with the Sicilian Mafia, the Camorra and other such organised crime groups. A main characteristic of these mafia-structured organisations is their use of their power to infiltrate the legitimate environment in order to control economic or commercial activities. In particular they made use of certain public services, such as licences, public contracts and subsidies. Due to the enormous problems deriving from these mafia-structured organisations Italy developed anti-mafia legislation in the 1950s to more effectively address organised crime and corruption. In 1965 the anti-mafia legislation entered into force and from then on the criminal court could prohibit a person suspected or convicted of organised crime from contracting with public administrations (Di Nicola, 2002:

252).[163] The anti-mafia legislation provides for a warning system to guarantee the exclusion of natural or legal persons. This system compels authorities involved in granting permits and all contracting authorities to check whether applicants are registered on the anti-mafia list.

The act became a success only in the 1980s after the concept of 'mafia organisation' was defined. Italian law-makers necessarily distinguished a mafia organisation from common organised crime as it implied a different problem, and as such needed a different approach. The characteristics of mafia organisations can be derived from its definition in article 416 *bis* of the Italian criminal code:

> A Mafia-type organisation is an organisation whose members use the power of intimidation deriving from the bonds of membership, the state of subjugation and conspiracy of silence that it engenders to commit offences, acquire direct or indirect control of economic activities, licences, authorisations, public procurement contracts and services or to obtain unjust profits or advantages for themselves or others, or to prevent or obstruct the free exercise of vote, or to procure votes for themselves or others at elections.

From this description it is clear that the abuse of public services is inherent in the form of organised crime that the Italian legislator has to deal with.

New York. In the late 1960s the New York authorities were confronted with similar mafia-structured organisations infiltrating the legitimate environment. In particular, the infamous Cosa Nostra organisation flourished in New York for a century. Cosa Nostra wielded significant power in unions and companies in various industries, such as construction, waste hauling and even John F. Kennedy Airport. It gained this power by selecting staff and claiming tributes through numerous rackets and schemes (Jacobs, 1999: 121). Obtaining or occupying positions of power in branches of industry is labelled 'racketeering'. The United States gave far-reaching facilities to law-enforcement authorities to enable them to effectively combat racketeering. Examples are testimonial immunity, enhanced sentencing in organised crime cases, the witness protection programme and the Influenced and Corrupt Organizations Act (RICO).[164]

RICO was a particularly important instrument, as this act marked the beginning of a new approach to fighting mafia-like organised crime. Traditional law enforcement tools had proven ineffective for fighting mafia syndicates, as they singled out individual criminals and offences. The syndicates simply replaced those who were convicted and imprisoned. RICO was designed to dismantle whole syndicates by making it a crime 'to conduct the affairs of an enterprise (a legal enterprise or a criminal group) through a pattern of racketeering activities (the commission of two or more non-isolated designated crimes within ten years)' (Goldstock, 1991: 139). Consequently, RICO enabled

[163] For an extended discussion of this Italian preventive approach see Di Nicola (2000) and Manunza (2001).

[164] These facilities became part of the Organized Crime Control Act established in 1970.

law enforcers to target companies in which criminal organisations had obtained positions of power. Due to the central role of the companies, the major penalty under RICO was forfeiture. With this, the US government applied its assumption that it was harder to rebuild a successful business than to replace individuals.[165] Although, ten years later the measures seemed successful, as the number of mafia organisations was enormously reduced, the authorities were unsuccessful in barring these organisations from legitimate sectors. It became clear that criminal law alone was not strong enough to break these organisations' positions of economic power.

The New York Organised Crime Task Force (OCTF) developed a new approach, which resulted in screening procedures in various sectors (Fijnaut and Jacobs, 1991; Jacobs, 1999). For example, there was a pre-qualification procedure regarding the school construction programme. By means of this procedure no companies could tender for a construction contract before the authorities – in this case an inspector general aided by representatives of police, public procurement services and even financial authorities – had checked the answers to an extensive questionnaire that was a part of the application form. The questions involved all aspects of the company's organisation: its owners, stockholders, corporate capital, payments of taxes and social security, employees with criminal records, previous construction projects, etc. An incomplete questionnaire or certain answers to the questions could result in an applicant being excluded from bidding for the public contract.

This procedure included two important aspects. First of all the screening involved an integrated approach in which the public administration, the criminal justice system and even the tax authorities cooperated. Second, the approach aimed at barring or hindering the infiltration of mafia organisations in legitimate economic sectors, with a clear emphasis on racketeering.

3.1.2 Development of the approach in the Netherlands

As described in Chapter 1 of this study, Dutch policy on fighting organised crime was strongly influenced by events in the United States. In particular the Dutch-American Conference on Organised Crime that took place in 1990 had a major impact on developments in the Netherlands.[166]

American influences could first be found at the local level. In 1990 the Amsterdam city government was planning the construction of a new metro line, a project estimated to cost €0.73 billion. Given the experiences of the New York Organised Crime Task Force presented at this conference, the city government decided to try to bar criminal organisations from the tendering procedure. In 1993 a project group consisting of local officials and police representatives

[165] The RICO legislation was also connected to money laundering, as violations of the money laundering statutes were included within the definition of racketeering (Mitsilegal, 2003: 39).

[166] This conference was organised by C. Fijnaut, a notable in the criminological circle in the Netherlands who praised the task force's innovative strategies and recommended the introduction of similar strategies in the Netherlands. The papers of this conference are published in *Organised Crime and its Containment: A Trans-Atlantic Initiative* (Fijnaut and Jacobs, 1991).

developed pre-qualification procedures with which Dutch and foreign companies participating in the public tendering procedure could be screened to uncover possible connections to criminal organisations. The experiences of the United States had taught Amsterdam's city government that it was particularly important that the screening and auditing agency could consult all relevant information. The fact that the information needed was not available in administrative databases made it necessary to seek information from police departments, judicial authorities and tax offices. However, the city government came across some judicial barriers in the form of privacy regulations, which hindered the sharing of such information.

Recording and communicating personal data is regulated by the Data Protection Act (*Wet Persoonsregistratie*),[167] which exactly describes obligations for safeguarding privacy in communicating personal data. The Police Files Act (*Wet op de Politieregisters*) deals with personal data recorded by police services.[168] Communication of personal data collected by police entities is strictly limited, meaning that this data may be shared for police purposes only. Because the screening and auditing activities were executed by administrative authorities, the police could not provide their information and vice versa, not even when these two bodies were cooperating on one project. In the framework of Amsterdam's administrative approach, discussed in more detail in the next chapter, the Minister of Justice granted special permission for the exchange of information, at least to a certain extent. Yet these obstructions delayed Amsterdam's establishment of its special *screening and auditing bureau* until 1996. In 1998 the local bureau commenced its operations.[169] These developments can be seen as the experimental garden for the national developments, which, for that matter, also took a long time to get off the ground.

The national developments started in 1992 with the Minister of Justice and the Minister of the Interior introducing the American screening approach into national crime-fighting policy. In the policy document *Organised Crime in the Netherlands: Threats and Plan of Action* the Minister of Justice described the administrative approach as necessary for complementing the repressive approach of police and judiciary.[170] In this plan organised crime was no longer seen as criminal activities that occurred in an underworld separated from the legitimate environment. On the contrary the Ministry of Justice argued that due to large profits deriving from organised crime 'criminal organisations and the

[167] In 2000 the Data Protection Act was replaced by the Personal Data Protection Act (*Wet bescherming persoonsgegevens*) *Stb.* 2000, no. 302.

[168] Law of 21 June 1990, dealing with regulations on the protection of the personal living situation in relation to police files, last revised in 1999, *Stb. 1999, no.* 244.

[169] The ministers of justice and finance even gave permission to exchange relevant information from police and tax authority databases. Such permission fit with Amsterdam's administrative approach. This approach, including rules on exchanging information, is described in Chapter 4. However, this special competence was taken away from the local bureau once the national screening and auditing procedures entered force.

[170] For more information on this policy plan see Chapter 1.

legal economy are interwoven to a much larger degree than in the past'.[171] Although the minister did not use the term racketeering, the idea that criminal organisations were gradually becoming embedded in the legitimate environment alluded to a problem similar to that observed in the United States. The minister argued that the public administration needed new capabilities to operate more combatively. These new capabilities are incorporated in the administrative approach,[172] which as presented in this government policy document, involves two main strategies. The first strategy was to investigate the possibilities for screening and auditing people in order to exclude criminal organisations from legitimate economic dealings. In particular the minister referred to certain civil services such as the granting of permits and subsidies and tendering of public contracts. The second strategy was to set up a campaign to strengthen integrity at all levels of the public administration. This implied increasing the defences of the public administration against the threat of infiltration by criminal organisations. In practice, this second strategy is one to counter government corruption and fraud in general. Integrity in the public administration was considered a main precondition for effective screening and auditing; without an honest administration screening has no purpose.

Notwithstanding the introduction of the administrative approach in 1992, it was unclear whether sufficient tools were in place to allow government agencies to implement a screening and auditing procedure. To answer this question Struiksma and Michiels (1994) investigated the legislative possibilities at that time.[173] They discussed a range of possibilities for refusing and withdrawing permits by means of an audit done by external agencies and consultation of criminal records. Yet the researchers concluded that the existing legislation likely offered insufficient possibilities to hinder criminal organisations in their economic dealings (Struiksma and Michiels, 1994: 70). In particular the fact that civil servants could not consult police data was seen as a huge obstacle to uncovering possible connections with organised crime and to dealing with suspicions of criminal activities. Moreover, there were few grounds for refusing permits based on the possibility of criminal activities. Therefore, Struiksma and Michiels recommended strengthening the law to enable administrative agencies to take action against organised crime. In their opinion, new legislation was needed to give administrative authorities the legal power to screen and audit applicants for permits and subsidies and participants in tendering procedures (Struiksma and Michiels, 1994: 67-69). Moreover, they said that the new legislation had to enable all types of information to be used in these screenings; and a judicial framework needed to be developed containing relevant grounds

[171] *De georganiseerde criminaliteit in Nederland; dreigingsbeeld en plan van aanpak. Kamerstukken II* 1992-1993, 22 838, no. 2: 2.

[172] Besides the administrative approach, in the policy plan several measures that fit the repressive approach are mentioned, e.g. intensification of cooperation between public prosecutors and police officials, formation of regional criminal investigation units, improvement of information exchange between police and regulatory agencies (e.g. tax authorities), growth of expertise on organised crime and expansion of international cooperation.

[173] This study concentrated on the legislative environment around construction and tendering.

for refusing and withdrawing permits and subsidies and for excluding certain agents from tendering procedures. The ministers of justice and of the interior acted on these recommendations and started a project to develop such legislation.

The development of the screening and auditing approach was postponed by a crisis in the criminal justice system in the mid-1990s.[174] The parliamentary inquiry that investigated this crisis made some recommendations on criminal methods, while also emphasising the need to further develop the administrative approach. This was remarkable as the research team led by Fijnaut, which the parliamentary inquiry had charged to investigate organised crime in the Netherlands, had just concluded that in general there was no evidence of racketeering in the Netherlands. Criminal organisations had gained no control of legitimate sectors of the economy, and neither were there indications that organised crime had infiltrated government (Fijnaut *et al.*, 1998: 203). On the contrary, the team concluded that, generally, organised crime in the Netherlands was mainly confined to the traditional illegal supply of certain goods and services (Fijnaut *et al.*, 1998: 203). Thus, based on the recommendation of the parliamentary inquiry, the administrative approach no longer needed to be exclusively aimed towards combating racketeering in the Netherlands.

Nonetheless, the research team did make an exception regarding the hotel and catering industry including the related real estate, where there was a certain extent of penetration by criminal groups (Fijnaut *et al.*, 1998: 204). In particular the team referred to the situation in the red-light district of Amsterdam. Criminal organisations were investing in hotel and catering premises so as to acquire positions of power there. These positions of power gave criminal organisations control over an important part of the economic life in this neighbourhood, which they used to influence the boundaries of interventions by the city and law enforcement (Fijnaut and Bovenkerk, 1996: 126). Thus, in Amsterdam's red-light district racketeering was observed, at least to a small extent. As the situation in Amsterdam could not be compared with that in the rest of the Netherlands, the Dutch nominal capital remained an exception where additional measures were deemed necessary. Chapter 4 further discusses the situation in Amsterdam and the city's response.

Thus, the problem of organised crime in the Netherlands was found to be generally limited to trade in illegal goods and services. Whereas racketeering refers to activities in the legal market, 'common' organised crime takes place in the unlawful market as it implies trade in illegal goods and services. The big difference between racketeering and 'common' organised crime is the level of penetration into the legitimate environment. With regard to this aspect Fijnaut's research team concluded that the Dutch situation was far less serious than the Italian one (Fijnaut *et al.*, 1998: 204, 207).

[174] The causes and the results of this parliamentary inquiry are described in the first chapter of this study. The criminological research was carried out by the Fijnaut research team (Fijnaut *et al.*, 1996 and 1998).

So why did the parliamentary inquiry recommend the administrative approach? The inquiry argued that the level of observed intertwining of organised crime and the legitimate environment, even though it did not amount to racketeering, was already enough reason for developing an administrative approach (Enquêtecommissie Opsporingsmethoden, 1996: 386). The interaction between criminal organisations and the legitimate environment was considered a problem as it could influence police and administrative authorities. Notwithstanding the fact that corruption cases were rare in the Netherlands, the number of incidents was considered worrisome and there were no guarantees for the future (Enquêtecommissie Opsporingsmethoden, 1996: 387). Furthermore, regarding public administration the parliamentary inquiry argued that granting public permits, subsidies or contracts to criminal organisations would damage the integrity of the administration (Enquêtecommissie Opsporingsmethoden, 1996: 386).

There was also a practical reason to develop the approach. The parliamentary inquiry argued that the lack of screening and auditing legislation had led to an informal exchange of information (Enquêtecommissie Opsporingsmethoden, 1996: 286) among various governmental bodies. In response to their need for information, these bodies were already creating administrative measures by which they could generate information from different sources. Although administrators officially had no access to police files, in practice the authorities were looking into alternatives for attaining that same information. Therefore, the parliamentary inquiry suggested that a legal instrument be established to regulate the necessary information exchange.

Based on the recommendations of Struiksma and Michiels (1994) and those of the parliamentary inquiry, the ministers of justice and the interior announced in October 1996 the development of an administrative and legal instrument to screen and audit subjects in order to refuse or withdraw permits and subsidies and to exclude them from tendering procedures if there was a serious threat of criminal abuse. In the meanwhile, some incidents of unintentional governmental involvement in fraudulent practices through the granting of permits or contracts by administrative authorities from the early 1990s had come to light. For example, the government had granted subsidies to a waste disposal firm that had pretended to offer environmentally friendly ways to process waste.[175] This case resulted in a scandal when it came to light that the company actually drained away its waste in illegal ways (Eshuis and Van den Berg, 1996). Furthermore, in awarding a contract for construction of a police station, the government proved unaware that illegal subcontractors would be involved. As these examples illustrate, the Dutch government was not exclusively focused on organised crime, but rather on all kinds of unintentional facilitation of criminal activities.

[175] Detailed in the explanatory memorandum to the BIBOB Act. *Kamerstukken II* 1999-2000, 26 883, no. 3: 3.

The resulting instrument to prevent such facilitation was established with the 'BIBOB Act' named from the Dutch acronym.[176] Due to the rather extensive legal adjustments and the wide discussions on the scope of the new act, it took until mid-2003 before the draft bill was passed by parliament.[177] Following the recommendations of the parliamentary inquiry the BIBOB instrument was designed not as focused on racketeering but to prevent the abuse of public permits, subsidies and contracts for criminal activities and to prevent public facilitation of criminal activities, in particular by the government. The BIBOB instrument is unmistakably concentrated on preventing organised crime. However, as early as the letter announcing the screening and auditing approach, the ministers of justice and the interior asserted that it was unnecessary to restrict the scope of the instrument to organised crime.[178] They said then that the unintentional facilitation of criminal activities should be the focus of the instrument irrespective of the kind of crime.

The explanatory memorandum to the BIBOB Act confirms that the act indeed applies to other criminal offences as well as organised crime. In fact, it indicates the scope of the instrument includes non-organised crime, at least as it seriously affects society and the integrity of the public administration.[179] This line of reasoning illustrates the policy precedence given to maintaining the integrity of the public administration. This aspect is described in more detail below.

With the act coming into force, the Netherlands is, after Italy, only the second country in Europe to have a judicial framework to screen applicants for permits and subsidies and subjects vying for public contracts with the view to preventing organised crime. Meanwhile, the European Union has been developing such a framework as well.

3.1.3 Developments at the European level

At the European level the attention to the screening and auditing approach can be divided into two parts. First is the first-pillar directives on procurement to complete the single market drawn up in the early 1990s. Second is the 1997 action plan to combat organised crime which includes recommendations for excluding criminals from tendering procedures. It is interesting to see how this third-pillar action plan resulted in adjustment of the first-pillar directives. The same dynamic can be observed in the anti-money laundering intervention. However, the rules on procurement proved much more difficult to adjust than

[176] BIBOB is an acronym of the Dutch title of the instrument and Act: Wet Bevordering Integriteitsbeoordelingen door het Openbaar Bestuur.

[177] BIBOB Act. Wet van 20 juni 2002, Wet bevordering integriteitsbeoordelingen door het openbaar bestuur (BIBOB). *Stb.* 2002, no. 347.

[178] Bevordering integere besluitvorming openbaar bestuur, letter from the ministers of the interior and of justice. *Kamerstukken II* 1996-1997, 25 056, no. 1: 5.

[179] The only condition the government inserted is the proportionality of the measure compared to the offence. Bevordering integere besluitvorming openbaar bestuur, letter from the ministers of the interior and of justice. *Kamerstukken II* 1996-1997, 25 056, no. 1: 5 and 19.

the rules involving money laundering. This was due to extensive discussions and disagreements regarding the new and sensitive issues related to the screening process.

The European directives on procurement serve an economic interest, as they facilitate the four basic freedoms: free movement of goods, persons, services and capital. With the directives on public supply contracts, public works contracts, public service contracts and contracts in the utilities sector,[180] the Community aims to guarantee a sufficient level of competition with public tendering in the European market and to harmonise the tendering procedures across the member states. For example, it wants to hinder governments' reflex to keep public procurement inside national borders (Manunza, 2001: 244).[181] In 1997 these directives were adjusted to implement the *Governmental Procurement Agreement* established in the framework of the World Trade Organization.[182] This agreement set out measures to facilitate transparency and tackle corruption in public procurement. With the adjustments of the European rules on procurement, the directives concentrated on corruption and fraud, in particular where it could hurt the financial interests of the Community. The European Union even raised the autonomous European Anti-Fraud Office (OLAF) to supervise its member states.[183] This supervising body illustrates the EU's awareness of the need for a Union-wide fight against fraud and corruption. Up until this point no official connection had been made between public procurement and organised crime. This only occurred in 1997, when the Council of the European Union concluded that fraud in the European Community was also being committed by organised crime:[184]

> 'Case studies show that fraudsters often belong to elaborate transnational criminal organizations and the Council stresses the importance of a coordinated transnational response to the problem.'

The fact that the Community easily attracts organised crime could not have been a surprise, since in the early 1990s the Commission of the European Union had already alluded to the large profits that were considered the mainspring of criminal organisations.[185] The fact that the Community often deals with large amounts of money might have alerted the authorities to possible abuse.

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[180] Directive on public works contracts. *OJ L 199*, 09/08/1993; Directive on public supplies contracts. *OJ L 199*, 09/08/1993; Directive on public services contracts. *OJ L 209*, 24/07/1992. These three Directives are adjusted by the European Parliament and Council directive 97/52/EC. *OJ L238*, 28/11/1997. Directive on procurement in the field of water and energy management and traffic and telecommunication. *OJ L 199*, 09/08/1993, adjusted by directive 98/4/EG. *OJ L 101*, 01/04/1998.

[181] There could be a range of arguments to keep tendering procedures inside the national border, e.g. stimulating employment in a country, and there are many reasons to hinder foreign applicants, e.g. the language barrier and cultural differences.

[182] The European Community is a member of the World Trade Organization (since 1 January 1995).

[183] OLAF stands for *Office pour la Lutte Anti-fraud* and was replaced in 1999 by the UCLAF which stands for *Unité de Coordination de la Lutte Antifraude*.

[184] Protection of the financial interests of the Communities, fight against fraud, annual report 1997. COM/98/0276 final and the Council conclusions PRES/98/157.

[185] See for this reasoning Chapter 2, section 2.1.

Nonetheless, the Council's findings on involvement of organised crime in fraud did not give rise to the immediate adjustment of the public procurement directives.

In the meantime a high-level working group was preparing the 1997 action plan to combat organised crime from within the third pillar. This working group had observed the problems of organised crime as well. The 1997 action plan put forth the first concrete initiatives at the EU level to protect the public administration against infiltration by criminal organisations. Its recommendations not only involved the abuse of tendering procedures, but also concerned the abuse of licenses and subsidies (recommendation 8.13):

> 'The European Council stresses the importance of […] taking necessary steps to allow the exclusion of criminal organizations or their members from participation in tendering procedures, receiving subsidies or governmental licenses. Specific attention should be paid to the illicit origin of funds as a possible reason for exclusion from tendering procedures.'

More specifically, the Council of the European Union wanted to establish new grounds for refusal, by which members of criminal organisations could be excluded from tendering procedures as well as from government licences and subsidies. The action plan's focus was thus wider than fraud, extending to all kinds of organised crimes and in particular to money laundering. In any case, the action plan recommends that involvement in organised crime be defined as sufficient grounds for exclusion from tendering procedures (recommendation 7):

> 'The Member States and the European Commission should ensure that the applicable legislation provides for the possibility for an applicant in a public tender procedure who has committed offences connected with organized crime to be excluded from the participation in tender procedures conducted by Member States and by the Community.'

This meant that the Community directives on procurement had to be adjusted. In 2000 the European Commission indeed submitted a proposal for new rules on procurement.[186] In this proposal, the procurement rules still centred on preventing corruption and fraud,[187] however, they now also included the possibility to cite as grounds for refusal serious offences committed by people participating in the activities of a criminal organisation.

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[186] Proposal for a directive of the European Parliament and of the Council on the coordination of procedures for the award of public supply contracts, public service contracts and public works contracts. COM(2000), 275 final and *OJ C 029 E*, 30/01/2001.

[187] In the proposal corruption is defined as 'having promised, offered or given, whether directly or via third parties, a benefit of whatever kind to a civil servant or public agent of a Member State, a third country or an international organisation or to any person for the benefit of that person or a third party, with the intention that such person will carry out or refrain from carrying out any act in breach of his professional obligations' (article 46 under b). Fraud is still connected to the financial interest of the European Community. The proposal refers to Article 1 of the Convention relating to the protection of the financial interests of the European Communities established by the Council Act of 26 July 199 (*OJ C 316*, 27/11/1995, 485).

The text of the proposal is phrashed as follows:[188]

> '1. Any economic operator shall be excluded from participation in the contract who, at any time during a five-year period preceding the start of the contract award procedure, has been convicted by definitive judgment:
> (a) of having committed a serious offence by participating in the activities of a criminal organisation, defined as a structured association established over a period of time and operating in a concerted manner to achieve financial advantage and, *where appropriate*, to influence unduly the functioning of public authorities [italics by CvdS].'

This directive proposal is focused on criminal organisations that try to abuse the public authorities. However, due to the addition *where appropriate*, the definition is not limited to such abuse. On the contrary, it covers all serious offences. This proposal thus seems a tremendous improvement, as it strengthens the EU's arsenal of means to fight organised crime. However, this proposal has not yet led to a new directive. Until it does the member states must rely on the recommendations of the 1997 action plan. Although these third-pillar recommendations are less imperative and not directly applicable in the member states, EU states do have to comply with them, since they involve an intergovernmental decision.

3.1.4 The scope of the screening and auditing approach in the Netherlands

The screening and auditing procedures developed in Italy and New York focused on racketeering activities executed by mafia-like organisations. Racketeering implies the hiding of involvement in criminal activities and acquiring apparently legal positions in the legitimate environment. To protect the legitimate environment against racketeering, an administrative approach was developed to counter this intertwining of the legitimate and illicit worlds. Following the examples of Italy and New York, the Dutch authorities began to develop their own screening and auditing approach.

The screening and auditing procedures in the Netherlands were first applied against another form of organised crime: trade in illegal goods and services. The same is true for the European legislation, which in the mid-1990s undertook action to hinder the abuse of public administration by criminal organisations in the fight against organised crime. Although the EU policy still refers to the importance of preventing public authorities from being influenced by criminal elements, the scope was larger, covering 'common' organised crime as well. The Dutch legislation even goes a step farther. The explanatory memorandum for the Dutch screening and auditing act reveals that the instrument is not restricted to organised crime, but can also be made available for non-organised criminal activities with serious social implications.[189] This means that the Dutch screening and auditing strategy aims firstly at organised crime, but not to the exclusion of other crime. Thus, whereas the Italian and New York screening and

[188] Directive proposal for rules on procurement in 2000, article 46 under a.
[189] Explanatory memorandum to the BIBOB Act. *Kamerstukken II* 1999-2000, 26 883, no. 3: 5.

auditing measures focus on organised crime related to racketeering, the Dutch and European instruments concentrate on organised crime involving trade in illegal goods and services and other serious crimes with societal repercussions.

Although the Dutch screening and auditing approach is much broader than the Italian or American one, it would be false to assume that the approach can be brought into action in any situation. The framers of the Dutch legislation carefully deliberated its proper scope. On one hand they argued that the instrument still had to prove itself. Therefore, the approach should be restricted to certain sectors in which the risk and threat of criminal involvement are the largest. On the other hand, they emphasised the preventive aspect of the approach: 'it not only involves sectors where criminal interference is already observed, it also involves sectors that answer certain criteria indicating vulnerability for crime'.[190] In this reasoning the scope of the instrument had to be rather wide. Deliberating on both aspects the legislator decided to apply the approach to those sectors considered most vulnerable to infiltration by organised crime. Hereby, it aligned itself with the view of the Fijnaut research team on organised crime, which listed as the most vulnerable sectors transport, waste disposal, construction, hotels and catering and coffee shops.[191] The Fijnaut team selected these five sectors based on assumptions about their vulnerability to criminal infiltration and experiences abroad, particularly in the United States (Fijnaut *et al*., 1996: 33, Fijnaut *et al.*, 1998: 51). In addition to this justification of the selected branches, the team explicitly stated that given other criteria other branches might have been selected (Fijnaut *et al*., 1996: 33, Fijnaut *et al.*, 1998: 51). Consequently, the basis for the selection is not as solid as it is probably assumed to be.

In fact, the BIBOB instrument is not restricted to the sectors in which penetration of organised crime was actually observed. If that were the case the instrument could be applied only in the hotel and catering industry including the related real estate. Nonetheless, the possible problems of criminal organisations intermingling in the other sectors were considered severe enough to bring them under the scope of the screening approach. Here, the legislator speaks of a 'justified need to prevent the unintentional facilitation of criminal activities',[192] which clearly indicates that from their perspective the legitimacy of the screening and auditing approach is not in doubt.

3.2 Programme theory of the Dutch screening and auditing approach

As described in the previous section the Dutch legislator brought the screening and auditing approach into action against the unintentional facilitation of organised crime. But what is its underlying rationale? This section first provides insight into the legislator's assumptions, which indicate how the intervention is

[190] Explanatory memorandum to the BIBOB Act. *Kamerstukken II* 1999-2000, 26 883, no. 3: 5.
[191] Explanatory memorandum to the BIBOB Act. *Kamerstukken II* 1999-2000, 26 883, no. 3: 4.
[192] Explanatory memorandum to the BIBOB Act. *Kamerstukken II* 1999-2000, 26 883, no. 3: 2.

supposed to work. The causal and normative assumptions are uncovered, which is necessary because the last section of this chapter evaluates these assumptions in light of pragmatic new criminological theories. This section secondly unearths the actual objectives of the approach and the strategies to achieve these objectives. These objectives also provide a framework for the final section of the chapter in which the observed outputs are evaluated.

As explained earlier the analysis involves the approach as it is officially written. It is based on the explanatory memoranda of the Dutch acts and on other related official documents.

3.2.1 Assumptions

Causal assumptions. Causal assumptions are part of the reasoning underlying perceptions of a specific problem and the way to handle the problem. For the screening and auditing approach, a first causal assumption is the observed relation between organised crime and interest in legitimate economic dealings. Chapter 2 introduced criminal organisations' desire to invest criminal proceeds in the legitimate environment. The explanatory memorandum of the Dutch screening and auditing approach explains that a lot of these investments involve certain economic sectors, such as construction, hotels and catering and transport.[193]

Investment of illegal proceeds in the legitimate environment could have serious consequences for the whole of society. This is well stated in the Vienna Convention wherein the United Nations speaks of 'illicit traffic and other related organized crime activities which undermine the legitimate economies and threaten the stability, security and sovereignty of States'.[194] The Dutch legislation is more specific and argues that with such investments criminal organisations could build positions of power in legal economic sectors, undermine the legal economy and disturb fair competition.[195] The idea is introduced that criminal dealings could even harm public interests such as public health, environmental quality and traffic safety. In addition, criminal organisations could use these investments to facilitate and shield criminal activities. In other words, criminal investments in the legitimate environment could precede new criminal activities. For example, front stores could be established to facilitate the transport of illegal goods, and criminal organisations could participate in tendering procedures in order to launder money. Consequently, the reasoning is that interfering in these economic dealings could hinder future criminal activities. To protect society, these investments must be curtailed.

The framers of the Dutch legislation seemed most disturbed by the idea that the public administration could unintentionally facilitate criminal investments and consequently facilitate future criminal activities. Such facilitation is

[193] Explanatory memorandum to the BIBOB Act. *Kamerstukken II* 1999-2000, 26 883, no. 3: 4.
[194] Vienna Convention, preamble.
[195] Explanatory memorandum to the BIBOB Act. *Kamerstukken II* 1999-2000, 26 883, no. 3: 2.

assumed to involve a wide range of activities: e.g. granting permits to entrepreneurs to start a restaurant which is used for drug dealing, granting a public contract to a company that uses their activities to launder criminal proceeds and permission granted to set up an establishment that is used as a front store for trade in illegal goods. In the letter announcing the BIBOB instrument the ministers of justice and of the interior argued that it is unsatisfactory that the government on the one hand invests a lot of time, energy and money in the investigation and prosecution of criminal offences and on the other hand runs the risk of unintentional facilitation of criminal organisations and activities, in a direct or indirect way.[196] Moreover, the unintentional involvement of administrative authorities could damage the credibility of these authorities and create risks for their integrity. An example of unintentionally facilitating criminal activities involves the subsidies that the City Council of Amsterdam granted to the Hells Angels. The government argued that the most effective way to prevent youngsters in this specific subculture from joining in criminal activities was to offer them their own clubhouse and support them with subsidies (Schutten, Middelburg and Vugts, 2004). However, the government underestimated the threat posed by the group, as in the course of time individual Angels were involved in offences such as drugs trafficking, human trafficking, arms trafficking, murder and extortion. More recently investigative authorities classified the Hells Angels as a criminal organisation and started a criminal investigation of it. However, up until now there has been too little evidence to bring this case to court.

Based on the crucial role of the public administration in granting permits and subsidies and in tendering public contracts, the public service is indicated as the entity that can effectively interfere in activities of criminal organisations. Similar to the interaction of criminals with financial institutions detailed in Chapter 2, this interaction can be viewed as an Achilles' heel of organised crime. In other words, the fact that the public administration is abused by criminal organisations in their bid to obtain access to various economic dealings makes these authorities well placed to interfere in organised crime. The explanatory memorandum of the BIBOB Act alludes to the assumption that intervening in this interaction would have a negative impact on the accessibility of the public permits, subsidies and contracts and criminal abuse of legitimate economic dealings.

The intervention as presented involves two approaches. First the public administration should be aware of possible use of permits, subsidies and tendering procedures for the benefit of criminal activities. Consequently, these authorities have to pay special attention to people who apply for permits or subsidies or who register for tendering procedures. The adage 'know your customer' thus applies not only to the financial institutions but also to the public administration. This means that the authorities in question need to be able to gather information concerning the individuals with whom they deal. Second, the

[196] Bevordering integere besluitvorming openbaar bestuur, letter from the ministers of the interior and of justice. *Kamerstukken II* 1996-1997, 25 056, no. 1: 1.

authorities have to be equipped to act upon observed abuses. This means they should be able to refuse permits or subsidies or exclude individuals from public procurement should these individuals aim to abuse the economic dealings for criminal purposes.

Like the financial service providers, administrative authorities are brought into action as gatekeepers of the legitimate environment. Their alertness should protect society as a whole. Thus, the recovered programme theory of the screening and auditing approach involves the assumption that increasing awareness and integrity of administrative authorities will hinder criminal organisations' abuse of permits, subsidies and tendering procedures for criminal activities.

Normative assumptions. Based on the problems outlined, we can conclude that it is considered undesirable for organised crime to spend criminal profits in the legitimate environment. Although the legislation does not use these exact words, its reasoning concerns the general assumption that crime should not pay. The rationale of why such investments should not take place is two-sided. Not only do criminal organisations disturb the legal economy with their illegal profits, their presence in the legitimate environment also offers them an apparently legal position that brings new possibilities for enjoying opportunities in the legitimate environment. That last makes it harder to uncover these persons.

Obviously, the public administration should not facilitate criminal operations. As described in Chapter 2, the legislator argues that nobody should facilitate organised crime. This applies to financial institutions that could get involved in money laundering and, not least, to the public administration that should act as an example for others. The unwitting facilitation of criminal activities would affect the credibility of the authorities and invade the authorities' integrity. This is certainly out of line with prevailing standards of integrity. As early as 1993 the Ministry of the Interior established a policy document *Integrity in the Public Sector* in which integrity issues are discussed.[197] This policy plan focuses on raising the defensibility and integrity of the public administration against the threat of infiltration by criminal organisations. Carrying out this policy, the Ministry of the Interior established a campaign to raise awareness of integrity at all levels of government administration.[198] The BIBOB Act is one of the results of this campaign.

3.2.2 Objectives and strategies

With the announcement of the Dutch screening approach the legislator presented two objectives: *guaranteeing the integrity of the public administration* and *preventing unintentional facilitation of criminal activities*.[199] These two

[197] Integriteit in de openbare sector. *Kamerstukken II* 1993-1994, 23 400, no. 11.
[198] Integriteit in de openbare sector. *Kamerstukken II* 1993-1994, 23 400, no. 11.
[199] Bevordering integere besluitvorming openbaar bestuur, letter from the ministers of the interior and of justice. *Kamerstukken II* 1996-1997, 25 056, no. 1.: 1.

objectives led to two strategies. The first is strengthening the integrity of the public administration, which was seen as of utmost importance.[200] The idea was that with the screening approach would give the administrative authorities an extra, powerful tool to shape the integrity policy.[201] This was in line with the government's general policy on integrity in the public administration and administrative corruption, both of which were high on the political agenda. The 1993 policy document on integrity in the public sector distinguished three categories of integrity: personal integrity, organisational integrity and relational integrity.[202] The first two refer to the integrity of the public administration itself. The last involves the integrity of the clients and partners of the public administration. The screening and auditing instrument was aimed primarily at this third element.

There was some confusion on this issue at the start of the implementation of the screening and auditing approach. In the letter announcing the development of the instrument the ministers emphasised its role in protecting the integrity of the public administration itself. Later, in the explanatory memorandum to the act, relational integrity was underlined.[203] The Council of State phrased this confusion as follows:[204]

> Parts of the explanatory memorandum to the Act and also the official title convey the impression that the legislative proposal in the main offers instruments to guarantee or to strengthen the integrity of the public administration. In the opinion of the Council that suggests an inaccurate impression. […] However, the legislative proposal intends to provide the public administration an instrument with which it can protect itself against the risk that criminal activities outside the public administration are facilitated.

The Dutch screening and auditing approach that resulted in the BIBOB instrument is thus focused on the integrity of those who interact with administrative authorities.[205] This implies that the public authorities should be aware of the risks third parties can bring. In other words, they should be aware of the risk of unintentionally facilitating criminal activities.

This reasoning leads to the second objective: prevention of unintentional facilitation of criminal activities by government administrations – because, in addition to being aware of possible risks, administrative authorities need an

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[200] Explanatory memorandum to the BIBOB Act. *Kamerstukken II* 1999-2000, 26 883, no. 3: 2, 6, 22 and 44.

[201] Explanatory memorandum to the BIBOB Act. *Kamerstukken II* 1999-2000, 26 883, no 3: 44.

[202] Integriteit in de openbare sector. *Kamerstukken II* 1993-1994, 23 400, no. 11.

[203] The personal integrity and organisational integrity of the public administrative remained an important issue in other policy documents.

[204] Regels inzake de bevordering van integriteitsbeoordelingen door het openbaar bestuur met betrekking tot beschikkingen of overheidsopdrachten. *Kamerstukken II* 1999-2000, 26 883, B: 1.

[205] The changeover from integrity of the public administration to the integrity of third parties with whom administrative authorities had contact can also be construed from the name of the instrument. Although the acronym of the title of the instrument stayed intact, the underlying words show a small change 'Bevordering Integere Belsuitvorming Openbaar Bestuur' was changed in 'Bevordering IntegriteitsBeoordelingen door het Openbaar Bestuur' (the change if from 'improving integrity' to 'improving *judgments* on integrity'.

instrument at their disposal to recognise and avert the risks in question. The BIBOB Act provides such an instrument, giving, as it does, officials the legal power to screen certain applicants for permits and subsides and participants in tendering procedures. Yet this power was not ascribed to the administrative authorities themselves; rather, a national bureau was set up to execute the screenings for them. Furthermore, the act provides grounds on which permits and subsidies can be refused when applicants are involved in certain crimes. The content of the BIBOB Act is more extensively described below.

3.3 Evaluation of the process of the Dutch screening and auditing approach

Like the previous chapter this section evaluates the process of the Dutch screening and auditing approach. The first subsection looks at the content of the approach. What does the screening and auditing instrument entail? Because the Dutch legislator must deal with European policy as well, the European rules on procurement are described afterwards in the second subsection. The third subsection looks at the implementation of the Dutch screening and auditing approach. How does the instrument function in practice? This part of the evaluation is limited to aspects that are important to the main topic of this study: prevention of organised crime. The final subsection describes possible bottlenecks in implementation, as these might affect the final outputs of the approach.

3.3.1 Content

During the development of the Dutch screening and auditing approach the legislator was well aware of the shortcomings of the existing screening instruments such as the 'certificate of good behaviour'. It was also aware of the essential demands of a successful approach such as New York's integrated approach. It therefore established four criteria to which the new instrument had to respond.[206] First of all, the screening had to be based on more than one database in order to provide a more complete insight. Second, the administrative authority had to have relevant information at its disposal to uncover possible criminal activities. Third, the screening was not to involve only the subjects themselves, but also their business relations and others directly involved in the application. In this way the screening could identify secret constructions and the use of front men. Finally, the legislator wanted easy access to information, for which applicants would fill in questionnaires and multidisciplinary teams would provide additional information. This meant that in accordance with the experiences of New York, an audit in which the applicant or tendering participant would provide the initial information would be the basis of the

[206] Explanatory memorandum of the BIBOB Act. *Kamerstukken II* 1999-2000, 26 883, no. 3: 19-20.

screening. All of these aspects came together in the BIBOB Act, making it a supplementary instrument for refusing and withdrawing permits and subsidies and enabling administrative authorities to apply the rules on procurement to exclude criminals from tendering procedures.

The execution of the BIBOB strategy is in the hands of the administrative authorities who deal with permits, subsidies and public contracts and the BIBOB Bureau, which performs the screening. In addition, the public prosecutor plays a small but key role in supervising the sharing of information. The tasks and competences of these three actors are described below. All of the activities impact people's privacy and their legal position. Therefore judicial matters are discussed as well.

3.3.1.1 The activities of the BIBOB Bureau

The BIBOB Bureau is mandated to consult various sources of information to screen applicants for permits and subsidies and participants in public tendering procedures. The bureau executes the screening and then formulates its advice on grounds for refusal, if any. The BIBOB Bureau starts a screening upon the request of an administrative authority. The bureau cannot start screening activities on its own. This is a first element of the proportionality safeguards built into the act vis-à-vis protection of people's privacy: the bureau which has sensitive information at its disposal cannot itself start an investigation. Next to these main tasks the bureau has a supportive task towards the administrative authorities.

Sources. One of the strengths of the BIBOB screening procedure involves the wide range of sources that provide information to the BIBOB Bureau. The screening starts with the information on the application form distributed by the administrative authorities. This information is then completed with data from open sources. Afterwards, the closed sources are consulted. The BIBOB Bureau has access to or permission to consult the judicial databases, those of police departments and those of the tax authorities. For this, the Personal Data Protection Act, the Police Files Act and the Judicial Data Act had to be adjusted. The information shared even includes secret information, meaning information that may not be shared with the subject involved. However, the secret information can be applied only to support the making of strategic decisions on further screening operations; secret information may not be included in the final advisory report. Neither may secret information be exchanged with administrative authorities. This is the result of the transparency principle of the General Administrative Law Act, which stipulates that the public administrators must justify all of their decisions to the subjects in question. This means that all information underlying a decision must be made public. This aspect is described later in more detail.

Finally, the BIBOB Bureau makes use of its own information. All information derived from screening activities can be retained in a BIBOB

database for a maximum period of two years. This database offers the fourth source of information. This database is particularly valuable, as the combination of sources described above enables the bureau to interrelate various information and arrive at new insights. The combination of the sources makes the database unique.

Obviously, all information gathered in this database needs protection against possible abuse. Therefore, article 28 of the BIBOB Act stipulates that the employees of the bureau as well as civil servants must comply with obligations of discretion and confidentiality. Furthermore, article 12 of the act limits communication of personal information, meaning that information can be used only for advising administrative authorities. Thus, information from the BIBOB database cannot be exchanged with other interested partners. Nonetheless, police have already indicated their interest in this unique information source. The question is whether the regulation limiting communication is sufficient. Van Stratum and Van de Pol (1999: 1972) argue that the prohibition to share information could become untenable. Refusing to provide certain information could disrupt relations with the police department in question on which the bureau depends for later screening activities. Therefore, these researchers foresee the possibility of exchanges of information through informal channels. Of course, this is something that should be watched carefully, especially as in previous years there was a similar informal exchange of information between the police and the public administration.[207] A few years of practice should reveal whether this prohibition to share information actually is a problem, and whether informal information exchange appears.

Screening subjects. The screening process has various phases. First is the verification of the information supplied on the questionnaire filled in by the subject – which can be a natural person or a legal person. This information relates to the subject's situation. Attention is focused on organisational and financial structures as well as management (if the subject is a legal person). Second, relations to both natural and legal persons are mapped. Here the BIBOB screening is much more extensive than traditional screening instruments as it involves not only the subject, but also persons directly related to the subject, such as an applicant's business relations. With regard to public contracts it can include possible subcontractors. In the third phase the BIBOB Bureau starts its investigation into the relevant and current antecedents of all persons involved. In addition it carries out a quick scan for other possible relations to criminal activities or unreliable persons. Finally, if necessary the bureau could perform an extensive investigation into aspects that remain indistinct.

During screening the bureau can ask the applicant or tendering participant for supplementary information. For aspects still lacking in clarity, the bureau tries to fill in missing information and uncover secrets. This whole screening

[207] As described in the first section of this chapter, this informal exchange of information was uncovered by the parliamentary inquiry on criminal investigative methods (Enquêtecommissie Opsporingsmethoden, 1996: 286).

process should take place in four weeks during which time administrative decisions are postponed (article 15).[208]

The large reach of the BIBOB analysis is the subject of frequent criticism, especially its inclusion of third persons. The Netherlands Committee of Jurists for Human Rights (NJCM) argues that the invasion of the privacy of clients is too severe (NJCM, 2001: 266). The criterion that defines the relation of these clients with the actual applicant is said to be too vague. According to the NJCM this is even more delicate when these clients are unaware of any screening activities, as the BIBOB Act obliges discretion and confidentiality. For the same reason Van Stratum and Van de Pol (1999: 1971) insist on changing the provision that the simple fact of a business relation could lead to a screening. They propose restricting the screening of clients to where there is considerable suspicion of involvement in criminal activities in the past or in the future. From their point of view, this is necessary to comply with article 8 of the ECHR.

Providing advice. The screening activities end with a written advisory report to the requesting administrative authorities regarding grounds for refusal or withdrawal. Article 3 of the BIBOB Act sets forth three grounds for refusal or withdrawal. First, permits and subsidies can be refused or withdrawn if the applicant has committed offences in order to have the administrative decision granted (article 3 subsection 6). The two other grounds for refusal or withdrawal relate to the serious threat that a permit, subsidy or public contract will be abused for certain offences. In particular, two possible threats are described (article 3 subsection 1). The first threat involves the abuse of administrative decisions to invest proceeds from crimes in the legitimate economy as well as to launder these proceeds. The second threat involves the abuse of the civil service to commit punishable offences. To comply with the European directives on procurement, the BIBOB Bureau also provides advice on grounds for refusal as laid out in these directives.[209] Various directives stipulate grounds for refusal based on the exclusion of non-solid as well as unreliable participants in tendering procedures. European grounds for refusal are described in more detail later.

To assess the threat a subject may pose, the BIBOB Bureau takes into account 'facts and circumstances that point out or reasonably make it likely that the person involved is related to offences as defined in article 1 (article 3 sections 2a and 3a). The first part of this provision implies that the advice could be based on suspicions. The seriousness of the suspicion indicates the seriousness of the threat (article 3 sections 2b and 3b). This provision aligns the Netherlands with only a few European member states who argue that a final

[208] In certain circumstances, such as conducting screening activities in foreign countries, the limit can be prolonged by four weeks (BIBOB Act article 15).

[209] Directive on public works contracts. *OJ L 199*, 09/08/1993; Directive on public supplies contracts. *OJ L 199*, 09/08/1993; Directive on public services contracts. *OJ L 209*, 24/07/1992. These three directives are adjusted by the European Parliament and Council directive 97/52/EC. *OJ L238*, 28/11/1997. Directive on procurement in the area of water and energy management and traffic and telecommunication. *OJ L 199*, 09/08/1993, adjusted by directive 98/4/EG. *OJ L 101*, 01/04/1998.

judgement is not necessary to exclude subjects from participating in tenders for public contracts and to refuse or withdraw applications for a permit or subsidy.[210] With this provision the Netherlands takes a progressive position.

The second part of the provision implies that the subject must be related to the offences themselves or by virtue of managing a legal person that has committed (or is thought likely to commit) the offence (article 3 section 2c and 3c). In addition, offences may be brought in that are committed by third parties who are directly related to the subject: e.g. by financing activities or by having authority over part of the activities. Furthermore, the explanatory memorandum states that offences or suspicions of offences must be related to the kind of civil service being applied for or a participant in. Thus not all offences could result in a refusal or withdrawal. This restriction follows the idea of proportionality of the act. The legislator clearly states that not all offences are relevant for administrative decisions; e.g. shoplifting is of no relevance for the granting of environmental permits.[211] Therefore, only relevant information shall be part of the advisory report. Irrelevant offences may not be mentioned. Nonetheless, as described earlier, the relation between applicants and offences is not limited to the offences that the applicant has committed. It is even possible for permits or subsidies to be refused or withdrawn due to offences committed by third parties.

The BIBOB Bureau provides a written report, which first of all, indicates whether there is a threat. The bureau indicates the seriousness of the threat by use of three modalities: no threat at all, some threat and high threat. The advice is valid for two years. The modality must be accompanied by a justification. The administrative authorities were not pleased with these multi-interpretable categories of threat. They would have prefered a clear answer to the question of whether the permit, subsidy or public contract could be awarded (Eiff *et al.*, 2003: 52). However, a final decision being made by the BIBOB Bureau runs counter to the idea of administrative authorities taking responsibility for their own decisions.

Administrative support. The introduction of a new instrument requires some preparation. In this case, the administrative authorities needed to be made aware of the possibilities of the new screening activities. For this the BIBOB Bureau set up a wide information campaign before the instrument came into effect. Furthermore, it organised several meetings at which authorities were informed. Moreover, a BIBOB helpdesk was set up. This permanent helpdesk supports administrative authorities who have concrete requests for advice. With the expertise that the bureau is developing, the legislator expects the bureau to be able to help assess the necessity of a request. Moreover, in the course of time

[210] Whereas, in 1997 Belgium, the Netherlands, Spain, the United Kingdom and Sweden agreed that suspicions are not enough, France, Italy and Germany agreed that a final judgment is not necessary (T.M.C. Asser Instituut, 1997: 93-99). The Netherlands has meanwhile switched to the second group. Furthermore, the issue of whether a final judgment is necessary to exclude subjects from participating in tenders for public contracts is discussed at the European level as well. This discussion is described later in the section on the European rules on procurement.

[211] Explanatory memorandum to the BIBOB Act. *Kamerstukken II* 1999-2000, 26 883, no. 3: 21.

various working groups have been established to formulate indicators to support decisions to request a BIBOB advice. In the next subsection on the implementation of the Dutch screening and auditing approach this issue is described in more detail.

3.3.1.2 Decisions of the public administration

The activities of the administrative authorities are related to two decisions: the decision to request advice from the BIBOB Bureau and the decision to refuse or withdraw permits and subsidies or to exclude subjects from tendering procedures. The authorities have other tasks as well. First they develop application forms which subjects must fill in to apply for permits and subsidies. These forms are important as they provide a first impression and are the basis of the screening process. Furthermore, the administrative authorities must organise the procedure to bring the BIBOB Bureau into action and the registration of the advice BIBOB provides. That last is vital, since the authorities deal with sensitive information that must be handled with due care. As mentioned earlier, administrative authorities must comply with obligations of discretion and confidentiality (BIBOB Act, article 28).

Decision to request BIBOB advice. The screening and auditing approach in the Netherlands is characterised by the discretionary powers of the administrative authorities. This implies that only these authorities can decide whether a screening should take place. This provision guarantees protection of the privacy of the applicant or tender participant. The explanatory memorandum to the BIBOB Act states that obligating administrative authorities to request advice regarding all applicants and all participants in tenders would be a disproportional invasion of people's privacy.[212] Moreover, this discretionary power fits the general policy regarding increasing awareness of integrity issues within the public administration. Because only a small proportion of the applicants and tender participants are unreliable, the authorities are forced to develop their own integrity policy. The legislation does acknowledge that the decision to request advice from the BIBOB Bureau should be deliberated accurately and that discretion should be exercised. This means that administrative authorities should develop some kind of policy. The act's explanatory memorandum proposes the involvement of the Association of Netherlands Municipalities to establish a framework of subjective and objective criteria on circumstances to request advice.[213] Although a clear framework would be helpful to the transparency of the public administration, it would be ineffective to list and publish the objective criteria, as criminals could adjust

[212] Explanatory memorandum to the BIBOB Act. *Kamerstukken II* 1999-2000, 26 883, no. 3: 22.

[213] The subjective criteria could include suspicions of serious abuses, which could appear from irregularities by administrative checks and in application forms. Moreover, some objective criteria could indicate risks involving infiltration by criminal organisations for example regarding public contracts above a certain amount of money. Explanatory memorandum to the BIBOB Act. *Kamerstukken II* 1999-2000, 26 883, no. 3: 42.

their activities to avoid screening (Struiksma, 2000: 269). Furthermore, one wonders whether administrative authorities are capable of observing abuse while they can only rely on their own information and open sources (Struiksma and Michiels, 1994: 16; Struiksma, 2000: 269).

Notwithstanding the discretionary competence of the administrative authorities, the screening and auditing approach is applicable only in selected sectors. As described before, the BIBOB Act focuses on those sectors that are considered most vulnerable for abuse by organised crime. With regard to the granting of permits, the vulnerable sectors are transport, waste disposal and hotels and catering including brothels and coffee shops.[214] Regarding subsidies the screening instrument may be applied only when the subsidy involves considerable social and economic significance that could attract criminal activities.[215] The formal prerogative to request a BIBOB advice should be established in the subsidy scheme. Consequently, the administrative authority must decide beforehand whether such advice will be necessary. Regarding tendering procedures the Dutch legislator first had to implement thresholds from the European directive above which screening is required. Furthermore sectors were specified in which BIBOB screening may be requested: construction, environment and ICT (information and communication technology). The BIBOB Act does not exclude expansion of applicable sectors in the future, if the instrument works and if other sectors prove vulnerable to criminal activity.

Use of Orders in Council make the act flexible and rather easily adjusted. The choice to start with application to a restricted set of sectors was partly based on the idea that the BIBOB instrument had to prove itself.[216] Whereas this reasoning seems justified, the sector selection lacks a clear empirical foundation regarding actual abuse by criminal organisations, though reference is made to the vulnerable sectors observed by Fijnaut's research team. Though these sectors seemed most vulnerable based on assumptions and developments abroad, the researchers did conclude that in most of them there was as yet no significant infiltration of criminal organisations. Therefore, the decision to select all of these sectors is rather arbitrary. The act could even stigmatise the selected sectors (Van de Bunt, 2004: 700) because the fact that a BIBOB screening and auditing procedure can be instigated in these sectors, contrary to empirical results, would seem to indicate that the sectors do have some intermingling of criminal elements.

Refusal or withdrawal of permits and subsidies and exclusion from tendering procedures. The most important aspect of the screening and auditing approach is the ability to refuse granting of permits, subsidies or public contracts. The legislator argues that because the BIBOB Act invades the privacy of the subjects involved it must answer the principle of subsidiarity. Before resorting to a BIBOB screening, administrative authorities must apply all other instruments.

[214] Explanatory memorandum to the BIBOB Act. *Kamerstukken II* 1999-2000, 26 883, no. 3: 21.
[215] Explanatory memorandum to the BIBOB Act. *Kamerstukken II* 1999-2000, 26 883, no. 3: 21.
[216] Explanatory memorandum to the BIBOB Act. *Kamerstukken II* 1999-2000, 26 883, no. 3: 4.

As described earlier the administrative authorities can check open sources as well as administrative data sources and they can employ certificates of good behaviour for both natural and legal persons. In addition, private certification and auditing are encouraged. When a BIBOB screening is requested the administrative authority still has the discretionary power to grant a permit, subsidy or public contract, even if the advice turns out to be negative. Thus, the BIBOB recommendation is not binding. Authorities can also refuse a permit even if the bureau finds no risk of abuse. Furthermore, the administrative authority is free to stipulate conditions under which a positive administrative decision may be granted (BIBOB Act article 3 section 7). For instance, it may require certain financial guarantees as a precondition for being granted a public contract.

The fact that these authorities are the only competent authorities to decide on civil matters is key, since these decisions now come under the General Administrative Law Act (*Algemene Wet Bestuursrecht*).[217] The judicial framework of this act safeguards the legal position of applicants and participants in tendering procedures who are screened. For example, the act states that the subjects in question should be given the opportunity to present their viewpoint (General Administrative Law Act article 4.8). This applies to others who are questioned as well. Furthermore, this act provides for the possibility to register a complaint against a decision and to appeal against rejected complaints. Here, various aspects involving fair trial are included; e.g. a public hearing (article 7.5 section 2) and a defensible decision (article 7.12 section 2). In practice this means that applicants are able to go to administrative court. Participants in tendering processes must turn to civil court as decisions regarding public contracts involve a contract between two civil parties. Finally, the General Administrative Law Act applies the justification principle, which requires that decisions be based on reliable data. In fact, all information relevant to the decision must be made available to the subject in question. This is why the advice formulated by the BIBOB Bureau cannot involve secret information that may not be communicated to the subject concerned. This is why the BIBOB Bureau can only use secret information for strategically guiding screening activities and not in the advisory report itself. Notwithstanding the restricted use of secret information, its use is still criticised by the Netherlands Committee of Jurists for Human Rights as harming the legal position of the subjects (NJCN, 2001: 267). According to this Committee no secretive information should be allowed as it is impossible raise objections against this unregistered information.

3.3.1.3 The role of the public prosecutor's department

The public prosecutor's department plays an important bipartite role in the BIBOB instrument. It first of all supports the preventive screening approach, as it is one of the sources the BIBOB Bureau can consult in a screening process.

[217] Wet van 4 juni 1992 houdende algemene regels van bestuursrecht (Algemene wet bestuursrecht). *Stb*. 2004, no 37.

Moreover, the public prosecutor entrusted with the BIBOB procedures has insight into all sensitive information, and can thus easily determine subjects that should be screened when they are in contact with administrative authorities. Therefore, the legislator enables the public prosecutor to inform authorities if a screening would be advisable (article 26 of the BIBOB Act). Although this advice may not include concrete information, such a suggestion for screening can hardly be passed on.

The appointed public prosecutor also guards the interests of the criminal justice system. This means that the public prosecutor checks all BIBOB advisory reports before they are sent to the administrative authorities in question. The prosecutor's task is to judge whether the exchange of the information in the report could damage possible criminal proceedings (article 14 of the BIBOB Act). If this is the case any such detrimental information is removed from the report. With these competences the public prosecutor can easily switch from a criminal approach to an administrative approach based on what it considers the best option. In this way the preventive approach can actually complement and complete the repressive approach. The legislator did not explain whether switching from one approach to the other is indeed intended. Practice will reveal to what extent public prosecutors, who are often true crime fighters, will indeed apply the administrative approach as an alternative to the repressive one.

Finally, the public prosecutor acts as the intermediary for receiving information from other countries. At least this applies to information from criminal charges or investigations. As an administrative agency the BIBOB Bureau cannot receive information from foreign police authorities. For requests on fiscal information, the Ministry of Finance is brought into action. For open sources there are no legal restrictions on consulting foreign data sources.

3.3.1.4 Judicial matters

With the coming into force of the BIBOB Act, the legislator was well aware of the potential invasion of people's privacy. However, the explanatory memorandum to the act states:[218]

> 'adequate protection of the integrity of governmental bodies and the positive effects of it regarding the fight against (organised) crime is of such importance that it justifies the invasion of people's privacy, at least within boundaries that must be determined later.'

This reasoning implies that screenings are justified if there is a balance between the interests of the administrative authority and the invasion required of personal privacy. To guarantee this balance the requirement of due care and the principles of proportionality and subsidiarity are emphasised.

[218] Explanatory memorandum to the BIBOB Act. *Kamerstukken II* 1999-2000, 26 883, no. 3: 19-20.

Privacy. Notwithstanding the justification for invading the privacy, Van de Pol and Stratum (2002: 51) argue that to protect privacy the screening should be based on fixed and controllable criteria and on legitimately required information. In addition, it is important that the applicants and tendering participants are informed of the procedures and the legal guarantees. According to the NJCM the BIBOB Act includes many vague elements, which complicates the controllability of the procedures. Much criticism revolves around the possibility to refuse or exclude subjects based on suspicions, as this violates the principle of innocence as laid down in article 6 subsection 2 of the ECHR (NJCM, 2001: 265). The Dutch legislator claims that this criticism is not applicable, as the BIBOB instrument does not fit the scope of this article.[219] Article 6 subsection 2 of the ECHR applies only to criminal law procedures or to similar procedures that determine someone's guilt of certain offences. The BIBOB instrument purportedly does not have this as its objective, as it involves no punishment. However, we may question whether refusing a permit, subsidy or public contract can be seen as a punishment. Also, there is more than this formal reasoning. We may question whether the applicability of suspicions is in line with the rule of proportionality. Unlike other aspects, the legislator did not elaborate on the matter of proportionality.

According to Dutch law-makers, the supreme test of the legitimacy of the BIBOB Act is testing the act against article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms and against article 10 of the Dutch Constitution. Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms involves the 'right to respect for private and family life':[220]

> '1. Everyone has the right to respect for his [sic] private and family life, his home and his correspondence.
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.'

The Dutch legislator states that the BIBOB Act responds to the criteria deriving from the second section of this article.[221] First, the act's entering into law fulfils the principle of legality. Second, the instrument is legitimate as it concentrates on the prevention of criminal offences. For the third criterion, involving whether the invasion of privacy is necessary, the legislator refers to the pressing social need to fight organised crime and to protect the integrity of the public administration. Moreover, the legislation complies with the principles of proportionality and subsidiarity, and some essential judicial aspects are safeguarded in the screening process such as the quality of information, the legal position of people involved and the availability of fair trial in accordance with

[219] Explanatory memorandum to the BIBOB Act. *Kamerstukken II* 1999-2000, 26 883, no. 3: 38.
[220] Convention for the Protection of Human Rights and Fundamental Freedoms, article 8.
[221] Explanatory memorandum to the BIBOB Act. *Kamerstukken II* 1999-2000, 26 883, no. 3: 37.

article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms. Therefore, all aspects of the BIBOB Act are well deliberated regarding proportionality.

Requirement of due care. The BIBOB Bureau has the exceptional competence to bring together all kinds of information on a subject, including sensitive information from police, judiciary and tax authority databases. This access to such a wide range of sources might at first seem an invasion of people's privacy. However, the government argues that this complete insight into a subject's situation actually protects the subject's privacy:

> 'Although it looks paradoxical the consultation of various sources in fact justifies the invasion in people's privacy. After all the risk of an inaccurate picture of the business and the persons involved is minimised.'[222]

The combination of the sources helps guarantee that the BIBOB Bureau draws a reliable picture of the specific case. Comparison of facts should prevent incomplete and unreliable information from being distributed to the administrative authority in question. The combination of all information should provide solid insight, which is said to justify its use. One could even argue that the number of sources is still too limited and too oriented towards police and judiciary (Van Stratum and Van de Pol, 1999: 1970). Information from financial institutions, financial advisors and insurance companies could offer a totally different viewpoint and certainly could be an important supplement. However, the legislator argued that it is unnecessary to bother these professions since most of the financial information can be acquired through police databases; the BIBOB Bureau may obtain information from the tax authorities and from the Dutch Financial Intelligence Unit (FIU) as well.[223]

Proportionality and subsidiarity. As described before the legislator advocates proportionality to guarantee a balance between fighting organised crime and invasion of people's privacy.[224] Proportionality implies that the intervention be no more than necessary to achieve the objective. Whereas in this case the objective is fighting organised crime, the BIBOB Act is nonetheless limited to the sectors in which a threat of abuse by organised crime is deemed present. Yet this balance has been called in question (Van Stratum and Van de Pol, 1999, Buruma, 1999; Struiksma, 2000, NJCM, 2001).

The broad concept of *threat* has also been criticised, as it is said to undermine the legal position of the subjects. Analysing the concept of threat, it must be concluded that despite the limitations built in to safeguard the proportionality, the notion of *threat* includes a large range of activities (Van Stratum and Van de Pol, 1999: 1969). Firstly, the danger can be related to

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[222] Explanatory memorandum to the BIBOB Act. *Kamerstukken II* 1999-2000, 26 883, no. 3: 24.
[223] The activities of the Dutch Financial Intelligence Unit, which registers the unusual transactions for uncovering money laundering operations are described in Chapter 2.
[224] Explanatory memorandum to the BIBOB Act. *Kamerstukken II* 1999-2000, 26 883, no. 3: 21.

criminal offences as well as minor offences. Secondly, the BIBOB Bureau looks at offences from the past as well as into the future. Thirdly, all forms of participation in offences, as well as preparation of offences are taken into account. Finally, the offences for which a decision not to prosecute was taken and for which a settlement was reached – thus for which no final judgement is known – are included in the decision. Not surprisingly, this rather vague notion of danger has led to criticism. The NJCM considers the concept of threat as defined in the BIBOB Act unacceptable (NJCM, 2001: 265). Certainly, regarding the specifications on privacy in article 8 of the ECHR the Committee argues that the Dutch government must redefine the concept more strictly.

Van Stratum and Van de Pol (1999: 1969) point out that risks are inevitable in business. According to them the risks that could lead to refusal or withdrawal of permits, subsidies or public contracts must be more specifically defined. They suggest restricting the concept of danger to offences related to organised crime. This would reconnect the screening instrument to its original purpose, prevention of organised crime.

In addition, the BIBOB screening procedure was introduced as a supplement to existing instruments. This means that the BIBOB Act should comply with the principle of subsidiarity which states that the least radical options should be brought into action first. Indeed, the legislator points out that before screening and auditing is begun other interventions that imply a lesser invasion of privacy should be carried out first. In fact, the explanatory memorandum of the act enumerates various less far-reaching instruments, such as the certificate of good behaviour, investigations of antecedents and the existing auditing and certification instruments. In other words, the BIBOB screening and auditing procedure should only be brought into action as an *ultum remedium*. Only if the other instruments fail to offer the possibility to respond to a perceived threat would the BIBOB procedures be used.

3.3.2 Implications of the European rules on procurement

The European Union has established various rules on procurement that oblige the member states to undertake actions on irregularities in tendering procedures. Notwithstanding the fact that these rules are mainly focused on economic regulation, they also include possible exclusion of persons involved in organised crime. Because all member states have to reckon with these European rules, the main implications are described below.

3.3.2.1 Grounds for refusal

The directives on procurement established in the first pillar of the European Union relate not to problems of organised crime but to completion of the single market.[225] As such the directives have mainly an economic purpose;

[225] For the sake of good order, these directives only involve public contracts. They do not encompass provisions on granting permits and subsidies.

encouraging a harmonious, well-balanced and lasting development of economic activities within the Community. In this framework, the directives encompass two kinds of criteria, of which only a small part is important for preventing organised crime. First, there are selection criteria, which test subjects' financial resources and economic means. Only when there is evidence that a company is financed by illegal profits could these criteria be effective against organised crime. This provision could be connected to the confiscation of illegally obtained profits. However, the limitations to this provision make its employ less suitable for preventing organised crime (Manunza, 2001: 286). Second, the directives include a list of criteria to test the reliability of participants in tenders. Two of these criteria are useful in preventing organised crime. According to the directives, any contractor may be excluded from participation who:[226]

> '(c) has been convicted of an offence concerning his professional conduct by a judgment which has the force of res judicata;
> (d) has been guilty of grave professional misconduct proved by any means which the contracting authorities can justify.'

These criteria are not compulsory. The lack of binding force means that authorities are not obliged to exclude entrepreneurs that fit one of these criteria. Although the literature sees this as a limitation it could also be viewed as an aspect of proportionality by which the administrative authority is the only one suitable to assess the actual threat. This reasoning is also the basis of the Dutch screening and auditing act. In addition, there are some other important restraints. The notion of participants in public tenders covers contractors, suppliers and service providers and only includes natural persons. This makes it impossible to exclude legal persons that answer these criteria (Manunza: 2001: 281). The most important limitation is the fact that exclusion can only be based on convictions.

At least, this limits the applicability of the first-pillar rules, as the recommendations in the 1997 action plan go much further. In this action plan the Council of the European Union suggests studying whether and under what conditions it is possible to exclude applicants who are currently under investigation or prosecution (recommendation 7). With this recommendation the Council introduced a novelty: that *suspicion* of connections with organised crime, which implies that no final judgement is needed, could be sufficient to exclude a participant from tendering procedures. Considering the preventive approach, the Council argues that it would be unwise to limit possible exclusion to final judgements. Waiting for a final judgement could harm the public administration, as criminal organisations could continue their economic dealings. This broadening of the scope of the grounds for exclusion was not easily accepted in the first-pillar directives on public procurement. This is remarkable as the same action plan put forth recommendations regarding the

[226] Article 24, directive on public building contracts, *OJ L 199*, 09/08/1993; article 20, directive on public procurement of goods, *OJ L 199*, 09/08/1993; article 29, directive on public procurement of services, *OJ L 209*, 24/07/1992; Directive on procurement in the area of water and energy management and traffic and telecommunication, *OJ L 199*, 09/08/1993.

fight against money laundering, and these recommendations resulted in a hasty adjustment of the anti-money laundering intervention.[227]

Finally, it is noteworthy that the European legislator at the first-pillar level as well as at the third-pillar level, focuses only on offences that took place in the past. In the European framework, the possibility to exclude tender participants based on the threat of future offences has not yet been discussed. The Dutch screening and auditing approach does include the possibility to exclude subjects based on risk analyses of threats of future irregularities.

3.3.2.2 Future grounds for refusal

As described earlier, the recommendations of the 1997 action plan resulted in a directive proposal for rules on procurement submitted by the European Commission in 2000. This proposal takes up some of the 1997 recommendations. The limitation to legal persons was easily adjusted. The proposal changed the concept of tender participants into 'economic subjects', which covers both natural and legal persons.[228] The issues of compulsory exclusion and the expansion to include suspicions of criminal involvement met more difficulties, as did the newly proposed grounds for refusal. The revised article 46 states that any economic operator – both natural and legal – shall be excluded from participation in the contract if at any time during the five-year period preceding the start of the contract, they have been convicted by definitive judgment of having committed a serious offence by participating in the activities of a criminal organisation, corruption or fraud.[229]

Regarding this new provision we can conclude that the proposal is bipartite. First, it introduces an obligation to exclude applicants related to organised crime. It still involves a final judgement regarding the offences; however, then the exclusion is compulsory. This provision is much stricter than the BIBOB Act, which gives administrative authorities the discretionary competence to undertake action. Second, the proposal offers contracting authorities the possibility to exclude participants on grounds of fraud, especially when it hurts the financial interests of the Community. In these cases the exclusion is without obligation, but no final judgment is required. Apparently, the Commission is calling for an enlargement of the rules on procurement. However, it does not agree with the Council of the European Union that suspicions of involvement in organised crime are sufficient grounds for excluding a participant from a tender, at least as it does not involve the financial interest of the Community.

The proposal is already an improvement on the earlier directives as it clearly strengthens the Community's arsenal of means to fight organised crime. In particular the binding grounds for refusal can be seen as a necessary adjustment to fight organised crime. However, the improvement is only minor,

[227] See for these developments the first section of the previous chapter.
[228] Directive proposal for rules on procurement in 2000, article 1.
[229] Directive proposal for rules on procurement in 2000, article 46.

as in most cases a final judgement is needed to exclude a participant from a tendering procedure. According to Manunza (2001: 288), this grounds for refusal is inadequate. She argues that to effectively fight organised crime it is necessary to operate in a *preventive sphere*, which means the period in which no offences have yet been committed (Manunza, 2001: 248). This implies acting on suspicions, as the 1997 action plan prescribes. Thus, up until now there is still a huge difference between the first-pillar initiatives and the third-pillar plans. This difference seems contradictory and it begs the question of which measures the member states should implement.

At first, this question may appear easily answered, as first-pillar directives are more imperative than third-pillar decisions. Based on this reasoning it is not surprising that in the millennium strategy of 2000, which is the plan to follow up the 1997 action plan, the Council of the European Union concluded that the recommendations had not yet been carried out. However, according to Manunza (2001: 267) this answer is not as obvious as it seems. Although the first-pillar and the third-pillar rules may seem contradictory, she shows that this does not have to be the case. She argues that the European legislator does not prohibit any measure to prevent crime and the first-pillar directives on public procurement leave open the possibility to formulate supplementary conditions (Manunza, 2001: 291, 308). In her opinion it is possible for member states to add additional specific conditions, such as suspicions of involvement in organised crime, to the limited list of objective indicators laid out in the directives on public procurement (Manunza, 2001: 361). This reasoning leaves member states the possibility to exclude criminal organisations from tendering procedures based on suspicions of criminal activities. Accordingly, waiting for new directives on procurement does not appear necessary. The Netherlands followed this reasoning in including suspicions of future offences in the BIBOB instrument as a valid reason to refuse or withdraw permits and subsidies or to exclude a subject from a tendering procedure.

3.3.3 Implementation

The Dutch screening and auditing approach starts upon a request by an administrative authority. Subsequently, the BIBOB Bureau conducts a screening of the subject using a wide range of sources, which ends in a report formulating advice on the possible threat that the administrative decision could be abused for criminal activities. The BIBOB Bureau's screening staff consists of two senior analysts, six researchers and two research assistants. These researchers perform desk research to verify data by checking relevant information sources. In addition, two employees are engaged full time in informing and supporting administrative authorities. After the screening and auditing activities, the administrative authority in question decides whether a permit or subsidy is to be granted or whether a subject is to be excluded from a tendering procedure.

What has become of these activities? In accordance with the previous chapter and general methods of this study, we now look at the main aspects that

have influenced the implementation of the approach, at least those aspects that are important regarding the prevention of organised crime. Because the BIBOB Act entered into force only in mid-2003, it is still too early to present adequate insight into its implementation. In a few years the first insights are expected, as the BIBOB Act provides for an evaluation within three years after it enters into force (article 45). Moreover, the BIBOB Bureau has not yet presented an annual report. Such a report is expected mid-2005. A pre-evaluation has already been conducted (Eiff *et al.*, 2003), also called the 'Berenschot study', after the name of the organisation that carried it out. This pre-evaluation outlines the situation before the screening and auditing measure came into effect and will be used to compare the situation three years after the instrument has been in force. Our examination also draws on information from newspapers and parliamentary questions regarding the screening instrument.

3.3.3.1 New working procedures for the administrative authorities

To implement this new procedure, the administrative authorities must understand the measure and be willing to accomplish it. Although the BIBOB Bureau launched an extensive campaign to inform authorities, the Berenschot study (Eiff *et al.*, 2003) indicates that even before the act came into force, problems with its implementation had already appeared.

Organisational changes. In the first months of 2003 a large part of the administrative apparatus seemed ill prepared for the BIBOB Act. In fact, the preliminary study showed that a large proportion of the administrative authorities were as yet unfamiliar with the act (Eiff *et al.*, 2003: 43). Only 41% of respondents indicated they knew of the act and that the act is clear.[230] Moreover, 56% of responding authorities said that the role and tasks of the BIBOB Bureau were unclear.[231] Because of the lack of knowledge about the new act, it is not surprising that many authorities were unable to start implementing the act; the organisations lacked the capacity as well as the financial resources to put the new working procedures into effect (Eiff *et al.*, 2003: 38). Only 19% of the respondents reported that their organisation had sufficient capacity and only 13% were content about the available financial resources. This lack of organisational change to accommodate the act can be perceived as a type of resistance to the act. This resistance probably results from the cultural change that had to take place within the administrative authorities. These authorities were used to operating with a customer-oriented attitude. However, they now had to adopt some scepticism. The new approach was also perceived as being at the expense of bona fide entrepreneurs who in general had good relations with the civil servants.

According to the Berenschot study, the willingness of administrative authorities was still minimal in February 2003 (Eiff *et al.*, 2003: 48). Less than

[230] In regard to this statement 28% disagrees.
[231] In regard to this statement 21% disagrees.

half of the respondents stated that their organisations supported the BIBOB Act (43%) and 13% agreed that in the administrations and organisations where they work, enough attention is paid to the development of the BIBOB Act in regard to granting permits. Regarding the granting of subsidies and public contracts the figures were 9% and 15%. Considering these figures it is not surprising that half of the respondents (49%) report that their organisation was not working to implement the act (Eiff *et al.*, 2003: 58).[232]

Nonetheless, things have been changing since 2004. Administrative authorities are increasingly endeavouring to implement the necessary organisational changes. Application forms are being adjusted to include the information required for a BIBOB screening and authorities are beginning to organise interviews with applicants. To aim these changes in the right direction, the Amsterdam city government was the first to establish concrete working meetings with the BIBOB Bureau at which local and national level procedures could be aligned. In the meanwhile, the BIBOB Bureau arranged similar meetings with 99 administrative authorities (Brouwer, 2005: 25). To coordinate requests from various municipal authorities, the Amsterdam City Council established a coordinating bureau to manage requests sent to the BIBOB Bureau (Gemeente Amsterdam, 2004: 10). An important advantage of this coordinating agency is to align the decisions of the various city departments. A similar development has taken place in the Central and West Brabant region, which has also appointed a BIBOB coordinator. This coordinator is unique in that the position operates for 27 municipalities (Brouwer, 2005: 27).[233]

Establishing general policies. The BIBOB Act gives administrative authorities the discretionary competence to decide on the necessity of a BIBOB request. However, to prevent arbitrary decision-making the act advises municipalities to draw up general policies on screening and auditing in granting permits, subsidies and public contracts. Therefore, the authorities were asked to establish general policies indicating when a BIBOB screening had to be requested. In the lead-up to the BIBOB Act, no administrative authorities had as yet established such policies and only 5% of respondents were working on it (Eiff *et al.*, 2003: 47).

In the course of 2004 administrative authorities began to pay attention to setting up these general policies. For this, the BIBOB Bureau drew up five central elements the administrative authorities should be aware of in processing an application: the application itself, the applicant, the structure of the company, the organisation of the company and its financial construction (Visser, 2005). In order to work out these central aspects in more detail, a so-called *lead group* (*kopgroep* in Dutch) was established.[234] This lead group brings together various administrative authorities to give a first impulse to application of the screening

[232] Only 32% of the respondents state that their organisation is working on the implementation, the other 19% does not know or has no opinion (Eiff *et al.*, 2003: 58).

[233] See press release of 3 Septermber 2003 of the municipality Moerdijk, http://www.moerdijk.nl.

[234] Examples of such indicators are the presence of prostitution in an establishment, changing licensees and remarkably high or low rents that have to be paid for the establishment.

and auditing approach by drawing up concrete policies, manuals and even information guides.[235] Subsequently, a BIBOB website was created with examples of policies that have been effective in various municipalities.[236] Now 118 administrative authorities have established such general policies (Brouwer, 2005: 25). These policies with concrete indicators are meant to support the administrative authorities and the individual civil servants in mapping out possible threats so as to ground decisions to ask for a BIBOB advice.

Whereas the individual civil servants play a crucial role in recognising possible threats, one would expect civil servants making such decisions to have some financial and judicial expertise at their disposal. It is remarkable that such expertise is seldom available. Nonetheless, the City of Amsterdam has started training civil servants in how to recognise and uncover unusual financing and funding structures (Gemeente Amsterdam, 2004: 7).

Costs of a BIBOB screening. Finally, the cost of a BIBOB screening could hinder the implementation of the act (Eiff *et al.*, 2003: 50). Although 50% of the respondents reported that a cost of €500 was not a problem, 37% considered this cost a constraint to request a screening. However, it should be remarked that 56% of the respondents stated that their organisation had not yet taken account of the costs (Eiff *et al.*, 2003: 60). For 70% of the respondents it was yet unclear how the costs would be dealt with. In the meanwhile, it appears that municipalities are trying to apply the BIBOB requests as purposefully as possible. Particularly the larger cities are investing in formulating a BIBOB policy to support the local security policy. For example the City Council of Rotterdam announced that BIBOB procedures would be brought into action for deprived urban areas known for problems and degeneration.[237] Also, the City of The Hague announced that the BIBOB screening would be primarily applied in problem areas that in some cases even are indicated as 'no-go' areas for public servants (see case The Hague in VNG, 2002: 70).

3.3.3.2 The role of the public prosecutor's department

With the BIBOB Act the public prosecutor is given a new competence: the possibility to advise administrative authorities to request a BIBOB screening. Based on the insights of the prosecutor such a suggestion could be interpreted as an indication of likely abuse. However, this competence could conflict with the prosecutor's role to protect the interests of the criminal justice system. Administrative measures could reveal information that alerts criminals to possible criminal investigations, of which they were not as yet aware. Obviously, in such cases criminals could stop their activities or use new methods which would hinder investigation. Or if a criminal is not under current

[235] In the lead group the BIBOB Bureau cooperates with administrative authorities of Amsterdam, Almelo, The Hague, Eindhoven, Rotterdam, Venlo and the Association of Netherlands Municipalities.
[236] See http://www.justitie.nl/bibob.
[237] See http://www.rotterdam.nl.

investigation, the public prosecutor could prefer availing of administrative measures instead of doing nothing. Therefore, time will tell to what extent the public prosecutor is willing to contribute to the administrative intervention. Nonetheless, structural use of this competence enables the administrative authorities to interfere in an early stage. For this the prosecutor must be aware of the persons that have applied for permits and subsidies.

In order to stimulate the exchange of information between the public prosecutor's department and the administrative authorities, a structural consultation mechanism has been established in various districts (e.g. in The Hague, Rotterdam, Dordrecht en Haarlem).[238] Amsterdam has gone so far as to establish a structural meeting between the police, the public prosecutor and the BIBOB coordinator (Gemeente Amsterdam, 2004: 10). The Minister of Justice has established a working group to promote the use of the special competence of the public prosecutor.[239] Over time it should become clear how the prosecutor deals with this competence. Until then, a public prosecutor tipping off administrative authorities still seems to be the exception (Visser, 2005).

3.3.3.3 Use of the various information sources

In a simulation conducted just before the act came into force, it appeared that not all sources were as yet open for BIBOB consultation. This lack of access to information sources and the fact that the administrative authorities were as yet unprepared led to the decision to postpone the enactment of the BIBOB instrument from January to June 2003. These extra months were to give the bureau the opportunity to execute a new simulation to help guarantee smooth proceedings. The difficult start of the screening and auditing procedure strengthened the realisation among the BIBOB employees that investing in good relations with those in place to provide information is crucial. However, this is not obvious, as the obligations of secrecy and confidentiality hinder the BIBOB employees from making BIBOB information available to third parties.

Practice has illustrated some problems as well. First, it appears that the competence to use secret information strategically in the decision-making process was not obvious, as the BIBOB Bureau must justify its choices. In some cases it is better not to know certain information, as it cannot be openly used. The same goes for information orally obtained. In accordance with the explanatory memorandum of the BIBOB Act, the Provisional Measures Judge ruled that information orally obtained may not be used in a BIBOB advice.[240]

Furthermore, it appears difficult to uncover financial operations in which money is borrowed from third parties, as these third parties do not have to explain where the money came from. Practice illustrates that in certain cases

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[238] See http://www.justitie.nl/bibob/images/implementatie/vergunningen/milieu/praktijkvoorbeelden_milieu/gs_voorstel_beleidslijn.doc.

[239] *Kamerstukken II* 2003-2004, Aanhangsel, 1868, 3955-3956.

[240] Rechtbank Groningen, 14 april 2004, nr. 71150KG/ZA 04-103, LJN-nr. A07830.

applicants may depend on loans from family in foreign countries (Visser, 2005). For the BIBOB Bureau it is impossible to uncover the origins of this money. In general it appears difficult to gain information from foreign countries, as the bureau depends on cooperation of the authorities abroad. Though such information is to be exchanged through the mediation of the Dutch public prosecutor's office, foreign countries are not always willing to supply information for administrative purposes (Visser, 2005).

The difficulties in gaining information have an important impact on the period of time the bureau needs to formulate its advice. According to article 15 of the BIBOB Act the bureau has four weeks for its screening procedure and when necessary this period can be extended by another four weeks. In practice, however, the bureau almost always needs the prolonged period of eight weeks (Brouwer, 2005: 27). This is understandable since gaining information often takes at least two weeks. Receiving information from foreign countries takes even more time. In addition, the check on the legitimacy of the advice executed by the judicial department of the BIBOB Bureau takes about two weeks. Consequently only a maximum of four weeks is left to perform the screening.

3.3.3.4 Consequences for applicants and tender participants

Obviously the BIBOB Act can have serious consequences for the entrepreneurs that apply for permits or subsidies and for those participating in tenders for public contracts. The legislator wants to prevent the BIBOB Act from weighing down businesses disproportionately. However, subjects will inevitably bear some extra costs and efforts.[241] First there is the administrative effort for the applicants to collect and report all information required on the application forms. Furthermore, the cost of the screening could be charged. To guarantee that businesses are not saddled with all of these costs, the administrative authorities are charged only a small amount for the screenings, so that the extra costs to businesses will be insignificant. However, the economic costs caused by the delay in the granting of a permit, subsidy or contract could not be avoided. The screening investigation can last four weeks and in certain circumstances this term is extended by another four weeks. During this whole period the administrative decision is deferred.

Yet other costs, and possibly the highest ones, are the possible damage to reputation caused by screening activities. Though it is not the intention of the BIBOB Act, the starting of screening activities can raise suspicions of possible criminal involvement. A general policy on requesting advice in the BIBOB framework would ease this consequence. Moreover, the argument is made that reliable companies that fully cooperate need not fear wrongful violation of their reputation.[242]

Following this reasoning one can even argue that a positive advice after a screening can serve as a kind of guarantee that the company is reliable. In this

[241] Explanatory memorandum to the BIBOB Act. *Kamerstukken II* 1999-2000, 26 883, no. 3: 58.
[242] Explanatory memorandum to the BIBOB Act. *Kamerstukken II* 1999-2000, 26 883, no. 3: 59.

regard the businesses' efforts can contribute to a subject's reputation. The question is whether the business will react this way. When companies indeed unjustly lose their good reputation the impact of this preventive measure can be more harmful than repressive measures. However, for repressive measures the legal guarantees of using suspicions as starting information are stricter. Finally, the costs include possible judicial procedures when a company decides to complain against an administrative decision. In these cases it is up to the court to decide whether the decision was legitimate and whether the person in question can count on compensation.

3.3.3.5 The BIBOB procedure as ultum remedium

As a result of the principle of subsidiarity the BIBOB procedure should be brought into action only as an *ultum remedium*. First the administrative authorities should bring into action other instruments. One of the most important instruments is just asking the applicant. The BIBOB Act enables administrative authorities to pose direct questions. For example, applicants must indicate how they gathered the capital needed for an investment. Moreover, when a first answer is insufficient or appears false, the authority may return to the applicant who has to explain. As such, one of the neighbourhood councils of Amsterdam was able to interrogate an applicant on his capital. The applicant reported that the capital was only from his own savings, though the first screening results showed that he had received a large gift (Van Houten, 2004: 22). Formerly, applicants did not have to answer such questions. Now any lack of transparency could result in refusal of a permit.

Administrative authorities can also turn to certificates of good behaviour, an investigation into antecedents and the auditing and certificating instruments previously in place. In practice article 15 of the Police Files Act (*Wet op de Politieregisters*) appears to be an important alternative instrument.[243] This article regulates the communication of personal data recorded by police and provides a legal basis for police and the mayor to share relevant information concerning maintenance of the public order. Based on this competence it is already possible to refrain from awarding permits in the hotel and catering industry. Important is that the mayor as well as the police can take the initiative for this information exchange. Nonetheless, the success of such a measure depends on the embeddedness of consultation between both parties. Therefore the local government of the city of Rotterdam established a special framework in which this kind of information is exchanged almost automatically (see case Rotterdam, VNG, 2002: 54). This cooperation results in an optimal utilisation of available information.

Obviously, jurisprudence should enlighten the extent to which it is lawful to refuse or withdraw permits and subsidies or exclude subjects from a tendering procedure. Up until now only one lawsuit has taken place. This involves an

[243] Wet van 21 juni 1990, houdende regels ter bescherming van de persoonlijke levenssfeer in verband met politieregisters laatst gewijzigd 1999, *Stb. 1999, no.* 244.

objection to a withdrawal of a permit in the hotel and catering industry and appeared before the Provisional Measures Judge of the Regional Court in Roermond.[244] The court ruled in favour of the administrative authority, as the municipality was convincing in demonstrating that the applicant was related to drugs trafficking and that the establishment could be used for money laundering. The court did not judge the correctness of these suspicions but judged whether the procedures were executed in conformance with the law. Because the authority in question answered all regulations, the court upheld the decision. Though the applicant can appeal this decision, for the time being this decision supports the authorities' prerogative to act preventively upon crime.

3.3.4 Bottlenecks in implementation

The Dutch screening and auditing approach involves cooperation between the public administration and the BIBOB Bureau as well between this bureau and the police, the public prosecutor's department, the tax authorities and other organisations that can provide relevant information. As such the approach is a real multi-agency initiative. The success of the approach depends on some essential elements such as activating the new actors in question, coordinating the activities of the various actors and coordinating the various interests. Based on these elements we can judge whether the implementation of the approach includes some shortcomings that might influence its output.

Activating the public administration. The BIBOB Act had a slow start, but this cannot be held against the act. Rather, it points to a lack of organisation within the administrative apparatus and a degree of unwillingness to implement the act. The figures described earlier clearly show that the BIBOB Bureau's information campaign failed to achieve its aims, as it had not reached all administrative authorities. Of the responding authorities, 67% even admitted being unfamiliar with the BIBOB information (Eiff *et al.*, 2003: 46). As a result the bureau increased its efforts. It continued to publish in several specialist journals and to organise conferences and workshops. It also set up a website to which authorities could address their questions. Moreover, a multidisciplinary working group was set up to inform the public prosecutor's department. This working group focused on giving greater publicity to the public prosecutor's role in the screening process.[245] Because a suggestion from the public prosecutor to an administrative authority can be interpreted as a direct warning, the prosecutor could play an important role in the screening and auditing approach. However, until now, the question remains whether the public prosecutor will use this competence.

The continuing efforts to promote the BIBOB approach appear to have been successful. After this initial period the authorities began investing

[244] See, the press relaese of the municipality Venlo, http://www.justitie.nl/bibob/images/bibob_persberich t_21jan05.doc.

[245] *Kamerstukken II* 2003-2004, Aanhangsel, 1868, 3955-3956.

increasing energy in preparing for the BIBOB approach. Various indicators were established to implement the BIBOB procedure in different sectors and sub-lead groups were established to support and activate municipalities to implement the act.

Coordinating activities. To coordinate the Dutch screening and auditing approach, lead groups from various municipalities, the Association of Netherlands Municipalities and the BIBOB Bureau formulated some general policies. These were to be the starting point for all administrative authorities' efforts and serve to coordinate BIBOB implementation throughout the country. In addition, some administrative authorities appointed a BIBOB coordinator and set up meetings with the BIBOB Bureau to work out procedures. However, it must be mentioned that as these civil servants play a key role in evaluating applications it is remarkable that they often have no financial or judicial expertise on which to base their judgements. Therefore, the initiative in Amsterdam to train civil servants should be followed by more authorities.

Regarding the screening process, various problems have arisen in consulting information sources. In particular gathering information from abroad comes up against a lot of problems. Foreign authorities are not always willing to share information with an administrative agency. Also, gaining information from foreign authorities often takes time. With regard to sources in the Netherlands that are obliged to share information with the BIBOB Bureau, there is also the problem of time. It generally takes two weeks to receive information from sources, which is a considerable period relative to the total time span of four to eight weeks in which the screening should take place.

Coordinating interests. Whereas the Dutch screening and auditing approach only involves governmental bodies, it could be assumed that all of these bodies have the same interest, namely preventing the unintentional facilitation of criminal activities. However, the competence to request a BIBOB advice and the final decision remains the responsibility of the individual authorities; the authorities are not obliged to implement the BIBOB Act. Consequently, authorities that see no threat of organised crime have not been enthusiastic about implementing the BIBOB Act (Eiff *et al.*, 2003). In the meanwhile, the consciousness-raising has increased enthusiasm for the initiative, and more authorities now see the benefit of the screening and auditing approach. Following the larger cities smaller municipalities are increasingly showing interest. Nonetheless, screening and auditing applicants will always reflect a balance between maintaining customer-friendly services and protecting the integrity of the civil service apparatus. Moreover, the local situation can result in specific economic or social interests. For example, a prestigious hotel is less likely to be suspected of questionable dealings and become subject of a screening than a coffee shop (which is a type of café in the Netherlands where cannabis can be purchased). This could be seen in the case of the prestigious sea-side Kurhaus hotel in Scheveningen. The Hague approved the sale of this

hotel without knowing the new owner. Though lack of knowledge about the buyer could be a reason for bringing the screening instrument into action, smaller and less reputable establishments like coffee shops are more likely to be screened, even when there is no immediate cause for suspicion. The difference between the hotel and the coffee shop could seem legitimate, however, the screening method can function well only if the authorities focus on all possible abuses.

In addition, the role of the public prosecutor could result in a conflict of interest. A suggestion from the prosecutor's office to bring the screening instrument into action might conflict with the public prosecutor's first priority, namely, to execute criminal investigations and prosecute offenders. To what extent these different responsibilities will result in conflicting interests remains unknown for now.

3.4 Evaluation of the outcomes of the Dutch screening and auditing approach

In accordance with the methods described in the first chapter of this study this section gives an overview of the observed outputs and the plausible outcomes of the intervention. The fact that the BIBOB Act entered into force for only two years ago makes it difficult to evaluate the outcomes. Yet this section presents a first look at the observed outputs and plausible outcomes of the Dutch screening approach as it impacts organised crime. Furthermore, based on an expert meeting organised for the Berenschot study it is possible to provide some insight on possible side effects. While the side effects can only be ascertained for certain after the approach has been in force longer, this study looks at some experts' expectations. Finally, notwithstanding that little is known on the effects of the screening and auditing approach a first conclusion on the approach is drawn.

3.4.1 Observed outputs

The Dutch screening and auditing approach focuses on two objectives, presented in the second section of this chapter: *preventing the unintentional facilitation of criminal activities* (which could be indicated by the number of BIBOB advice reports requested) and *increasing the awareness of the public administration.*

3.4.1.1 Number of BIBOB advisory reports requested

In the explanatory memorandum of the BIBOB Act the legislator estimated that 500 BIBOB advisory reports would be requested in the first year.[246] Although these figures were computed based on the cost of the advice and the length of

[246] Explanatory memorandum to the BIBOB Act. *Kamerstukken II* 1999-2000, 26 883, no. 3: 57. This explanatory memorandum also states that in later years this could increase to thousands.

the screening period, the BIBOB Bureau considered the figure a rough estimate with little foundation (Eiff *et al.*, 2003: 62). The bureau itself reckoned on an initial peak, as some municipalities were known to be holding cases for a BIBOB screening (Eiff *et al.*, 2003: 62). The BIBOB Bureau also expected many administrative authorities to wait to see how the judicial frameworks would hold up and whether the BIBOB Act could prove its added-value.

As described, the BIBOB Act had a slow start. After the first year the number of BIBOB requests lagged far behind the estimations. An interview with the director of the BIBOB Bureau published in one of the Netherlands' larger newspapers resulted in parliamentary questions on this figure.[247] The Minister of Justice indicated that one year after the act came into force, the BIBOB Bureau had received only 29 requests for advice.[248] The minister attributed this low number of requests to the fact that many municipalities had not yet implemented the act, due to a lack of awareness, priority and support. This applies mostly to the smaller municipalities.[249] However, even the larger cities had requested screening for only a few subjects. In the first six months Amsterdam applied for only one screening. It was expected that Amsterdam, the municipality facing the most problems of organised crime infiltrating the legitimate environment,[250] would request many more BIBOB screenings.

Regarding the proportionality of the BIBOB Act, the City of Amsterdam brought local administrative measures into action first.[251] The use of other grounds for refusal is actually a positive outcome as it indicates the Amsterdam City Council's compliance with the principle of subsidiarity. (See Chapter 4 in this study and Huisman *et al.*, 2005.) To what extent this same reasoning can be applied towards other municipalities is unknown. Nonetheless, it indicates that a low number of requests does not imply bad implementation of the BIBOB Act. In the second year the BIBOB Act became better known, and the number of requests is still increasing. In two years' time the BIBOB Bureau completed about 100 screenings (Brouwer, 2005: 27). Most of these involve the hotel and catering industry including brothels (Visser, 2005). This is not surprising as this is the main sector on which the authorities are focused.

What do these screenings imply? Two-thirds of the advisory reports indicated some threat or a serious threat and only one-third indicated no threat at all (Visser, 2005). However, up to now no overview has been made of the final decisions taken by the authorities in question. So, we have no insight as yet into the total number of cases in which the administrative authorities refused or withdrew a permit or subsidy, and the number of cases in which subjects were excluded from tendering procedures.

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[247] Weinig gemeenten screenen criminelen, *de Volkskrant*, 1 June 2004.

[248] Vragen van de leden Van Haersma Buma en De Pater-van der Meer. *Kamerstukken II* 2003-2004, no. 1868.

[249] Antwoord van Minister Donner op de vragen van de leden Van Haersma Buma en De Pater-van der Meer. *Kamerstukken II* 2003-2004, no. 1868.

[250] See the description of the problem of organised crime in the Netherlands in Chapter 1 of this study. Moreover, Chapter 4 elaborates on problems in Amsterdam as well as measures taken.

[251] As described in the next chapter, Amsterdam has developed an administrative approach.

3.4.1.2 Increasing the awareness of the public administration

The Berenschot study (Eiff *et al.*, 2003: 39) illustrates that, notwithstanding the lack of preparation, awareness within the public administration has been on the rise. Of those surveyed, 63% of respondents agrees with the statement that their organisation has paid more attention to possible unintentional facilitation of criminal activities. Moreover, 41% of respondents say that the BIBOB Act is one of the reasons for this increase. Because a wide range of policy measures focuses on integrity it is difficult to determine to what extent this increasing awareness results from the BIBOB Act. In any case, the combination of measures, of which the BIBOB Act is one, does seem to have had some success in achieving this objective. Now that the BIBOB Act is operational, awareness is likely to increase even more.

3.4.1.3 Conclusion on outputs

The lack of observed outputs makes it as yet impossible to indicate effects on organised crime. We may even question whether the effect on organised crime can be determined once clear outputs are available. For this, one has to uncover to what extent the authorities were facilitating organised crime before the screening instrument came into force and whether this has decreased. However, the administrative authorities have no insight in the extent of their previous unintentional facilitation of criminal activities (Eiff *et al.*, 2003: 23). Before the BIBOB Act came into force the authorities screened applicants and participants in tenders regarding technical aspects, not possible criminal records. As a result there are no figures on possible abuse, only estimates. In the Berenschot study 5% of the respondents states that their organisation had been assessing possible risks regarding applications for permits and public contracts, however actual unintentional facilitation would occur only in some cases (Eiff *et al.*, 2003: 57).[252] Still, 11% of respondents had dealt with such facilitation regarding granted permits in the past (Eiff *et al.*, 2003: 22). For subsidies and public contracts these percentages drop to, respectively, 1% and 2% (Eiff *et al.*, 2003: 23). In such cases it is logical to assume that refusing these permits hindered facilitation.

This reasoning is subscribed to by many experts, who agree that the BIBOB Act will lead to a reduction of unintentional facilitation (Eiff *et al.*, 2003: 53). The experts are less optimistic on whether this will reduce criminal activities in the sectors concerned. Only 33% believe the intervention will really affect organised crime (Eiff *et al.*, 2003: 53).[253] However, this evaluation is based on opinions and not empirical evidence, meaning the figures can be presented only as general expectations, albeit of experts.

[252] Regarding subsidies, only 1% said they assess threats with all applications.

[253] 44% of experts disagreed with the statement that the screening instrument would decrease criminal activities in the sectors involved (Eiff *et al.*, 2003: 53).

3.4.2 Plausible outcomes

In the absence of concrete findings it is interesting to indicate the extent to which it is plausible that the screening and auditing approach will be effective against organised crime. For this, the programme theory of this approach is judged in the light of pragmatic new criminological strategies that represent the common preventive approaches and the empirical knowledge on organised crime.

3.4.2.1 Situational crime prevention

The recovered programme theory involves the assumption that increasing the awareness and integrity of administrative authorities would hinder criminal organisations' abuse of permits, subsidies and tender procedures for unlawful activities. In addition, the BIBOB Act provides grounds to actually bar those who want to abuse permits, subsidies and tendering procedures from committing criminal acts. Based on the principle that organised crime depends on certain administrative decisions it is plausible that the Dutch screening and auditing approach can prevent unintentional facilitation. This reasoning follows from the rationale of situational crime prevention as designed to reduce opportunities (Clarke, 1997). The BIBOB Act hinders opportunities to abuse administrative authorities and it hinders the use of certain economic dealings for criminal activities.

This subsection looks only at the main strategies and underlying techniques used in the screening and auditing approach. This is similar to the process used to examine the anti-money laundering intervention in Chapter 2; the techniques are similar as well. Situational crime prevention includes crime-reducing techniques that influence the realisation of criminal activities. These techniques involve increasing the risk, increasing the effort, reducing the rewards, reducing provocations and removing excuses. Table 3.1 presents the techniques deriving from the Dutch screening and auditing approach and illustrates that these techniques fit the classification of Cornish and Clarke (2003: 90).

Increase the risk. First of all the BIBOB Act increases the risk for criminal organisations as administrative authorities are brought into action as extra guardians. Obviously, with such extended guardianship the risk that criminal involvement will be uncovered is much larger. This extended guardianship not only concerns the authorities; in practice it involves a responsibilisation of civil servants in their workplace. These public servants must be alert for possible irregularities and unusual constructions that may indicate criminal purposes. While it is the civil servant who in interaction with an applicant or tender

participant could uncover these irregularities, this technique is also comparable to the technique that Cornish and Clarke (2003: 90) define as utilising place managers.

Furthermore the auditing activities that are part of the application process for permits and subsidies or the registration for public procurement reduce the possibility to act anonymously. According to Clarke, reducing anonymity is a technique to prevent crime.

Finally, the screening and auditing approach provides the opportunity to bring into action formal surveillance when offences are uncovered. For example, criminal investigations can be started to look into offences in more detail. According to Clarke, the presence of formal surveillance implies a threat that would deter some potential offenders. The execution of the BIBOB procedure in Rotterdam has shown that deterrence indeed takes place, as in two cases applicants withdrew their application after a BIBOB screening was to be requested and additional questions were asked (Visser, 2005).

Increase the effort. The screening and auditing approach not only reveals the identity of applicants or participants in public tenders, it also hinders the concealing of criminal activities or purposes. Simply phrased, it makes it more difficult to conceal irregularities and obtain the permit or subsidy in question. Clarke (1997: 17) defines this technique as 'target hardening'. It implies that criminals must increase their effort to achieve their aims. Regarding the screening and auditing approach, the subjects have to increase their effort to conceal their true identity and their criminal activities or purposes. This technique also fits the technique of deflecting offenders, as in practice criminals might have to think of more complex constructions, for example, using front men and front stores.

Another technique that implies increased effort is the control of access to important facilities. In this case access to the permits, subsidies and tendering procedures necessary to take part in specific economic dealings is implied. Permits, subsidies and tendering procedures are only accessible through administrative authorities, and these authorities can easily control the access. In contrast to the anti-money laundering intervention, applicants have no recourse to other providers. As such the monopoly of the administrative authorities strengthens this technique to the maximum.

Reduce the rewards. Reducing the rewards is probably the most concrete strategy. As a result of the screening instrument, certain economic dealings can be denied to criminal organisations. In fact, permits and subsidies can be refused or withdrawn and criminal subjects excluded from tendering procedures. These are the means that can be brought into action with the BIBOB Act. Moreover, when a screening uncovers criminal offences, then other possible measures can be brought into effect: criminal investigations can be started, administrative fines can be imposed and tax authorities can resort to additional collection.

Table 3.1 The techniques of the Dutch screening and auditing approach categorised in Cornish and Clarke's 25 techniques of situational prevention

Increase the effort	Increase the risk	Reduce the rewards	Reduce provocations	Remove excuses
1. Target hardening • questionnaires and screenings hinder the concealing of criminal purposes of economic dealings	6. Extend guardianship • examine applications for possible criminal purposes	11. Conceal targets	16. Reduce frustrations and stress	21. Set rules • general policies should provide indicators for requesting a BIBOB advice
2. Control access to facilities • legal grounds for refusal or withdrawal enables controlling the access to certain economic dealings	7. Assist natural surveillance	12. Remove targets	17. Avoid disputes	22. Post instructions
3. Screen exits	8. Reduce anonymity • complete questionnaires to uncover identity of applicants, their enterprises and their business relations	13. Identify property	18. Reduce emotional arousal	23. Alert conscience • increasing awareness and integrity
4. Deflect offenders • by screening for criminal activities, criminal organisations have to turn to other or more complex methods	9. Utilise place managers • individual civil servants have to wonder whether clients fit certain indicators	14. Disrupt markets	19. Neutralize peer pressure	24. Assist compliance
5. Control tools/weapons	10. Strengthen formal surveillance • administrative authorities can bring into action formal surveillance when offences are uncovered	15. Deny benefits • refusing and withdrawing permits and subsidies • excluding applicants from tendering procedures	20. Discourage imitation	25. Control drugs and alcohol

All of these actions have their costs. According to Clarke (1997) the knowledge that benefits can be denied prevents some of the criminals from committing the offence. Uncertainty about profits would influence the cost-benefit balance, perhaps leading to a change in the decisions of criminal organisations.

Remove excuses. A final strategy involves the removing of excuses. This strategy does not focus on the criminal organisations but on the administrative authorities that unwittingly facilitate crime. In fact this strategy is the basis for the Dutch screening and auditing approach. By increasing the awareness and the integrity of the administrative apparatus the screening approach applies the technique of raising consciousness. By raising the conscience of administrative authorities, the abuse of these authorities should be hindered.

Moreover, the general policies to implement the BIBOB procedure established by the lead groups implies a framework of rules on which the authorities can rely. However, in contrast to the anti-money laundering intervention, these rules are not clear and binding, so authorities can deviate from them.

3.4.2.2 Effects of the techniques

The assumptions and techniques of the Dutch screening and auditing approach easily fit situational crime prevention and as such it is plausible that the BIBOB Act can indeed hinder criminal activities by interfering in the process by which criminal activities occur. Practice already illustrates that bringing the BIBOB procedures into action might result in the withdrawal of requests (Brouwer, 2005: 29), so apparently, the screening procedure does deter certain applicants. However, an important aspect of this pragmatic new approach is possible displacement. Before looking at the problem of displacement, the possible effectiveness of the BIBOB Act is judged in light of empirical knowledge on organised crime.

3.4.2.3 Empirical knowledge on organised crime

As described in the first section of this chapter the Dutch screening and auditing approach is based on the integrated approach developed in New York City. This approach consists of a screening in which the public administration closely cooperates with the police, the public procurement services and even with financial authorities. In New York this approach proved successful against racketeering, as it actually barred Cosa Nostra groups from core economic sectors (Jacobs, 1999: 223). As such we could likely conclude that this approach can succeed in the Netherlands. However, is it possible to copy an approach from New York City and apply it in the Netherlands?

A policy programme can be successful only if it is geared to the problem confronting the policy-maker. Regarding the problem of organised crime, the literature indicates that the Dutch government deals with another sort of crime

than New York City's government. In New York the approach was applied against racketeering by criminal organisations, which takes place in the legitimate environment. The Dutch authorities are confronted with organised crime mainly confined to the traditional illegal supply of certain goods and services (Fijnaut *et al.*, 1998: 203). This means that in the Netherlands organised crime is mainly situated in illegal markets. Signs of racketeering have been found only in the hotel and catering industry, especially in the red-light district of Amsterdam (Fijnaut and Bovenkerk, 1996: 126). Consequently, one might wonder whether the Dutch screening and auditing approach could be effective against the illegal supply of goods and services in the same way as it was effective against racketeering. This question involves the scope of the administrative approach.

According to Kleemans *et al.* (1998: 61; 2002: 65) and Huisman *et al.* (2003: 36) organised crime situated in the illegal environment *touches* the legitimate environment in many ways. These interfaces offer opportunities for an administrative approach and should be seized for interventions. Examples of these interfaces are the transfer of criminal proceeds by providers of financial services and granting of permits for criminals' legal persons by relevant administrative authorities. The first interface offers opportunities for the anti-money laundering intervention, as described in the previous chapter. The second offers opportunities for administrative regulation, particularly for a screening and auditing approach. As such the Dutch screening approach does not focus on racketeering activities, but on the activities that support criminal undertakings.

Based on insights into Dutch organised crime, Huisman *et al.* (2003: 36) argues that an administrative approach could be effective, but that the opportunities for interfering are limited. Consequently, because Dutch organised crime offers fewer opportunities to interfere than racketeering in New York, the expected results should be adjusted to reflect the more limited extent of opportunities. This reasoning is confirmed by Van de Bunt (2004: 701) who warns against too much optimism: the BIBOB approach could have some value, but given the nature of criminal organisations in the Netherlands, we should not expect too much of the BIBOB Act as an instrument to contain organised crime.

3.4.3 Side effects

Based the plausible outcomes, the Dutch screening and auditing approach is likely to be effective to some degree. The extent of this effect depends partly on the extent of the side effects that influence the outcomes. Side effects can imply positive as well as negative actions. We describe here the main side effects that could have a negative impact on the outcomes.

Displacement. As described in Chapter 1, most preventive measures have to deal with displacement. This is certainly the case for interventions based on the situational approach. In fact, displacement could develop into a real bottleneck if the preventive measures leave open enough alternatives to which criminals can

turn. As described in the previous chapter, Clarke was aware of this possible side effect. However, based on the idea that situational intervention increases the costs and reduces the benefits of crime, he assumes that in the decision-making process criminals would refrain from criminal activities if situational intervention is in place. Still, Clarke (1980: 141) realises that some potential offenders will search for alternatives. In particular he refers to changes in time, place, method and type of offence. In addition, Clarke argues that the extent to which potential offenders definitively end their activities depends on the scale of alternatives. Therefore, the extent of displacement depends on the scope of the intervention; focusing on a whole class of opportunities would be more effective than focusing on just a part (Clarke, 1980: 141).

Regarding the scope of the Dutch screening and auditing approach, some aspects of the BIBOB Act could enlarge the risk of displacement and other aspects reduce such risk. First, the fact that the Dutch screening and auditing approach is aimed at certain sectors makes it likely that criminal organisations will switch to other sectors where no screenings take place. For these other sectors, the authorities have no strong rules to hinder unintentional facilitation. This reasoning is strengthened by the fact that the BIBOB Act is being implemented in stages: the authorities are focusing first on the hotel and catering industry and brothels. Thus, this initial period offers various alternatives. The question is to what extent are potential criminals interested in these alternatives. One may wonder whether a criminal who wanted a restaurant to facilitate money laundering would turn to waste disposal or to the construction sector. Each sector requires some specific knowledge and experience. It is questionable whether criminals would invest in acquiring such new expertise. The situational crime prevention approach says that such dilemmas would deflect offenders.

Moreover, the slow start of the various authorities in implementing the BIBOB Act leaves open the possibility of geographic displacement. In particular, the smaller municipalities seem less prepared to carry out the screening and auditing procedures. As a result of a refusal or withdrawal of a permit or subsidy in one municipality, it seems likely that a criminal would turn to another municipality where the screening and auditing approach is not yet implemented. Finally, difficulties in obtaining information from abroad, in particular on legal persons established in foreign countries, could provoke displacement. Criminals who are aware of these difficulties could establish foreign legal persons to hinder screening. To avert such developments the BIBOB Bureau suggests that it would be more effective if in such cases the applicant has to provide proof of the legitimacy of activities, such as the origin of money and the structure of foreign legal persons.

Second, the BIBOB Act is focused on economic dealings for which the interference of administrative authorities is required. Unlike the anti-money laundering intervention, criminals have no other providers to which they can turn. In this sense the Dutch screening and auditing approach indeed focuses on a whole class of opportunities. An optimal execution of this approach would then seem to prevent an extensive part of possible unintentional facilitation.

Additional side effects. At the meeting organised as part of the Berenschot study the experts agreed that the BIBOB Act could result in a large range of side effects. They pointed out the juridification, longer procedures, heavier burden for judicial power and displacement of crime to other sectors (Eiff *et al.*, 2003: 55). They also raise questions on the lack of safeguards of legal rights and possible stigmatisation of applicants and sectors (Eiff *et al.*, 2003: 55). Notwithstanding that these side effects are likely, it is impossible at this point to discern whether they will actually occur and if so to what extent. For an evidence-based insight into side effects, we must wait for the evaluation study.

3.4.4 Conclusion

The Dutch screening and auditing approach was developed to hinder the unintentional facilitation of criminal activities by administrative authorities. This approach is based on two pillars. The *awareness* of possible unintentional facilitation and increasing the *level of integrity* of the public administration. These two elements are basic conditions for organised crime prevention (Van de Bunt and Van der Schoot, 2003: 70, 72). The approach also provides an instrument to actually bar criminals who try to abuse administrative decisions. For the actual screenings, the Dutch legislator introduced a national bureau, which has authority to consult all kinds of sources (police, judicial and tax records). The programme evaluation illustrates that such sensitive information is necessary to obtain complete and reliable insight into the possible threat of abuse. In the Netherlands the screening and auditing approach has been discussed intensively, both within and outside the parliament. For the legislator it is obvious that the fight against organised crime and protecting the integrity of the public administration justifies some invasion of people's privacy. To come to a legitimate balance, provisions have been established regarding the principle of proportionality and subsidiarity to guarantee subjects' legal position.

Nonetheless, various aspects are still criticised. One of these is the fact that suspicions of future offences are sufficient grounds for refusing or withdrawing a permit or subsidy or excluding a subject from a public tendering procedure. With this provision the Netherlands takes a progressive position and is one of the only EU member states to implement recommendation 7 of the 1997 European action plan to combat organised crime. Nonetheless, this provision is still under discussion at the European level, as it is not yet included in the new directive proposal on public contracts. At the national level the Dutch legislator has countered this criticism by pointing out the wide range of databases that the BIBOB Bureau can access. This, they say, guarantees a complete and reliable picture of the subject in question. Moreover, subjects are protected by the General Administrative Law Act that guarantees transparency in the decision-making of public administrators.

The implementation of the BIBOB Act had a slow start. The BIBOB Bureau indicates that the number of requests is increasing. About 100 screening reports have been completed. Unfortunately, it is unknown what the authorities

did with these reports. This number is much lower than the 500 requests forecast to be handled each year. On the one hand, this is because administrative authorities must take care that requests for advice from the BIBOB Bureau conform with the principles of proportionality and subsidiarity. Few requests could indicate a well-deliberated use of the instrument vis-à-vis other less invasive grounds for testing an applicant. On the other hand the caution in requesting a BIBOB screening, could be based on the fear of lawsuits to fight the administrative decision and claims for damages regarding possible administrative failures (Heddeghem *et al.*, 2002: 71). Such caution could cripple the BIBOB procedures' effectiveness in achieving its objectives. Particularly for attempts by organised crime to conceal their criminal activities the more in-depth screening by the BIBOB Bureau would be necessary. In addition, it is likely that authorities would refuse an application or exclude subjects from tenders only if the BIBOB Bureau advice indicates a serious threat of abuse. Here again the screening approach would fail to meet its objectives, as in this case the authorities would agree to cooperate with persons that are some extent upright.

Jurisprudence in the coming years will enlighten this reasoning. Only one lawsuit on the BIBOB procedure had as yet taken place in 2005. That case showed that the BIBOB procedures were applicable beyond organised crime. The Regional Court of The Hague ruled that the administrative authority did have the right to refuse a permit in the hotel and catering industry.[254] The court judged that the BIBOB procedure was applied correctly and thus the refusal was lawful. The structural violation of rules and constant police intervention in the applicant's former catering establishment, as well as the double bankruptcy of this establishment and the involvement of a foreign legal person, were sufficient reason to assume that violations would also occur in the future. The court even referred to the parliamentary history of the BIBOB Act to show that the act not only opposes abuses regarding organised crime.

Based on the situational prevention theory it is plausible that the screening and auditing approach indeed deters criminal organisations, as it increases the risk and diminishes the rewards. While the BIBOB Act focuses only on the economic sectors in which unintentional facilitation is deemed most likely, it is possible for criminals to displace their activities to other sectors. In addition, the slow implementation could encourage geographical displacement. However, the administrative authorities' monopoly to interfere in these economic dealings implies an enormous restriction of possible displacement. This strengthens the plausibility that the screening and auditing approach will be effective.

One main objection to the BIBOB Act is the problem of national boundaries. It has proven difficult to gain information from foreign countries and it is hard to screen foreign companies wanting to settle in the Netherlands. A second objection that can be raised to the BIBOB Act is that it is not precisely designed to fight organised crime in the Netherlands. The approach is based on a similar approach that was successful in New York. However, while New York

[254] Court of The Hague, AWB 05/601, 730, 1055 and 1056, LJN AS 9631.

has to fight racketeering by mafia organisations, organised crime in the Netherlands involves trade in illegal goods and services. We will therefore have to wait some years to determine the intervention's real impacts.

Chapter 4 The administrative approach of Amsterdam

Chapter 1 mentioned the City of Amsterdam's development of an administrative approach to contain organised crime. This administrative approach was the city's answer to the specific crime problems it faced in the 1990s. Obviously, this development in Amsterdam did not take place in a vacuum. The success of administrative approaches in the fight against organised crime in countries such as Italy and the United States had enormous influence on the development of the Amsterdam policy. In the Netherlands the administrative approach was unique as it included progressive structural measures for organised crime prevention. With the support of the national government Amsterdam became an experimental garden for crime-fighting policies. For example, the city introduced local screening and auditing procedures that later contributed to the development of the national BIBOB Act described in the previous chapter. Amsterdam's approach also seems unique in Europe as it is discussed internationally in the framework of best practices (Seger, 2003).

Like the two previous chapters the purpose of this chapter is to reveal whether it is correct to assume that Amsterdam's administrative approach actually can prevent organised crime. In conformance with the methods described in the first chapter this chapter answers the three research questions:

- What is the programme theory underlying the administrative approach of Amsterdam? (Section 4.2)
- What is the content of the administrative approach of Amsterdam and how is it implemented? (Section 4.3 and 4.5)
- What are the observed outputs and plausible outcomes of the administrative approach of Amsterdam? (Section 4.4 and 4.6)

The structure of this chapter is similar to the two previous chapters except for the fact that this administrative approach does not exist as one intervention, but in a range of approaches. Section 4.1 introduces the problems that led to the administrative approach. Section 4.2 elaborates on the programme theory on which the administrative approach is based and introduces the main elements of the Amsterdam approach. Two of these are detailed: the integrity approach and the Van Traa approach. Sections 4.3 and 4.4 involve, respectively, the evaluation of the process and the evaluation of the outcomes of the integrity approach. Sections 4.5 and 4.6 involve, respectively, the evaluation of the process and evaluation of the outcomes of the Van Traa approach.

The Amsterdam city government started development of the administrative approach in the early 1990s. Over the years the local government has reported on this approach in progress reports and annual reports. It even published a public information book to introduce and explain this new approach (Fijnaut,

2001; 2002).[255] Furthermore, Amsterdam's administrative approach is discussed in *Organised Crime: Best Practice Survey* of the Council of Europe (Seger, 2003) and in the Belgian study on administrative approaches (Van Heddeghem *et al.*, 2002). The Van Traa approach was evaluated only recently. Although this evaluation is not yet completed (Huisman *et al.*, 2005) some findings and main conclusions have already been presented at conferences and seminars. These preliminary findings and conclusions are presented in this study, as they provide deliberated insight into the implementation and results and effects of the Amsterdam administrative approach.

4.1 Organised crime in Amsterdam

The administrative approach of Amsterdam is a direct answer to the increased problems regarding organised crime perceived by the city government during the 1990s. But what problems was the city government dealing with? This section provides insight into the problems of organised crime in Amsterdam. First, the problems in the early 1990s are described. Second, the problems that directly resulted in Amsterdam's administrative approach are outlined.

4.1.1 The problem of organised crime up until the early 1990s

The Amsterdam police department has had a great influence on the organised crime-fighting policy of the Netherlands. This is because organised crime in this city was more developed than in the rest of the country. The Amsterdam police department indicated as early as the 1970s that organised crime in the Netherlands was changing (Fijnaut and Bovenkerk, 1996, 32). In the following decennia two important developments unfolded. The first change involved the enormous increase of foreign criminal organisations. Especially in Amsterdam the police had to deal with organised crime groups of different nationalities, mostly Italian, Chinese, Yugoslavian and Turkish. These organisations were involved in trade in illegal goods and services. Mainly this implied drugs trafficking, but weapons and women were also the subject of illegal trade. Based on its observations, experiences and investigations the police concluded that the problem of organised crime was no longer limited to Dutch criminal organisations, but that Amsterdam had become an important intersection of international trade in illegal goods and services in which many nationalities participated. Later, empirical research confirmed the importance of the Netherlands and in particular Amsterdam as an international marketplace where supply and demand of illegal goods and services could easily meet (Kleemans *et al.*, 2002: 46; Huisman *et al.*, 2004).

At the same time the Amsterdam police department observed a change in the criminal activities of Dutch groups. Whereas their activities had at first

[255] This public information book was translated into English, see Fijnaut *et al.*, 2002.

concentrated mainly on the trafficking of hashish, later these activities were expanded to hard drugs, cocaine and heroine. For the drugs trade and other trafficking activities, large networks with a lot of foreign contacts were created. According to the police these Dutch organisations characterised themselves by corrupting and intimidating police officers and customs officers and by investing criminal proceeds in legal dealings. They not only profited and lived an expansive life style, they also invested in property and legal persons, which facilitated other illegal activities such as illegal gambling and prostitution. In particular the latter took place in the red-light district of Amsterdam. The Amsterdam police considered these investments worrisome, as they seemed to indicate a shift of Dutch organised crime towards the Italian and US models. In other words the Amsterdam police warned of mafia-structured organisations trying to penetrate the legitimate environment.

The Amsterdam police argued the importance of staying informed of different organised crime groups. However, there were in this period no empirical studies to confirm this insight. Only in the late 1980s did organised crime become a subject of criminological research in the Netherlands. The earliest discussions on organised crime had already made clear that the problem could exist in many forms. This idea was confirmed during the Dutch-American Conference on Organised Crime in 1990, as the US speakers emphasised that not all criminal organisations had typical mafia structures (Goldstock, 1991: 11-12). At the conference it even became clear that the criminal organisations in the Netherlands differed from the ones in the United States. For example, in the Netherlands there was no evidence of systematic corruption, blackmail or intimidation and there was no question of organised crime having strong hold over certain sectors of the economy (Fijnaut, 1991: 21). Notwithstanding the conclusion that there were no mafia-structured organisations in Amsterdam, the city government wanted to reckon with possible future changes.

The intention to undertake action against organised crime was probably strengthened by the fact that in the early 1990s various famous criminals were shot dead in public. In particular the murder of crime boss Bruinsma and the extensive reports in the Amsterdam newspaper *Het Parool* alarmed the city government of possible mafia-like activities. Subsequently, inspired by the experiences and success of the New York Organised Crime Task Force (OCTF), presented at the Dutch-American conference, the city government urged introduction of screening and auditing procedures to supplement law-enforcement interventions.[256] With this new approach the city government wanted to seek out the possibilities for using the civil service apparatus in the fight against organised crime; the public administration had to be equipped to bar criminal influences. In addition, the city government emphasised the need for integrity in the public administration. For this, the Amsterdam human resources department organised a seminar titled *Corrupt or Correct* to prepare new policy on this matter.

[256] See Chapter 1 for more details on this Dutch-American Conference on Organised Crime.

With the introduction of these two approaches the Amsterdam city government was the first to carry out the 1992 national policy plan on organised crime, *Organised Crime in the Netherlands: Threats and Plan of Action*.[257] This policy document emphasised the role of the public administration in containing organised crime. An honest, open, independent and checkable administration was seen as necessary to hinder organised crime as well. From then on integrity of the public administration was placed high on the political agenda, at a national as well as a local level.[258] A defensive approach was to help the public administration resist efforts by organised crime to take advantage of irregularities. In addition the offensive approach was to provide public administrators with the tools to refuse permits to criminal organisations. In the first half of the 1990s developments towards this approach were started in Amsterdam. However, the real breakthrough of the new strategy several years later resulted from the parliamentary inquiry into criminal investigation methods.

4.1.2 Insight into the organised crime problem in 1996

Notwithstanding the developments described above, it took until 1996 for the Amsterdam city government to really become aware of the problems and threats deriving from organised crime. In this year the Fijnaut research team presented the results of its extensive criminological study on organised crime, performed under the authority of the parliamentary inquiry into criminal investigation methods.[259] Although the study looked at organised crime in the whole of the Netherlands, a part of the report focused especially on the situation in Amsterdam (Fijnaut and Bovenkerk, 1996). The findings of this section alerted the Amsterdam city government. This was remarkable, since the research team did not present any new empirical evidence, but only confirmed the insights of the Amsterdam police department. In fact its research was based on data available from the police department. The research team described that the capital was indeed an intersection of international trade of illegal goods and services where criminal organisations of different nationalities and ethnical origins were involved (Fijnaut and Bovenkerk, 1996: 32). The researchers were able to overcome the compartmentalisation of the Dutch police and combine the information on organised crime from different services. The fact that an external team was able to present a more complete insight into the problem of organised crime than the police department indicated the severe lack of communication at the time between the different police offices. Furthermore, the researchers were able to overcome the distance between police and administrative authorities.

The combination of sources enabled the research team to present some additional insights into the specific problems of organised crime that the

[257] See Chapter 1 for more details on national developments in fighting crime.
[258] The Association of Netherlands Municipalities was put into action to increase awareness of the municipalities; Integriteit in de openbare sector. *Kamerstukken II* 1993-1994, 23 400, no. 11.
[259] The causes and results of this parliamentary inquiry are described in Chapter 1.

Amsterdam city government was facing. The key problem the research team observed was the possible intertwining of legitimate and illicit worlds and the role of legal economic sectors in willingly or unwillingly facilitating criminal activities (Bruinsma and Bovenkerk, 1996). This part of the study was important, as it was not based on police data, but on information from economic actors themselves. As described in Chapters 1 and 3, there is in general no racketeering in the Netherlands; criminal organisations do not hold positions of power in legal economic sectors. Whereas in New York mafia-structured organisations invested in legal sectors, in the Netherlands such investments did not seem to be taking place. The criminal organisations in Amsterdam were mainly focused on trade in illegal goods and services by which they hardly disrupted legal sectors. However, if these organisations were not investing their criminal profits in legitimate sectors, where did these monies go?

According to the Fijnaut research team, one of the alarming aspects of organised crime was the lack of insight into its money flows. However, regarding the situation in Amsterdam the researchers referred to studies done by the local police on ownership of hotel and catering establishments. The team confirmed the idea that organised crime was investing in the hotel and catering sector, in the gambling industry and in real estate, at least in the red-light district of Amsterdam (Fijnaut and Bovenkerk, 1996: 151).[260] Based on a study by the Hotel and Catering Intervention Team of the Amsterdam police department it was known that criminal organisations had control of 20% of the hotel and catering establishments in Amsterdam (Enquêtecommissie opsporingsmethoden, 1996: 62). The Fijnaut research team concluded that these investments were mainly based on their functional use,[261] which implies the aim of facilitating illegal activities. For example, criminal organisations invested in bars, restaurants and hotels for the distribution of illegal goods and services. Moreover, these establishments could serve as a safe meeting place for criminals and these establishments were suitable for money laundering processes. However, in some cases the research team observed investments that went beyond this functional use. In particular in the red-light district in Amsterdam a substantial part of the premises were in the hands of criminals who were building positions of power (Fijnaut and Bovenkerk, 1996: 151). In fact, together these (former) criminals had such power in the area that they controlled important parts of economic life there.

Obviously, such power marks the boundaries of interventions by the public administration and law-enforcement authorities. For this part of the city the research team concluded that the functional use of investments had already been changing into a kind of racketeering (Fijnaut and Bovenkerk, 1996: 118). Still, the situation could not be compared with that in New York. In the red-light

[260] Regarding these investments, the Fijnaut research team observed culpable involvement of notaries and lawyers (Van de Bunt, 1996: 49; Fijnaut *et al.*, 1998: 161). As described in Chapter 2 such involvement could consist of advising on purchases of premises with which possibly criminal proceeds are laundered.

[261] These activities are ascribed to Dutch criminal organisations: they know all procedures and they want to invest in their own environment, just like foreign organisations invest in their country of origin.

district in Amsterdam the positions of power were limited to economic dealings; criminal organisations had no political or administrative influence as in New York. In other words corruption was not structural (Fijnaut and Bovenkerk, 1996: 126). Nevertheless, the research team concluded that the city government had lost part of its scope for policy-making (Fijnaut and Bovenkerk, 1996: 153). Based on these conclusions the parliamentary inquiry stressed the need for the city government to react in order to bar criminal influences from the policy-making process (Enquêtecommissie opsporingsmethoden, 1996: 425).

A second important problem observed by the Fijnaut research team was the connection between organised crime on the one hand and common crime and degeneration in deprived urban areas on the other. The team concluded that the presence of organised crime could have a negative impact on the environment, as it affects the social security and the liveability of neighbourhoods (Fijnaut and Bovenkerk, 1996: 104, 126). This was especially the case in the Amsterdam red-light district. The presence of organised crime had been causing degeneration and common crime: e.g. wandering drug addicts, presence in the neighbourhood of drug dealers' premises and the prostitution of heroine addicts. By connecting organised crime to common crime and degeneration, the researchers distanced themselves from the national-level crime control policy, in which policies towards common crime and organised crime are traditionally separated. In doing so, it opened the door to integrated policies towards crime as such.

4.1.3 Problem analysis of the Amsterdam city government

The criminological study of the Fijnaut research team furnished a relatively clear insight into the nature of organised crime in Amsterdam. In general the research team concluded that organised crime was mainly a problem of trading illegal goods and services. However, some signs of incidental racketeering were observed. These insights revealed Amsterdam as a special case regarding organised crime. The geographical location and the diverse population provide a suitable infrastructure for illegal trade in goods and services (Enquêtecommissie opsporingsmethoden, 1996: 61). Although the Amsterdam city government was already aware of a number of problems concerning organised crime – the police had already indicated most problems – the conclusions of the Fijnaut team came as a severe confrontation and impacted hard on the city government (Fijnaut, 2002: 25). In particular the worrisome development of criminal organisations penetrating the legitimate environment urged action. Consequently, the Amsterdam city government took the recommendations of the parliamentary inquiry (Enquêtecommissie opsporingsmethoden 1996: 470) as an impetus to further install the administrative approach.

The city administration duly examined the conclusions of the report related to Amsterdam. Remarkably, this examination was not limited to the sectors or areas where problems were observed, but included no less than 25 sectors and areas that could be affected by criminal organisations. Furthermore, the city government established a working group on the administrative approach to

organised crime in Amsterdam (*Bestuurlijke Aanpak (Georganiseerde) Criminaliteit in Amsterdam*) to conduct an analysis of risks and causes. In practice the working group is referred to as the Van Traa working group, after the chairperson of the parliamentary inquiry that emphasised the need to develop the administrative approach. Considering the awareness of the problems and the later successful implementation of administrative measures, it was decided not to outsource this new analysis. Instead, the Van Traa working group consisted of civil servants complemented by police officials as well as representatives of the public prosecution services. As a result, a lot of people from various authorities were involved in the analysis. Furthermore, the Van Traa group drew in the opinions of experts by interviewing lawyers, notaries, real estate agents, contractors and university researchers, as well as by discussing the findings of the analysis in various expert meetings (Jansen Schoonhoven, 2002: 44, 46).

This working group and all persons involved started with an analysis of risks and causes to determine the exact crime problems the city had to deal with. Following the Fijnaut research team, the Van Traa working group firstly concentrated on the interaction between organised crime and the legitimate environment in general.[262] First, the group connected this interaction to some general developments at the international and national level that had resulted in the welfare state the Netherlands now enjoys. The findings of the Fijnaut team on the alarming role of immigrants (Bovenkerk en Fijnaut, 1996: 208) urged the working group to pay special attention to groups of immigrants, legal residents as well as the illegal residents, who often face difficult social circumstances. In regard to this kind of problem in Amsterdam, the working group argued that ineffective care of immigrants and prejudiced police authorities had led immigrants to have fewer chances in the legitimate environment, prompting them to choose alternative careers in informal scenes. These informal scenes, often based on ethnicity, were a perfect place for criminal organisations to recruit workers. Moreover, criminal organisations helped immigrants to come to the Netherlands with fictitious marriages and human trafficking.

Second, the Van Traa working group analysed the way criminal organisations were trying to penetrate the legitimate environment. The group found that criminal organisations influence legitimate markets by distorting competition, buying market access through front men and drawing on the use or threat of violence (Fijnaut, 2002: 45). The intermingling of illegal and legitimate activities arises from opportunities in the legitimate markets to launder criminal proceeds. Moreover, revenues from dealings in legitimate markets could be applied to new criminal activities. In this case, money from organised crime would be invested in legal markets and backwards.

[262] The analysis of risks and causes is written in one of the reports of the working group Van Traa; Werkgroep 'Bestuurlijke Aanpak (georganiseerde) criminaliteit in Amsterdam' (s.d.), *De bestuurlijke aanpak van de (georganiseerde) criminaliteit in Amsterdam; De ontwikkeling van een effectief instrument, Probleem- en oorzakenanalyse en Verslagen van expertmeeting*, Amsterdam: Sander Pinkse Boekproductie.

In studying the interaction between criminal organisations and the legitimate environment, the Van Traa group was particularly interested in the role of the public administration. To what extent was the public administration facilitating criminal organisations? It was already clear that by setting rules, granting permits and subsidies, and by auditing and enforcing compliance various authorities played an important role in the marketplace (Fijnaut, 2002: 45). The analysis of risks and causes showed that the public administration was less than efficient in using its powers. First, the analysis uncovered problems in enforcing compliance with rules. Inaccurate handling of municipal services and inefficient rules caused vagueness and contradictions, which were exploited by criminal organisations. Furthermore, the working group ascertained shortcomings in the organisation of the public administration, which could damage its integrity. Failing internal procedures, tolerance of undesirable behaviour and the lack of clear standards could facilitate organised crime. This was particularly important as organised crime could try to influence the decisions of the public administration by means of intimidation and infiltration (Fijnaut, 2002: 45). Finally, the public administration had no information on organised crime at its disposal. Such information is registered in police databases. Privacy provisions bar municipal services from accessing this information, meaning they have no insight into the possible criminal involvement of those who apply for permits, grants or public contracts.

4.2 Programme theory of the administrative approach of Amsterdam

In order to answer the first research question, this section analyses the programme theory by which the assumptions and objectives of the Dutch legislator are outlined. In accordance with the methods described in Chapter 1, this section first elaborates on the assumptions of the Amsterdam city government in developing the administrative approach. Second, the objectives and strategies of the administrative approach are revealed. The assumptions and objectives of these specific projects are first uncovered in order to establish a framework for the impact assessment, which is described in the final sections of the chapter. The programme theory is based on official documents regarding Amsterdam's administrative approach in general and specifically the two selected projects.

4.2.1 Assumptions

Causal assumptions. Causal assumptions reveal the rationale of the intervention. They present the reasoning of the policy-maker on the problems it is confronted with and the ways these problems are set to be handled. In this case this involves the reasoning of the Amsterdam city government. The Amsterdam city government focused first and foremost on the role of the civil service apparatus on the interaction between organised crime and the legitimate environment.

The Van Traa working group observed that criminal organisations had acquired positions of power in the red-light district. As a result of these positions of power the city government was partly deprived of their policy-making tasks related to public order and decency (Fijnaut, 2002: 24). The threat implied by this loss of policy-making power is that this neighbourhood would become breeding grounds for further criminal activities and that criminal organisations could further extend their powers.

To address these problems the city government wanted to restore order in the area and regain the policy-making power of the city. For this many things had to change. At the official presentation of the administrative approach the city announced the steps that had to be taken (Köbben, 2002: 73):

> 'Efforts must be […] continually focused on an honest, well informed authority that implements policy also with a view to combating crime, that consistently maintains policy and acts with due care in the marketplace.'

This quotation includes two important elements – being honest and being well-informed – as basic conditions for combating crime. First, the city government indicates that city councils and municipal services should know what happens in the urban areas. In particular authorities must be aware of what happens behind the facade of premises. For this they should be able to bring municipal data sources to the task. Moreover, the city government argued that if necessary information should be shared with parties such as the police, judiciary and tax authorities.[263] The combination of these data sources should provide the authorities with reliable insight into the situation and uncover irregularities. The need for authorities to be well-informed is based on the assumption that a weak government, that is, a government unaware of possible irregularities, facilitates crime. Stated differently, the government assumes that a strong, well-informed public administration would hinder crime.

In addition, the city government argues that an honest organisation is a basic condition in the administrative approach to fight organised crime. The objective to raise integrity is based on the assumption that intrusions on integrity could facilitate organised crime. The reverse of this reasoning involves the assumption that the public administration must be reliable and upright in order to hinder organised crime. To establish such an organisation, the civil service apparatus must become aware of its vulnerable position regarding its actions in markets. Regarding that last, the city government spoke of the need for a transparent organisation. This means that the civil service apparatus must be constantly alert to possible internal as well as external infringements of integrity. Internal infringements imply integrity violations by civil servants within the apparatus; external infringements involve actions from persons outside the apparatus who want to abuse the apparatus for criminal activities. This two-

[263] The parliamentary inquiry pleads for the exchange of police data with the public administration in order to determine the actual threat to the legal system (Enquêtecommissie opsporingsmethoden 1996: 285-288, 433, 470).

sided approach towards organised crime aligns with the defensive and the offensive approach on fighting organised crime, described in the policy document of 1992.[264]

Thus, to prevent intrusions by criminal organisations, the public administration needed reliable information at its disposal and it must have integrity. This is not always obvious as the public administration has a wide range of tasks and interests which can cause contradictions in its dealings. For example, there could be tension between economic and political interests or between enforcing compliance and condoning certain activities (Burgemeester en wethouders, 1998: 1158). Therefore, the city government considered it necessary to prescribe six conditions to which all policy should apply (Burgemeester en wethouders, 1998: 1155). These conditions had to guarantee a transparent and alert civil service apparatus, which offers no chances for intrusion by criminal organisations.

The first condition was obvious; integrity must be a integral element throughout the civil service apparatus in general and the public administration in particular. In the administrative approach the concept of integrity encompasses transparency, independence and alertness. Integrity in a civil service apparatus prevents opportunities for corruption and intimidation by criminal organisations. Moreover, part of the important role of integrity was the idea that the Amsterdam civil service apparatus had to serve as an example to others. How could the public administration expect compliance if the organisation itself breaks its own rules? This became even more important in the 1990s when the media brought some major integrity scandals into the public limelight.

The second condition was obvious as well. The public administration had to act cautiously in the marketplace. For careful handling the public administration must be certain with whom it is dealing. The city government argued that it was of utmost importance for civil servants to be able to reveal the background of persons applying for public services such as permits, subsidies and contracts. This meant that rules on screening needed to be developed and that grounds for refusal or withdrawal of public services should be introduced.

The third condition focuses on the provision of information, as certain conditions had to be fulfilled to enable the administrative authorities to effectively combat organised crime. The civil service apparatus including the public administration could be alert only if it was aware of what was happening on the streets of Amsterdam. Therefore, information from the various local authorities as well as from law enforcement needed to be shared.

The fourth condition is that all policy should focus on crime reduction. This means that all policy should be tested for contradictions and side effects of which organised crime could take advantage.

Moreover, the city government determined a fifth condition, which involves the consistent implementation of all policies. Consistent policy implementation is a must for fighting organised crime, as not enforcing

[264] De georganiseerde criminaliteit in Nederland; dreigingsbeeld en plan van aanpak. *Kamerstukken II* 1992-1993, 22 838, no. 2. See Chapter 1 for the main aspects of this policy plan.

compliance could result in an undesirable breeding ground for criminal activities. Moreover, constantly enforcing compliance should have a discouraging effect on abusing public services.

The last condition is a little different from the previous ones, as it relates to the attention that the competent authorities should pay to the integration of ethnic communities given their predilection for involvement in crime. With this condition the city government clearly refers to the findings of the Fijnaut research team on the alarming role of immigrants in organised crime. For this the city government aimed to strengthen immigrants' social and economic position by creating jobs and cutting the number of high school dropouts.

With these six conditions the city government hoped to create an honest and transparent public apparatus that could serve as a barrier against intrusions by organised crime. According to the city government these conditions had to be fulfilled as a normal part of administrative activities (Burgemeester and wethouders, 1998: 1159). In other words these conditions had to be implemented throughout the civil service apparatus. This is important as the city administration could take the lead, but the actual performance of most administrative tasks is left to the civil servants in the different departments. Implementation of these six conditions would involve a change in mentality in the whole of the civil service apparatus. With this reasoning the city government had a clear effect in mind: the reduction of crime and organised crime. Because this study focuses on organised crime, the rest of this chapter is limited to this aspect.

Normative assumptions. Based on the analysis of risks and causes the city government argued that the interaction between organised crime and the legitimate environment had to be broken. The important role of the public administration in this interaction illustrates that the public administration could not ignore its role in combating this kind of crime (Fijnaut, 2002: 45). Therefore, the city government argues that the public administration should not facilitate organised crime. Similar to the measures discussed in the two previous chapters, involvement in organised crime is assumed to have a negative impact on the integrity of reliable and lawful units of the public administration. From this perspective, the Amsterdam city government argues that public administration should take responsibility for its own vulnerability (Jansen Schoonhoven, 2002: 42). In fact, this responsibility is not limited to certain areas or sectors but applies to the whole civil apparatus. Consequently, the new administrative approach had to be a city-wide approach that included all municipal services and made no distinction with regard to geographic area. Accordingly, the Van Traa working group started development of this new strategy.[265] In close cooperation with the city government and with external partners such as the police and the public prosecutor's office an action plan was developed, The Administrative Approach to (Organised) Crime in Amsterdam (Burgemeester en wethouders,

[265] The development of an administrative approach is not new as first initiatives were taken as early as the beginning of the 1990s under the influence of successes in New York (see section 4.1).

1998). They presented this action plan to the city council, which accepted the text on 8 April 1998. Based on the relation observed between organised crime and common crime, the Amsterdam city government decided that its administrative approach should focus on all kinds of crime. This is why the word organised is placed in parentheses in the action plan's title. Thus, Amsterdam's administrative approach is not specifically focused on organised crime. In fact, the city indicated that the approach should have a broader reach, focusing on prevention and containment of crime in general, including common crime. Accordingly, the administrative approach had to be seen as additional to the already existing safety policy (Burgemeester en wethouders, 1998: 1150).

The city government also argued that the administrative approach was a necessary supplement to the repressive approach. The Van Traa working group agreed that a repressive approach was not enough (Burgemeester en wethouders, 1998: 1153). Referring to the growth of organised crime in the last decennia, the city government concluded that law enforcement could have only a partial effect. This is because not all offences are reported to the authorities and only a small percentage of reported offences are solved, prosecuted and punished. As a result the general preventive effect of penal law is limited. In addition, the city government attached limited importance to special prevention, as in their opinion rehabilitation had little effect. Moreover, the shallowness of law enforcement was considered an important limitation; it could not fight the complex underlying causes of crime.

Consequently, the city government agreed to develop a new administrative approach, which would give the public administration excellent supervising instruments with which to handle these complex causes and the observed interaction.

4.2.2 Objectives and strategies

Based on its own analysis of risks and causes and based on the basic conditions formulated by the city government, the Van Traa group completed its action plan with concrete actions. In 1998 the plan encompassed 77 such concrete actions. Most of these can be grouped in three categories. Actions involving the internal organisation of the civil service apparatus are brought under the *integrity approach*. In the *screening and auditing approach* category are activities related to the vulnerable position of the public administration in the market. Actions regarding the specific problems of the red-light district were grouped under the *Van Traa approach*. The screening and auditing approach is left out of consideration in this chapter as it was discussed in Chapter 3. Consequently, this chapter on the administrative approach of Amsterdam concentrates on the two other elements.

The integrity approach. Integrity problems became an issue in Amsterdam in 1995 when the human resources department organised a seminar titled Corrupt

or Correct.[266] The conclusions of the Van Traa working group gave new impetus to this issue with the introduction of a city-wide action plan Corrupt or Correct? The Integrity of the Administration and the Civil Services Apparatus of the City of Amsterdam. Obviously, this approach fit the central assumption that a weak government facilitates crime – and the reverse: an honest and transparent public organisation hinders organised crime. In this framework the integrity approach relates to the vulnerability and the defensibility of the public organisation. By increasing the defensibility and reducing the vulnerability to fraud and corruption inside the civil service apparatus as well as within the public administration the city government assumes that organised crime will have no chance to develop (Bureau Integriteit, 2000: 14; Bakker, 2002: 33). This is the main assumption that will be judged in light of criminological theories to determine the plausible outcomes of this approach.

To detect vulnerable activities and situations, all municipal organisations had to be audited for risks of fraud, corruption and manipulation (Bakker, 2002: 31). The integrity approach was established for these audits.[267] It was explicitly written that this approach would not focus on uncovering fraudulent activities in order to investigate them. Rather, the approach was to give an impulse to discussions on integrity by pointing out vulnerable situations and activities. In practice, the integrity approach has two objectives. First, the approach should result in a consciousness-raising in which all services and individuals become aware of their vulnerability and their own responsibility. Second, the approach focuses on compliance with integrity rules. In the end an integrity bureau was established to handle these tasks. These two objectives form the framework by which we will judge the outputs of the integrity approach later. However, we first look into the process assessment of this approach.

The Van Traa approach. The severe problems in the red-light district, in particular the findings of the Fijnaut research team that the city government had lost a part of its scope for policy-making in this area (Fijnaut and Bovenkerk, 1996: 153), urged the city council to undertake immediate action. As the city-wide approach would take to long time coming, the city began the Wallen project in September 1997. This project, named after the Dutch name of the Amsterdam red-light district, consisted mainly of a Wallen manager appointed by the city government to restore order in the red-light district. Later, together with a couple of employees this manager formed the Wallen team. The team was active from 1997 to 2000. In this period there was a strong interaction between the Wallen team and the team charged with developing the city-wide approach. From 2000 the working space of the team was enlarged from the red-light district to the whole city. From then on the name was changed to the Van Traa team and the project named the Van Traa project. Under responsibility of the Inner City Service the Van Traa team and the Van Traa project was further

[266] See section 4.1.

[267] By changing the word order – putting correct before corrupt – this project seems to indicate a more positive attitude.

implemented. Thus, the Wallen project involved only the red-light district and the Van Traa project involves a city-wide effort. This study refers to the development and implementation of both projects as the Van Traa approach.

Because the severe problems in the red-light district urged the city government to take immediate action, the Wallen manager had to develop a new approach. Nonetheless, the main starting point was obvious; the whole civil service apparatus had to take on responsibility in fighting crime. This starting point is based on the assumed interaction between organised crime and the legitimate environment and the role of a negligent civil service apparatus in unknowingly facilitating crime. Because the Fijnaut research team explained that the lack of administrative decisiveness had resulted in a breeding ground for illegal activities the Wallen manager firstly wanted to restore the city government's administrative powers in this area and ensure that there was no question of *who owns the red-light district* (Wallenproject, 1997: 3). As such, the Wallen manager responded to the finding of the Fijnaut research team that the loss of control in the red-light district had created fertile breeding grounds for illegal and criminal activities (Fijnaut and Bovenkerk, 1996: 123). This finding resulted in the key philosophy that the Van Traa approach had to address breeding grounds for crime and organised crime.[268]

According to the Wallen manager this implied that to fight organised crime all civil services had to be in order. Furthermore, the Wallen manager argued that the city government had to have clear insight into what goes on in the city, or in this case, in the red-light district. In addition, the city government should be able to combine forces and act together with other agencies. In short, this reasoning is based on the assumption that with increased supervision of certain economic dealings organised crime would have less chance to abuse or benefit from these dealings.

The rush of the city government to fight the problems in the red-light district resulted in the Van Traa approach having to develop its own instruments. Subsequently, *developing and executing instruments for the administrative approach* became the main objective of the Van Traa project. The Wallen manager described his task as follows: 'to cluster administrative instruments to enhance the combating of greater criminal penetration of the Wallen district' (Wallenproject, 1997: 3). Moreover, after two years, the instruments developed had to be integrated into the regular organisation of the civil service apparatus (Fijnaut 2002: 25). In this way the existence of the Van Traa approach would become superfluous in several years. Therefore, the *integration of the Van Traa approach into the existing apparatus* can be seen as the third objective. These assumptions and objectives provide the framework for our later evaluation of the

[268] At the European level, which traditionally has little interest in local problems, such analyses created awareness of the connection between organised crime and social economic problems. In the 1997 action plan to combat organised crime the European Council explicitly recommended structural funds to assist the labour market and urban programmes to *prevent large cities in the Union from becoming breeding grounds for organised crime* (recommendation 9).

outcomes of the Van Traa approach. However, before going into the outcomes the process of the Van Traa approach is evaluated (section 4.5).

4.3 Evaluation of the process of the integrity approach

In the previous section we saw the focus of Amsterdam's administrative approach is on the performance of the civil service apparatus. Therefore, it is not surprising that an integrity approach was established as part of the framework. But what does this approach entail and how are the activities resulting from the approach implemented? These questions can be answered through an evaluation of the intervention's process.

In accordance with the methods described in Chapter 1, this part of the evaluation involves two elements. The first is a description of the content of the approach along with the approach's main activities. Second is the evaluation of the implementation of these activities. It also looks at a mid-term review that reveals the main implementation bottlenecks. This is important as it introduces the possible difficulties that can influence the outputs of the measure, which are more fully described later. The evaluation of the implementation is limited to the elements that are important for the overall subject of this study: the prevention of organised crime. The administrative approach is more extensive, however, as it focuses on common crime as well as organised crime. The main sources for this part of the evaluation are the documents from the programme itself, such as its annual reports and the study of the integrity violations carried out by Nelen (2003a).

4.3.1 Content

The content of the integrity approach is illustrated by the main activities carried out in its framework. The first activities are executed as part of the project *Correct or Corrupt?*, established by the city government in 1997. These activities include registering fraud and corruption, auditing all municipal services and developing a centre of expertise. In addition, the Amsterdam city government itself was a main actor. Its two most important activities were developing a code of conduct and establishing internal rules on whistle-blowing.

4.3.1.1 Registering violations regarding fraud and corruption

Amsterdam's decentralised structure means that all local authorities and neighbourhood councils deal with their own integrity problems. This means the city had little insight into the overall extent and nature of the integrity problem. Therefore, the municipal government set up the Central Register for Fraud and Corruption to gain insight into the problems that municipal services were dealing with, in particular problems of fraud and corruption. Installation of the Central Register was deemed so important that it was established in 1997, even

before the city-wide approach was adopted. This bureau registered and analysed all concrete incidents of fraud and corruption of civil servants and delegates of the City of Amsterdam. Incidents were registered only if they were reported to the police or if administrative measures had been taken against the persons involved (Burgemeester en wethouders, 1997: 490).

The Central Register was to become a centre of expertise, advising and supporting civil services. For this, however, it had to widen its focus, to look at not only concrete incidents, but also suspicions of fraud and corruption so as to uncover risky procedures or rules that could provoke fraud and corruption. Notwithstanding all the information at the Central Register's disposal, the city administration stressed the fact that the agency could not itself conduct investigations on fraud and corruption. Dealing with concrete violations would remain under the competence of the managing director of the municipal service in question (Burgemeester and wethouders, 1997: 492).

4.3.1.2 Auditing all municipal services

The second activity of the project *Correct or Corrupt?* involved the auditing of all municipal services for vulnerable situations in which integrity violations could easily occur. These audits focused on abuse of official knowledge or competences in order to gain improper advantages or passing on improper advantages to outsiders (Bureau Integriteit, 2000: 14). In practice it looked into risks of fraud and corruption. In addition to inventorying vulnerable actions of municipal services, the project aimed to increase the awareness and defensibility of the civil service apparatus as a whole (Bureau Integriteit, 2000: 14). To raise awareness of integrity issues the municipal services were charged to audit themselves. Therefore, the audits were performed through a self-investigation process in which employees of all different levels were involved. All 54 municipal services – neighbourhood councils and local authorities – produced self-reports on the vulnerabilities of their organisation with recommendations for future developments.[269] These 54 reports were brought together in one city-wide report, to which supplementary provisions were added for improving defences against erosions of integrity.[270] This overall report showed that violations of integrity generally resulted from the organisational structure or organisational culture.[271]

Most recommendations related to the organisational structure (Bureau Integriteit, 2000: 32). This is not surprising, as a transparent administrative

[269] At the moment Amsterdam is divided into 15 neighbourhood councils which operate rather autonomously, and there are 37 local authorities managed at the municipality level. This means together 52 bodies participate in the integrity policy. For more information on the organisation of the city of Amsterdam see its website www.amsterdam.nl.

[270] Based on the reports of all different services a final report at the city level was presented (Bureau Integriteit, 2000).

[271] The organisational structure is taken to mean the entirety of formal rules and provisions for the benefit of honest functioning of the organisation. The organisational culture encloses the social interplay between employees and organisations (Bureau Integriteit, 2000: 15 and Bakker, 2002: 33).

organisation is seen as the basic condition for improving integrity (Bakker, 2002: 31). According to various municipal services, oversight and transparency of working processes had to be improved and these processes formalised in writing (Bureau Integriteit, 2000: 21). They argued that clear regulations, tasks and competences were needed that are known to all employees, as vagueness and ignorance might lead to undesirable interpretation of regulations. Furthermore, for vulnerable areas, the municipal services recommended making organisational changes, such as separating certain work processes. The second category of recommendations involves the need to enforce compliance with these clear regulations, tasks and competences. The report points out that organisations have to supervise correct behaviour of employees, and that organisations must respond to violations (Bureau Integriteit, 2000: 31).

The renewal of the organisational structure was viewed as essential for improving integrity. However, the audit also showed that organisational changes alone were not sufficient. The integrity of an organisation depends on individual actions as well. Employees, administrators and civil servants were considered each to have a responsibility to act in conformance with the rules. Moreover, they were considered to have a collective responsibility for all that happens inside the organisation. This behaviour is dictated in part by the organisational culture, which is much harder to influence. There were therefore fewer recommendations in this area. Most attention was given to internal communication (Bureau Integriteit, 2000: 32). To safeguard integrity it should be possible to discuss behaviour on a horizontal and vertical level without regard to the particular persons involved. This cultural change was to be made possible by introducing integrity as a normal issue in the working environment; e.g. in the daily discussions of progress, in hiring new employees and during performance appraisal interviews. According to the final report of the *Correct or Corrupt?* project, a shift in attitude would result in which civil servants were constantly aware of vulnerable situations and of the consequences of their actions (Bureau Integriteit, 2000: 21).

4.3.1.3 Developing a centre of expertise

With all its attention on integrity, the city government wanted to increase the defensibility of the civil service apparatus. The project *Correct or Corrupt?* had to provide measures for reacting when ‘individual personnel deliberately or accidentally act without due care’ and it was explicitly formulated that the project was ‘not started up to check on possible fraud’ (Jansen Schoonhoven, 2002: 33). In other words, the project was initiated to deal with risky situations, but not to investigate integrity violations as such. Regarding the Central Register for Fraud and Corruption, the city administration paid special attention to this restriction.

The findings of the auditing report resulted in a wide range of new activities. First, the Amsterdam government decided to install an integrity bureau to ensure the continuation of the integrity approach. In 2001 this bureau

was established in the Amsterdam Public Administration Department, which supports the central public administration. In practice the integrity bureau became the city-wide centre of expertise, which took over all auditing activities and incorporated the Central Register. Second, the integrity audit started a whole new discussion on integrity that eventually resulted in formulation of a code of conduct and internal rules on whistle-blowing.

4.3.1.4 Developing a code of conduct

The first audits that came out of the integrity approach related integrity to vulnerable actions for which there was a risk of fraud and corruption. After all, these were the actions that could be utilised for intrusions by organised crime. However, after these firsts audit thinking about integrity became wider and came to include more and different behaviours. As a result, the concept of integrity changed. The developments to improve the transparency of the civil service apparatus and to change the attitude of civil servants urged the city government to clearly demarcate the guiding standards and values for civil servants and administrators. As described above, it became necessary to embed clear regulations, tasks and competences. To this end, the city drew up a mandatory municipal code of conduct indicating activities and behaviours which are permissible and those not or no longer acceptable (Burgemeester en wethouders, 2001: 1-22).

The code of conduct came into force in 2001. It is comprised of two conduct codes, one for the city executives and another for civil servants. The special attention given to the behaviour of city executives follows the idea that public servants must set a good example for the rest of society. With respect to the content, both codes discuss more or less the same issues: e.g. how to deal with invitations, how to handle gifts, how to arrange working in additional jobs and how to manage confidential information. For example this code dictates how to deal with smaller gifts such as a bottle of wine and larger gifts like dinners and trips. Because the city government considered it impossible to demarcate all actions and behaviours, the code introduces some basic values as a central point of reference (Burgemeester and wethouders, 2001). These basic values – activeness, openness and integrity – serve as criteria for the desirability and legitimacy of civil servants' activities and they offer third parties criteria with which to evaluate civil servants' behaviour.

In contrast to the concrete regulations, tasks and competences described in the code, the basic values are rather vague, and they actually do not provide more than general guidance. According to the city government this is no shortcoming; in accordance with the recommendation from the overall report of the *Correct or Corrupt?* project, this would stimulate discussion on integrity in the municipal services. Good internal communication existing in consultation with executives and other employees should result in agreements on what integrity is as well as increasing awareness of what is acceptable and what not (Bureau Integriteit, *s.d.*: 6).

With the code of conduct coming into force the idea of the public administration being an organisation of integrity was no longer only related to fighting organised crime. Similarly, vulnerable actions were no longer limited to incidents of fraud and corruption. Instead, the city government had enlarged the concept of integrity in 2002 by adopting a directive on integrity violations. From then on, all integrity violations fitting the following criteria had to be reported:[272]

'- conflict of interests;
- theft and embezzlement;
- fraud and corruption;
- manipulation of abuse of information or of the access to information;
- abuse of competences;
- incompatible functions and activities;
- waste and abuse of municipal property;
- use of violence, threat and intimidation;
- (criminal) offences committed in non-working hours, at least as these offences are connected to the functioning of the civil servant involved and as the offences are of extremely serious nature.'

The enlargement of the concept of integrity did not contribute to the clarity of the problems to be handled. In fact, the behaviour connected to integrity problems became increasingly vague. Whereas fraud and corruption must fit the definition for criminal penalisation, which is clear, other violations can hardly be defined. For example, how is a conflict of interests defined? Economic and political differences can easily lead to a conflict of interests; but in what cases can one speak of an integrity problem, let alone an integrity violation? Consequently, the integrity approach seems to have experienced a net-widening of behaviours; it no longer focuses on the interaction with organised crime, but aims at the functioning of individual civil servants. This new focus certainly raises questions on the relation between this wide range of violations and possible intrusions committed by organised crime. This question is addressed later in the discussion of the results and effects of the integrity approach.

4.3.1.5 Developing internal rules on whistle-blowing

The code of conduct indicates which activities and behaviour are permissible and which are no longer acceptable. However, as important as formulating clear rules is, enforcing compliance with these rules is considered even more important (Burgemeester en wethouders, 2001: 22). The Dutch Criminal Code (article 162) obliges civil servants to report certain offences to the police, especially serious offences committed by a civil servant. However, to encourage actual reporting of serious integrity violations in sensitive cases the city government introduced the directive referred to earlier on suspicions of integrity

[272] See the last version of the directive involving the supply of information regarding integrity violations adopted by the mayor and aldermen on 30 September 2003.

violations (24 September 2002). This directive includes rules on whistle-blowing.

First of all this directive commits every civil servant to expose suspicions of abuses involving their own organisation or council (directive involving suspicions of integrity violations, article 2). According to article 1 of this directive, suspicion of integrity violations is understood to mean:

> '- reasonable grounds for suspecting abuses of enough importance, regarding:
> an offence;
> - a serious violation of rules;
> - the deception of judicial authorities;
> - a major danger to public health, security or environment, or
> - the deliberate withholding of information on these facts.'

Before going into the content of this directive, it should be remarked that over time the city administration has let go of the idea that reporting should only include concrete incidents. Whereas the Central Register for Fraud and Corruption at first was to report definite incidents, this directive obliges the report of suspicions of integrity violations as well. Reporting suspicious incidents has subsequently been simplified. Whereas before, a police record or threat of administrative discipline could be a barrier to reporting a suspicion, now all suspicions of integrity violations can and must be reported immediately.

The directive on suspicions of integrity violations says that violations and suspicions of violations must be reported. In general, the directive is based on internal reporting and internal settlement. This means that in the first instance the report of violations is dealt with within the organisation. As such, the handling of cases would contribute to raise awareness of risks and violations. Therefore, reports of suspicions of abuses should be addressed to the civil servant's executive. When the civil servant feels unwilling to turn to the executive (or their direct supervisor), it should be possible to turn to a confidant. A last option is reporting to the Integrity Bureau. Reporting to this bureau is mandatory if the violation concerns the executive of the civil servant. Furthermore, reporting to the bureau is possible if there are good reasons to believe that there will be no response within the organisation. Subsequently, investigations must be executed by the executives of the local authorities or the neighbourhood councils (article 4) or the Integrity Bureau (article 15). Finally, the executives of the city administration or the executives of the neighbourhood councils decide on the proper reaction, if necessary supported by an integrity committee.[273] The final decision and response must be announced to the civil servant who reported the abuse or violation as well as to the Integrity Bureau. The latter registers the information and utilises it for other tasks.

[273] The Integrity Committee is the highest organisation involved in the integrity policy. Chaired by the mayor, one aldermen and several executives of local authorities the committee guards the progress of the integrity policy (Bureau Integriteit, 2002: 8). Furthermore, the committee has an advising role in relation to the settlement of integrity violations and it is the organisation that civil servants turn to in case they disagree with the reasoning of their executives.

Internal reporting and internal settlement could also have its consequences. Notwithstanding the different options for reporting, the city government recognised the vulnerability of persons who stick out their necks. Therefore supplementary provisions – internal rules on whistle-blowing – were adopted. According to the directive on suspicions of integrity violations (article 10), all reports must be treated with confidentiality and care. Moreover, this article determines that when a report results from acting in good faith the position of the reporter cannot be damaged in any way. In fact the article determines that in such a case, the reporter cannot be dismissed within two years of the report, at least not without permission by the city administration or the executives of the neighbourhood councils.

4.3.2 Implementation

In just a short period of time integrity became a central issue in the civil service apparatus of Amsterdam. The integrity approach resulted in a flood of activities. This section provides insight into the implementation of these activities. Like Chapter 3 and in accordance with the general methods of our research, this subsection looks at the main aspects that influenced implementation, at least those aspects that are key regarding the prevention of organised crime. The data presented here derives from annual reports and progress reports of the Amsterdam Integrity Bureau. In addition, some of the figures are based on a study by Nelen (2003a), who evaluated the reports documented by the Central Register for Integrity Violations, which replaced the Central Register for Fraud and Corruption.

4.3.2.1 Centre of expertise: the Integrity Bureau

With the establishment of the Integrity Bureau in 2001, Amsterdam's city government had a centre of expertise in mind, which would be charged to develop, encourage and embed the integrity policy.

The city government apparently considered a city-wide policy to be very important. Establishment of a single, central Integrity Bureau was even more remarkable because in that period Amsterdam was in the middle of a decentralisation process. Although the independent neighbourhood councils and the municipal services remained competent to conduct internal investigations and settlements, they had to comply with the city-wide policy. Obviously this might have resulted in some tension between the parties. The city government also attached great significance to the development of a capable bureau, which in 2003 was equipped with a staff of 15 persons. At the start of 2001, the Integrity Bureau had only four employees. A former public prosecutor was appointed to lead the bureau (Bureau Integriteit, 2003: 25). In view of the decentralisation process, one might wonder whether such a manager could gain the confidence of the municipal services.

The Integrity Bureau's tasks were mainly in the framework of prevention: supporting municipal services and civil servants to raise their 'integrity awareness'. In other words, the Integrity Bureau had to make integrity issues common good. For this, the bureau focused on the organisational structure as well as organisational culture. With regard to the first, it performs organisational audits to map risks and suggests solutions. In late 2002 the Integrity Bureau had a new instrument at its disposal to execute risk analysis. By the end of 2004 integrity advisors were to have finished eight risk analyses. Regarding individual employees, the Integrity Bureau was looking into the possibility of screening personnel. For this, functions in municipal services were divided into three sorts: confidential functions, vulnerable functions and remaining functions. Confidential functions refer to the Security Clearances Act,[274] which is related to national security. At first it seemed that at the local level there were no functions answering this criterion. Yet, the act has in fact been applied in four cases. With regard to protecting vulnerable functions, which are functions with higher risks regarding integrity violations, the Integrity Bureau was able to point out various risky factors; e.g. solitary handling, dealing with large amounts of money and pressure on the market civil servants are dealing with (Bureau Integriteit, 2003: 14). Regarding the third category of functions the Integrity Bureau draws attention to existing possibilities for screening, such as checking references. Furthermore, the Integrity Bureau organises trainings involving integrity dilemmas which aim to contribute to developing integrity of individuals as well as of organisational culture.

Next to the duties in the preventive framework, the Integrity Bureau plays a role in the repressive approach regarding integrity violations. According to the directive involving suspicions of integrity violations the managing directors of municipal services are obliged to start an investigation when violations are observed. Formerly, municipal services brought in private investigation agencies to carry out such investigations. Now, the Integrity Bureau offers its own help for free. There are three investigators engaged to carry out this work.[275] In 2002 the Integrity Bureau executed 45 internal investigations. Moreover, the bureau engaged an expert in civil service law, who formulated 25 advisory reports and supported 13 written objections and three appeals proceedings (Bureau Integriteit, 2003: 16). This involvement of the Integrity Bureau in internal investigations regarding integrity violations implies a huge change from the original objectives of the integrity approach. At the start of the approach it was clear that actions were initiated to deal with risky situations, but not to investigate integrity violations as such. Regarding the Central Register for Fraud and Corruption, the city administration paid special attention to this restriction (Burgemeester and wethouders, 1997: 492). Nowadays however, the bureau is

[274] Wet van 10 oktober 1996, houdende regelen inzake het verrichten van veiligheidsonderzoeken. *Stb*. 1996, no. 525.

[275] In June 2002 there were two investigators. From January 2003 the Integrity Bureau employed a third investigator. Due to the increasing attention to integrity, the bureau's expectation is that the number of investigators will increase (Bureau Integriteit, 2003: 15).

seen as competent to replace the use of expensive private investigation agencies. We must conclude however that with its investigative tasks, the Integrity Bureau is no longer focused on a preventive approach. It also brings about an administrative reaction or repression of integrity violations.

The surplus value of the Integrity Bureau seems to be the combination of all its tasks. The connection between the registration of violations, audits or risk analysis, dilemma trainings and internal investigations enables the bureau to act as a centre of expertise.[276] The Central Register succeeded in providing insight into the integrity violations at the city level. These insights were presented in periodic reports directly to the city administration and the Integrity Committee.[277] Moreover, these reports, which are anonymous, are accessible to all civil servants and third parties as they are published on the Internet; at least since the second half of 2003.[278] This accessibility of insights on integrity violations corresponds with the idea of developing common awareness. The reports are important for internal purposes as well, as they form the basis of the bureau's expertise. Based on the reports the Integrity Bureau is able to map developments and trends in integrity violations. Moreover, certain violations serve as cases in the dilemma trainings. This is particularly important since internal communication on integrity issues is viewed as an important instrument to achieve common awareness.

Finally, the Integrity Bureau has its role in registering integrity violations. All municipal bodies have to report violations to the Central Register for Integrity Violations, which is now under the authority of the Integrity Bureau. At first, this only included violations of fraud and corruption. However with the code of conduct and the directive involving suspicions of integrity violations in the workplace, this now applies to all suspicions of integrity violations. The data of this Central Register are presented in the next subsection.

4.3.2.2 The Central Register for Integrity Violations

Due to the enlarging of the kinds of violations that the municipal services have to report, the Central Register changed its name so as to reflect its broadened scope. The Amsterdam city government attaches great significance to the integrity of the whole civil service apparatus; and the developments described above clearly illustrate that its concern is not limited to good intentions. Moreover, the city asked the Vrije Universiteit Amsterdam to perform an evaluation study on the integrity violations reported to the Central Register for Integrity Violations (Nelen, 2003a). Not only the fact that such an evaluation was requested, but also the cooperation of civil servants in carrying it out, shows the seriousness of the city government on this issue. Normally, administrative integrity as well as fraud and corruption are seen as sensitive issues on which no

[276] This is also the experience of the Integrity Bureau itself (Bureau Integriteit, 2003: 14).
[277] Nowadays these reports are included in the annual reports of the planning and controlling department of the City of Amsterdam.
[278] See http://www.amsterdam.nl/contents/pages/00000393/2ehalfjaarrapportage2003cri.pdf.

information should be distributed to third parties. The Central Register, however, has gone some way to breaking this taboo.

The reports of the Central Register for Integrity Violations clearly indicate an increase of integrity violations over the years (see table 4.1). From the start of the Central Register in 1997 the number reports increased almost every year.[279] Only in 1999 and 2001 did the total number of reports decrease or remained stable.

Table 4.1 Number of integrity violations, 1996 to 2002

	Number of reports
1996	4
1997	17
1998	27
1999	19
2000	61
2001	61
2002	97
Total	286

Source: Nelen (2003a: 8).

This increase, however, has different causes. First, the increase of reports could be the result of the increasing awareness of integrity violations. The Integrity Bureau predicted that the number of reports would increase in the first years because of the increasing attention to the subject (Bureau Integriteit, 2002: 7). Second, the code of conduct that came into force in 2000 enlarged the concept of integrity. From then on, the reports not only encompassed fraud and corruption, but also extended to other areas of the functioning of individual civil servants. Consequently, the net-widening of integrity violations resulted in an increase of the number of violations as well. Currently, most violations reported to the Central Register for Integrity Violations concern five phenomena: fraud, embezzlement, waste and default, theft and corruption (see table 4.2).[280]

Table 4.2 Nature of integrity violations,1996 to 2002

	Number of reports
Fraud	80
Embezzlement	49
Waste and default	49
Theft	38
Corruption	33
Total	249

Source: Nelen (2003a: 10).

[279] The reports that are categorised in the year 1996, before the installation of the Central Register, were reported afterwards.

[280] The 249 reports comprise 88% of the total number of violations (286 reports) reported to the Central Register.

The large number of reports on fraud stems from the focus on fraud in the first years of the Central Register. Nonetheless, corruption, one of the most serious violations, occurred only a couple of times. In fact, Nelen and Nieuwendijk (2003: 15) explain that of the 33 reports only 8 cases actually involved corruption.[281] In the other cases the suspicions were incorrect or they turned out to be other forms of integrity violations.

The limitation of this register is that it can only document what is reported. The Integrity Bureau, which operates the Central Register, cannot search out violations. This means that civil servants are the only ones who can report violations or suspicions thereof. According to the internal rules they must do so.[282] However, based on the difficulties of supervising compliance with these rules, it would be advisable to reconsider the competence of the Central Register. If it could actively search out violations, it might gain insight into the number of unreported integrity violations.

Notwithstanding this criticism, what do these numbers tell us? Are these numbers of violations high, normal or low? It is difficult to interpret these numbers because there is no material for comparison (Nelen, 2003a: 38). No other Dutch cities have similar databases to which to compare. Consequently, we can conclude only that over the years the number of reports in Amsterdam is increasing.

Is it possible to compare the Amsterdam councils and authorities with each other? Such comparison reveals that departments with field staff report the most integrity violations (Nelen, 2003a: 24). According to the respondents of Nelen's evaluation (2003a: 24) this is the result of the extensive decision-making power of the field staff and the lack of supervision of their activities. For example, some major cases of fraud came to light from the department in charge of managing public parking, with some civil servants pocketing revenues from ticket dispensers (Nelen, 2003a: 23). Furthermore, respondents of Nelen's evaluation (2003a: 34) refer to job satisfaction and profession-related pride as important aspects influencing awareness of integrity in an organisational culture. Large-scale integrity violations of civil servants resulting from opportunities in the organisational structure can have a negative impact on other employees. In some cases it may even cause low job esteem, a climate in which integrity violations can flourish even more. This example also illustrates the interaction between organisational structure and organisational culture. Moreover, Nelen's study shows that integrity violations depend not only on internal processes but also on external ones. Nelen's respondents argued that operating in fraud-rife environments can have a negative impact on civil servant behaviour (Nelen, 2003a: 24) lowering the threshold to violate integrity rules.

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[281] Nelen refers to a definition used in a previous study that involved corruption by police officers (Nelen and Nieuwendijk, 2003).

[282] According to the current directive local authorities and neighbourhood councils must report incidents three days after the start of an internal investigation, the report of the incidents to the police or the moment that a disciplinary measures is taken.

A comparison of the various councils and authorities can thus give some background on integrity issues. However, these insights cannot be taken as certainties. There are other local authorities with operational field staff which are confronted with the same elements, but which report fewer integrity violations. For example, the construction department and the department involved in town and city planning report few integrity violations. Are there explanations for the lower number of integrity reports? Are there fewer integrity violations than in other departments? According to Nelen the lower number of reports is due to what is in the literature called collusion (Nelen, 2003a: 25). The tight relation between civil servants and the organisations they check can lead to blind spots towards unreliable practices.

4.3.3 Bottlenecks in the implementation

Activating municipal services. The Integrity Bureau, installed in 2001, had by 2003 become a centre of expertise with 15 employees that supported the municipal services. This rather large team at the central level operating under the direction of a former public prosecutor might have been construed as a threat to the independence of the neighbourhood councils and municipal services, causing a natural tension between the parties. Nonetheless, the evaluation of the process indicates that these services in general are willing to comply with the new measures. Over the years most of the 54 city councils and administrative authorities have reported more and more integrity violations. However, not all municipal services are willing to cooperate. The evaluation by Nelen (2003a: 37) illustrates that nine municipal services never reported a violation and that six services only reported once. Although some differences can be explained by the size of the services and by the sort of activities they facilitate, it also reflects the willingness of these services to report violations.

Coordinating activities. Because the integrity approach involves only the municipal services – city councils and administrative authorities – it is not so much a multi-agency approach. Therefore, the implementation is not really hindered by difficulties in coordination of activities, like the anti-money laundering intervention was.

Coordinating interests. The activities of the Integrity Bureau can be divided into two strategies. First, there is the focus on increasing the awareness to prevent possible integrity violations, as was described upon the launch of the integrity approach. For this, the city government introduced the obligation to report integrity violations. While these reports were not primarily aimed at investigating offences but at hindering possible intrusions by criminal organisations, this strategy can be indicated as a preventive strategy. Second, with the code of conduct coming into effect it was important to enforce compliance with these rules. Therefore, the city government wanted a clear handling of all violations. Implicitly, this became the second objective of the

integrity approach. The handling can exist in administrative or criminal measures which both come under the repressive approach. One might wonder whether in the course of time the interest of the city government changed from the preventive approach to the repressive approach. Obviously, such a change in emphasis could have a major impact on the effects.

In addition, the net-widening of integrity violations that must be reported raises the question of the relation between integrity violations and possible intrusions by organised crime. By their focus on the functioning of individual civil servants it seems that the city government lost sight of one of its earlier objectives: prevention of organised crime. What are the consequences of these findings and how do they affect the outcomes of the integrity approach? This is discussed below.

4.4 Evaluation of the outcomes of the integrity approach

In order to answer the last research question this section deals with the outcomes or effects of the integrity approach. In accordance with the methods described in Chapter 1 the evaluation of the outcomes involves an overview of the observed outputs and the plausible outcomes of this approach regarding organised crime. The outputs are judged in the framework of the objectives described section 4.2. To judge the plausible outcomes the assumptions are evaluated in light of pragmatic new strategies to prevent crime. In addition, the outcomes involve the side effects the legislator has to deal with. Finally, an overall conclusion is provided regarding the strengths and weaknesses of the intervention.

4.4.1 Observed outputs

To fortify the civil service apparatus against organised crime, Amsterdam's government paid a lot of attention to the integrity of this apparatus. Over time, the integrity approach resulted in a number of activities, which can be grouped into two strategies. First are activities specifically focusing on *increasing awareness* to prevent possible integrity violations. Second, with the code of conduct coming into force, it was considered important to *enforce compliance with integrity rules*. For this latter strategy it is interesting to look at some reactions to the reported integrity violations.

4.4.1.1 Increasing the awareness within the civil service apparatus

The data from the Central Register for Integrity Violations clearly illustrates an increase in reports over the years. However, it would be premature to conclude that based on this increase the level of integrity is declining. There are simply too many elements that could influence the level of violations as well as attitudes towards reporting. In particular one might wonder whether an increase of violations indicates less integrity in the organisation or an increased

awareness of integrity violations. It is even impossible to compare city neighbourhood councils and local authorities with each other. Although three larger neighbourhood councils are responsible for a large part of the reports (Nelen, 2003a: 21), it is impossible to ascertain whether these neighbourhood councils are less upright than the others, whether they are just more aware of integrity violations or whether there are simply more problems in these areas.

Despite these remarks, the municipal services seem to have become more aware of the importance of addressing integrity problems. In particular, the code of conduct is seen as a positive step and the basic values as a central point of reference has resulted in debate on integrity as planned (Nelen, 2003a: 33). To a large extent this is caused by the main interventions influencing the organisational structure and culture (Nelen, 2003a: 5)

Furthermore, there are indications that the integrity problem in Amsterdam is decreasing. Figures from the Central Register for Integrity Violations seem to indicate that any integrity problems that Amsterdam has had are related to some rotten apples and not to a rotten organisational culture or organisations. According to Nelen (2003a: 8), 80% of the 286 cases of integrity violations are related to individual behaviour. In the other cases, three or more employees were involved. Though the figures should be interpreted with caution, respondents in this study seem to confirm that the number of integrity incidents in which large groups of civil servants are involved has been on the decline in the last couple of years (Nelen, 2003a: 16). This could be due to the changes in the administrative organisations and the strengthening of the municipal authorities. However, more data is needed to draw such a conclusion.

4.4.1.2 Enforcing compliance with integrity rules

According to Nelen (2003a: 31), the city councils and administrative authorities have handled integrity violations decisively, at least the ones that were reported to the Central Register for Integrity Violations. In fact, 43% of all reports ended in a settlement in court, an administrative settlement or a combination of both (Nelen, 2003a: 28). This result seems an important indication of the credibility and legitimacy of the integrity policy.

Regarding how these violations were handled, 40% of the reported violations remained internal issues and 38% resulted in a report to the police (Nelen, 2003a: 27). Unfortunately, one in three reported cases could not be resolved because of unknown offenders or lack of evidence (Nelen, 2003a: 27).

In the period 1996 to 2002, 83 civil servants were confronted with criminal law proceedings (Nelen, 2003a: 28). This number is equivalent to a quarter of all civil servants registered in the Central Register. Nelen's (2003a: 28) evaluation indicates that most cases handled by the police concerned embezzlement and fraud. There were hardly any cases of corruption. According to Nelen (2003a: 28), corruption is seldom settled in a criminal court as in most cases evidence is lacking. Table 4.3 shows the numbers of settlements by criminal court. On one hand the settlements were successful, as in more than half of the cases a criminal

punishment was enforced. These criminal punishments imply irrevocable convictions existing in penalties, community service orders or suspended prison sentences (34%). In addition, in 20% of the cases a compromise was reached. On the other hand some cases resulted in acquittal (4%) or a decision not to prosecute (18%). The remaining criminal cases were not yet closed or the results remained unknown.

Table 4.3 Settlements by a criminal court in the period 1996-2002

	Number of civil servants	Percentage
Decision not to prosecute	11	13
Compromise	17	20
Irrevocable conviction	28	34
Acquittal	3	4
Criminal case is not finished yet	15	18
Unknown	9	11
Total	83	100

Source: Nelen (2003a: 28).

With a view to administrative settlement, the city government has an arsenal of means that can be brought into force against civil servants violating the rules. In fact, different administrative measures can be combined. That is why the numbers in table 4.4 cannot be added to arrive at the total number of reports. An important finding regarding the administrative settlements is that in 35% of the cases the contract of employment was brought to an end. In 23% of the cases the severance was initiated by the employer and in 12% of the cases the employees themselves initiated the resignation.

Table 4.4 Administrative settlements

	Number of civil servants	Number of cases	Percentage*
Reprimand/warning	46	28	10
Suspension	63	46	16
Transfer	7	7	2
Resignation by the civil servant	36	33	12
Suspended dismissal	27	20	7
Dismissal	82	66	23

Source: Nelen (2003a: 30).

* Percentage of the total number of reported violations (n=286).

An administrative settlement can also be combined with a settlement by criminal court. This was certainly the case for the most serious offences. In 25 cases that resulted in a dismissal and in 10 cases in which the employee resigned, the public prosecutor's department commenced proceedings against the employee as well (Nelen, 2003a: 30).

4.4.1.3 Conclusion on the outputs

It is difficult if not impossible to determine causal relations between measures and effects. The increase in the number of reports of the Central Register for Integrity Violations does not automatically imply an increasing problem regarding the integrity of the organisations involved. The increase in integrity violations could be the result of the increased attention to this problem. First of all, the increase in integrity violations has resulted from enlarging the concept of integrity. In addition, the increase in reports can be due to the fact that integrity has been introduced as a normal subject in the organisational culture (Nelen, 2003a: 39). Still, it is possible that the increase in reports indeed indicates an actual increase in violations. If this is the case the preventive approach seems to have had no effect on the integrity of municipal services. Obviously, the increasing number of violations could be the result of a combination of both causes. These scenarios illustrate the lack of insight into the effect of integrity violations reports. It is simply impossible to conclude whether the actual violations have increased. This makes it impossible to judge whether the differences in numbers of reports is the result of a low level of violations or a low level of awareness.

This problem can be illustrated with an example. Nelen (2003a: 24) shows that in general integrity violations are more common in municipal services among field staff, who tend to have a large amount of individual decision-making power. Even so, there are differences between departments with field staff (Nelen, 2003a: 23-25). The department in charge of parking management reported many violations, while the city planning department and the construction department reported only a few. According to Nelen (2003a: 26) the differences in reporting could be the result of collusion. Collusion involves the relation between entrepreneurs and the civil servants who grant and supervise these third parties. This relation can in fact be so tight that it causes a blind spot towards unreliable practices (Nelen, 2003a: 26). Subsequently, civil servants could be unaware of possible integrity violations. Whether this is the case with the departments involved in city planning and construction is unclear. Accordingly, it is still an open question of whether all the attention to the integrity of the civil service apparatus has actually prevented intrusion by organised crime.

4.4.2 Plausible outcomes

In contrast to the screening and auditing approach, the integrity approach does not focus on potential criminals but only on the civil service apparatus that could facilitate crime. To hinder intentional or unintentional facilitation of organised crime, the Amsterdam city government wants to strengthen the defensibility of its administrative apparatus. This was deemed necessary since a weak government was believed to facilitate crime. An upstanding and transparent public organisation was assumed to hinder crime. Therefore, the integrity

approach aims at reducing the vulnerability of the apparatus in order to prevent fraud and corruption. Over time the integrity approach came to include all kinds of vulnerabilities related to the functioning of individual public servants. This section looks at the extent to which the integrity approach can be judged in the framework of situational crime prevention and with regard to empirical knowledge on organised crime.

4.4.2.1 Situational crime prevention

Table 4.5 provides insight into the extent to which the techniques of the Amsterdam integrity approach fit the classification of Cornish and Clarke. A part of the techniques focus on the criminals; these techniques involve increasing the risk and effort involved in benefiting from crime. Other measures involve the removal of excuses. However, where Clarke and Cornish apply the strategy of removing excuses to criminals, in the integrity approach these techniques aim at the civil service apparatus.

Remove excuses. In order to increase the defensibility of the civil service apparatus the city government must set clear rules with which the civil service as well as the individual servants must comply. According to Clarke (1997: 24), setting clear rules is a technique of situational crime prevention, as any ambiguity in rules and regulations will be exploited to the advantage of an individual public servant. The Amsterdam city government set clear rules by writing out tasks and competences. With such transparency in the organisational structure, civil servants know what behaviour is expected of them and what they can expect of others. The addition of the code of conduct can influence the organisational culture.

A second strategy to remove excuses involves alerting the conscience. As described in the previous chapters, Clarke (1997: 24) argues that measures that stimulate conscience will prevent violations. By making the whole apparatus aware of possible abuses the city government is alerting the conscience of individual civil servants. In fact, the city government is attempting to realise a constant level of high conscience regarding integrity dilemmas in the municipal services. This is necessary, because alerting the conscience is mostly effective when applied at the point of contemplating the commission (Clarke, 1997: 24).

Finally, the city government provides structures that encourage compliance with the set rules and procedures. This strategy fits Clarke's reasoning on assisting compliance. First of all, the rules on reporting integrity violations and suspicions of integrity violations stipulate that civil servants must report the violations they come across. These same rules provide a clear framework on how these violations must be reported, which facilitates compliance. Such a clear framework is particularly important where people hesitate to act. Reporting an integrity violation of colleagues is probably such a situation. It is likely that in the absence of clear rules, civil servants would rather refrain from reporting violations, as they do not know how to go about it.

Table 4.5 The techniques of the Amsterdam integrity approach categorized in Cornish and Clarke's 25 techniques of situational prevention

Increase the effort	**Increase the risk**	**Reduce the rewards**	**Reduce provocations**	**Remove excuses**
1. Target hardening	6. Extend guardianship	11. Conceal targets	16. Reduce frustrations and stress	21. Set rules • write out tasks and competences • establish a clear code of conduct
2. Control access to facilities • increasing the integrity of the civil service apparatus increases the control of those who access the facilities	7. Assist natural surveillance	12. Remove targets	17. Avoid disputes	22. Post instructions
3. Screen exits	8. Reduce anonymity	13. Identifying property	18. Reduce emotional arousal	23. Alert conscience • increasing awareness and integrity
4. Deflect offenders	9. Utilise place managers • introducing awareness of integrity problems in the normal working processes strengthens the natural surveillance	14. Disrupt markets	19. Neutralize peer pressure	24. Assist compliance • rules on reporting suspicions of integrity violations • the rules on whistle-blowing
5. Control tools/weapons	10. Strengthen formal surveillance • once integrity violations are reported, it is possible to bring formal surveillance into action	15. Deny benefits	20. Discourage imitation	25. Control drugs and alcohol

In addition, the city government has assisted compliance by establishing rules on whistle-blowing. These rules protect the ones who dare to stick out their neck. This is particularly important since exposing behaviour of colleagues or a superior could cause problems for the one reporting the violations.

Increase the risk. Whereas the integrity approach is mainly focused on the civil service apparatus and individual public servants' compliance with the rules, it is also important to increase the risks involved in violating integrity rules. With the attention paid to integrity problems in the civil service apparatus, the city government has tried to stimulate surveillance by supervisors and other employees. According to Clarke, such surveillance increases the risk of being caught. Clarke attributed such surveillance to employees (Clarke, 1997; 20) and later to place managers (Cornish and Clarke, 2003: 90) who deal with the public. In other words, people who by virtue of their position have good insight into certain behaviours are charged with surveillance. In the case of Amsterdam's integrity approach the employees and place managers supervise their colleagues.

In addition, the integrity approach could bring formal surveillance into action. In the rules on reporting suspicions of integrity violations the city government requires each violation to be investigated. In the first instance the municipal service itself must deal with investigations and settlements. However, it is possible to hand over serious violations to the investigative authorities such as police or tax authorities.

Increase the effort. Notwithstanding the fact that the integrity approach focuses on the civil service apparatus, there is one technique that aims at criminals who want to abuse civil services' facilities; that is, controlling access to these facilities. Like the anti-money laundering intervention and the screening and auditing approach, the central issue of the integrity approach is to prevent unwitting facilitation of criminal activities. To prevent such abuse it is necessary to control access to these facilities (Clarke, 1997; 17). To control access, the Amsterdam government has increased the awareness of the civil servants who provide such facilities. Similar to financial service providers and administrative authorities, the Amsterdam municipal services must be alert as to with whom they are dealing. Thus, the adage 'know your customer' is important at the local level as well.

4.4.2.2 Effects of the techniques

Based on the situational crime prevention approach it can be assumed that an upright civil service apparatus exerts more control over facilities. Consequently, it increases the efforts that criminal organisations must make to infringe on these facilities. In other words, by making the civil service apparatus more upstanding and transparent the various services and the individual public servants can be defined as preventers, making crime less likely (Clarke: 1997). However, the integrity approach is mainly focused on the civil service apparatus and hardly on

potential criminals. As a result this approach includes fewer techniques of situational prevention. Thus, criminal organisations have fewer barriers to overcome.

4.4.2.3 Empirical knowledge on organised crime

In a Falcone study exploring possibilities for preventing organised crime, it became clear that increasing integrity and awareness could contain a fair number of potential facilitators (Van de Bunt and Van der Schoot, 2003: 71). For example, awareness of possible abuse in welfare service flats could hinder the abuse of such accommodation for storerooms and remove a considerable facilitating factor for drugs and human trafficking. Therefore, awareness of facilitators of possible abuse is a basic condition for crime prevention (Van de Bunt and Van der Schoot, 2003: 72). It plays a pivotal role. This requires public agencies to be well aware of their own vulnerabilities. Awareness presupposes good governance and, at the very least, the integrity of government agencies. The prevention of organised crime entails a constructive attitude in the working of an organisation, meaning the creation of more transparency in the decision-making process, the consolidation of procedures and the instruction of personnel. Such remarks concerning awareness presuppose that the private and public parties involved are themselves bona fide.

Nonetheless, awareness is not sufficient to guarantee the success of situational prevention. Next to being aware, facilitators must have integrity (Van de Bunt and Van der Schoot, 2003: 72). This means that facilitators have to take preventive measures against possible misuse. A constructive attitude aiming for transparency in organisations, consolidation of procedures and clear instructions for personnel are needed. Obviously, this approach can be effective only when the parties who take them are upstanding themselves. Should this not be the case – e.g. when organised crime has deeply penetrated legitimate parts of society – the situational approach will be totally ineffective.

4.4.3 Side effects

The main side effect ascribed to situational prevention is displacement. However, according to Clarke (1980: 140), displacement not only depends on the offender's strength of motivation, but also on the range of alternatives offenders have available. Therefore, Clarke argues that protecting a whole class of property would leave few alternatives and thus will be highly effective (Clarke, 1980: 140). One could say that the Amsterdam civil service apparatus aims at eliminating a whole class of targets, namely the abuse of all of the facilities they provide. Because the civil service apparatus has a monopoly on certain facilities, it unlikely that displacement will take place. Even more, the integrity approach could affect other sectors in Amsterdam. Such development is described as 'diffusion of benefits' (Clarke, 1997). This would be a positive side effect, as it would mean that not only the city government, but also other

sectors were paying attention to integrity and had become aware of possible abuses. Such developments fall out of the scope of this research, however, so no insight into them can be given.

A different side effect of the integrity approach is the possible hardening of the response to smaller violations in the name of the so-called prevention of organised crime. Reports based on suspicions alert the city government to possible offences, but could result in excessive reactions. Care must be taken with suspicions until there is some certainty on the accusation involved. Investigations can seriously damage the reputations of the persons concerned. In an atmosphere in which so much attention is paid to integrity, the simple fact of an investigation being started might make a person seem guilty. This is particularly a problem when a case lacks confidentiality and information leaks. In such cases people can be publicly attacked, even without being found guilty. Remarkably, in such cases a local integrity investigation and possible media attention could be even more damaging than a penal sanction. This means that the preventive approach can damage subjects even more than repressive measures, though the suspicions may be mistaken. Such failures and the resulting public judgement represent a hardening of the preventive approach.

An example from 2003 illustrates such a situation. The managing director of one of the larger museums of Amsterdam was accused of fraud. The co-director reported suspicions regarding the managing director to the Integrity Bureau. Consequently, the mayor, who was informed according to the rules, ordered an internal investigation and the Fiscal Intelligence and Investigation Service started its own investigation. Furthermore, the mayor decided to postpone the official farewell party for the managing director, which had long before been planned. The postponing of such a prestigious party, to which even the queen had been invited, obviously received a lot of attention. The news was published in all newspapers and the good reputation of the managing director and the museum were damaged. In the end the incident appeared to involve a disorderly transaction regarding the loaning of paintings by which taxes were not paid. In this case, the farewell party was organised after all, however the director's good reputation could not be recovered as easily. The former managing director phrased this as following:

> 'For more then a year I was wrongfully accused. People constantly asking about it affected my professional integrity. Moreover, it contributed to the complete misrepresentation in the media that my last years at the Stedelijke [museum, CvdS] were a failure.'[283]

This quotation illustrates the severe personal impact that integrity investigations can have.

[283] Rudi Fuchs niet vervolgd om Appels, *NRC Handelsblad*, 4 November 2003.

4.4.4 Conclusion

The Amsterdam policy to increase awareness of integrity issues was originally aimed to make the civil service less vulnerable and more defensible against intrusions from criminal organisations. In theory it is plausible that the integrity approach supports the defensibility of the civil service apparatus. In addition, based on situational crime prevention it would be realistic to expect that increasing integrity would decrease opportunities for organised crime. Empirical knowledge points out that increasing integrity is not only a basic condition, it is a necessary precondition for prevention as well. Without an upstanding civil service apparatus, no preventive measures can be taken seriously. However, the implementation of the integrity approach has gone through some changes that probably affect its outcomes.

The developments regarding the integrity policy involved two types of expansion. First, the attention to integrity issues resulted in a code of conduct in which the concept of integrity was expanded to include a wider range of behaviour. While at first integrity violations involved only fraud and corruption, they now varied from theft and embezzlement to conflicts of interest and waste of municipal property. This expansion made it difficult to define integrity violations. While the definition of fraud and corruption is clear, conflict of interests can involve a wide range of behaviours.

The second expansion of the integrity policy was the obligation to report suspicions of integrity violations. This marks the hardening of the preventive approach towards integrity violations. In an environment in which integrity is a central issue, the start of an internal investigation could be perceived as a conviction. Moreover, despite the rules on confidentiality, in cases in which incidents are made public the person involved may be publicly attacked even without any evidence. In these cases, a preventive approach can be even more damaging to people than repressive measures, though suspicions can be wrong. Moreover, during the years the city government even changed the objective of the approach. At first it was explicitly written that the integrity approach was not intended to investigate fraudulent activities. However, the new directive explicitly dictates settlements be determined for all such violations.

Both expansions imply a net-widening, meaning that more and more subjects are drawn into the intervention. Such net-widening is characterised by the blurring of boundaries between crime, deviance and non-deviant behaviour. Consequently, integrity has widened into an almost meaningless concept, and there are still many blind spots regarding this problem. Moreover, the net-widening of the integrity approach has resulted in goal displacement. Whereas integrity violations were at first a means to fight criminal organisations, the handling of violations is now a goal in itself. Also, the expanded definition of activities that are seen as integrity violations makes the fight against them more difficult. As a result of the net-widening and goal displacement, the city government lost sight of its actual objective; the prevention of organised crime.

These changes have made the Amsterdam's integrity approach appear to be less preventive than it was first described. Whereas the preventive tasks of the Integrity Bureau were seen as its main duties, most attention is now paid to the repressive approach. The evaluation study by Nelen shows the resulting settlements, but no evaluation study has been performed of the preventive effects. Notwithstanding the importance of clear settlements, which can have preventive effects as well (deterrence), respondents in Nelen's evaluation study argued shortcomings in the preventive approach. For example, they argue that integrity is still not a normal subject of discussion in performance interviews and in the recruitment of new employees. Civil servants may even be engaged in a municipal service shortly after their dismissal for dubious reasons from another service. Obviously, much remains to be done. The good thing is that improvements do not have to cost much. Regarding the example above it could be sufficient to check the references of former employers.

Moreover, the approach is not aimed at organised crime. Although the integrity approach was initiated as the result of severe problems with organised crime, the city government focuses the approach on all sorts of crime. As a result the approach is likely to have less impact on organised crime than expected. Still, the approach is one of the most logical steps that can be taken against organised crime. Because integrity is a basic and necessary condition for crime prevention the problem of organised crime could be much worse without it.

4.5 Evaluation of the process of the Van Traa approach

The Van Traa approach is a direct reaction of the Amsterdam city government towards the severe problems observed in the red-light district. Like other preventive measures taken against organised crime, this approach is evaluated in order to gain insight into the process through which the measure is realised. In accordance with the methods described in Chapter 1, the evaluation of the process involves two elements. First, the content of the approach is described. This description involves the main activities that have taken place in the Van Traa approach. Second, the implementation of these activities is evaluated. This discussion is limited to those aspects that are important to the main topic of this study: the prevention of organised crime. Bottlenecks in the implementation that could affect the outputs of the Van Traa approach are also described.

The evaluation of the process is based on the large documentation of the Van Traa team. Over time this team, including the Wallen manager, published an action plan, several annual reports, progress reports and a public information book on the Van Traa approach.[284] In addition, information was acquired from

[284] This section cannot elaborate on all aspects of the Wallen project. The analysis is limited to the aspects that are most interesting for our study of the prevention of organised crime. However, for those who are interested, several reports on the progress of the Wallen project are published, see Wallenproject (1997, 1998), Projectbureau Manager Wallengebied (1998, 1999) and Van Traa

seminars and lectures by Freek Salm, who was the Wallen manager from 1997 to 2000. Furthermore, the Van Traa approach was recently evaluated (Huisman *et al.*, 2005). This study includes the main findings and conclusions of that evaluation.

4.5.1 Content

As described in section 4.2 the Van Traa approach encompasses the Wallen project and the Van Traa project. The Wallen project existed from 1997 to 2000 and was restricted to the red-light district. With the enlargement of the approach from the red-light district to the whole city in 2000, the project was re-named the 'Van Traa project' after the parliamentary inquiry that recommended development of the administrative approach. Here we first look at the content of the general approach. The integral and integrated enforcement of rules is described as well as the cooperation between the partners involved and the exchange of relevant information. Subsequently, a short description is provided of the main subprojects of the Van Traa approach.

4.5.1.1 The general approach

Integral and integrated enforcement of rules. The Wallen project concentrates on the development of an administrative approach to fight the specific problems of Amsterdam's red-light district. The approach turned out to be unique in that it includes an integral and integrated maintenance of crime problems, which was unprecedented. Describing the Van Traa approach Fijnaut (2002: 25) defined integrated maintenance as the mutual cooperation of all city departments including the police. In fact, this integrated cooperation includes the public administration, police, judicial authorities, tax authorities and in some cases even semi-government corporations and private organisations. In other words, the integrated approach is a multi-agency approach, including a wide range of actors. Fijnaut did not define integral maintenance, but from its general use, it probably indicates consistent enforcement of all legal rules. In practice this means that the approach covers consistent enforcement of compliance with all legal rules.

Operating procedure. The operating procedure of this integrated maintenance is characterised by a two-step approach that basically corresponds with intelligence-led policing. The first step is collecting and analysing data on organised crime. For this the Wallen team and later the Van Traa team make use of all kinds of open sources, the register of the chamber of commerce, municipal registers (e.g. those of the Building and Housing Inspectorate, Social Services,

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team/Wallenproject (2000). See also the public information book on the administrative approach of Amsterdam in which one chapter involves the Van Traa approach (Köbben, 2002). In 2001 the Dutch version was published and in 2002 the English version. These publications provide information for this section as well.

Environment Service, Licensing Department and Population Register) and the closed registers of police, justice and tax authorities.[285] By combining all information, an assessment can be made of criminal involvement. This wide range of data sources makes the approach integral and multidisciplinary. Because the combination of information is the basis of the administrative approach, one can refer to it as information-led policing.

The second step is to undertake strategic decisions on the measures to be taken based on this assessment. For this step, the Wallen project and the Van Traa project use an integral or multidisciplinary approach as well. The responsible authorities can decide on a range of interventions. They can undertake administrative measures, such as refusing or withdrawing permits, they can decide to start a criminal investigation or they can decide to submit a fiscal claim. The Van Traa approach even makes it possible for authorities to take civil measures, such as the purchase of premises (see one of the following key subprojects).

The Van Traa approach exists in various subprojects that involve rectifying deficiencies in maintaining or enforcing rules. Some of these subprojects focus on geographic areas or branches of economic activity in which the Wallen team, and later the Van Traa team, assumed are related with organised crime. These assumptions may be based on problems or degeneration of deprived urban areas or on possible involvement of persons or companies in criminal activities. The geographically oriented subprojects usually start with the collection of information involving the premises. This means that regarding all premises in the selected area the ownership, rent, financing and occupation are observed. Moreover, the team analyses the businesses that are accommodated, the licenses distributed, the actual activities taking place as well as the relations between these legal persons and the natural persons involved. All collected information is written in a matrix or a fact sheet that during a subproject is constantly updated.[286] Such matrixes illustrate irregularities based on which the authorities in question can undertake action. Thus, these subprojects actually imply strong operational aspects. The subprojects that focus on branches usually involve strategic aspects. Here, the gathering of information is focused on mapping possible risks of criminal abuse and possible criminal investments in the selected branches. This applies, for example, to the hotel and catering industry. However, in some subprojects insights result in actual interventions, such as against illegal casinos.

A second part of the subprojects involves the deficiencies present in the organisation and administration of the various civil services which hinder the application of the administrative approach. One of the crucial deficiencies involves the information position. This is remarkable as the administrative approach is an information-led policing that should have a certain level of

[285] Later the competences necessary to exchange this data are described.

[286] A matrix or fact sheet indicates owners, tenants, managers of establishments; it shows how activities are financed and which permits are obtained and by whom; it registers the remarks from administrative checks and sanctions.

information at its disposal. Consequently, various subprojects aim at providing such a level of information. These subprojects appear during the whole execution of the Van Traa approach, as the team has to deal with various bottlenecks that stand in the way of the administrative approach.

Organisational structure. At the start of the Wallen project its team consisted of the Wallen manager supported by only a small group of co-workers: a policy advisor, two legal advisors, a project manager for urban renewal and an administrative employee (Köbben, 2002: 75). This team was responsible for developing and coordinating the new administrative approach and for implementing it in all urban districts and municipal services. However, for strategic decisions and the actual execution of the project, they had to rely on the authorities involved. The Wallen manager described the official organisational structure in the project's first working plan (Wallenproject, 1997). Most of the consultations for the Van Traa approach were based on the existing 'tripartite consultations' which involved representatives of the police, the public prosecutor and the public administration. Tripartite consultations can exist for different geographic areas and for special topics.

Regarding final responsibility, the Van Traa approach was placed under the formal guardianship of the local tripartite consultations of the urban district 'Centrum' (the centre of town). This tripartite body meets once a month and the Van Traa approach became a continuing topic on its agenda. The Wallen manager also had a place at these consultations. In addition, a steering committee was established with representatives of the same authorities.[287] This steering committee had the strategic task to coordinate and initiate activities. In short, it decided what action would be most effective and which partner was best qualified to act in a certain situation. With the changeover from the Wallen project to the Van Traa project the steering committee ceased to exist. Strategic decisions were then taken by a new body of tripartite consultations that was established to fight serious crime.[288] In these consultations the Van Traa approach was discussed and new subprojects *earmarked*. This *earmarking* was necessary as it was a basic precondition enabling the exchange of information. This is discussed in more detail below.

A core group made up of representatives of the four authorities involved was established as well. This core group is responsible for execution of actions, meaning that these representatives had to manage employees in their own organisations in order to gather information on selected areas and branches and to execute the measures the steering committee decided on. Over time it appeared inefficient to work with one core group. Therefore, a special core team was established for each of the subprojects initiated. This was necessary, as each subproject demanded different expertise. With the start of the Van Traa project

[287] The steering committee consists of a district chief of police, a public prosecutor, an official of the tax authorities and the Wallen manager, as representative of the local authorities.

[288] This tripartite consultation exists in the heads of the departments of police and public prosecution that are involved in fighting serious crime as well as the head of the Van Traa team.

it was formally decided to put together specific core groups adjusted to each subproject.

Finally, a broad team was established of representatives of various public and private agencies to act as a sounding board for the Van Traa approach, to advise and inform the steering committee. However, the broad sounding board was never effectively initiated, and advice was later distributed via informal channels. This organisational structure is aimed at guaranteeing cooperation amongst the various authorities at all levels.

With the changeover from the Wallen project to the Van Traa project the administrative approach became city-wide. The project was placed under the Amsterdam Public Administration Department which is charged with maintaining public order and safety. Until 31 December 2002 the Van Traa project remained an independent project with its own management and budget. From 2003 the project was officially embedded in the civil service apparatus. It became part of the city department for public order and safety.

4.5.1.2 Key subprojects

The Wallen manager's first job was to gain in-depth knowledge of the crime problems in the red-light district. This was done by interviewing a large number of people about the problems and the range of administrative measures that were put to use against the problems. Moreover, the manager made frequent visits to the area to experience the problems and general atmosphere. The diversity of criminal behaviour in the district made it impossible to fight these crimes all at once. Therefore, the Wallen manager and the project team started different subprojects, each focusing on one branch or area. These subprojects were laid out in an action plan (Wallen project, 1997). Some of key subprojects (Köbben, 2002: 79) are described below.

Grey premises project. A key subproject is the 'grey premises' project. Grey premises are premises of which the actual function is unknown to the authorities. Thus, this subproject is a perfect example of rectifying deficiencies in maintaining or enforcing rules. The Wallen team was interested in these premises since they could be used for criminal purposes. For example, grey premises were revealed to be used as illegal accommodations for which usurious prices are asked. Such accommodations are rented to illegal immigrants, persons seeking political asylum and tourists. In many cases these premises do not comply with the legal rules such as for licences and fire safety; neither do they comply with the city zoning plan. The Wallen manager argued these were exactly the sorts of situations in which the administrative approach could prevent criminal activities. The reaction of the Wallen team to such infringements is a clear example of a multi-agency approach and consistent enforcement of compliance with legal rules.

Moreover, this subproject is a perfect example of the two-step approach. First, with regard to the consistent enforcement of compliance with legal rules,

the Wallen team started to gather information from different local authorities to determine concrete offences. Second, with regard to the multi-agency approach, the Wallen team, and later the Van Traa team, took the most suitable response: enforcing compliance, withdrawing permits, starting a criminal investigation or bringing into force additional collections by tax authorities.

However, during this subproject, a major problem appeared in that the registers of the different local authorities were difficult to compare and they lacked information. In particular property registration needed updating. Licences for hotels, boarding houses and lodging houses had not been recorded for the past two years. This led the Wallen manager to start the basic property database subproject.

Basic property database. To consistently enforce compliance with legal rules an accurate picture was needed of property registration, as ownership can help to uncover what actually happens beyond front doors of houses. However, holes in the various registers and the impossibility of connecting the registers of various local authorities hampered investigations. For example, in 5,000 cases the ownership of accommodations was unknown and 15,000 house numbers were wrongfully registered (Van Traa team, 2000: 11).[289] Consequently, the registrations had to be improved first; missing information had to be completed and incorrect files deleted. This meant the Wallen manager needed to create a single reliable basic property database. Furthermore, this database had to be connected to other public registration systems, such as that of the chamber of commerce, the land registry and register of population (Van Traa team/Wallenproject, 2000: 4). In this way it would become possible to relate objects (premises) to subjects (owners, licensees), to uncover illegal activities in or from the premises and to uncover constructions to protect the anonymity of actual owners such as the use of front men. For example, a large amount of property without a clear business purpose in hands of one person or differences between names on the license and actual executives could indicate illegal activities (Van Traa team, 2000: 15). The fact that reliable and current information was assumed to be a basic condition for consistently enforcing compliance urged the city government to make this a city-wide project, under the responsibility of the Van Traa team.

The need for a basic property database stemmed from organisational and administrative shortcomings, in particular, in the information position of local authorities. As such this subproject can be construed as a real policy-aimed project to overcome the bottlenecks that hindered the administrative approach.

Urban renewal. Urban renewal is a common action by which local authorities attempt to combat degeneration and negative atmosphere in deprived urban areas. The Van Traa approach combined the ‘usual’ urban renewal activities executed by the Amsterdam city government with specific actions of the Wallen team. The subproject focused on degenerated neighbourhoods that, for example,

[289] One premises can have more than one accommodation.

had a large concentration of cannabis retail outlets, suppliers of herbal drugs and providers of equipment to grow cannabis.

In the framework of the 'usual' urban renewal activities, the city government invested extra resources in public places and in actions related to the safety and liveability of the area. Subsequently, these investments attracted private investors who refurnished privately owned property. This approach was implemented in combination with the other subprojects of the Van Traa approach such as the grey premises project and the purchase of premises, discussed next. The successes, described later, of the combined interventions resulted in selection of other areas in which the strategy was applied.

Purchase of premises. The Wallen team established a framework for the rapid purchase of premises by the city government. Many problems of the Wallen area were considered the result of investments by criminal organisations in property in the area. The Wallen manager refers in a report to these problems, which were also described by the Fijnaut research team (Van Traa team, 2000: 8). The manager argued that investments of criminal organisations lead to an undesirable mixing of criminal and legal activities. Consequently, these investments push the prices of properties up to a point at which premises become unaffordable for bona fide entrepreneurs. Moreover, illegal activities in these premises lead to further crime and degeneration of the area.

The Wallen team established a protocol for the purchase of premises by the city government. This subproject is certainly an example of a multi-agency approach. For the purchase of premises the Wallen team operates in close cooperation with two semi-governmental housing cooperatives. On the recommendation of the Wallen team the housing cooperatives buy premises that could otherwise fall into the hands of criminal organisations. Instead, the Van Traa approach passes the premises on to bona fide entrepreneurs in order to start legal and desirable activities.[290] In these cases the Wallen team screens the buyers for possible connections with criminal organisations. Moreover, with a view to the future, lease contracts include a clause that the right to lease is dependent on permission of the city government (Köbben, 2002: 84). The protocol includes circumstances under which premises will be purchased. Because of possible negative effects, like price boosting, the precise content of the protocol is secret.

4.5.1.3 Legal preconditions

Competences to exchange of information. A crucial condition for the success of the Van Traa approach is the exchange of information. With the start of the approach the Wallen team tried to find out what information was available from

[290] This strategy is not new as in the 1980s the Amsterdam city government already applied this method.

the different partners and to what extent this information could be exchanged.[291] With regard to the amount of information available, results were positive. In particular the different local authorities (the Building and Housing Inspectorate, Social Services, Environment Service, Licensing Department and Population Register) appeared to have a mass of information (Köbben, 2002: 76). To combine this information the Amsterdam City Council gave permission (15 November 1997) to share relevant administrative data in the framework of the Van Traa approach.

In addition, the Wallen team and later the Van Traa team needed information from the closed registers maintained by the police, the public prosecutor's department and the fiscal authorities. These registers are closed and these authorities have a legal duty to maintain confidentiality. As a result, the Amsterdam city government in cooperation with the authorities in question established a framework to provide for the necessary data exchange.

Regarding the police registers, the Data Protection (Police Files) Act is in force to protect this sensitive information.[292] Article 15 of this act empowers the mayor to consult police records in the context of maintaining the public order. This power can be delegated to the chairperson of urban districts with the purpose of maintaining public order, a provision that appeared to be useful for investigating licenses in the hotel and catering industry and in the prostitution branch. However, the idea of delegating this power to the Wallen manager in order to prevent crime on the Wallen area was found unacceptable. The police argued that this interpretation went too far, certainly as the Wallen project was to be the basis of a general approach. Subsequently, the mayor applied article 18 of the Data Protection (Police Files) Act. This article allows the Minister of the Interior or the Minister of Justice to give permission to share information with public authorities in the interest of public order. By ministerial regulation (11 March 1998) the Wallen team was authorised to consult police information for a period of two years up to 1 January 2000. This was the first time that article 18 was applied. In fact up until now it is still the only application. This permission has thus far been extended four times. It includes the sharing of police data with the mayor, the Wallen team and the Van Traa team. At first this competence was limited to activities in the red-light district. Later with the expansion of the approach city-wide, the competence came to involve all subprojects earmarked by the body of the tripartite consultations established to fight serious crime.

The Judicial Records and Certificates of Good Behaviour Act protect the registers of the public prosecutor's department.[293] Base on article 14 information can be shared with mayors on certificates of good behaviour. Based on article 15 of this act the Minister of Justice can determine whether to exchange information with others if there is a weighty public interest. From 2003, the

[291] For this a conference was set up where 40 employees from different partners participated an interesting exercise illustrating the possibilities of gathering and exchanging information on the basis of a number of pre-selected cases.

[292] Wet van 6 juli 2000 houdende regels inzake de bescherming van persoonsgegevens (Wet bescherming persoonsgegevens). *Stb.* 2000, no. 302.

[293] Wet op de justitiële documentatie en op de verklaringen omtrent het gedrag (WJD).

Minister of Justice gave this permission to the Van Traa team where final convictions are concerned.

Regarding cooperation of the fiscal authorities, the State Taxes Act hindered the exchange of information, as the civil servants in question are not allowed to share this information with others.[294] Article 67 section 2 of this act offers the possibility to grant a release of this prohibition. In cooperation with public agencies the Internal Revenue Service may exchange information if the cooperation in question contributes to the core tasks of this service. The State Secretary of Finance decided to discharge the civil servants that cooperated in the Wallen project from their legal duty to maintain confidentiality (28 April 1998), which enabled the tax authorities to participate in the Van Traa approach. However, from 2000 the Internal Revenue Service withdrew from the Van Traa approach as in general the cooperation did not contribute to the service's core tasks. As described later regarding the implementation it remained possible to exchange information with tax authorities on an ad hoc basis.

Privacy regulations. With these permissions the Wallen team and later the Van Traa team had access to information maintained by all the partners involved. The fact that some of this information was sensitive implied that the Van Traa approach had to comply with the legal standards to protect privacy. According to the Personal Data Protection Act a privacy regulation had to be created for recording sensitive information. This privacy regulation describes how the Wallen team had to deal with the information it received to ensure it was treated with care. Moreover, a sub-covenant had to be established to arrange the passing on of information to the core team so it could undertake actions. With the publication of the privacy regulation in the Municipal Bulletin it came into force 17 November 1997. Finally, the four partners involved drew up a cooperative covenant that set out the general objective and the related responsibilities and authorisations. This covenant outlines the balance between the interests of the city government and privacy and offers a clear framework in which information can be exchanged. With the signing of this cooperative covenant (8 June 1998) no formal obstacles remained to implementation of the Wallen manager's action plan, at least up to the end date of the approach that was set for 1 January 2000.

4.5.2 Implementation

The Van Traa approach was the first approach to be based on integral and integrated enforcement of rules in the Netherlands. To execute this approach the city government installed the Van Traa project to develop instruments and to implement them. What became of these approaches? In accordance with the previous chapter and this study's general methods this subsection provides insight into the main aspects that influenced the implementation, at least those aspects that are important with regard to the prevention of organised crime.

[294] Algemene wet inzake Rijksbelastingen (AWR).

Because the Van Traa project was an experimental approach, its proper evaluation was of utmost importance. Much data for such an evaluation can be derived from the annual reports and the progress reports. In 1999 an interim evaluation study was performed. In 2000 an overall evaluation study was announced. Due to the importance of such evaluation for the further development of the administrative approach, the study was partly financed by the Ministry of Justice. The Vrije Universiteit Amsterdam performed the most extensive evaluation study, which will be finished in 2005 (Huisman *et al.*, 2005). As described above, due to the presentation of the general findings at seminars, we can already refer to some of them.

4.5.2.1 Initiating subprojects

The Wallen team's first task was to create new instruments for the administrative approach. Because of a lack of examples from elsewhere the Wallen team had to experiment itself and learn from methods that succeeded or failed. The team operated thematically in certain areas and branches for which several subprojects were started. As a result the team designed a wide range of instruments: dealing with degenerated neighbourhoods, screening possible unreliable entrepreneurs, mapping economic positions of power of criminal organisations, purchase of premises, etc.

The experimental nature of the Wallen project meant that the team had to deal with a lot of problems. Most of these involved basic conditions: organisational and judicial bottlenecks of the administrative approach, for which several subprojects were started. For example, the Wallen team had to deal with incomplete administrative databases and with problems in the processing of information within the law-enforcement authorities. While dealing with these basic conditions the Wallen team had to solve other problems, including those faced in applying its own instruments. As a result the Wallen team had an enormous range of duties. The fact that the Wallen team and the Van Traa team had to cooperate with other agencies made it even more difficult for them to set a clear agenda; all parties had their own interests (Huisman *et al.* 2005). The city government and urban district councils proposed areas and branches that reflected their own priorities for attention from the Van Traa approach. Furthermore, some subprojects were started at the request of police as a result of indications of criminal activity. In addition, various external forces influenced the Van Traa agenda. According to Huisman *et al.* (2005) issues of the day as well as suspicions and rumours of abuses led to the initiation of new subprojects as well. All these influences extended the range of tasks involved in the Van Traa approach.

With the changeover from the Wallen project to the Van Traa project, the Van Traa team became responsible for the coordination of the administrative approach city-wide. Moreover, the team had to adjust from more operational activities to more strategic tasks, such as coordinating and supporting local authorities. The Van Traa team had to operate as a helpdesk for other urban

districts who wanted to actively install administrative measures; it also had to pass on its knowledge and techniques to other city areas. Consequently, the approach came to encompass even more tasks, even more varied in nature.

This wide range of tasks was the result of the experimental design with which the Van Traa approach started and which can be evaluated positively. The opportunity for urban district councils and police services to become actively involved and contribute to new subprojects made the Van Traa approach multidisciplinary. Moreover, acting in conformance with the issues of the day resulted from the increasing insight into local problems. However, over time the wide range of tasks seems to have undermined the decisiveness of the approach. For various projects it is doubtful whether they fit the actual objectives of the Van Traa approach. Therefore, Huisman *et al.* wonder why the Wallen team did not make strategic decisions about its main tasks. In their opinion, the Van Traa team should draw up clear selection criteria of subprojects to undertake. Such decisions and criteria would strengthen the authority of their activities. Nonetheless, the Van Traa team must also safeguard the active involvement of the other parties in order to guarantee the multidisciplinarity of the approach.

4.5.2.2 Executing subprojects

Gathering information. The two-step approach used by the Wallen team firstly exists in collecting and analysing information. In practice, it turned out to be difficult for the authorities to gain insight into what goes on beyond the front doors of premises as it was it was not easy to gain relevant and recent information (Huisman *et al.*, 2005). In fact this process took a lot of time and energy. First of all, the Wallen team had to deal with the lack of information in several administrative registers. As described, this even resulted in a subproject to compile a basic property database. Furthermore, it appeared difficult to gain information from police and tax authorities. Covenants between the different authorities and permission of the Minister of the Interior and the State Secretary of Finance to access the police records and records of the Internal Revenue Service proved to be no guarantees for cooperation and information exchange.[295] Not only did information processing within the police prove problematic, reservations about passing on information because of the harm that could be done to criminal investigations resulted a lot of knowledge on organised crime not being shared with the municipal services involved. To facilitate the exchange of information, participants in the core groups were adjusted for each subproject based on the information each could provide. For example, in the case of the police various representatives could be selected (Huisman *et al*., 2005). In some subprojects local police officers joined the core team, as they had a good view of the specific problems in the areas in question. In other subprojects the police was represented by a detective from the criminal

[295] Criticism on the exchange of information mainly applies to police and tax authorities. The Wallen team only recently discovered the actual value of the judicial databases. Up to now little use has been made of these databases (Huisman and Huikeshoven, forthcoming: 11).

investigation department, who could provide information on involvement of individuals or criminal groups in organised crime. The best option, however, was to include both types of representatives in the core group to combine the various types of information so as to obtain a complete picture, which is in fact the strategy of the Van Traa approach.

Notwithstanding the efforts of the parties involved, the exchange of information remained difficult, as the Wallen team, and later the Van Traa team, could not easily indicate what information was needed, let alone where this information could be found in the police organisation. The teams did not know to whom information requests had to be addressed and the police services had no central information desk to turn to. Recently, this has been addressed as an information desk is now functioning. All of these problems regarding gathering information and ongoing changes in situations gives the impression that projects sometimes got stuck in this first step (Huisman *et al*., 2005).

Analysing information. Next to collecting information, the analysis of the information is crucial. After all, it is through the assessment of all information that the Wallen team and the Van Traa team could derive effective measures. Before initiation of the administrative approach, analysing information was mainly a preparatory activity to criminal investigations. In the administrative approach, these analyses had to be adjusted to map other elements. Whereas police analyses concentrate on criminal activities, administrative analyses focus on activities in the legitimate environment, such as property, use of legal persons and the use of public services. The different focuses prompted the Wallen team to develop its own instrument, which it did in the form of a matrix or fact sheet containing relevant information and which is constantly updated during a subproject. With the fact sheet in hand, registered information could be compared with the actual situation and inexplicable deviations could give rise to further research and interventions.

The most important aspect of the fact sheet is the interpretation of the information; when should the authorities involved interfere? According to Huisman *et al.* (2005), this process is characterised by a lack of assessment criteria. No indicators point out the extent of risk of intrusion by organised crime and the need for intervention. In practice the administrative approach depends on suspicions regarding the combination of persons and premises. The Wallen team depended mainly on the availability of police information on which to base their suspicions. Holes in their information position and the problems of information processing inside police departments meant that the correctness and completeness of the information was by no means guaranteed. Because the public administration was unable to verify facts, it is possible that it operated on the basis of imperfect information. As a result these analyses could have resulted in a degree of arbitrariness regarding the entrepreneurs who were investigated.

To avoid such arbitrariness, action was needed in the police information handling to make information more conducive to the administrative approach. However, in proactive intervention, it is not always possible to arrive at clear

insights into possible problems. As a result, the Van Traa team must sometimes act on less reliable information where the intervention is the result of a balancing of possible threats. An example of such balancing was the purchase of the Oibibio premises near the Amsterdam Central Station. The city government bought these premises based on a rumour that Albanians involved in organised crime were interested in securing the premises. Although the premises are situated in a city area that could be interesting for the underworld, it was absolutely unsure to what extent these rumours were true.

Undertaking measures. The second step of the Van Traa approach is taking strategic decisions regarding bringing into force the most effective instruments to end illegal or undesired situations. It is remarkable that in this step the Wallen team and later the Van Traa team played a crucial role in determining strategy. These teams, in cooperation with the local tripartite consultations, decided on the measures to be undertaken. In practice, the strategic decisions were taken at the same level as the subproject was executed, instead of by the steering committee and tripartite consultations. In fact the body of the tripartite consultations only showed interest in earmarking new projects, as this was needed to enable the exchange of information (Huisman *et al.*, 2005). The progress and the strategic decisions in the subprojects were not structural issues on the committee and consultation agendas.

Under supervision of the Van Traa team and the local tripartite consultations, a large scope of measures were brought into action. Most of the measures were of an administrative nature, mostly refusal and withdrawal of permits. The possibility to refuse or withdraw permits was already applied in the Licensing and Catering Act, which covered the criterion *bad way of life* as grounds for refusal.[296] People's lifestyle was assumed to be important with regard to their social manners and issues regarding health and social economic aspects (Huisman *et al.*, 2005). As a result, different offences regarding discrimination, sexual violence, drunkenness, tax evasion, violence and handling stolen property could lead to refusal or withdrawal of permits. The city government introduced three additional municipal systems with similar grounds for refusal. These systems involve hotel and catering exploitation, prostitution and gambling. Based on the *bad way of life* grounds, the public administration can bar applicants with criminal records. As described below, with the Van Traa approach Amsterdam's public administration has successfully barred applicants based on suspicions of involvement in criminal activities. The analysis of the *way of life* of applicants aims at maintenance of public order. According to article 15 of the Data Protection (Police Files) Act the mayor has direct access to police records in this framework.[297] This is important since to use these grounds of refusal the Wallen team does not depend on the special permission of the Minister of the Interior, meaning this instrument can also be used in other cities in the Netherlands.

[296] Wet van 13 April 2000 tot wijziging van de Drank- en Horecawet, *Stb.* 2000, no. 184.
[297] See the above-mentioned article 15 of the Data Protection (Police Files) Act.

The administrative instruments were expanded with the BIBOB Act coming into force in mid-2003. Obviously the Amsterdam city government, which contributed to the screening and auditing approach with the development of its own screening and auditing bureau (see previous chapter), makes use of this act. The BIBOB Act is particularly important since it covers areas for which there are no special grounds for refusal. Moreover, the act is important because the screening possibilities and the grounds for refusal or withdrawal are not limited to the direct applicant, but also extend to persons in the applicant's environment. Thus, in contrast to the special municipal systems, with the BIBOB instrument front men can be barred as well.

In addition to these administrative measures, the partners in this multidisciplinary approach have undertaken action as well. Tax authorities have submitted various fiscal claims and the police have initiated criminal investigations. The outputs of the Van Traa approach are described in more detail later.

4.5.3 Bottlenecks in implementation

From the beginning the Wallen team has carried out a range of subprojects. This wide range of tasks and duties even increased with the changeover from the Wallen team to the Van Traa team, when the approach was enlarged from the red-light district to the whole city. In their new position the Van Traa team became a helpdesk that had to pass on their knowledge to other city areas. Consequently, the team had to activate the municipal services instead of carrying out the subprojects themselves. Moreover, the team had to coordinate activities and interests regarding the different tasks it carries out.

Activating urban district councils and municipal services. At the start of the Van Traa approach the Wallen team created a framework to support the urban districts and municipal services. Over time some of the urban districts became actively involved in initiating subprojects under the administrative approach. However, this was not true of all districts and services. Moreover, the involvement was sometimes limited to the initiation of projects; in most cases the subprojects were still carried out by the Van Traa team itself or with great support from this team. Few subprojects were carried out by the urban districts or municipal services themselves.

The large range of tasks of the Van Traa team meant that strategic decisions had to be taken and selection criteria drawn up for initiating new projects. However, this implied a changeover in the activation policy of the Van Traa approach. Whereas at first the approach was focused on creating support, now it had to select subprojects – and thus turn down some requests. However, turning down requests for support from the Van Traa team does not have to hinder the execution of administrative action by the councils and municipal services themselves. The Van Traa team had to find a balance between

supporting projects that need specialised expertise and encouraging councils and municipal services to execute their own subprojects.

Coordinating activities. The Van Traa approach is based on cooperation between various partners at different levels in fighting crime. Over time, it appears that the core team and in particular the Van Traa team became the key figure of the approach. That is not surprising, as this core team was charged with the actual execution of tasks and the Van Traa team was especially charged with the development and execution of the administrative approach. According to Huisman *et al.* (2005) setting up a special team has advantages and disadvantages.

An advantage is that the team was able to develop and internalise skills and expertise. With the start of the Van Traa approach the Wallen team came up against several shortcomings, in particular involving the quality of municipal databases. Although repairing these shortcomings was not an objective of the approach, the Wallen team invested in solving these problems, since they involved basic conditions for the administrative approach. In addition to the subprojects focusing the preconditions for the administrative approach, the Wallen team developed various subprojects related to certain problems or problematic areas. A few years later, the team was executing a wide range of tasks, in addition to which, the later Van Traa team built up a large network of contacts among the involved parties.

A disadvantage of such a specialised team is the ease with which municipal services have left the specialised approach to the experts. Thus, instead of carrying out activities regarding the integral and integrated enforcement of rules, some services have left these activities to the Van Traa team. The consequences are described in the next subsection.

Finally, regarding the coordination of activities it must be concluded that the exchange of information was a problem. The permission of the competent ministers proved to be no guarantee that information would be exchanged. Unwillingness on the part of the partners and deficiencies in local registers and incomplete databases, as well as holes in the information position of police departments and problems in receiving information from these departments made it difficult to gain complete and recent insight into specific problems. Moreover, the exchange of police information was limited to the Van Traa team and to cases earmarked as Van Traa subprojects. This meant that parties brought into action, for example, the fire safety inspection or city planning department, could not be informed of this information. City councils and the municipal services were therefore less informed than the Van Traa team. Obviously, this could be a reason to leave Van Traa approach activities to the Van Traa team.

Coordinating interests. From the start the Wallen team applied itself to various subprojects. Its wide range of tasks and duties was even increased with the changeover from the Wallen team to the Van Traa team; when the approach was enlarged to the whole city. Regarding cooperation in the Van Traa approach,

Huisman *et al.* (2005) conclude that some partners expressed their commitment in words but did not always put their words into action. Cooperation seemed to depend on individuals, as the enthusiasm of individual police officers and civil servants appeared to be key.

Over time, the Internal Revenue Service, which was brought into action to submit additional fiscal claims, indicated its desire to focus on other tasks and that the Van Traa approach was not its priority. It decided to end its structural involvement in the approach. Nonetheless, with regard to individual subprojects the tax authorities deliberated on the benefit of their involvement.

Notwithstanding its many tasks, the Van Traa team has not yet made strategic decisions on its main duties and interests. Because choices on these duties remain forthcoming, the Van Traa team is now saddled with a lot of work, but lacks a framework in which to make decisions and set priorities. Only in late 2003 did the team begin to question its wide range of duties and busy schedule, which resulted in reflection on its actual responsibilities and objectives (Huisman *et al.*, 2005).

4.6 Evaluation of the outcomes of the Van Traa approach

To answer the third research question this section deals with the outcomes of the Van Traa approach. In accordance with the methods described in Chapter 1 and similar to the previous chapters, this section provides insight into the observed outputs and plausible outcomes. The outputs relate to the objectives described in section 4.2. The plausible outcomes involve the assumptions judged in light of pragmatic new criminological theories. Possible side effects are also discussed, and an overall conclusion is drawn with regard to the strengths and weaknesses of the intervention.

4.6.1 Observed outputs

The Van Traa approach is based on the assumed interaction between organised crime and the legitimate environment as well as the role of the negligence of the public administration in this interaction. The approach had two objectives: *developing and executing instruments for an administrative approach* and *implementing these instruments* in the existing civil service apparatus.

4.6.1.1 Developing and executing instruments for an administrative approach

In a rather short period the Wallen team managed to develop several strategies and instruments which were executed in several subprojects. After this first period the Van Traa approach was considered to be so successful that it was seen as a cure-all (Huisman *et al.*, 2005). Although this was certainly not the case, the approach did achieve some positive results. In their evaluation Huisman *et al.* (2005) present a clear overview of the outputs up until May

2004. Regarding this overview Huisman *et al.* remark that it does not include outputs from interventions outside the main Van Traa framework. So in practice even more results could be found. In addition, they conclude that not all projects and outputs can be ascribed exclusively to the Van Traa approach as some of the interventions would have taken place without the Van Traa approach (Huisman *et al.* 2005). Their outputs are related to the two main activities of the two-step approach of the Van Traa approach: collecting and analysing data on the one hand and undertaking strategic decisions and interventions on the other.

The collecting and analysing of data is mainly related to the mapping of ownership and exploitation. For these activities the Van Traa approach examined hundreds of premises consisting of all kinds of hotels and catering establishments, smart-shops, casinos and call centres. The strategic decisions included a range of interventions. According to the Van Traa team (2001: 6), the city government purchased 56 premises up until 2001. These premises housed several brothels and coffee shops that now, due to the Van Traa intervention, are replaced by legal and reliable businesses and houses (Van Traa team/Wallenproject, 2000: 9). Because of the success of this intervention, this method was later applied in other areas of the city. In the grey premises project, the Wallen team managed to restore situations in conformance with the rules. In one of the largest cases, an entrepreneur who owned 65 houses and 40 commercial premises in the Wallen area was checked. Of these premises almost none was used in accordance with the rules (Projectbureau manager Wallengebied, 1999: 7). In fact they were used to accommodate illegal immigrants. Under threat of administrative fines the situation was restored in compliance with the licences.

In a general overview of all interventions, various successes can be ascribed to the Van Traa approach (Huisman *et al.*, 2005). First, tens of establishments housing illegal hotels, casinos and catering activities were closed. Among these closed establishments were four illegal casinos, which clearly illustrates the success of the administrative approach. For years the authorities were unable to cooperate to close illegal casinos, but now they succeeded. In addition, different administrative warnings were given, reports of offences regarding environmental rules were handed over and some 10 permits in the hotel and catering industry were refused or withdrawn. Moreover, tax authorities imposed various additional taxes and investigative services started two criminal investigations.

4.6.1.2 Implementing the instruments in the regular structure of the civil service apparatus

The Van Traa approach was set up as a temporary approach. From the start the city government wanted to implement its methods and instruments in the regular organisations of the civil service apparatus. The implementation of the methods and instruments was even seen as a basic condition for the success of the administrative approach in Amsterdam. In 2003 the Van Traa team indeed

became integrated in the regular organisation.[298] What can we conclude about the integration and implementation of the methods and instruments?

Two years after the start of the approach the interim evaluation showed that the methods and instruments had not yet been integrated into the regular organisations, and information provision still depended on personal contacts (Andersson Elffers Felix, 1999; Köbben, 2002: 89). The study recommended the further development of the approach by which successful experimental instruments were converted into structural methods embedded in the organisation (Andersson Elffers Felix, 1999; Köbben, 2002: 89). In the meantime, the team has been officially integrated into the existing civil service apparatus. The approach is now under the responsibility of the Inner City Service. However, the methods and instruments of the approach seem not yet fully implemented in the regular organisation or the various city councils and municipal services (Huisman *et al.*, 2005). Notwithstanding the efforts of the Van Traa team, a separate subproject was even established to implement the approach in Amsterdam's downtown district. After some years, however, the approach was pushed to the background. Once more it appeared that successes were related mostly to individuals (Huisman *et al.*, 2005). With the departure of these individuals the execution of the instruments and methods often fell apart.

In some cases new executives were even unaware of the implementation of the Van Traa approach. Obviously, this was fatal for development of expertise as well as maintaining and updating databases. However, the difficult implementation was also a result of the special position of the Van Traa approach in its first years (Huisman *et al.*, 2005). On the one hand, the installation of the Wallen team to be alert to possible criminal intrusions could have been an excuse for other municipal services to not be alert. On the other hand, due to its increasing experience the Van Traa team preferred carrying out operations itself, to be sure that they were performed correctly. Also a part of the city councils and municipal services referred to the expertise of the Van Traa team and consciously left activities of integral and integrated enforcement of rules to the specialised team. Consequently, it cannot be said that the Van Traa approach is actually implemented by the civil service apparatus.

4.6.1.3 Conclusions on the outputs

The multidisciplinary measures taken in the framework of the Van Traa approach illustrate the success of this unique aspect of this approach. Based on these outputs one must conclude that the Van Traa approach gained clear insight into the ownership and exploitation of premises. The question, however, is to what extent these activities contributed insight into organised crime and impacted the organised crime problem?

With regard to the projects focused on the rehabilitation of degenerated neighbourhoods, one must conclude that these subprojects were successful. The

[298] From 2003, the Wallen team – or Van Traa team – was part of the department of public order and safety.

activities of the Van Traa approach helped to rehabilitate whole neighbourhoods; more premises are occupied, entrepreneurs show more commitment to their neighbourhood and perceived safety is increased (Huisman *et al.*, 2005). These subprojects, which focus on 'breeding grounds for crime', confronted the team with problems related to drug abuse and with misadministration in the hotel and catering industry, but not with criminal offences, let alone organised crime (Huisman *et al.*, 2005). Notwithstanding that for these subprojects it is possible to uncover the effects regarding common crime, it remains impossible to determine the extent to which these results affect organised crime.

In the subprojects focused on barring criminals from public services, the team was confronted with organised crime. Most of the time these subprojects concerned selected areas wherein organised crime was considered to have established positions of power. For example, by purchasing premises in which criminals seemed to be interested and by closing establishments used for criminal activities, the criminals were hindered in extending their positions of power. Also the closing of illegal casinos helped uproot organised crime. Consequently, the Van Traa approach has shown that it is possible to successfully bar certain entrepreneurs and stop certain activities. Where these entrepreneurs and activities are related to organised crime, it is also possible that the intervention affects criminal activities. A clear example of such success is the closing of four casinos that facilitated illegal gambling.

Notwithstanding the results regarding individual criminals it is hard to determine the effects of the Van Traa approach on the general problem of organised crime. First of all, the approach lacks a clear definition of the kind of crime on which it focuses. The Van Traa approach involves organised as well as common crime. Moreover, regarding organised crime it is unclear what definition is used. This is not surprising since there is a lot of discussion on the definition of organised crime in the field of criminology as well as in politics. Moreover, it is unclear which crime the approach needed to focus on. Due to the wide range of duties it concentrated on both organised crime and on common crime and even on degenerated neighbourhoods that were assumed to be breeding grounds for crime. According to Huisman *et al.* (2005), the failure to define the actual object of the approach – including the lack of a clear definition of organised crime – hinders determining the actual effects.

Efforts to uncover the impact on organised crime come against more problems. The main one is the limited amount of quantitative and qualitative insight regarding organised crime before as well as after the approach. The only option to deduce some results is to compare the extensive overview of the nature of organised crime in Amsterdam presented by the Fijnaut research team in 1996 (Fijnaut en Bovenkerk, 1996) with a recent analysis of organised crime in Amsterdam. Such an overview suggests that it is unlikely that the positions of power of the criminal entrepreneurs uncovered by the Fijnaut research team have been pulled down. Notwithstanding the methodological differences it can be concluded that the problem of organised crime, in broad outline, remains the

same. Amsterdam still functions as an international marketplace where criminals from all over the world do businesses and still these businesses mainly involve trade in illegal goods and services (Huisman *et al.*, 2004, Huisman *et al.*, 2005). Hereby, the researchers refer especially to the Amsterdam infrastructure, which is ideal for the distribution of illegal goods and services and for displacing and laundering criminal proceeds. Finally, the recent killings on the streets of Amsterdam of people who are likely involved in organised crime illustrate that criminal organisations have not yet been chased out of the city.

4.6.2 Plausible outcomes

Although the Wallen manager and the Wallen team did not refer to clear theories on causes of crime and fighting crime at the start of the approach, the subprojects that were executed encompass two strategies. One is hindering criminals from using public administration's services. By creating clear insight into what goes on in the city, by increasing supervision in economic dealings in particular areas where problems are observed and by bringing into action combined forces of the civil service apparatus, police, judiciary and tax authorities and even certain private companies, the city government has tried to prevent criminal activities. Second is fighting symptoms and activities that are assumed to be breeding grounds for crime: e.g. degenerated neighbourhoods. This section illustrates the extent to which these two strategies are based on the situational crime prevention approach.

4.6.2.1 Situational crime prevention

Table 4.6 presents the techniques of the Van Traa approach classified according to Cornish and Clarke's (2003: 90) scheme. To a large extent the Van Traa approach's techniques include elements similar to the previous interventions. On one hand, the approach tries to increase the costs of crime by increasing the risk and effort involved. On the other hand, it tries to decrease the benefits by depriving criminals of their rewards. Moreover, like the previous intervention, the Van Traa approach focuses on the public service actors to remove excuses not to apply the approach. However, in contrast with the other interventions the Van Traa approach includes techniques of reducing provocations. Because this technique is not evident in the other interventions, this technique is described most extensively.

Increase the risk. The methods and instruments of the Van Traa approach focus on gaining clear insight into situations. Therefore, the approach includes the technique of strengthening surveillance. Surveillance comes from the civil servants charged with the enforcement of rules. Because the Van Traa approach includes an integral enforcement of rules, the civil servants must be alert to all kinds of violations. By virtue of their position they are able to supervise many activities. Cornish and Clarke (2003: 90) define this technique as the utilisation

of place managers. In addition the Van Traa approach strengthens formal surveillance, as the integrated enforcement of rules includes activities of police, judiciary and tax authorities (Cornish and Clarke, 2003: 90).

A second way of increasing risks is to reduce anonymity (Cornish and Clarke, 2003: 90). This plays an essential role in the Van Traa approach. To know with whom a city council or a municipal service is dealing, the actual owner of premises and establishments is revealed. Moreover, this applies economic dealings, as the public services must know what goes on in premises and whether valid licenses are present.

Increase effort. With its integrated and integral enforcement of rules the Van Traa approach hinders the concealing of criminal activities or purposes. Simply phrased, it makes it harder to conceal irregularities and, for example, get a permit or subsidy. Clarke (1997: 17) defines this technique as target hardening. It implies that criminals must increase their efforts to achieve their aims. In addition, the increased supervision enables municipal services to control access to certain facilities (Clarke, 1997; 17). Obviously, the fact that these facilities are only accessible through the municipal services of a specific area means these services have a monopoly, which strengthens this technique to the maximum. In particular, criminal organisations must find other methods to achieve their criminal intentions or get access to the required facilities. This way of deflecting offenders is a technique for preventing crime (Cornish and Clarke, 2003: 90).

Reduce the rewards. In addition to the previous strategies, some of the methods of the Van Traa approach have a direct effect on the rewards of criminal organisations. Similar to the Dutch screening and auditing approach the Van Traa approach enables the refusing or withdrawing of permits and the closing of establishments. With these competences, the municipal services can deny criminal organisations' their benefits. Moreover, the integrated enforcement of rules enables the Van Traa approach to bring intervention of its partners into action: criminal investigations can be started, administrative fines can be imposed and tax authorities can resort to additional collection. All of these actions have their costs for the criminal organisations, and the knowledge that benefits can be denied can prevent some of the criminals to commit the offence (Clarke, 1997: 23).

The uncertainty of gaining profits would influence the cost-benefit analysis and change the decisions of criminal organisations. Denying benefits would affect not only the criminal organisation in question, but could also serve as an example to other organisations. This might certainly be the case in a specific neighbourhood where entrepreneurs know one another. It sends a message to criminal organisations that they might reconsider establishing in Amsterdam, since there is a risk of losing their business.

Table 4.6 The techniques of the Van Traa approach categorized in Cornish and Clarke's 25 techniques of situational prevention

Increase the effort	**Increase the risk**	**Reduce the rewards**	**Reduce provocations**	**Remove excuses**
1. Target hardening • integrated and integral enforcement of rules	6. Extend guardianship •	11. Conceal targets	16. Reduce frustrations and stress	21. Set rules
2. Control access to facilities • increased supervision of economic dealings increases the access to relevant facilities	7. Assist natural surveillance	12. Remove targets	17. Avoid disputes	22. Post instructions
3. Screen exits	8. Reduce anonymity • mapping out actual owners and uncover their identity	13. Identifying property	18. Reduce emotional arousal	23. Alert conscience • stimulates awareness of possible abuse of facilities
4. Deflect offenders • by controlling access to facilities criminals must turn to other methods	9. Utilise place managers • civil servants must be alert to violations of all rules	14. Disrupt markets	19. Neutralize peer pressure	24. Assist compliance
5. Control tools/weapons	10. Strengthen formal surveillance • commitment of police, judiciary and tax authorities to intervene when necessary	15. Deny benefits • closing establishments, refusing and withdrawing permits directly affects criminals' expected benefits	20. Discourage imitation • recovering degenerated neighbourhoods and rapid repair	25. Control drugs and alcohol

Remove excuses. Similar to the previous interventions, this technique focuses not on the criminal organisations, but on the municipal services that could facilitate criminal activities. By implementing the Van Traa approach the city government aimed to activate the conscience of the various municipal services. In fact, for this technique the integrity approach was instilled as described earlier.

Reduce provocations. In contrast to the previous interventions, the Van Traa approach includes activities that fit the strategy of reducing provocations. This technique is present in the subprojects involving rehabilitating degenerated neighbourhoods. Because of the special interest of the Wallen manger to visible crime and degeneration in the red-light district, the Wallen team and later the Van Traa team attached great significance to the relation between organised crime on the one hand and common crime and degeneration on the other. To a great extent this reasoning fit the technique of reducing temptation to commit crime (Clarke, 1997: 22) and discouraging imitation of crime (Cornish and Clarke, 2003: 90). These strategies mainly encompass rapid repair and good governance to prevent crime.

Clarke (1997: 22) refers to Wilson and Kelling who argue for this technique as part of their 'broken windows' approach. This approach, also presented as the '*fixing broken windows approach*' by Kelling and Coles (1998) has been successful in the United States. As this technique is an essential element of the Van Traa approach, its theoretical value is described in more detail later.

The fixing broken windows approach involves the regulation of public places and is based on the idea that small disorder leads to larger disorder and that disorder results in city decay and even crime. The reasoning is simple (Kelling and Coles, 1998: xv). A broken window that is not fixed shows that no one is in charge and that no one cares. As a result more windows will be broken. Consequently, young criminals feel attracted to unprotected areas, while upright citizens abandon these areas. The approach is based on three step-wise relations: the relation between disorder and fear, the relation between disorder and urban decay and the relation between urban decay and (serious) crime. According to Kelling and Coles (1998: 20) the first two relations have clear empirical foundation. Aggressive begging, abandoned cars, graffiti, public drunkenness and street prostitution are signs of disorder that citizens must cope with and that citizens fear. Disorderly behaviour therefore disturbs individuals and indicates that an area is unsafe. Consequently, signs of disorder can affect social life in a whole neighbourhood. For example, merchants face financial losses if citizens abandon an area. Such a situation can result in urban decay.

However, the third step is put forth as a hypothesis that requires empirical testing (Kelling and Coles, 1998: 20). It involves the assumption that disorder and urban decay leads to common crime and even to serious crime. According to Kelling and Coles (1998: 25) the existence of this relation can be based upon different criminological studies. In neighbourhoods with higher crime levels,

disorder was linked more strongly with crime than with other characteristics, such as poverty and instability of the housing market. Based on this insight Kelling and Coles (1998: 25, 27) argue that 'disorder does indeed precede or accompany serious crime' and that restoring order prevents or reverses urban decay and subsequently, prevents serious crime.

Similar to the fixing broken windows approach, the Van Traa approach focuses on decay or degeneration of neighbourhoods because they could serve as breeding grounds for organised crime. From this point of view the Van Traa approach seems plausible. However, the fixing broken windows approach is not generally accepted. In particular some criminologists doubt both its empirical validity and the theoretical foundation of the relation between disorderly, degenerated neighbourhoods and crime (Taylor, 2001; Harcourt, 2002). Critics of the fixing broken windows approach of Kelling and Coles mainly focus on the firmness of the assertions. Although empirical results show some support, this support is neither consistent nor as applicable as the theoretical statements suggest (Taylor, 2001: 367).

4.6.2.2 Effects of the techniques

Based on the techniques of situational crime prevention it seems plausible that Amsterdam is now less attractive to criminal organisations. Although there is no empirical evidence to confirm this reasoning, civil servants operating in the city and a field study of the red-light district give the impression that certain entrepreneurs have indeed refrained from some activities. Just the introduction of the Wallen manager would have caused commotion in the red-light district and for some entrepreneurs this would have been sufficient reason to close the doors of their establishments. Moreover, one subproject, the announcement of forthcoming action to enforce compliance with rules on hotel and catering establishments, has already resulted in the closure of five establishments (Huisman *et al.*, 2005).

Regarding the technique of recovering degenerated neighbourhoods, the results are less obvious. The subprojects involving recovering degenerated neighbourhoods are based on the observed relation between organised crime on the one hand and common crime and degeneration on the other. Often people say that organised crime is invisible. However, according to Fijnaut *et al.* (1998: 213) this is only half true, especially with regard to traditional organised crime involving trade in illegal goods and services. Fijnaut *et al.* (1998: 213) pose that 'its invisibility might pertain to the producers of the goods and services, but not to people who distribute them'; the situation in the red-light district of Amsterdam is a perfect example. With this reasoning Fijnaut *et al.* argue that organised crime can affect neighbourhoods where illegal goods and services are distributed. Moreover, if organised crime leads to common crime and degeneration, the reasoning may be turned around. The Van Traa team assume that interfering in degenerated neighbourhoods will affect organised crime, as it would take away its breeding grounds (Huisman *et al.*, 2005). This strategy has

been tried under the name of ‘fixing broken windows’. However, up to now there is no theoretical evidence that this strategy is effective.

4.6.3 Side effects

The Van Traa approach has various side effects. First of all, installing the Wallen team appears to have had a symbolic function. According to Huisman *et al.* (2005) some unreliable entrepreneurs left even before any instruments were put into action. However, the selection of sectors and areas as the working terrain of the Van Traa team could stigmatise these sectors and branches (Huisman *et al.*, 2005). Subprojects of the Van Traa approach indicate suspicions of irregularities. However, media attention could place these areas and sectors in a bad daylight that is difficult to recover.

The main negative side effect of the Van Traa approach is – like the previous measures – the possible displacement of criminal activities. It is likely that the Van Traa team approach would result in the geographic displacement of criminal activities (Huisman *et al.*, 2005). In fact there are signs of such displacement. Some entrepreneurs who are refused permits in the inner city have tried to get a similar permit in another neighbourhood. The extent of displacement is hard to determine, in particular as criminals displace their activities outside of Amsterdam. Furthermore, the Van Traa team suspects certain criminals displace activities to other branches, in particular those branches that are as yet unregulated or that are not subject to the Van Traa approach (Huisman *et al.*, 2005). This would seem plausible, as in these branches no barriers yet hinder their criminal activities. In reaction to suspicions of such displacement, the Van Traa team started some new projects, such as the examination of call centres and smart-shops. A third form of displacement involves methods. Criminals may adapt their business plan or bring front men into action to remove grounds for refusal. It is unclear to what extent this kind of displacement takes place in Amsterdam. Obviously, the Van Traa team as well as the municipal services should take account of such constructions.

A second negative side effect involves the possible strengthened positions of power of some large entrepreneurs (Huisman *et al.*, 2005). These entrepreneurs are not always the goods ones. In fact, these large entrepreneurs have at their disposal tools to perfect their legal activities and shield their illegal activities. After some time, the entrepreneurs in the red-light district became well informed of the instruments and methods focused on uncovering irregularities in entrepreneurs’ dealings. When entrepreneurs follow the rules and comply with the conditions of the local authorities and when they successfully hide possible connections with organised crime, the Van Traa approach has no point of application. In such cases grounds for refusal cannot be brought into action. As a result, the reallocation of property in the red-light district could be to the advantage of the more professional criminal organisations. The unintentional facilitation of these professional organisations, which are able to shield their activities in such a way that they are not found in

police records and which can afford judicial advisors to perfect their activities, cannot be prevented. The perfecting of legal activities has even resulted in persons who formerly were indicated as criminals, now discussing this problem with municipal services in the framework of new subprojects (Huisman *et al.*, 2005).

4.6.4 Conclusion

To what extent does the administrative approach of Amsterdam prevent organised crime? To answer this question one must take account of two aspects: the implementation of the instrument and the effects of the executed instruments. Although the Van Traa approach successfully developed administrative measures, the implementation of the approach appeared rather difficult. One of the most important shortcomings involves the exchange of information. Apparently, ministerial permission is no guarantee for a perfect exchange of information. Unwillingness and deficiencies in databases and limited information positions make it hard to gain solid oversight of the concrete problems. A second shortcoming involves cooperation. The instruments applied to eliminate undesirable situations were mainly administrative ones. For this, it is difficult to say that the Van Traa approach has resulted in a real joint policy (Huisman *et al.*, 2005). Furthermore, it appears difficult to implement the activities of the Van Traa approach in the regular civil service apparatus. Moreover, little by little the Van Traa team developed a wide range of tasks and new objectives. In fact, it seems that the approach resulted in goal displacement. All attention was paid to developing new subprojects, with less attention paid to the results of the approach. Moreover, developing these different activities resulted in a net-widening. Consequently, the Van Traa team lost sight of its actual objective – the prevention of organised crime.

So, what were the results and effects of the Van Traa approach? In fact, uncovering the actual effects of the approach is difficult. The first strategy, barring criminals from public services, seems to have some positive effects regarding hindering organised crime. However, the lack of insight into developments of organised crime makes it impossible to determine the extent of this effect. Based on the situational crime prevention approach this strategy could be plausible; methods and instruments of the Van Traa approach could hinder organised crime. However, the hindering of criminal activities seems to have had the most impact on small-time criminals, as the big ones seem able to pass the barriers by increasing their shielding efforts. The second strategy, recovering degenerated neighbourhoods in order to take away the breeding grounds for organised crime, has resulted in some positive effects: neighbourhoods have been rehabilitated and more premises are occupied. It is however, impossible to determine the effects of this success with regard to organised crime. Moreover, this strategy as yet has no strong theoretical foundation on which to rest. Similar to the fixing broken windows approach it is uncertain whether this strategy actually works.

Chapter 5 Effectiveness of organised crime prevention in the Netherlands: overview of my research findings

From the early 1990s the preventive approach to fight organised crime has been launched on many international fronts as well as national ones. This is certainly true in the Netherlands. For the past fifteen years Dutch authorities have developed a progressive preventive approach to complement repressive strategies to combat organised crime. Various preventive measures have been implemented with much enthusiasm and high expectations. Now critics are waiting for the results. This study has exposed the possible effectiveness of some of these preventive measures against organised crime.

Determining the effectiveness of preventive programmes is no easy task. In particular it is difficult to establish a causal relation between the indicated policy programme and specific effects. This certainly goes for fighting organised crime, since it is impossible to erect classic experimental designs and statistical approaches with before and after measurements. Consequently, this study uses two other strategies to expose programmes' effectiveness. The first strategy involves studying the preventive measures in the abstract. By exposing the programme theory of the measures and judging the underlying assumptions in light of the situational crime prevention approach, this study indicates the extent to which it is plausible that the measures are effective. These results are indicated as the 'plausible outcomes'. Second, this study observes the outputs of the preventive measures. This part of the study looks particularly at 'observed outputs' by which the effectiveness of the measures can be related to objectives formulated beforehand. The outputs of the measures may illustrate their success and strengthen the plausibility of the final outcomes. In determining the output of preventive measures it is important to realise that the functioning of the measures depends on how they are implemented. If measures are not implemented well, one can speak of implementation failures, due to which the expected effects of the measure is no longer self-evident. Together the observed outputs and the plausible outcomes determine the programme impacts and effectiveness.

To execute these two strategies this study includes a programme evaluation of the essential elements of executing an intervention: the programme theory, the programme process (implementation) and the programme impacts. These three essential elements form the basis of the research questions posed in this study. Consequently, answering the three questions for each of the selected measures – the anti-money laundering intervention, the screening and auditing approach, and the administrative approach of the City of Amsterdam – enables us to say something about the measures' possible effectiveness.

This final chapter firstly elaborates on the main conclusions regarding these three essential elements and illustrates the way in which these elements are handled in the evaluated measures. The first section exposes the programme theory or design of the studied preventive measures. The second section looks at

the implementation of the preventive measures. The third section provides insight into the impact of the preventive measures. Subsequently, the fourth section of this final chapter looks at some boundaries for organised crime prevention. These boundaries are the result of balancing safety with privacy. Lastly, the final section discusses expectations and further development of organised crime prevention. This discussion describes some overall thoughts and conditions for organised crime prevention.

5.1 Exposing the programme theory of preventive measures

To ascertain the effectiveness of preventive measures, first the programme theories or the programme designs must be evaluated. An adequate design is a necessary precondition for a measure to live up to expectations of it. The evaluation of the programme theory or design regards the rationale for expecting that the action undertaken will result in the desired results. This rationale should be based on empirical knowledge on organised crime as well as on criminological theories, in this case, the situational crime prevention approach.

5.1.1 Judging preventive measures based on empirical knowledge on organised crime

Insight into organised crime is necessary to point out the exact problems that need to be fought. Obviously, measures against organised crime should focus on exactly these problems. Early in the preventive approach to organised crime in the Netherlands there was no such insight, and the authorities were led by rumours and ghost stories about the problem. As described in Chapter 1, the first empirical study was performed only in 1996 (Fijnaut *et al.*, 1996, 1998). This first study confirmed the presence of organised crime in the Netherlands and yet placed the problem in perspective. While no mafia-structured organisations had infiltrated the legitimate environment (racketeering), there were various criminal networks of changing composition that dealt in illegal goods and services (vices). To update authorities' insights, the Research and Documentation Centre of the Ministry of Justice of the Netherlands began to monitor the problem of organised crime (Kleemans *et al.*, 1998, 2002.). In addition, police departments have conducted various analyses of specific organised crime-related phenomena (Dienst Nationale Recherche Informatie, 2004, 2004a, 2004b). Furthermore, a nationwide analysis of the threats of serious crime and organised crime (*Nationaal Dreigingsbeeld Zware of Georganiseerde Criminaliteit*) was recently conducted and will be repeated every two years. This too should increase insight into current and future threats. According to all of this research, organised crime in the Netherlands can best be described as *transit crime* (Kleemans *et al.*, 2002: 139; Zaitch, 2002; Dienst Nationale Recherche Informatie, 2004: 85). This means that a large proportion of illegal goods are carried through the Netherlands to other countries via the normal infrastructure of the legitimate

environment. In particular Rotterdam and Amsterdam harbours and Schiphol airport facilitate the transport of goods. They are used as a gateway to the rest of Europe, not only for legal economic dealings but also for organised crime.

The insight that the Netherlands is a marketplace for the international trade in illegal goods and services was an important impetus for the realisation of the administrative approach in the Netherlands and for applying best practices derived in other countries. The objectives of the screening and auditing approach of New York which focused on racketeering had to be adjusted when using this intervention in the Dutch context. Because racketeering manifests in the legal environment where it must conform with all kinds of regulations, it presents various opportunities to interfere when irregularities take place. In contrast, vices mostly take place in the illegal environment, meaning that there are fewer opportunities to interfere. Consequently, the expectations of the Dutch administrative approach have to be adjusted as well (Huisman, 2003: 36; Van de Bunt, 2004: 701).

Unfortunately, insight is still lacking into many aspects of organised crime. For example, a lot is still unknown about the laundering and spending of criminal profits. Research shows that consumer spending cannot account for all use of criminal profits. While some of these profits are known to be invested in real estate, the investigative services have been unable to map the spending of the rest.

With the rise of preventive measures, knowledge about organised crime cannot be limited to the criminal activities of criminal organisations. Unlike the repressive approach, which focuses only on criminal activities, the preventive approach aims at the facilitating activities that take place in the legitimate environment. This means that for organised crime prevention it must be clear what services are being abused by criminal organisations and what economic dealings facilitate organised crime. However, as this study has illustrated, it is not always easy to indicate the concrete sectors where such abuse takes place. For example, the screening and auditing approach was not based on strong empirical evidence, at least not on evidence regarding the situation in the Netherlands. The explanatory memorandum of the BIBOB Act refers to empirical evidence on racketeering by mafia-structured organisations in foreign countries, in particular Italy and the United States. The experiences in these countries point to the abuse of public business dealings, such as the government contracts awarded by administrative authorities. Although the Dutch legislator was aware that it had to deal with vices and not racketeering, it selected more or less the same sectors as in the United States: transport, waste disposal and the hotel and catering industry including the legitimate brothels and coffee shops. It justified this selection with the reasoning that preventive measures should not only hinder observed abuses, but should also focus on vulnerable sectors and possible future risks.

This reasoning clearly illustrates that organised crime prevention is not based only on empirical research, but also on risk assessments that map the presence of risks and risk factors in concrete situations. Consequently, we may

conclude that the preventive approach seems to require less empirical evidence than the repressive approach. Still, the success of preventive measures will increase as the risk analyses include more empirical evidence. This is exactly what the Amsterdam government had in mind with its administrative approach. After an extensive risk analysis, the city government decided to impose the strategy for all of its municipal services, to avoid overlooking possible vulnerabilities.

However, the danger of risk assessment is its possible stigmatising effect. For example, indicating certain economic sectors as vulnerable to abuse by organised crime can have adverse effects on these sectors (Van de Bunt, 2004: 700). The same is true for screening procedures against an individual to learn about any possible involvement in criminal activities. A screening might raise suspicions of possible criminal involvement, which could harm an entrepreneur's businesses even if the suspicions prove groundless. Possible media attention could strengthen such negative effects. Accordingly, policymakers should be aware of the problem of false positives and false negatives.

5.1.2 Judging the measures in light of the situational crime prevention approach

In the three preventive measures studied in this research, the Dutch legislator brought agencies and organisations into action to prevent the abuse of opportunities in the legitimate environment for committing criminal activities. The interfaces between organised crime and the legitimate environment thus became a main arena of organised crime prevention. By increasing supervision and raising barriers against possible abuse, the agencies and organisations turned these interfaces into the Achilles heel of organised crime. With this reasoning, organised crime prevention in the Netherlands was aligned with the situational crime prevention approach – one of the pragmatic new strategies for preventing crime. The situational approach argues that interfering in opportunities for crime will prevent crime. Thus, where organised crime abuses certain opportunities in the legitimate environment, interfering in this abuse will have an impact on organised crime. Based on this theoretical insight it is plausible that the preventive measures are effective. This section elaborates on the various strategies of intervention that the authorities have executed, by which these strategies are judged in the overall framework of situational crime prevention of Cornish and Clarke (2003: 90).

Increasing supervision. In all three measures the legislator brought about increased supervision in order to increase the risk involved in committing offences. According to Clarke (1980) increasing the risks would increase the costs and influence decision-making in such a way that some potential criminals will give up further criminal activity. From the start of the development of the situational crime prevention approach, Clarke (1980) indicated that not all

motivated criminals would be hindered by situational crime prevention. Some motivated criminals will get around such measures to achieve their purposes by changing the place or time of their offences or by using other methods. Nonetheless, Clarke (1980: 141, 1987: 945) argues that displacement is not inevitable and various studies show that displacement is never 100%, meaning that at least some crimes are prevented (Hesseling, 1994).

In the various measures the authorities focus on all kinds of supervision. First, the government emphasises the need for guardianship of various agencies and organisations, such as financial service providers and administrative agencies, as well as by their individual employees. With this technique the government introduces new 'watchdogs' to protect the legal environment. In addition, when these watchdogs suspect untrustworthy activities they must alert formal surveillance, which undertakes further action if necessary. For example, by reporting unusual transactions the financial service providers bring into action the investigative services, which can start criminal or financial investigations. In Amsterdam the Van Traa team can call in municipal authorities to close establishments and on tax authorities to impose additional taxes.

To make supervision tasks more effective, the legislator has installed various measures to reduce anonymity. Based on the adage 'know your customer', agencies and organisations are charged to examine the reliability of clients. Accordingly, these agencies and organisations must not facilitate services for clients that appear unreliable. This is the case, for example, for the Dutch screening and auditing approach, which enables authorities to exclude unreliable applicants from tendering procedures and to refuse such persons permits and subsidies. Checking the identity of persons enables authorities to track clients later. Our main example of this technique is the customer identification obligation of the anti-money laundering intervention. By obliging customers to provide identification, it becomes possible to relate transactions and underlying offences back to persons.

Alerting conscience. A second strategy of Dutch organised crime prevention involves increasing awareness of possible abuse and increasing the integrity of agencies and organisations. The basic idea of this strategy is that one has to be aware of problems before they can tackle them. In addition, the government has set clear rules to which these representatives must answer and introduced and installed techniques that assist compliance. With this strategy the Dutch authorities want to ensure that its representatives are constantly alert and therefore, less likely to be involved in criminal activities, knowingly or unknowingly.

These techniques of intervention come under Clarke's strategy of removing excuses. This strategy responds to offenders' efforts to neutralise feelings of guilt and shame. Under the guise of not knowing that something is forbidden and by maintaining that others break minor rules all the time, people can give in to everyday temptations to break certain rules. Removing such excuses hinders

this rule-breaking behaviour (Clarke, 1997). However, whereas Cornish and Clarke address this technique to potential criminals, the Dutch legislator focuses on agencies and organisations in the legitimate environment. This means that the technique is turned around. In Dutch organised crime prevention it is the agencies and organisations that must be alert for possible abuses from outside. Probably it is easier to influence agencies and organisation than willing offenders.

Raising barriers. With the three preventive measures the authorities have erected barriers to abuse of certain services. The main barrier of the Dutch preventive measures is control of access to services, in particular, the financial services provided by the financial sector and the economic dealings requiring interference of administrative authorities. According to Clarke, increasing the effort required increases the costs of offending and some potential offenders will give up their intentions. Practice illustrates that these barriers are often insurmountable. To overcome or get around these access controls, potential criminals must invest in expertise. Therefore, money laundering operations have become increasingly complex, and for the granting of permits and participation in tendering procedures criminals must invest in complex constructions with front men and front stores. This aspect fits the technique that Clarke refers to as deflecting offenders.

As described above not all offenders are able or willing to rearrange their plans. Moreover, empirical research shows the success of deflecting criminals. Criminal organisations often rely on a small group of people to facilitate the necessary logistical elements. When plans have to change criminal organisations must rely on new *modus operandi* and new facilitators who often turn out to be unreliable.

Reducing rewards. A fourth strategy that appears in all three preventive measures is reducing the rewards. By reducing rewards the authorities hope to take away the main incentive of organised crime. The most obvious examples in the Dutch preventive measures are the refusal or withdrawal of permits and subsidies and exclusion from tendering procedures deriving from the BIBOB Act. Moreover, the Van Traa approach makes it more difficult for criminals to build positions of power. Subsequently, the rewards deriving from such a position would be beyond the reach of many criminals.

The anti-money laundering intervention also focuses on reducing rewards. When illegal profits cannot be laundered it is much more difficult to invest them in the legitimate environment. In addition, the anti-money laundering intervention produces a paper trail with which criminal profits can be confiscated. According to Clarke (1997) reducing the rewards indeed influences decision-making, as it reduces the expected benefits. Consequently, based on this insight it is certainly plausible that organised crime prevention can be effective.

Question marks regarding the strategy of fixing broken windows. A last strategy, brought into action in the Van Traa approach, involves the rehabilitation of deprived urban areas to prevent crime. This strategy is based on the assumption that fighting symptoms and activities that are assumed to provide breeding grounds for crime will prevent crime, including organised crime. This reasoning is based on the more general idea that degenerated neighbourhoods and the absence of a government active in performing neighbourhood maintenance and repairs facilitate crime. In contrast, a strong government presence would hinder crime. This reasoning is an example of rapid repair, which according to Clarke (1997) discourages imitation and thus further crime. With regard to this technique Clarke refers to the *fixing broken windows approach* (Kelling and Coles, 1998), which connects disorder with urban decay and relates urban decay to (serious) crime. In other words this approach assumes that disorder is a precursor of crime. Good management of public areas and restoration of these neighbourhoods would result in less crime.

However, this approach is not generally accepted, as some criminologists doubt the relation between urban decay and crime. In addition it must be said that the Van Traa team expanded this reasoning. Whereas the original fixing broken windows approach states that disorder and degeneration encourages more serious crimes, the Van Traa team went a step further to connect the decline of areas to organised crime. Yet, in contrast to most of the elements of the preventive measures, this step has not been supported by criminological theories or empirical knowledge. In this case further investigation is needed to reveal the possible effectiveness of this approach against organised crime.

5.2 Exposing the implementation of preventive measures

From the previous section it appears that the preventive measures need an adequate programme theory and design that corresponds with empirical and theoretical insights. However, even such a design is no guarantee for successful impact. Preventive measures must also be implemented in the intended way. This study has illustrated that with regard to implementation the responsibilisation of all persons and organisations involved in prevention is important as well as the performance of the programme itself.

5.2.1 Responsibilisation of persons and organisations

A main characteristic of prevention is the so-called *responsibilisation strategy* towards non-law enforcement agencies. Garland argues that with this strategy, persons, agencies and organisations have to be activated and inter-agency structures must be established (Garland, 1996: 453). From the evaluation of the three preventive measures it can be concluded that responsibilisation does not come easy. First of all there are some basic conditions for successfully activating representatives. Representatives must be aware of abuses in order to

act against them. Furthermore, a certain level of integrity is needed to execute and comply with the measure. These two conditions for organised crime prevention were emphasised in earlier research (Van de Bunt and Van der Schoot, 2003: 70). In the early 1990s organised crime justly became an important topic on the political agenda, it was no surprise that before that time, there was a generally low level of awareness of the risks of organised crime. Consequently, increasing the awareness of financial service providers, administrative authorities and the civil service apparatus was an important first step.

Findings here illustrate that the responsibilisation process and raising consciousness has not proceeded smoothly, neither in the private nor the public sector. Problems related to the private agencies were expected, as these are commercial institutions, organisations and persons with their own economic interests. This was especially the case with the financial service providers. Obviously, cooperating with law-enforcement authorities could interfere in these actors' special relations with their clients. Moreover, the little responsibility ascribed to the institutions made them feel like unpaid 'watchdogs' that just had to pass on information to law enforcement. It is no wonder that financial institutions were at first unwilling to comply with the disclosure obligation. However, rather quickly these institutions changed their attitude as the new disclosure obligation gave them more responsibility for which they could apply the obligation for their own interest; it improved the transparency of the system and prevented internal fraud. This willingness was also supported by the awareness that any relationship with money laundering and organised crime would damage their reputation and subsequently harm their business. Thus, in addition to awareness and integrity, the findings of this study indicate another condition for responsibilisation: the preventive measure must align with agencies' and organisations' own interests. This is no easy task, as the preventive approach requires a change in business culture of the selected representatives. Nonetheless, when this is achieved good cooperation will follow.

Lawyers, notaries and accountants argue that they have nothing to gain from their new reporting obligation. According to them the anti-money laundering intervention results only in more administrative effort and costs, like disturbed relations with clients. These professionals argue that criminal involvement only occurs incidentally, which probably does not strengthen their willingness to cooperate. Possibly, when the reputation of these legal professions is at stake and self-regulation falls short, these professions might adjust their opinion, like the financial institutions did.

One might expect the responsibilisation process to proceed more easily in the public sector, since public authorities all have the same interests. However, this study has shown that this is not self-evident. The common interests that are assumed to be present in all layers of the government are not experienced as items of importance in each of these layers. The Dutch screening and auditing approach had to be postponed partly due to a lack of preparation of the

administrative authorities. This was probably not due to a true unwillingness, but rather, many administrative authorities argued that unintentional facilitation did not occur in their sector. This shows a lack of awareness, at least with regard to the legislator's objectives. In Amsterdam, activating the civil service apparatus met difficulties as well. With regard to the Van Traa approach, the establishment of a special team responsible for the new approach became an excuse for other agencies to be less active and aware. Here, the preventive approach partly had the opposite effect of leaving the problem to others, specifically to the Van Traa team. Although this did not apply for all municipal services, the success of many of the subprojects depended on the involvement of the Van Traa team. As a result, the team did not succeed in implementing its new administrative instruments within the regular structure of the civil service apparatus. Thus, a lack of attention to common interests, poor cooperation and competition of competences disturbed the responsibilisation process in public agencies.

5.2.2 Inter-agency structures

Next to raising consciousness and activating persons and organisations, the responsibilisation strategy implies the establishment of inter-agency structures. For this, new structures of cooperation and information exchange have been implemented. Garland argued that such cooperation could be more difficult than bringing into action the traditional criminal justice system (Garland, 1996: 454). This study illustrates that this is indeed the case and much work is left to be done on these issues.

Persons and organisations of the legitimate environment all have their own competences and instruments. In order to exclude those who are involved in organised crime, these persons and organisations must be informed of possible irregularities and involvement in criminal activities. This means that they need relevant and reliable information. Shortcomings in the available information can be crucial, since being informed is one of the basic conditions of organised crime prevention (Van de Bunt and Van der Schoot, 2003: 72). Moreover, whereas the police could provide some of this information, special arrangements had to be established enabling the exchange of sensitive information. This means that for the activation of new 'watchdogs' information from police departments might need to be made accessible. As a result, privacy regulations that limit the use of sensitive information (Personal Data Protection Act, Police Files Act, Judicial Data Act) must be adjusted. A structural basis needs to be created for the exchange of sensitive information between police, the public administration, judicial authorities and tax authorities, at least in the judicial framework of the screening approach.

With regard to the Dutch screening and auditing approach and the Amsterdam administrative approach the authorities made special arrangements. The limitations of these arrangements determined the limitations of the intervention. In the Dutch screening and auditing approach the BIBOB Bureau is

given access to a wide range of information sources, including sources of sensitive information. However, because sensitive information cannot be included in the actual advisory report, the bureau cannot base its advice on this information. In the Van Traa approach, these special information access arrangements were limited to the Van Traa team. This meant that information could not be shared with other parties brought into action, for example, the fire safety inspectors or the city planning department. In this regard the city councils and the municipal services are less informed than the Van Traa team. Obviously, this has hindered the implementation of the Van Traa approach in the civil service apparatus. Regarding the anti-money laundering intervention things were much easier, as the legislator had just enforced legislation that obliged the financial service providers to share information.

The most important conclusion is that legal regulations and special permissions by ministers are no guarantee for the smooth exchange of information. The Van Traa approach clearly illustrates that the environment may hinder implementation. In this case various local registers were simply incomplete and the information position of police departments was lacking. Moreover, it appeared difficult to access police information as it was not always clear which department or unit had the needed information at its disposal. Nonetheless, a reliable and complete insight into ownership of premises and subjects was necessary to undertake action. The screening process of the BIBOB Bureau revealed various problems with consulting information sources. In particular, gathering information from abroad proved difficult. Foreign authorities are not always willing to share information with an administrative agency. In addition, receiving information from foreign authorities often takes time. Regarding information sources in the Netherlands, those obliged to share information with the BIBOB Bureau face a problem of time. In general it takes about two weeks to receive information from various sources, which is a considerable period relative to the total time span of four to eight weeks in which the screening should take place.

The problems of exchanging information clearly illustrate that organised crime prevention should become a multi-agency approach wherein the various parties cooperate. This study illustrates that up to now, this cooperation mainly takes place on an ad hoc basis. For a more effective preventive approach to organised crime, this ad hoc cooperation should develop into a continuing multi-agency approach.

5.2.3 Performance of the programme

In order to implement a programme it is important to define clear objectives at the beginning and to maintain them during the implementation. This is vital since lack of such clear objectives could result in net-widening. Net-widening implies that measures are broadened, due to which more subjects or behaviours are drawn in. A preventive approach based on controlling risks will always be subject to net-widening, unlike a repressive approach which is based on legal

definitions. However, regarding organised crime prevention it is necessary to remain focused on the possible impact of measures on the specific phenomenon.

Unfortunately, this study found evidence of goal displacement in the measures studied. This means that authorities often lost sight of the objective of preventing organised crime.

From the very beginning of each of the evaluated measures the authorities' focus on organised crime had already started to become diffuse. The explanatory memorandum of the Dutch screening and auditing act indicates that the use of such an instrument need not be restricted to organised crime, but that it can also be made available to counter non-organised criminal activities that cause serious social effects. The Dutch anti-money laundering intervention involves a reporting system for unusual transactions as defined by objective and subjective indicators. This means that many transactions must be reported even when financial service providers know beforehand that they have nothing to do with money laundering.

This study also shows how difficulties in implementation can distract persons and organisations from their original objectives. The Van Traa project in Amsterdam started as an innovative approach, originally aimed at the prevention of (organised) crime in the red-light district of Amsterdam. Towards this objective a wide range of projects were established. First of all, the Van Traa approach operated thematically in certain geographical areas and economic branches, for which several subprojects were started. In these subprojects large numbers of premises were examined for possible irregularities and possibly unreliable entrepreneurs were screened. Over time, many subprojects came to focus on the degeneration of deprived urban areas. As a result, the Van Traa approach exists in a wide range of tasks that concentrate not only on organised crime, but on all sorts of crime and even deviancy.

There has been a net-widening in the Amsterdam integrity approach as well. The city government enlarged the concept of integrity time after time. The reporting obligation first focused on fraud and corruption, yet nowadays it encompasses all kinds of integrity problems, such as conflicts of interests and waste or abuse of municipal property. As a result it is hard to point out the core of the problem. In any case, over time the approach has lost its focus on fighting organised crime and aims at crime, deviancy and even non-deviancy. It is unclear to what extent interfering in crime, deviancy and non-deviancy contribute to the prevention of organised crime. This lack of clear objectives certainly impacts the effectiveness of the administrative approach of Amsterdam in preventing organised crime.

With regard to the anti-money laundering intervention, goal displacement was the result of bureaucracy. By establishing a mixed system of objective and subjective indicators the authorities had to deal with an enormous number of reports. Instead of taking strategic decisions on the use of transaction data to prevent organised crime, the authorities instead focused on compliance by the financial service providers. Due to a lack of investments in personnel and expertise by the Dutch Financial Intelligence Unit, the FIU was unable to

conduct strategic analyses on a structural basis. Moreover, a lack of financial expertise by investigative authorities resulted in the limited use of transaction data in criminal investigations.

In contrast to the described disadvantages of net-widening, it must also be said that net-widening can contribute to the effectiveness of an intervention. Clarke (1980, 140) argues that displacement is influenced by criminals' knowledge of alternatives. This means that protecting a whole class of facilitators reduces the alternatives available. Thus, bringing all financial service providers under the anti-money laundering obligations will hinder possible displacement and make the intervention more effective. Based on this reasoning, it is also likely that administrative authorities' monopoly in certain economic dealings implies an enormous restriction of possible displacement. This reasoning is strengthened by the knowledge that offenders are not always attracted to other alternatives. Clarke (1987: 935) refers to choice-structuring properties, which implies that the readiness to substitute one offence for another depends on the mutual characteristics of the original planned offence and the alternative. With regard to the BIBOB screening and auditing approach, many criminals would not turn to other sectors simply because they have no experience and skills in other economic areas. A similar reasoning applies to the administrative approach of Amsterdam: not all criminals will leave Amsterdam to avoid the integral and integrated enforcement of rules.

5.3 Exposing the impact of the preventive measures

In this study the impact of the preventive measures was determined by the observed outputs and the plausible outcomes. Regarding the observed outputs, the programme evaluation uncovered the negative effect of problems in implementation. In fact, the various activities of the measures can be grouped into three categories. First are those for which it is impossible to ascertain the outputs, as there is simply too little insight. In other words, data are lacking from which to derive the outputs. For example, for the anti-money laundering intervention, no clear summary of the exact number and scope of money laundering investigations could be found; and it was certainly impossible to determine the extent to which these investigations are based on transaction information. The second category of measures is those for which enough information is available to show some of the outputs, but the outputs are not those implied by the original objectives. This goal displacement is ascertained in the anti-money laundering intervention, the integrity approach and in the Van Traa approach. Based on this goal displacement it is unlikely that these measures meet their actual objectives and in fact prevent organised crime. Third are the successful measures, which resulted in observed outputs that respond to the original objectives. Notwithstanding the problems in the implementation described above, the measures did result in some outputs. For example, the anti-money laundering intervention has supported various criminal and financial

investigations. The BIBOB screening and auditing approach has resulted in the refusal and withdrawal of various permits. With the support of the Van Traa approach, the city government was able to issue various administrative warnings and closed a number of establishments housing illegal hotels, casinos and catering operations. These outputs illustrate that the preventive measures probably do have some effects. However, these outputs are related to individual cases, and it still is impossible to estimate the impact of these outputs on organised crime in general.

Based on these aspects, we must conclude that organised crime prevention could be effective in theory, but problems in implementation have limited actual outputs. In other words, a plausible programme theory is a necessary condition for organised crime prevention, but it is not a sufficient one. Authorities must invest in the implementation of such measures. Up until now, implementation shows some shortcomings, which makes it unlikely that the evaluated preventive measures will have a great impact on organised crime. This implies that the preventive measures taken against organised crime are probably scarcely effective. However, this is no reason to give up on organised crime prevention. On the contrary, the plausibility of the programme theories justifies new efforts in further development of these measures and amelioration of the implementation problems.

5.4 Some boundaries of organised crime prevention

Organised crime prevention implies the exclusion of criminals and criminal organisations from services in the legitimate environment. Excluding people in order to control risks is the central aspect of the actuarial justice that characterises recent crime policy and the policies of safety and security in Dutch society. A main question of this actuarial justice is how to separate those who have criminal purposes from those who do not. With regard to organised crime prevention, this question is certainly important, as the measures discussed aim at services used by many upstanding people. Empirical research illustrates that organised crime is a complex phenomenon with complicated constructions that are difficult to uncover. This means that regarding preventive measures the good guys might suffer from the interventions aimed at bad guys.

Because organised crime prevention interferes in the lives of many people, the authorities must guarantee a balance between protecting people's privacy and protecting people's safety, for instance, by fighting crime. According to the authorities the large threat emanating from organised crime justifies interference in people's daily lives. However, as described earlier the measures are unspecific and, indeed, hardly focused on organised crime. The anti-money laundering intervention focuses on all kinds of predicate offences. The administrative approach of Amsterdam focuses on crime, deviancy and even non-deviancy. During the years the importance of the specificity of preventive measures seems to have gained interest, as it was extensively discussed during

the development of the Dutch screening approach. This approach aims at organised crime, but also at activities that can cause serious social impacts. Moreover, this approach is specifically focused on those sectors that are deemed vulnerable to abuses by criminal organisations, which already makes the measure much more specific than if no sectors had been selected.

It is remarkable that measures to prevent organised crime in general are so unspecific, since the measures imply a serious invasion of privacy. With the anti-money laundering intervention coming into force the legislator sacrificed part of banking secrecy. Professional secrecy was also partly forgone when in 2003 legal professionals were mandated to comply with the intervention as well. The reporting obligation applies only to the financial advising activities of these professionals, which are comparable to services provided by other financial service suppliers. Professional secrecy regarding activities to defend a client's legal position remains intact. Nonetheless, the reporting obligation interferes in the specific relationship based on trust between legal professionals and their clients. Accordingly, the professionals argue that the division of tasks into financial advising and judicial advising is theoretical and cannot hold in practice.

However, the costs of intruding on people's privacy cannot be calculated, as it is not something material. Neither is the cost of invasion of people's privacy fixed. Privacy interests and the need to protect privacy are subject to complex flows in the political arena, as well as in public debate. In fact, as long as crime control exists, authorities must find a balance between fighting crime and protecting people's privacy. This process started as early as Rousseau's social contract. Nowadays, people in our western society seem willing to give up a large part of their privacy for a more effective fight against crime. The terrorist attacks in New York and Washington, D.C. brought this willingness to new heights. Nonetheless, privacy is still the subject of heated debate. Such debate is necessary, since it forces the legislator to be aware of the problem, in particular since preventive measures are so unspecific.

Another aspect regarding people's privacy involves the use of intelligence. In all of the preventive approaches discussed here, suspicions of unlawful activities are sufficient to put preventive measures into operation. This also applies to the repressive approach, though in this case we speak of a *reasonable suspicion of guilt*, as set out in the Dutch Code of Criminal Procedure (article 27). The preventive approach has no legal framework. At first, suspicion-based interventions were limited to the fight against organised crime. However, in all of the evaluated measures the scope was enlarged early on to include suspicions. The anti-money laundering intervention focuses on all predicate offences; the Dutch screening and auditing approach involves all offences that could seriously harm society; and the administrative approach of Amsterdam concentrates on all forms of crime. The two main projects of the Amsterdam approach have an even farther reach. The Van Traa approach includes projects that focus on deprived urban areas and the integrity approach includes problematic situations such as conflicts of interests and waste of municipal property.

Due to the enormous net-widening of these last two projects the focus has changed to even include behaviour that does not imply a criminal offence. It is remarkable that measures that intrude on people's privacy can be put into action to counter undesirable situations or activities that are not even forbidden by law. Van Swaaningen (1999) argues that net-widening is no reason to reject prevention, as long as it contributes to a more social law enforcement. However, the findings here illustrate that in such cases preventive measures can cause more harm to subjects than a repressive approach. This could be interpreted as a 'hardening' of the preventive approach. With regard to Amsterdam's integrity approach an example from this study illustrates how reports of a possible integrity violation by a well-known individual resulted in public debate on the professional integrity of the person in question, though the presumed violation turned out to be only a disorderly transaction. Also the fact that a screening procedure is started could affect an involved entrepreneur. Moreover, withdrawal of a permit might be an economic death sentence for a business person.

5.5 Expectations and further development

Developments since the 1990s have firmly affixed prevention of organised crime in crime-control policy. The terrorist attacks in New York and Washington, D.C. served as an impetus for the preventive approach. All recent crime-control policy plans include preventive measures that target the facilitating circumstances present in the legitimate environment. This is logical, since it would be pointless to invest in the repressive approach when the legitimate environment facilitates unbridled criminal activities. From this point of view it is remarkable that the authorities are not extending this approach to all far-reaching governmental decisions, to ensure that these decisions have no criminogenic effects. In my opinion this should in fact be the starting point of all governmental policy, particularly since recent research has uncovered a low-level accessibility of licit services to organised crime in the whole of society.

Regarding crime-control policy plans it should be remarked that organised crime prevention needs to be further developed. Obviously, in this further development and implementation authorities can draw valuable lessons from the past to meet the general conditions outlined above. This means that all policy plans should be based on adequate programme theories and that the process of implementation must be monitored accurately.

Furthermore, in realising new preventive measures authorities should make more use of private agencies, given that these agencies offer services that might be abused by criminal organisations. It will probably be difficult to get through the commercial armour. However, when the 'name and fame' of agencies are at stake, they might quickly develop into reliable partners to fight crime.

In addition, the authorities should realise that cooperation between various public agencies will not necessarily proceed smoothly. Preventive measures

require an approach supported at all levels of all authorities involved. Obviously the official decisions have to be taken at a higher level. But still the belief that preventive measures are useful, and in fact essential, in the fight against organised crime should be internalised at the other levels as well. Here, more effort should go out to the individual civil servants. The administrative approach of Amsterdam, more specifically its integrity approach, is directly aimed at civil servants, to involve them in the fight against (organised) crime. It could serve an example to other local governments.

Finally, authorities should realise that an integral inter-agency approach is vital in preventive measures. On the one hand, the preventive approach aims at the facilitating circumstances provided by all kinds of public and private agencies and organisations. On the other hand, the preventive approach operates based on information extended by law enforcement agencies to help determine whether one is dealing with organised crime. Thus, preventive measures are performed independent of penal law, but they require criminal proceedings to achieve breakthroughs. Moreover, such an integral approach is not self-executing. This means that law enforcement agencies must actively pass information on to persons and organisations who can interfere in facilitating circumstances. For this, the law enforcement agencies should partly remove their focus from the core activities of criminal organisations to the logistic processes of these activities. Public and private agencies, in turn should not wait for information, but undertake action themselves. For this cooperation, particularly for the exchange of information, various collaborative initiatives have been established at different levels and on various subjects. Covenants have been established that offer the possibility to cooperate. In addition, experiences in some projects have illustrated the power of the existing local consultative body of mayor, chief of police and the head of the public prosecutor's office to create the basic conditions needed to implement an integral approach to prevention. In the future, such consultative bodies should be exploited more systematically and effectively for promoting the preventive approach and exchanging best practices.

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Samenvatting

Vanaf het begin van de jaren 1990 is er zowel op nationaal als op international vlak geïnvesteerd in een preventieve benadering van georganiseerde criminaliteit. Nederland heeft hier een progressieve rol in gespeeld. Met veel enthousiasme en hoge verwachtingen zijn verschillende preventieve maatregelen ontwikkeld. Sommige van deze maatregelen worden uitgedragen als 'best practices' in andere Europese landen. De vraag is echter wat beleidsmakers precies verwachten van de preventieve benadering en of de preventieve maatregelen ook aan deze verwachtingen kunnen voldoen. Kortom, wat is eigenlijk het effect van preventieve maatregelen op het probleem van georganiseerde criminaliteit. Deze vraag behelst de centrale probleemstelling van mijn onderzoek.

Het onderzoek

Het vaststellen van effecten is geen eenvoudige klus, zeker niet als de maatregelen zijn gericht op het veranderen van sociaal gedrag. Allereerst moet er een effect kunnen worden vastgesteld. Neemt het probleem van georganiseerde criminaliteit in Nederland werkelijk af? Daarnaast moet de causaliteit tussen de eventuele verandering en de ingezette maatregel worden vastgesteld. Is het effect op het probleem van georganiseerde criminaliteit het gevolg van de geselecteerde maatregel? Helaas is er, ondanks de in het afgelopen decennium flink toegenomen kennis omtrent georganiseerde criminaliteit, nog te weinig inzicht in de omvang ervan om dalingen of stijgingen te kunnen vaststellen. Daarom is voor dit onderzoek gezocht naar alternatieve methoden om de effecten van preventieve maatregelen op georganiseerde criminaliteit te kunnen beoordelen. Concreet zijn daartoe twee wegen bewandeld. Ten eerste wordt een indicatie gegeven van de 'mogelijke effecten' door de maatregel in het abstracte te bestuderen. Met het bestuderen van de filosofie achter de maatregelen, de beleidstheorie genoemd, is gekeken of de doelen en verwachtingen van de maatregel plausibel zijn. Ten tweede is aan de hand van 'concrete resultaten' vastgesteld in hoeverre de doelstellingen in de praktijk zijn gehaald. Alhoewel deze laatste bevindingen door problemen met het vaststellen van causaliteit niets zeggen over de werkelijke effecten, zeggen ze wel iets over de plausibiliteit van de maatregel. Als doelstellingen worden gehaald, is het meer aannemelijk dat de maatregel effect heeft.

Voor het exploreren van deze probleemstelling is dit onderzoek opgezet in de vorm van een beleidsevaluatie van een aantal belangrijke maatregelen die zijn gericht op het voorkomen van georganiseerde criminaliteit. De eerste maatregel betreft de anti-witwasinterventie, die voornamelijk vorm krijgt door de Wet melding ongebruikelijke transacties en de Wet identificatie bij dienstverlening. Daarnaast wordt de Nederlandse screeningsprocedure, vastgelegd in de Wet BIBOB, geëvalueerd. Deze recent in werking getreden wet

behelst een screeningsvoorziening die is ontwikkeld ter voorkoming van het misbruiken van vergunningen, subsidies en aanbestedingen bij het plegen van strafbare feiten. In de praktijk betekent dit dat lokale overheden vergunningen en subsidies kunnen weigeren en mensen kunnen uitsluiten van aanbestedingen indien er een gevaar bestaat dat hiermee criminele activiteiten worden gefaciliteerd. Ten slotte is de bestuurlijke aanpak van Amsterdam onderwerp van de evaluatie. Deze aanpak bestaat uit tal van maatregelen en projecten. In mijn onderzoek komen twee grote projecten aan bod: het Van Traa-project en het integriteitsproject. Deze bestuurlijke aanpak bestaat uit een strikt handhavingsbeleid en een grootse integriteitsbewustwording waarmee wordt getracht te voorkomen dat criminele groeperingen kunnen infiltreren in de legale omgeving. Deze lokale aanpak wordt gezien als zeer vooruitstrevend en wordt vaak aangehaald als *best practice*.

De beleidsevaluatie omvat drie elementen: de beoordeling van de beleidstheorie, de beoordeling van de implementatie en de beoordeling van de uitkomsten van de maatregelen. Deze drie elementen zijn de rode draad van dit onderzoek. Door de systematische toepassing van deze elementen op de drie geselecteerde maatregelen, kan niet alleen iets worden gezegd over de effecten van de afzonderlijke maatregelen, maar is het ook mogelijk om de maatregelen te vergelijken en te komen tot meer algemene inzichten.

Beoordeling beleidstheorie

Een adequate beleidstheorie is een noodzakelijke voorwaarde voor maatregelen om aan de verwachtingen te voldoen en om gewenste effecten te sorteren. Voor het beoordelen van de beleidstheorie moet de filosofie van de beleidsmaker worden getoetst aan criminologische theorieën en empirische kennis over georganiseerde criminaliteit.

Preventie van georganiseerde criminaliteit is gebaseerd op de situationele criminaliteitsbenadering. Deze benadering berust op de aanname dat het niveau van criminaliteit wordt bepaald door de aanwezigheid van omstandigheden die gelegenheid geven voor criminele activiteiten. Met andere woorden: de preventieve benadering behelst het ingrijpen in maatschappelijke gelegenheidsstructuren zodat misbruik voor criminele doeleinden wordt bemoeilijkt. Moderne termen die hiervoor ook worden gebruikt, zijn het ‘tegenhouden’ van criminaliteit en het ‘opwerpen van barrières’. De situationele criminaliteitsbenadering is gebaseerd op verschillende strategieën zoals het verhogen van toezicht en het wegnemen van beloningen. De Nederlandse maatregelen steunen grotendeels op deze strategieën. Financiële dienstverleners en het openbaar bestuur worden ingezet als nieuwe ‘waakhonden’ die de samenleving moeten beschermen tegen georganiseerde criminaliteit. Het ontnemen van criminele gelden is een voorbeeld van het wegnemen van een beloningen. Alleen het Van Traa-project berust mede op een innovatieve strategie die niet algemeen geaccepteerd is binnen de criminologie. Hier speelt de vraag in hoeverre verloederde buurten een voedingsbodem zijn voor georganiseerde criminaliteit en in hoeverre het aanpakken van verloedering een

effect kan hebben op georganiseerde criminaliteit. Deze vooruitstrevende Amsterdamse aanpak verdient nader onderzoek en eventueel kunnen concrete resultaten de effectiviteit aantonen.

Het toetsen van een beleidstheorie aan empirische kennis over georganiseerde criminaliteit is belangrijk om de werkelijke problemen aan te kunnen pakken. Uit empirisch onderzoek blijkt dat criminele groeperingen inderdaad gebruik maken van legale maatschappelijke structuren. In feite verschillen de logistieke activiteiten van de handel in illegale goederen en diensten niet van gelijkaardige handelsactiviteiten voor legale goederen; dezelfde transport- en opslagfaciliteiten worden gebruikt, dezelfde documenten worden ingevuld en dezelfde dienstverleners worden benaderd voor hun exclusieve expertise (advocaten, notarissen, accountants, etc). Dit betekent dat overheidsdiensten, bedrijven en zelfs individuele burgers criminele activiteiten faciliteren zonder zich daarvan in veel gevallen bewust te zijn. Dit geldt bijvoorbeeld voor het financieel stelsel, dat het mogelijk maakt crimineel vermogen wit te wassen, maar ook voor bestuurlijke overheden die door het verlenen van vergunningen criminele groeperingen onbedoeld de gelegenheid bieden om crimineel vermogen te investeren in de legale economie. Op andere gebieden is er echter nog een beperkt inzicht in georganiseerde criminaliteit. Zo is er weinig bekend over de bestedingen van criminele groeperingen en de interactie tussen groeperingen in bronlanden, doorvoerlanden en doellanden. Voor de preventieve benadering is een degelijke probleemanalyse een noodzakelijke voorwaarde, maar er komt meer bij kijken. De preventieve benadering veronderstelt ook een risicoanalyse op basis waarvan mogelijk toekomstig misbruik door criminele organisaties kan worden voorkomen. Uiteraard schuilt hierin het gevaar dat een maatregel is toegespitst op problemen die zich (nog) niet voordoet. Juist omdat dergelijke maatregelen mogelijk resulteren in het stigmatiseren van sectoren en individuen, zou hier een grote voorzichtigheid moeten worden betracht.

Beoordeling implementatie

Naast een adequate beleidstheorie is het noodzakelijk dat maatregelen worden uitgevoerd zoals de beleidsmaker heeft bedoeld. Dit onderzoek heeft aangetoond dat voor een goede implementatie vooral energie moet worden besteed aan de responsabilisering van personen en organisaties, aan de totstandkoming van een geïntegreerde aanpak en aan de uitvoering van de maatregel zelf.

Responsabilisering betekent dat personen en organisaties zelf de verantwoordelijkheid nemen om te handelen. Op het gebied van preventie van georganiseerde criminaliteit betreft het die personen die maatschappelijke structuren bieden waar criminele organisaties gebruik van maken. Zij kunnen het beste ingrijpen in deze omstandigheden. Dit betekent dat het aanpakken van georganiseerde criminaliteit niet langer de exclusieve taak is van het traditionele opsporingsapparaat. Responsabilisering is echter niet vanzelfsprekend, noch in de private sector noch in de publieke sector. Voor wat betreft de private sector had de overheid problemen met responsabilisering verwacht; tijd, geld en

menskracht moet worden geïnvesteerd in activiteiten om overheidsinstanties te helpen criminaliteit te bestrijden, terwijl deze activiteiten niet overeenkomen met de eigenlijke (commerciële) doelstellingen van de actoren. Zo heeft de reeds genoemde meldingsplicht ertoe geleid dat financiële instellingen een administratie moesten opzetten voor het registreren en melden van ongebruikelijke transacties. Dit onderzoek heeft aangetoond dat het in eerste instantie moeilijk kan zijn om instellingen in de private sector te activeren, maar dat deze instellingen wel bereid zijn mee te werken als er ook een eigen belang aan vast zit. Het gaat hier met name om de goede naam van een instelling of sector die verloren kan gaan als er een relatie met georgansieerde criminaliteit kan worden gelegd. Voor wat betreft de responsabilisering van publieke sectoren waren geen problemen voorzien, aangezien zij dezelfde belangen zouden hebben. Dit onderzoek heeft aangetoond dat een dergelijke redenering niet vanzelfsprekend is. De inwerkingtreding van de Nederlandse screeningsprocedure is uitgesteld vanwege gebrek aan voorbereiding bij lokale overheden. Het argument dat zij niet te maken zouden hebben met georganiseerde criminaliteit, toont het gebrek aan responsabilisering. Ondertussen is deze bewustwording echter gegroeid en worden er steeds meer screeningsonderzoeken aangevraagd.

De responsabiliseringstrategie vereist een integrale aanpak waarbij instellingen in private en publieke sectoren samenwerken met het traditionele opsporingsapparaat. Op basis van verschillende wettelijke bepalingen is de samenwerking en met name het uitwisselen van gevoelige informatie, juridisch goed geregeld. Echter in de praktijk blijkt dat dergelijke juridische regelingen geen garantie zijn voor een vloeiende informatie-uitwisseling. Uit het Van Traa-project blijkt dat informatie soms gewoon niet aanwezig is of dat het niet bekend is waar relevante informatie gevonden kan worden. Daarnaast beperken deze regelingen zich tot Nederlands grondgebied en is het vaak moeilijk relevante informatie uit het buitenland te verkrijgen. Dit is uiteraard een probleem omdat georganiseerde criminaliteit wel vaak grensoverschrijdend is.

De problemen met de uitvoering van de maatregelen worden met name veroorzaakt door het gebrek aan duidelijke doelstellingen. In de bestuurlijke aanpak van Amsterdam is er sprake van ‘net-widening’. Door het ontwikkelen van steeds nieuwe maatregelen en het verruimen van deze maatregelen worden steeds meer personen en objecten aan de maatregelen onderworpen. Zo was de integriteitsbenadering in eerste instantie gericht op fraude en corruptie, maar is deze uitgebreid tot alle integriteitsproblemen, zoals persoonlijke belangenconflicten en verspilling van gemeentelijke eigendommen. De vraag is natuurlijk in hoeverre deze problemen nog gerelateerd zijn aan georganiseerd criminaliteit en wat het effect is bij het aanpakken van deze criminaliteit. Bij de anti-witwasinterventie is er sprake van bureaucratie die leidt tot doelverplaatsing. De beleidsmaker heeft zich voornamelijk gericht op de handhaving van de meldplicht waardoor slechts weinig geïnvesteerd is in de verwerking van de verkregen gegevens. Dit heeft geresulteerd in een databank met een groot aantal ongebruikelijke transacties waarvan slechts een beperkt

gedeelte goed is geanalyseerd en wordt gebruikt in de aanpak van georganiseerde criminaliteit. Ook hier moeten vraagtekens worden gezet bij de effectiviteit ven deze aanpak.

Beoordeling van de uitkomsten

Op basis van de beoordeling van de beleidstheorie kan worden gesteld dat voor het grootste deel van de maatregelen het aannemelijk is dat gewenste effecten worden gesorteerd. Echter uit de beoordeling van de implementatie blijkt dat er vaak niet, of slechts in beperkte mate, kan worden gesproken over concrete resultaten. Voor bepaalde activiteiten van de onderzochte maatregelen is het wegens een gebrek aan inzicht onmogelijk om concrete resultaten vast te stellen. Zo kan niet worden achterhaald in hoeverre strafrechtelijke onderzoeken zijn gebaseerd op transactie-informatie die is gegenereerd met de anti-witwasinterventie. Voor andere activiteiten waarbij sprake is van doelverplaatsing, is er wel voldoende inzicht in de resultaten, maar wijken deze resultaten af van de oorspronkelijke doelstellingen. Voor deze maatregelen is het niet waarschijnlijk dat ze een groot effect hebben op georganiseerde criminaliteit. Tenslotte zijn er de activiteiten die redelijk succesvol zijn verlopen. Ondanks de onduidelijkheid over het gebruik van transactie-informatie heeft de anti-witwasinterventie wel geleid tot verschillende financiële onderzoeken en ontnemingen. Daarnaast heeft het Van Traa-project bijgedragen aan het verstrekken van administratieve waarschuwingen, het sluiten van illegale hotels, casino's en ander horecagelegenheden die niet aan de regels voldeden. Deze concrete resultaten zijn echter gerelateerd aan individuele gevallen en zeggen niet veel over de effectiviteit op georganiseerde criminaliteit in het algemeen. Wel versterken deze resultaten de aannemelijkheid dat de maatregelen gewenste effecten kunnen sorteren.

Conclusie

Het is logisch dat de Nederlandse overheid, in navolging van Amerikaanse en internationale initiatieven, invulling heeft gegeven aan de preventieve benadering. Zoals de ministers van Binnenlandse Zaken en Justitie in 1996 stelden, zou onbevredigend zijn 'dat de overheid enerzijds veel tijd, energie en geld steekt in de opsporing en vervolging van (al dan niet georganiseerde) criminaliteit, en anderzijds het risico loopt ongewild direct of indirect criminele organisaties en activiteiten te faciliteren' (*Kamerstukken II*, 1996-1997, 25 056, nr. 1, p. 2). Dit geldt uiteraard ook voor het ongewild faciliteren door bedrijven en individuen die niet tot de overheid behoren.

Daarnaast moet de Nederlandse overheid rekening houden met een aantal beperkingen van de preventieve benadering. Het gegeven dat preventieve maatregelen niet zijn gericht op de persoon van de dader maar op maatschappelijke gelegenheidsstructuren, maakt dat deze maatregelen consequenties hebben voor het handelen van grote groepen mensen die zonder criminele bedoelingen gebruik maken van deze structuren. Dit betekent dat preventieve maatregelen vaak weinig specifiek zijn waardoor de goeden met de

kwaden moeten lijden. Zo wordt met het melden van ongebruikelijke transacties het *bankgeheim* ingeperkt en wordt voor het screenen van vergunningaanvragers gebruik gemaakt van gevoelige informatie uit politiebestanden. Voor dergelijke maatregelen moet een balans bestaan tussen het beschermen van privacybelangen en het beschermen van veiligheidsbelangen. In de westerse wereld is een groot deel van de mensen, zeker na de terroristische aanval in New York, bereid een deel van hun privacy op te geven ten behoeve van de veiligheid. De vraag is echter of dergelijke maatregelen wel bijdragen aan de veiligheid of dat er sprake is van schijn-veiligheid. In hoeverre draagt de meldplicht bij tot het aanpakken van georganiseerde criminaliteit en terrorisme? Het is daarom goed dat privacy nog steeds een belangrijk onderwerp van debat vormt.

Met het aanstippen van deze discussie over privacy wordt geenszins gesteld dat de preventieve benadering niet verder zou moeten worden ontwikkeld. In tegendeel, preventieve maatregelen die zijn gebaseerd op een adequate beleidstheorie en op een deugdelijke wijze worden geïmplementeerd kunnen wel degelijk een impact hebben op georganiseerde criminaliteit. Bij de verdere ontwikkeling van preventieve maatregelen zou de overheid kunnen aansluiten bij de belangen van de private sector. Daarnaast moet zeker aandacht worden besteed aan de totstandkoming van integrale overlegstructuren. Er zijn reeds verschillende overlegstructuren waarin opsporingsinstanties en bestuurlijke overheden deelnemen die de preventieve benadering verder kunnen ontwikkelen en uitdragen. In de toekomst zouden deze dergelijke overlegstruturen systematisch moeten worden ingeschakeld voor het bevorderen van de preventieve benadeirng en het uitwisselen van ‘best practices’.