

Confiscation of the Proceeds of Crime

Many seeds, meagre harvest

2022



Netherlands
Court of Audit

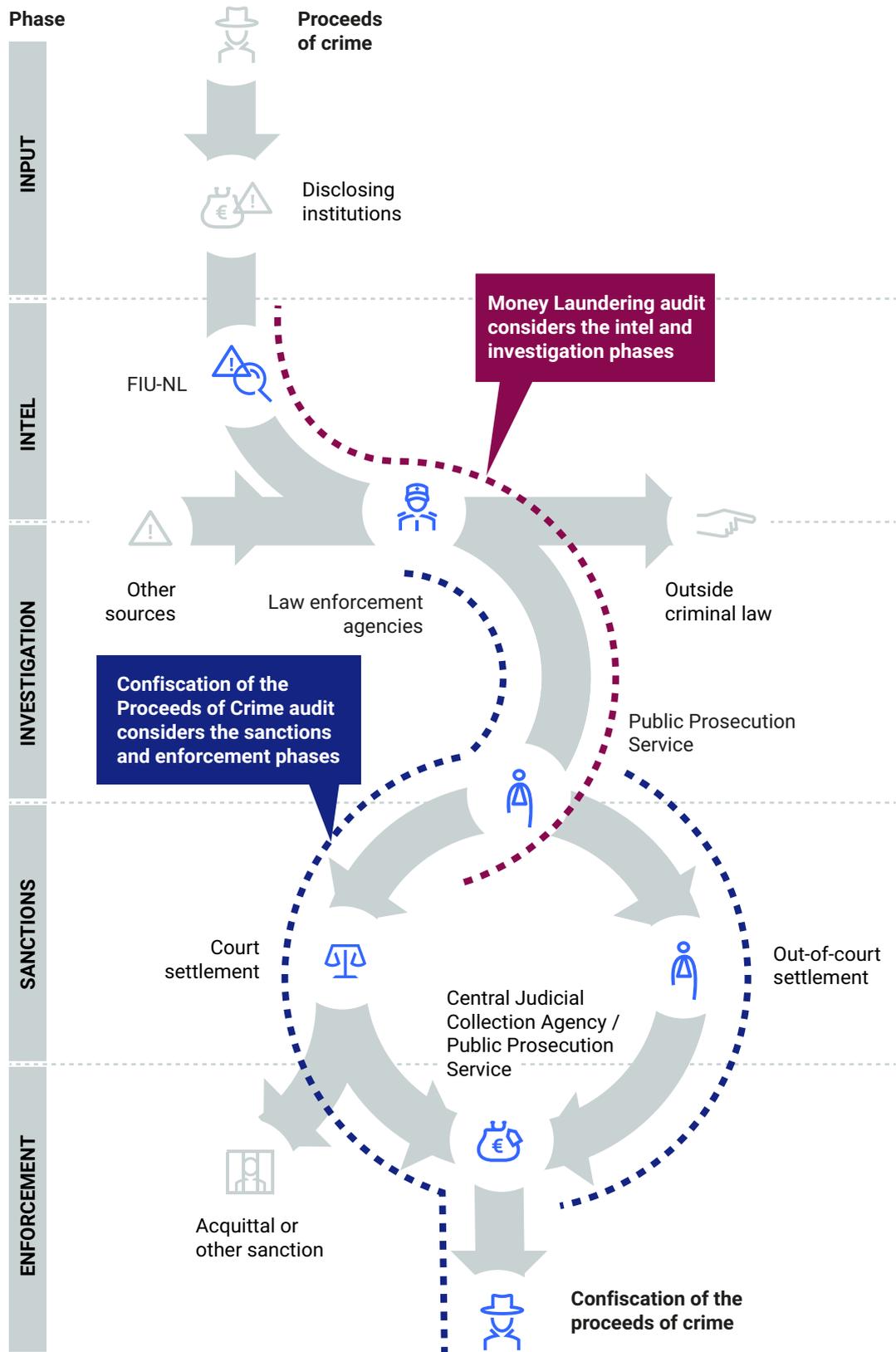
Foreword

This report concerns the achievement since 2010 of government policy to confiscate as many proceeds of crime as possible. Additional budgets have been released on several occasions since 2010 in the expectation that they would enable the confiscation of more criminal assets. We have audited the achievement of the government's financial objectives and the underlying context.

We audited two related themes in tandem with this audit. As part of our Accountability Audit for 2021, published on 18 May 2022, we investigated the management of confiscated money and goods. That audit looked at the financial management of part of the confiscation system and the improvements made in 2021 regarding the storage and administration of confiscated money and goods. A second audit considered measures taken to combat money laundering. By entering the regular economy and society through a series of illegal financial arrangements, the proceeds of crime can subvert the rule of law. Confiscation is a key instrument to combat money laundering. Laundered goods and/or money can be confiscated if a case is taken to court.

Both combating money laundering and the confiscation of the proceeds of crime require cooperation between the various parties in the system (as shown in the figure below). The money laundering audit considered the first part of the system and this present audit on the confiscation of the proceeds of crime the second part. The two audits were carried out in conjunction with each other and published on the same day. The figure shows the relationship between the two.

Relationship between the audits on Combating Money Laundering and the Confiscation of the Proceeds of Crime



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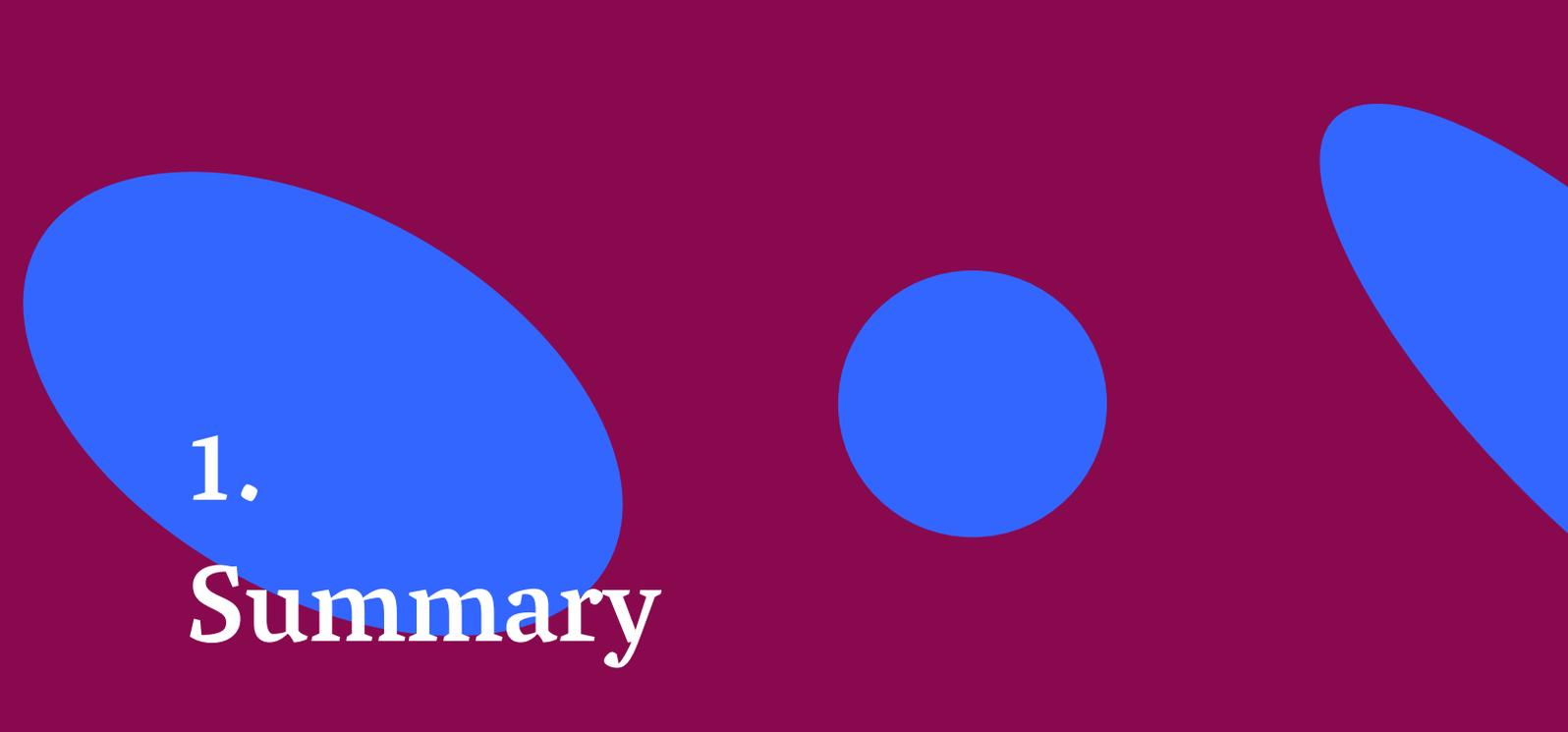
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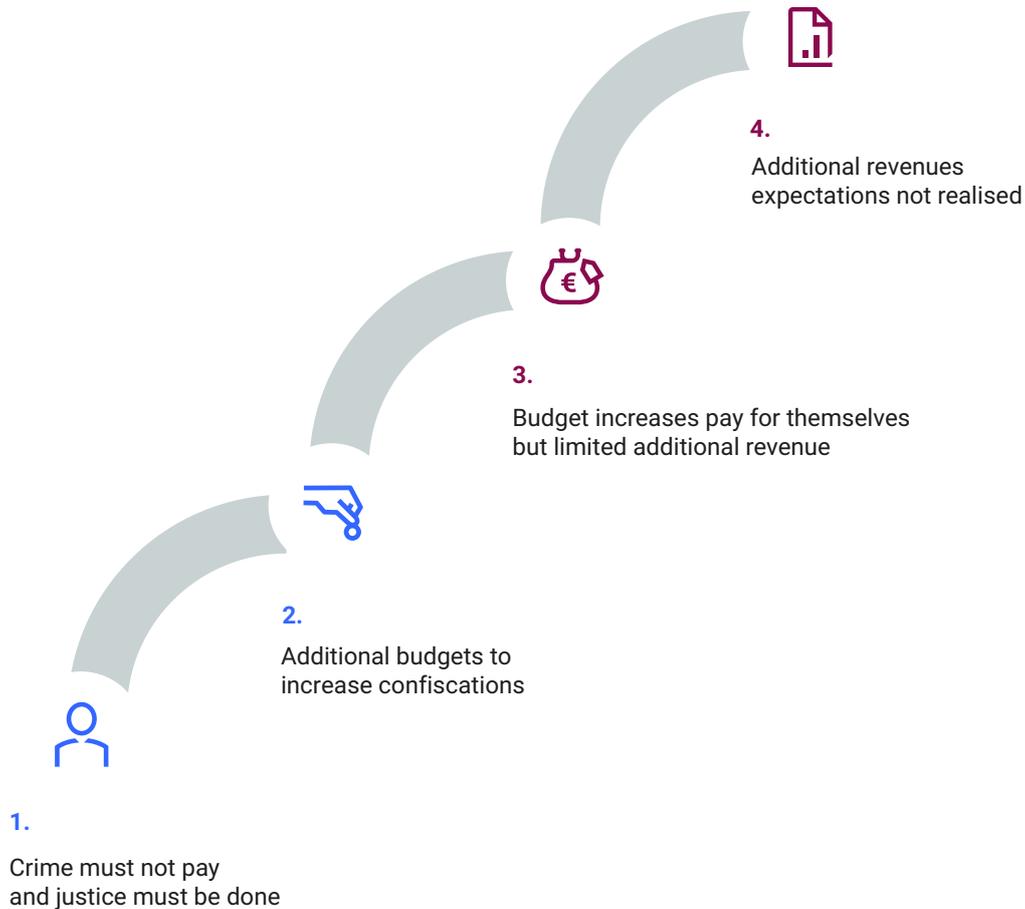
1.

Summary

In the belief that crime must not pay, successive Ministers of Justice and Security (J&V) have cumulatively invested at least € 634.1 million to step up the confiscation of the proceeds of crime. The fourth Rutte government is continuing this pursuit of criminal assets. We investigated whether 5 budget increases in 2010-2021 had led to the confiscation of more criminal assets and realised the additional revenue foreseen by the Minister of J&V.

We conclude that the political ambitions are high but the results do not meet the Minister of J&V's expectations (see figure). The additional budgets have at least paid for themselves but little additional revenue has been realised. This is disappointing because the ministers widened the scope of laws and regulations and simplified policies during the same period in order to confiscate more proceeds of crime. Much has been sown by the Minister of J&V but little has been harvested. Owing to the accumulation of budget increases and, especially, poor and inconsistent record keeping, evaluation and filing, we were unable to determine whether the additional budgets had been spent efficiently and effectively.

Budget increases do not meet additional revenue expectations



Our conclusions

Limited achievement of financial goals

We conclude from the 5 budget increases we audited that:

- the additional total funding of at least € 634.1 million released in 2010-2021 paid for itself through the additional confiscation of € 740.3 million from routine cases; routine confiscation cases do not include high and exceptional out-of-court transactions such as those made by banks for systematic contraventions of the Money Laundering and Terrorist Financing (Prevention) Act;
- in the second half of the period 2010-2021, the amount actually confiscated each year increasingly fell short of the Minister of J&V's expectations: since 2019, the shortfall per annum has been higher than € 100 million;
- since 2015 the average amount confiscated in routine cases has totalled € 83 million per annum; there are tentative signs that the amount is increasing;

- all other things being equal, we expect barely any medium-term increase in the total amount confiscated in routine cases. The positive trend in the number of new confiscation cases with short case times seen since 2017 has reversed into a negative trend; the number of seizures and the amount confiscated per case have remained reasonably stable or increased slightly over the past decade.

Our audit scope and methodology with calculation principles and conceptual framework are explained in appendices 2 and 3.

Additional budgets have no audit trail

Despite our audit, we still do not know how the additional funding of at least € 634.1 million was spent, and thus how effectively and efficiently it was applied. Firstly, the financial goals were not achieved in full, as noted above. Secondly, there is no direct cause and effect relationship between the budget increases and financial results. Such a relationship cannot be established on account of the accumulation of successive measures, the failure to keep consistent records of confiscation cases and results, the ministry making few evaluations and the ministry and the Public Prosecution Service (OM) not having the information necessary to explain how the additional budgets were spent.

Poor information management at Ministry of J&V and OM

Information management at the Ministry of J&V and the OM is not in order and does not meet the requirements of the Public Records Act 1995. Information to develop policy, such as evaluation results, is not available. The information that is available is not mutually consistent or accessible. Each party in the system keeps its own databases containing information that is of relevance specifically to it, on its own IT systems and using its own definitions and measuring methods. As a result, there is no overall insight into confiscation results or, in particular, the use of the additional budgets. This impedes parliament's ability to debate and scrutinise confiscation of the proceeds of crime.

Limited financial results due to poor performance

Successful confiscation of the proceeds of crime requires close alignment of policy and implementation. The strength of the implementation system depends on the performance of all the parties concerned: the weakest link sets the pace for the entire system. The minister's ambitions remained high and the financial goals were not revised, however, because of the following 2 factors.

- The additional budgets have no audit trail; neither the minister nor parliament can trace the use or impact of the 5 budget increases. The budget increases

were neither monitored nor evaluated and no supporting evidence is available for their use. In consequence, the ambitions, financial goals and reasons for the increases could not be revised.

- There are few signs that the various parties (e.g. law enforcement agencies, OM and Central Judicial Collection Agency) approached the system coherently. The alignment of policy and implementation was ineffective; a system perspective of management and implementation was lacking; the Minister of J&V did not take the initiative to strengthen the alignment of implementation and decision-making.

Our recommendations to the Minister of J&V

The recently installed fourth Rutte government also has high ambitions for the confiscation of criminal assets. We recommend that the Minister of J&V first put the basic principles of the confiscation system in order and then build on the improvements to meet the government's ambitions.

More specifically, we recommend that the Minister of J&V:

- consult the Board of Procurators General to agree structural improvements throughout the confiscation system. Discuss ways to improve alignment of policy and implementation and then set realistic financial goals. Involve other parties in the consultation;
- take the initiative to align effective policy with effective implementation and ensure that decisions are taken. Strengthen the confiscation system in the longer term and take the initiative to decide how the basics can be put in order so that the ambitions can be achieved;
- optimise the Minister of J&V and the OM's information management of the goals and results so that all necessary information is available, properly arranged and accessible. Formulate a single financial objective for the amount to be confiscated. Work the objective out consistently for each party in the system and monitor its achievement by the system as a whole.

In sum

This audit considers the additional budgets released under the policy to confiscate the proceeds of crime and the additional revenue its implementation was expected to realise. Although the term 'pay back' is regularly used in this report, it should not be assumed that the Court of Audit considers 'paying back' to be an assessment criterion for the use of public funds. The provision of additional public money to

combat crime can be a legitimate political objective, without it having to pay for itself through the confiscation of criminal assets. That is not our concern. However, it was this political ambition and the Minister of J&V's declared expectation that additional revenue would be 3 times as high as the budget increases that prompted us to audit the effectiveness of policy and its implementation.

Response of the Minister of Justice and Security

The Minister of J&V expressed her gratitude for our audit on the confiscation of the proceeds of crime in the Netherlands. Our conclusions are robust and provide food for thought for her and the parties in the system. She appreciates our recognition of the improvements that have been made and our understanding of the complexity of confiscation cases and the challenges regarding cooperation in a system. The draft report presents some valuable recommendations that can contribute to a further strengthening of the confiscation process. The clear and wide formulation allows solutions to be found that are realistic, make a true contribution and do justice to the independence of the parties in the system and the management relationship with the ministry. Nevertheless, the minister adds context and nuance in certain sections in order to place the conclusions and recommendations in a wider perspective. Two important points the minister names are the limited financial scope of the audit and the complex mechanisms available to her to steer the confiscation system.

Court of Audit's afterword

The Minister of J&V endorses our conclusions in her response and states that she will use our recommendations to further strengthen the confiscation system. The minister stresses that she has power only to steer the management of the confiscation system. We think the minister is underplaying her management powers. She can also set priorities for the National Police and give general and specific instructions regarding the OM's performance of its tasks and powers.

Confiscation of the proceeds of crime is an instrument of government policy to combat organised and subversive crime. Realistic and clear confiscation goals must be aligned with the prioritisation of tasks. The minister would then be able to request the necessary financial and human resources from parliament. This would create a learning practice with policy-rich accountability to explain the results of confiscation policy in the light of the instruments used.

2.

About this audit, Confiscation of the Proceeds of Crime

2.1 Background

Confiscation of the proceeds of crime has been high on the political agenda for several decades. This policy objective is fed by 2 sources: crime must not pay, and justice must be done. Successive governments and Ministers of Justice and Security (J&V) have invested in the recovery of more criminal assets.¹ Additional budgets have been released on several occasions to confiscate more proceeds of crime. The box below provides examples of the ambitions.

The ministers' ambitions: selected quotes

- 2011
'It is this government's ambition to confiscate as many illicit financial benefits as possible. Crime must not pay. The goals will be tightened up, extra capacity will be applied and law enforcement instruments will be strengthened wherever necessary' (Ministry of V&J, 2011).
- 2017
'The Minister of Finance and I are sympathetic to the idea that you can invest in confiscating criminal assets in light of the revenue expected' (Ministry of V&J, 2017).
'Confiscation of criminal assets is a government priority and the systemic confiscation programme is driving ambitious goals' (Ministry of V&J, 2018).

- 2021
'Criminal revenue models will be tackled more rigorously by intensifying efforts to stop illicit money flows' (Coalition Agreement, 2021).

In 2012 we investigated the assumption that the *Confiscation System programme* would generate additional revenue (Netherlands Court of Audit, 2013). We concluded that the minister's ambition that every euro invested in the programme would triple the revenue confiscated was not realistic. A year later we could find no link between additional budgets and additional revenue (Netherlands Court of Audit, 2014). We therefore could not determine whether the goal had been achieved. This present audit looks at the situation ten years later. We first describe the context in which the proceeds of crime are confiscated and present our audit question. Appendices 2 and 3 are particularly relevant in this respect. Appendix 2 includes further information on confiscation and explains the limits of our audit scope. Appendix 3 presents our audit methodology, with calculation principles and terms and definitions.

2.2 Context

2.2.1 Policy

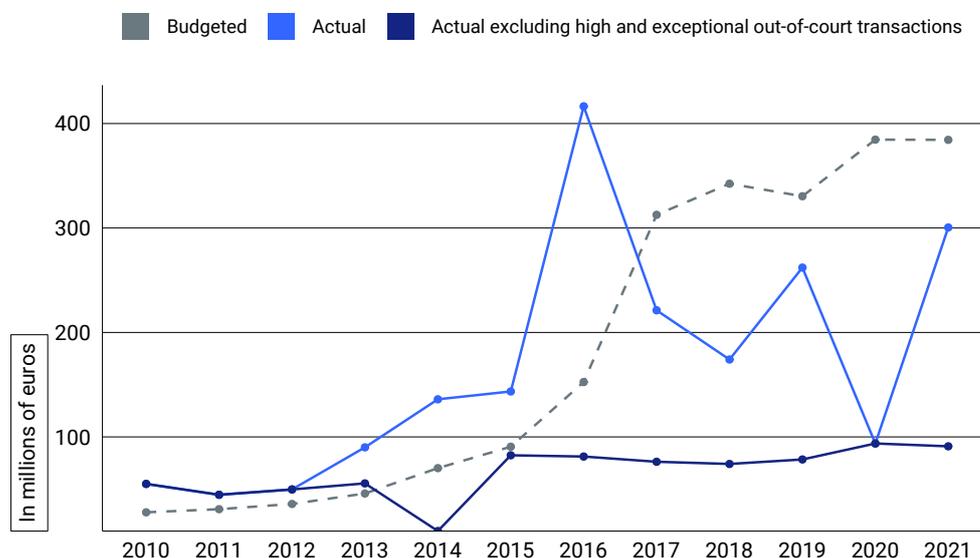
Billions and billions of euros are laundered in the Netherlands. One of the most recent studies on the scale of money laundering put the figure at € 16 billion in 2014 (Unger et al., 2018).² This is money that could be confiscated, but in 2010 only € 55 million was. At the same time, there has been a manifest and sharp increase in organised and subversive crime and high frequency criminality. Against this background, successive Ministers of Justice and Security (J&V) have introduced a raft of instruments to confiscate more proceeds of crime. We confine ourselves in this audit to criminal law instruments (see appendix 2 for an explanation). The ministers have widened the scope of laws and regulations, introduced new policy, released additional funding, set ambitious goals and encouraged closer cooperation among the parties in the system. In September 2020, the Ministry of J&V set up a Directorate-General on Subversive Crime to oversee the confiscation system.

2.2.2 Revenue

Article 33 of the Ministry of J&V's budget and annual report, *Security and crime prevention*, discloses the budgeted and actual revenue realised through confiscation (see figure 1). These amounts comprise revenue from out-of-court transactions, value confiscations, out-of-court settlements with a confiscation element and object confiscations (see appendix 2).

Figure 1. Budgeted and actual confiscation revenue, 2010-2021

Budgeted revenue not realised



Source: Ministry of J&V, Public Prosecution Service.

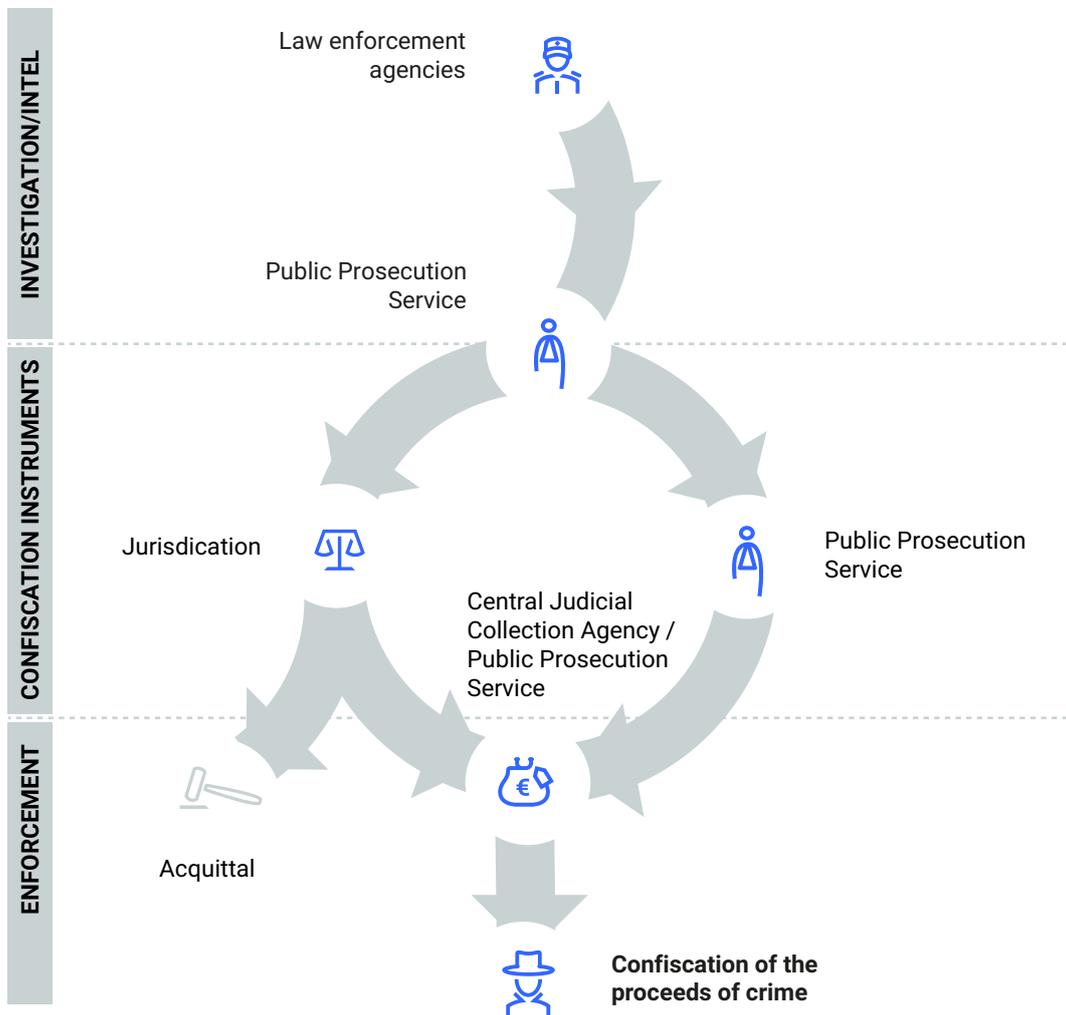
The figure shows a sharp increase in budgeted revenue. Budgeted revenue is the amount the Ministry of J&V and the Ministry of Finance thought would be confiscated. We had previously concluded that the assumptions underpinning the 2013-2016 forecast did not meet our quality criteria (Netherlands Court of Audit, 2017). Actual revenue consisted mainly of the non-recurring and exceptional out-of-court transactions recognised in the budgets and annual reports. There had been 8 such transactions in 2010-2021.³ Revenue from routine confiscation cases (i.e. excluding high and exceptional out-of-court transactions) has been relatively stable since 2015 and coincided with the release of additional budgets; for the purposes of this audit, the additional revenue relates to routine cases. This is explained further in section 3.2.

2.2.3 Confiscation system

The Minister of J&V is responsible for confiscation policy and its efficiency and effectiveness. The Public Prosecution Service (OM) is responsible for investigating and prosecuting suspects in possession of criminal assets and for the effectiveness of confiscation, which stands or falls on cooperation in the system.

Figure 2. The confiscation system

Implementing organisations in the confiscation system



Confiscation is the outcome of a system (see figure 2 and the example in the box below). Figure 2 provides a further breakdown of the figure in the foreword.⁴ Each party in the system works within its own legal framework.⁵

In principle, every confiscation case is based on a financial investigation conducted either as a preliminary investigation or as part of a criminal investigation. Financial investigations are conducted by a law enforcement agency such as the OM, National Police and/or the Fiscal Information and Investigation Service (FIOD). On the basis of the financial investigation and other information, the public prosecutor decides on the most effective instrument to recover the criminal assets. One or more instruments can be used in each case (see appendix 2). Depending on the preferred instrument, the case is taken to court or settled between the OM and the suspect. The OM ensures that the amount due is paid to the Central Judicial

Collection Agency (CJIB) or in some cases to the OM itself. Prejudgment seizure is an important instrument to make sure the money is actually collected. The suspect's assets are seized so that a subsequent payment obligation can be settled (see also appendix 2). Revenues are currently taken to general funds.⁶

Example of a simple confiscation case



In May 2015, a suspect began to grow and sell cannabis. To do so, he illegally tapped electricity from his home. When the first harvest did not meet his expectations he stopped growing cannabis but left his cannabis farm largely intact.



In July 2018, the police received a report on the illegal tapping of electricity. The police found both the electricity connection and the remains of the cannabis farm in the suspect's home.



On 8 August 2018, the suspect made a confession and the OM drew up a confiscation report. A standard formula was used to calculate how much the suspect had earned from his cannabis farm, about € 10,000. To ensure that the suspect could pay this amount, the OM seized his delivery van on 1 March 2019.



On 5 July 2019, a year after charges had been brought, the court passed judgment. The suspect was found guilty and ordered to pay the State the calculated amount of € 10,000. He did so by letting the State sell the delivery van it had seized.



The suspect elected to pay the € 10,000 to the State by buying back his van, as it were, from the police and paying interest on its value. On 5 October 2019, the entire amount ordered by the court was paid in full.

2.3 Audit question

On several occasions since 2010, the Minister of J&V has released additional funding to confiscate more proceeds of crime. Taking account of the nature of the additional funding, our key audit question was, did the additional budgets deliver the additional revenue foreseen by the minister? We audited 5 additional budgets released in 2010-2021:⁷

- Police Financial and Economic Investigation programme (Police FinEC programme), launched in 2008;
- Confiscation System programme, including Taskforce B5 Brabant, launched in 2011;
- Confiscation of Criminal Assets in the Southern Netherlands and Rotterdam, launched in 2016;
- Budget increases for the FIOD and OM to combat corruption and money laundering, launched in 2016;
- Incidental additional budget released by the second Rutte government for the period 2018-2022.

2.4 Structure of this report

The audit question is answered in chapter 3. The findings underlying the answer are presented in chapter 4.⁸ We present our conclusions and recommendations in chapter 5. Chapter 6 contains the Minister of J&V's response and our afterword.

3.

Results of additional budgets to confiscate the proceeds

This chapter answers the key audit question: did the 5 additional budgets to increase confiscation of the proceeds of crime realise the additional revenue foreseen by the minister? We first describe the budget increases and then answer our question from 3 points of view:

- whether the additional budgets paid for themselves;
- whether they realised the additional revenue foreseen by the minister;
- changes in revenue per confiscation case.

3.1 Our findings in brief

5 additional budgets were released in order to increase awareness of the importance to society of confiscating the proceeds of crime and strengthen confiscation capacity at the OM, National Police and FIOD. The resultant accumulation of additional budgets led to an accumulation of additional revenue expectations. An explanation of our audit scope and methodology, terms and definitions is presented in appendices 2 and 3.

Our audit found that the financial expectations were too high:

- the additional total funding of at least € 634.1 million released in the period 2010-2021 'paid for itself', as additional revenue was realised from routine cases in an amount of € 740.3 million;
- as from the second half of 2010-2021, the actual revenue realised by the additional budgets lagged further and further behind the minister's expectations; since 2019, the difference has exceeded € 100 million per annum;

- average annual revenue from routine confiscation cases has been about € 83 million since 2015; there are tentative signs that the amount is increasing;
- based on our audit and all other things being equal, we do not expect total revenue from confiscation cases to increase in the medium term.

3.2 Description of budget increases

According to the minister, the goals of the 5 budget increases we audited were to:

- improve awareness of the importance to society of confiscation at, for instance, the OM, National Police and FIOD;
- improve financial and economic investigations carried out by the parties in the confiscation system and strengthen their cooperation.

The minister has put combating subversive crime and money laundering at the heart of both these goals. The reasons for the 8 high and exceptional out-of-court transactions was different (see appendix 3). By failing to disclose suspected money laundering transactions to Financial Intelligence Unit – the Netherlands (FIU-NL), ING Bank N.V. and ABN AMRO Bank N.V. systematically contravened the Money Laundering and Terrorist Financing (Prevention) Act. Our audit on combating money laundering (Netherlands Court of Audit, 2022a) considers how public bodies investigate and where necessary prosecute disclosures of unusual transactions. This audit on the confiscation of the proceeds of crime considers the additional revenue realised from routine confiscation cases in relation to the budget increases, i.e. excluding revenue from high and exceptional out-of-court transactions. We do not consider such transactions to be revenue from the confiscation of the proceeds of crime.

Successive Ministers of J&V applied the additional funds from the 5 budget increases in the budget and accountability cycle. The budget increases and additional revenue estimates were approved by parliament. We found that the budget increases totalled at least € 634.1 million during the entire period audited (see box below). In the course of the years, 4 of the 5 budget increases became permanent; following the initial startup phases, an additional budget of € 66.6 million was made available each year.

The minister expected 3 of the 5 budget increases to generate additional revenue. Parliament was informed of this in general terms. The minister made the parties in the system responsible for realising the additional revenue. According to internal documents, additional revenue was expected in a ratio of at least 1:3: every € 1 in

additional funding would lead to the confiscation of an additional € 3 or € 4. The assumptions underlying this revenue ratio are considered in section 4.4.

Financial description of the 5 budget increases			
<i>Budget increase</i>	<i>Budget per annum, after startup phase</i>	<i>Total additional budget 2010-2021</i>	<i>Revenue ratio</i>
1 Police FinEC programme, since 2008	Permanent € 23.6 million	€ 279.8 million	none
2 Confiscation System programme, including Taskforce B5 Brabant, since 2011	Permanent € 20 million One-off € 2 million	€ 207 million	1:3
3 Confiscation of Criminal Assets, Southern Netherlands and Rotterdam, since 2016	Permanent € 3 million	€ 18 million	1:3
4 Budget increase for FIOD and OM to combat corruption and money laundering, since 2016	Permanent € 20 million	€ 99.3 million	1:4
5 Incidental additional budget released by the second Rutte government, 2018-2022	One-off total € 30 million	€ 30 million	none
Total	Permanent € 66.6 million	€ 634.1 million	

Source: Ministry of J&V, OM and FIOD.

Prejudgement seizure is an important instrument to ensure that criminal assets can actually be collected (see section 2.2.3). The ministry applies a ratio of 1:2.3 between the amount to be confiscated and the amount of the prejudgment seizure: confiscation of € 100 million requires a prejudgment seizure of € 230 million.

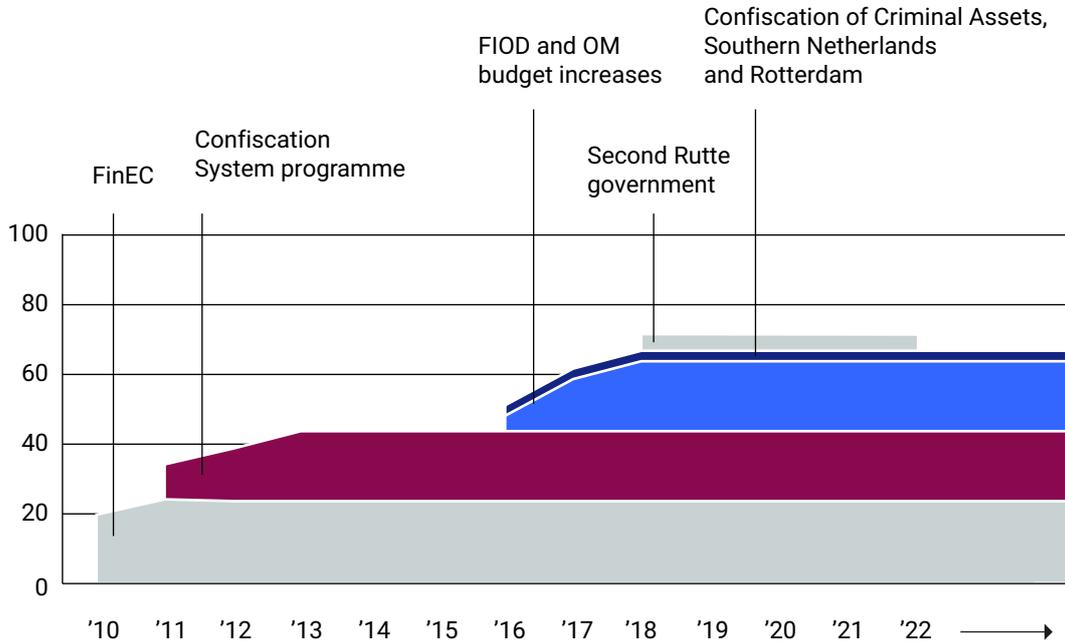
3.3 Accumulation of budget increases and additional revenue

In the period 2010-2021, the Ministry of J&V released several additional permanent budgets in order to confiscate more proceeds of crime. This also resulted in an accumulation of additional revenue expectations.

Figure 3. Additional funding of 5 budget increases as from 2010

Accumulation of budget increases

Budget increases in millions of euros

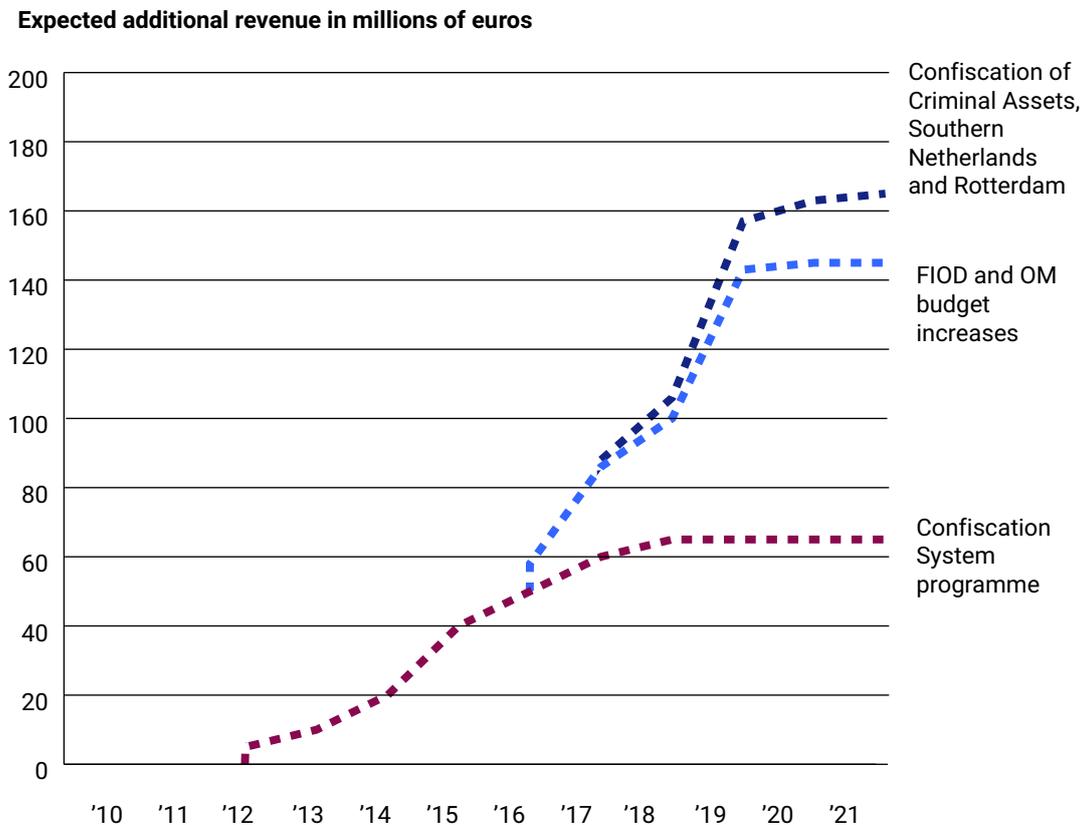


Source: Ministry of J&V.

Additional funding was released in 2010-2021 and added to the available budgets each year. The accumulation of the 5 budget increases is shown in figure 3. In step with the accumulation of budget increases, the additional revenue foreseen by the Minister of J&V also increased over the years from € 5 million in 2012 to at least € 165 million in 2021 (see figure 4). All additional revenue from 3 of the 5 budget increases was expected to be realised by 2021.

Figure 4. Additional revenue expected from 3 budget increases as from 2010

Accumulation of additional revenue expected from 3 budget increases



Source: Ministry of J&V, OM and FIOD.

We first note that the expected additional revenue influences the revenue budgeted by the ministry. In 2021, the expected additional revenue amounted to at least € 165 million. An additional budget was released of € 66.6 million per annum, which, on the basis of the 1:3 revenue ratio, should have generated additional revenue of nearly € 200 million per annum. There is thus a revenue gap of at least € 35 million per annum.

Secondly, the minister overestimated the additional revenue expected as it was assumed the money would be confiscated quickly. The budget increases for the FIOD and OM were expected to start realising additional revenue within a year. The additional annual revenue to be ultimately realised by 2 of the 3 budget increases was higher than the additional revenue expected on the basis of the revenue ratio. The € 3 million budget increase for the Southern Netherlands and Rotterdam was expected to generate € 20 million in additional revenue, but if the 1:3 revenue ratio is applied, just € 9 million in criminal assets would be confiscated.

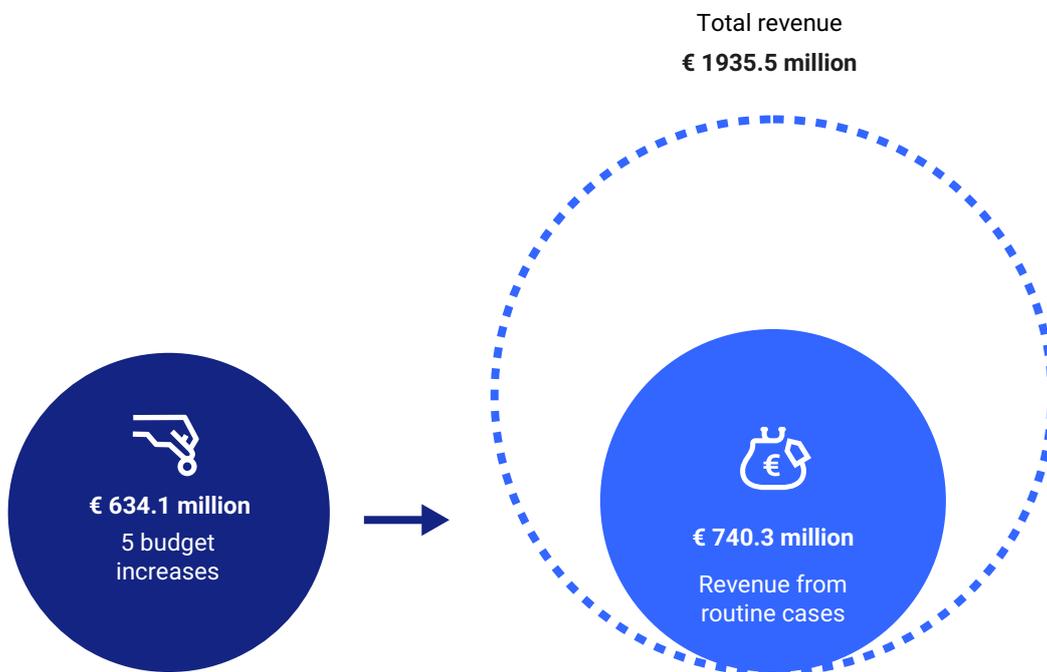
The additional revenue from the budget increases should be reflected in the amount of prejudgment seizures. The additional revenue of € 165 million expected in 2021 would require prejudgment seizures of € 379.5 million. The law enforcement agencies and the OM, however, did not apply the Ministry of J&V's 1:2.3 seizure rate.

3.4 Additional budget 'paid for itself'

In 2010-2021 additional budgets totalling at least € 634.1 million were released in order to confiscate more proceeds of crime. The criterion we applied was that the additional budgets should at least pay for itself. Figure 5 shows that it did so, as an additional € 740.3 million was confiscated from routine cases. In total, the revenue confiscated in routine cases over the period as a whole was € 106.2 million higher than the budget increases. Figure 5 also shows that the Ministry of J&V recovered more than € 1.9 billion in criminal assets in total, but most of that amount was due to 8 high and exceptional out-of-court transactions.

Figure 5. Additional budget in comparison with confiscation revenue, 2010-2021

Additional budget paid for itself through routine confiscation cases



Source: Ministry of J&V.

One of the budget increase specifically targeted the Southern Netherlands and Rotterdam. We could not conclude from our audit whether more criminal assets were confiscated in these 2 regions than in others. The minister has not kept records and this lack of information prevents us from investigating the matter further.

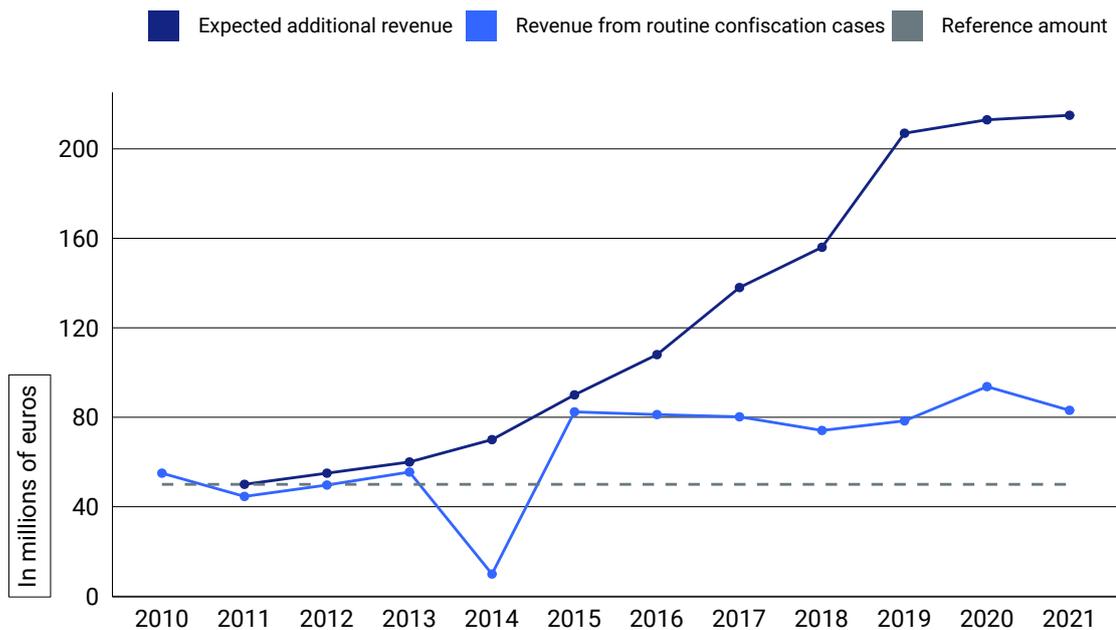
3.5 Expected additional revenue not realised

To determine whether the expected additional revenue was realised, we focused on the agreements the Minister of J&V made with the parties in the system for 3 of the 5 budget increases (see sections 3.2 and 3.3).

We found a clear discrepancy as from 2015 between the expected additional revenue (dark blue line in figure 6) and the actual additional revenue (light blue line in figure 6). Actual revenue from routine confiscation cases remained relatively stable as from 2015 but the expected additional revenue increased year on year. The gap between expected and actual revenue widens from year to year, rising to more than € 100 million per annum after 2019 and reaching € 124 million in 2021.

Figure 6. Annual additional revenue from routine confiscation cases due to 3 budget increases, 2010-2021

Expected additional revenue due to 3 budget increases not realised



Source: Ministry of J&V, OM.

We calculated the additional revenue by taking the average revenue from routine confiscation cases at the beginning of the audit period (2010-2012) as a reference. The additional revenue is therefore in addition to the € 50 million normally confiscated in routine cases (dotted line in figure 6). See appendix 3 for further information.

3.6 No change in confiscation prospects

In the medium term, higher revenue can be realised from:

- more new confiscation cases with shorter case times as a result of greater awareness among the parties in the system;
- more effective confiscation in new cases by means of more prejudgment seizures and/or financial investigations as a result of greater awareness and better financial detection work;
- higher revenue per confiscation case as a result of better financial detection work.

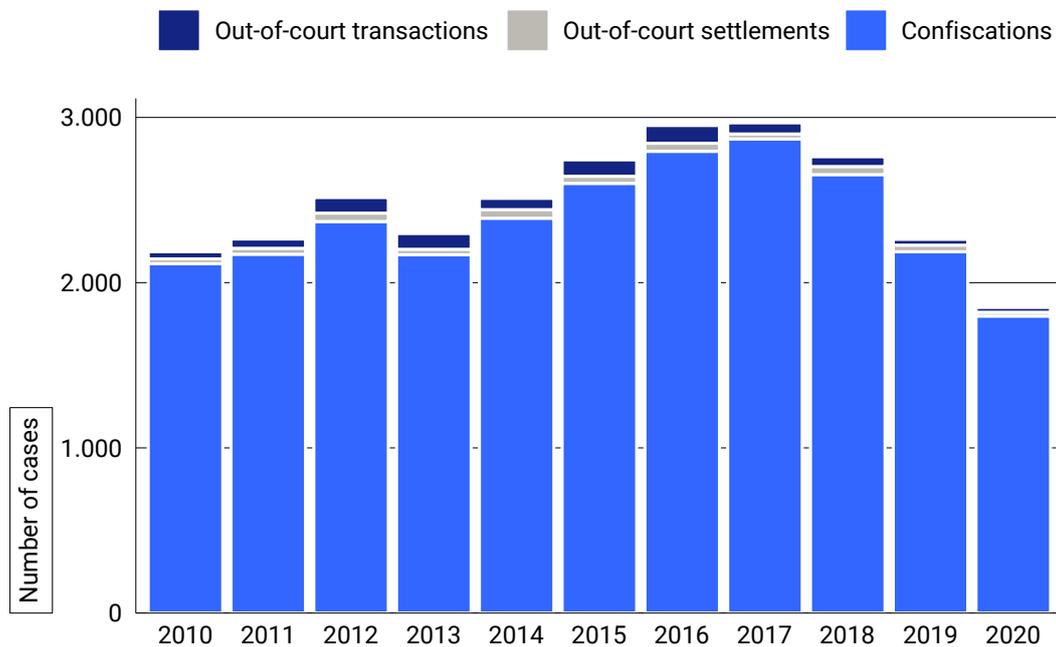
We expect little increase in total revenue from routine confiscation cases in the medium term unless there are changes in policy, implementation and context. The positive trend in the number of new confiscation cases and shorter case times of simple confiscation cases seen until 2017 has reversed into a negative trend. Seizures and revenue per confiscation case are expected to remain relatively stable with at best only a very limited increase over time. We explain these points below.

3.6.1 New inflow of cases

The inflow of new confiscation cases is shown in figure 7. The number of new cases increased from about 2,100 in 2010 to 3,000 in 2017 before falling to 1,800 in 2020, 300 fewer cases than in 2010.

Figure 7. Number of new recovery cases initiated in 2010-2020

Number of new recovery cases has declined since 2017



This trend can also be seen in the time required to complete simple confiscation cases. The time required for cases lasting less than 5 years declined slightly until 2017 and then rose sharply. It should be noted, though, that 2020 was the first year of the COVID-19 pandemic and the courts were closed for several weeks. This influenced the number of criminal cases that could be handled and the number of confiscation cases that could be initiated and completed.

3.6.2 Two indicators of effective confiscation

The *Confiscation Instructions* (Government Gazette, 2016) state that prejudgment seizures and financial investigations are mainstays for effective confiscation of the proceeds of crime. We studied their use for each recovery instrument and found that only in 26% of new confiscation cases prejudgment seizures were made. The percentage was higher for out-of-court settlements and out-of-court transactions: 55% and 34% respectively. A trend seems to be emerging of more prejudgement seizures being made in new confiscation cases. The Ministry of J&V and the OM do not have information on the conduct of financial investigations.

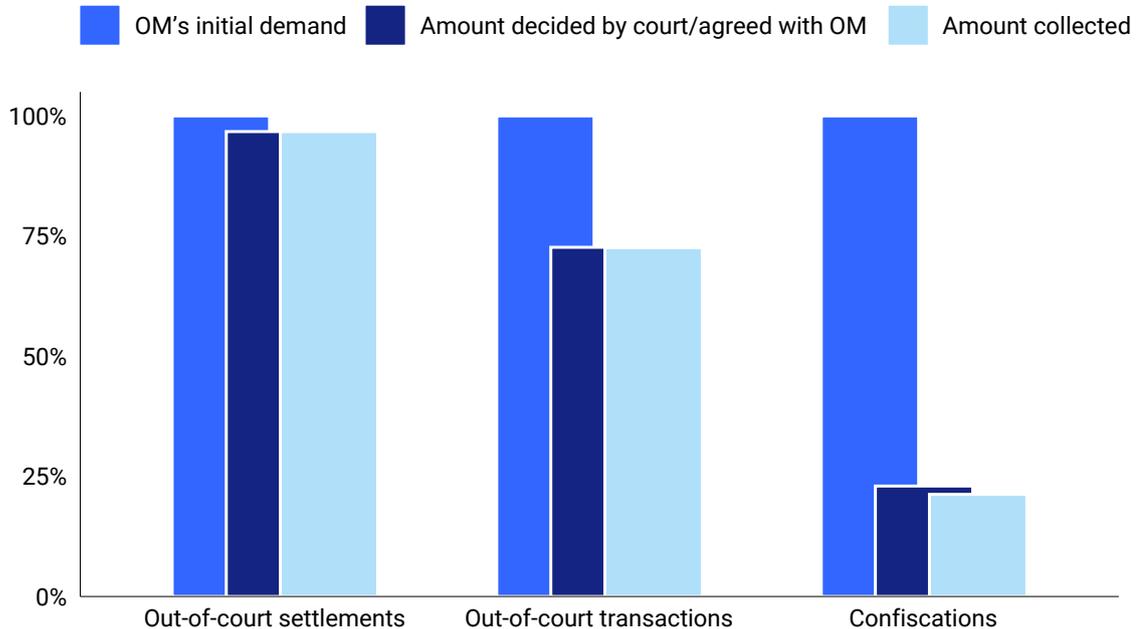
3.6.3 Collection rate

The actual amount of criminal assets confiscated per case in 2010-2021 is presented with the aid of a collection rate. This is the amount collected by the CJIB and/or OM as a percentage of the amount initially demanded by the OM. Differences between the two amounts are due to the courts forming their own opinion on each case and independently deciding on the amount to be confiscated.

We found that the collection rate remained stable for the 3 recovery instruments. There are clear differences, however, among the instruments (see figure 8). In the case of confiscations – the instrument most frequently used – only 21% of the amount initially demanded by the OM was actually collected by the CJIB and/or OM. The rate is significantly higher for out-of-court settlements and out-of-court transactions: 97% of the amount agreed in out-of-court settlements was collected and 73% of the amount agreed in out-of-court transactions was collected.

Figure 8. Collections rate for completed out-of-court settlements, out-of-court transactions and confiscations, 2010-2020

Collection rate differs per recovery instrument



The main reason the amount initially demanded by the OM differs from the amount the suspect is required to pay (decided by the court or agreed with the OM) is that the suspect is acquitted of one or more offences and the amount demanded in respect of those offences is annulled. As a result, 77% of the amount initially demanded by the OM in confiscation cases is never collected. Partial acquittals are

due chiefly to the quality of the evidence presented (see box below). We did not investigate why there was such a difference between the OM's initial demand, the amount agreed and the collection rate in out-of-court settlements and out-of-court transactions.

Possible causes of less revenue being confiscated (collected) than demanded by the OM

Significantly less money is often confiscated and collected than the OM initially demands. Internal documents we studied and interviews we held for this audit revealed several possible causes of this:

- poor quality of financial investigations producing weak evidence and annulment of the amount demanded;
- the court accepts the suspect's pleas regarding his/her financial situation;
- the OM and/or court exceeds a reasonable case time, which can result in the reduction of a payment obligation;
- inadequate knowledge of confiscation law among staff in the system;
- complications that hinder collection if there has been no prejudgement seizure.

4. Explanation of confiscation results

We noted in chapter 3 that the minister had had only limited success realising the additional revenue expected from the 5 budget increases. In this chapter, the reasons for the limited success are described. We identified several factors based on our document analyses and interviews.

4.1 Our findings in brief

The confiscation system can only work if all the links function optimally. The quality and pace of the entire confiscation system are determined by the least robust element, the weakest link. We identified 4 factors that can influence the system's performance:

- confiscation cases are protracted and complicated; the results of a budget increase can take a long time to emerge;
- information on the results of confiscation cases and budget increases is limited, difficult to access, inconsistent and thus difficult to share with the parties in the system. This muddies the Minister of J&V's insight into the expected results and thus weakens parliamentary control;
- policy on the budget increases is poorly developed with regard to both the underlying reasons for the financial goals and the monitoring and evaluation of the results achieved;
- the Minister of J&V does not manage the confiscation system consistently and the parties concerned do not work together from a system perspective. The budget increases seem to have resulted chiefly in improvements at individual parties, as evidenced by the short-term results.

4.2 Recovery cases are protracted and complicated

The proceeds of crime can be recovered by means of several instruments, each having its own specific procedure (see appendix 2). The various procedures are time consuming. Even simple cases can take between 2 and 5 years (see example in section 2.2.3); more complex cases can take far longer (see box below). Our data analysis found that 60% of the recovery cases initiated in 2010 and 2011 (in total more than 4,100) had been completed by 2021 and 40% were still 'on the treadmill' at the OM, the courts or the CJIB. These lengthy case times mean the results of the budget increases will not be seen for many years. The ministry's calculation of the additional revenue expected each year did not take sufficient account of this. Confiscation cases are complicated because suspects do all they can to conceal themselves and their assets and it is often difficult to link a suspect to an offence. Financial arrangements are becoming more complex and opaque. A case can take even longer if it has an international dimension, especially with a country that does not have a treaty with the Netherlands.

Example of a complex recovery case



In 1994, a suspect committed investment fraud in Germany. He used some of the proceeds to buy a house and laundered criminal assets worth approximately € 30 million. He granted mortgage loans and placed money with foreign banks.



In 2014, an unusual transaction was disclosed to Financial Intelligence Unit – the Netherlands (FIU-NL). At first sight, there was no connection between the mortgages and the foreign cash flows and they could not be linked to each other. On 17 April 2014, FIU-NL launched an investigation. It quickly found that the suspect had set up complex financial arrangements using several foreign legal persons. The Netherlands accordingly had to make several international requests for legal assistance and travel to the countries concerned to gather information. The foreign dimension also made it more difficult to seize cash and property purchased using the proceeds of crime.

The financial investigators soon concluded that the investment fraud was difficult to prove. The OM, however, could prove that the money used to buy property was obtained from criminal offences and accordingly decided to prosecute the suspect for money laundering and issued object confiscation orders. Seizure with a view to confiscation was not an option because a number of properties abroad could not be seized.



In January 2018, a criminal case was taken to court. In March 2021, the court passed judgment. It partially agreed to the OM's demand. Both the OM and the suspect appealed against the judgment. At the time of writing it was not known when the appeal would be heard.

4.3 Insufficient information on confiscation cases

The Minister of J&V needs clear and consistent information on confiscation cases for both policy development and policy implementation. Without such information, the parties in the system cannot work together effectively and the minister cannot inform parliament whether the goals are being achieved.

We found that the limited information available to the Minister of J&V and OM was often incomplete, inaccessible and difficult to share. Some documents are kept digitally across a series of IT systems and others are kept on paper but are not filed systematically or orderly. In view of the latter, confiscation records do not comply with 2 requirements of the Public Records Act 1995: records must be properly arranged and accessible. We consider the information available to the minister and OM below.

The information available to the *Minister of J&V* is mainly financial in nature and meets the minimum requirements of the Government Accounts Act 2016. The financial statements of the ministry, OM and CJIB, however, are not always consistent with each other. Information on policy development, from reasons to evaluation, is limited (see section 4.4). Information on policy implementation and the impact of the budget increases often relates to individual aspects and/or specific parties and does not present a full picture of a system based on shared principles. As a result, the minister has little insight into the results and the information parliament receives about them is limited and fragmented. This impedes both policy implementation and parliamentary control.

The *OM* does not have information on the use of the budget increases. The additional budgets are recognised in the regular material and personnel budgets and are subsumed in the general budget. The *OM*'s information on confiscation cases is kept in several IT systems and digital files. It is therefore difficult to retrieve and share with other parties.

Unlike the ministry, the *OM* prepares monthly management reports on confiscation cases. This information, however, has only limited practical value for internal steering and coordination of the parties in the system because the indicators, such as the seizure indicator, are neither specific nor consistent and there is no indicator of whether or not financial investigations have been carried out. This is noteworthy because financial investigations are vital to understand the scale and composition of criminal assets.

4.4 Budget increase poorly substantiated and evaluated

To determine whether the budget increases achieve the intended results, the Minister of J&V must ensure that they are properly substantiated, monitored and evaluated. Implementation, policy and ambitions can then be revised as and when necessary. We found, however, that policy substantiation, monitoring and evaluation were inadequate.

In 2012, the J&V Inspectorate concluded that the impact of the *Police FinEC programme* was uncertain because the National Police did not have standard definitions of certain confiscation terms (J&V Inspectorate, 2012). The same problem was later pointed out by an interministerial working group (Ministry of J&V, 2016) and the Research and Documentation Centre (Research and Documentation Centre, 2018). Following the budget increase for the Southern Netherlands and Rotterdam, the minister gave parliament an undertaking to improve insight into impact and results. The box below provides examples of goals that are poorly formulated.

Poorly formulated goals

- Police FinEC programme:
 - approach each case from a financial and economic perspective;
 - integrate recovery into all police work processes.

These goals are not specific: what is a financial and economic perspective?

What requirements must work processes meet?

- Incidental additional budget released by the second Rutte government:
 - strengthen policy on the confiscation of criminal assets;
 - improve records of revenue from confiscation cases.

These goals are very general. It is not clear which aspects of the confiscation system and/or which party in the system needs to be strengthened. There are no targets: when are records properly arranged and accessible?

Ten years after the J&V Inspectorate presented its findings, we found that a business case for the confiscation of criminal assets had still not been drawn up, nor can it be. This was due to the following factors:

- the lack of standard terms and definitions with uniform records of results for and by all parties in the system. We referred to this problem as long ago as 2008 (Netherlands Court of Audit, 2008, p. 22/pp. 76-77);
- poor substantiation of the financial goals and expected additional revenue. The Minister of J&V did not use an integrated assessment framework or expenditure plans to prepare the 5 budget increases. The minister overestimated the additional revenue and did not base budgeted revenue estimates on a tried and tested estimating system;
- a monitor with relevant information on the financial and other goals and final and interim results was not prepared or introduced; the Ministry of J&V's Directorate-General on Subversive Crime (DGO) did not take the initiative to prepare a monitor until the end of 2021.

We expect ministers to monitor policy implementation and periodically assess whether it should be revised and whether lessons are being learned. The revenue ratios and the relationship between total revenue and the value of assets seized have not been assessed. Furthermore, the minister and OM have carried out just 3 policy evaluations of 2 budget increases.⁹ These evaluations were very limited in scope; they considered a specific aspect and a specific party and were mainly qualitative in nature. Furthermore, the minister does not know how the budget increases were applied or what results were achieved.

4.5 Poor performance of the confiscation system

The budget increases seem to have led to improvements mainly at individual parties in the system, as evidenced by the short-term results. For the longer term, however, there are structural weaknesses in the system due to the Minister of J&V's inconsistent management and the parties' failure to work from a system perspective.

4.5.1 Short-terms results

The 2010-2021 budget increases were intended to improve awareness among the parties in the system of the importance to society of confiscating criminal assets and to strengthen the parties' financial investigations and cooperation (see box below for examples).

Improved work process at parties in the confiscation system

- National Police:
 - appointment of a unit coordinator at strategic level to increase awareness and improve preparedness;
 - establishment of 'Table of 11' with representatives of all police units to embed financial investigation and confiscation in regular police investigations.

- FIOD:
 - introduction of confiscation specialisations within regular and specialised teams;
 - establishment of 'Special Business Team' to carry out major complex investigations for the confiscation of financial assets, in cooperation with other law enforcement agencies.

- Public Prosecution Service:
 - establishment of a national team with confiscation specialists at the National Office for Serious Fraud, Environmental Crime and Asset Confiscation;
 - appointment of a confiscation specialist at every district court office;
 - introduction of preliminary assessments to assess the appropriateness and proportionality of investigation capacity.

- CJIB:
 - streamlining of internal processes by separating standard and bespoke cases;
 - introduction of accompanying forms to improve the quality of information shared with the OM.

The budget increases certainly had a positive short-term impact. Awareness of the importance of confiscation was increased at, for instance, the OM and National Police. The OM is continuing to raise awareness by providing accessible information and advice on confiscation cases both internally and to the other parties in the system. Several law enforcement agencies have also strengthened their financial investigations. However, it is uncertain whether they are now strong enough or whether the quantity or quality of financial investigations is adequate. We noted in section 3.6.3 that the quality of financial investigations might be inadequate to produce persuasive evidence of criminal assets. Finally, individual parties in the confiscation system have made organisational and/or procedural changes, often in consultation with an adjacent party in the system. Partly on the ministry's initiative, a number of consultative bodies have been set up at both management and civil servant level and at both strategic and operational level.

4.5.2 Poor performance impedes long-term results

Despite the above initiatives and improvements, we have to conclude that there are more-structural weaknesses in the confiscation system. Management is inconsistent and the parties concerned do not work from a system perspective. We suggest there are 4 reasons for this.

Firstly, the Minister of J&V has inadequate insight into and oversight of the system as a whole. In our audits of the Minister of J&V's financial management in 2018-2021, we referred to the financial management of the confiscation system as a shortcoming (Netherlands Court of Audit, 2022b, p. 18).¹⁰ There were problems in the management of seized illicit money and goods. The process was complex and time consuming because many parties were involved and cases could take several years to complete. Further improvements were made in 2021, however, and the benefits should emerge in the years ahead. It is also striking that no party in the system has given any thought to the common support functions necessary for the efficiency of the confiscation system. This is partly because the minister has not taken the initiative to adopt an integrated approach to the system. We found, however, that the ministry had taken initiatives in 2021 to bring the parties in the system together in order to discuss these matters.

Secondly, the Minister of J&V has to apply different management approaches for each party in the system. The National Police, FIOD and judiciary, for instance, are subject to different laws and regulations and the minister's powers and responsibilities in respect of these parties are accordingly different. With regard to the OM, which is responsible for the efficiency of the parties in the system, the minister focuses on the policy framework in place for its performance. The minister follows the OM's performance passively through the ministerial planning and control cycle. There is therefore a risk that the minister is unable to ensure achievement of the confiscation policy goals in a timely manner and is not fully aware of the OM's performance.

Thirdly, there are diverse financial goals that the system does not pursue consistently and for which the minister has different responsibilities (see box below). As a result, it is uncertain what the principal objective is, how the minister can and intends to achieve it and which party is responsible for which goal. This makes it difficult to translate objectives into individual goals for each party or to pursue the goals with the highest priority.

Two concurrent but inconsistent goals

Estimated revenue from the confiscation of criminal assets is included in the Ministry of J&V's budget. The 2018 budget recognised revenue in an amount of € 342.4 million. The Minister of J&V, the president of the Board of Procurators General and the regional mayors reached agreement on the priorities for the National Police as part of the Security Agenda. Confiscation had been a priority in 2015-2018 and a goal had been set for the expected revenue. The goal for 2018 had been revenue of € 115.6 million. The same amount was also the goal for the OM.

In millions of euros	2015	2016	2017	2018	2019	2020	2021
<i>Ministry of J&V's budget</i>							
Revenue	90.6	152.5	312.6	342.4	330.4	384.6	384.4
<i>Security Agenda</i>							
Revenue	90.6	100.6	110.6	115.6	-	-	-

Source: Ministry of J&V, OM.

However, the expected revenue in the ministry's budget was far higher than the internal goals which were issued by the Om and in the in the Security Agenda. In 2018 the difference amounted to € 226.8 million. It is uncertain how these two differing amounts were arrived at and whether and by whom the difference of € 226.8 million will be collected.

Fourthly, we found that the minister could not prevent the parties in the system using the extra money from the budget increases in their own interests rather than for the common benefit of the confiscation system as a whole. The additional budgets were applied chiefly to adapt and improve the parties' own processes, based on their own management philosophies and working methods. Some measures were taken to coordinate the parties' activities and strengthen cooperation but they were taken chiefly by adjacent parties in the system. In consequence, the results were mainly short term in nature, as evidenced by the positive trend we saw to the end of 2017 (see section 3.6).

5. Conclusions and recommendations

5.1 Main conclusion

Under the motto 'crime must not pay', successive Ministers of Justice have entertained political ambitions to confiscate more proceeds of crime. Since 2010, at least € 634.1 million has been invested in these ambitions. This additional funding has in any event 'paid for itself' but the additional revenue foreseen by the ministers has not been realised in full. This is disappointing because in the same period the ministers widened the scope of laws and regulations and simplified policy to make it easier to confiscate the proceeds of crime. The Ministers of J&V have sown many seeds but reaped a meagre harvest. The ambitions are still high but it cannot be said whether they are realistic or whether the structural performance of the confiscation system can be strengthened for the common good.

5.2 Secondary conclusions

Our main conclusion is based on the following 4 secondary conclusions.

5.2.1 Limited achievement of financial goals

The financial goals of the 5 budget increases were achieved to only a limited extent. The political ambitions were high but their achievement fell short of expectations.

The 5 budget increases we audited led to an accumulation of permanent budgets and an accumulation of additional revenue expectations. Our audit found that the Minister of J&V's expectations were higher than the actual financial results.

- The additional budget of at least € 634.1 million ‘paid for itself’ through the confiscation of € 740.3 million from routine cases.
- In the second half of 2010-2021, actual revenue increasingly fell short of expectations; since 2019 the difference has exceeded € 100 million per annum.
- Since 2015 annual average revenue from routine confiscation cases has amounted to about € 83 million; there are tentative signs that the amount is increasing.
- We expect little increase in total revenue from routine confiscation cases in the medium term if circumstances remain unchanged; the positive trend in the number of new confiscation cases and shorter case times for simpler confiscation cases seen after 2017 has reversed into a negative trend. Seizures and revenue per case have remained relatively stable or slightly higher in the past decade.

For an explanation of our calculation principles, see appendix 3.

5.2.2 Budget increases have no audit trail

Our audit could not determine how the additional budget of at least € 634.1 million had been spent, and thus how efficiently and effectively it had been applied. The reasons for this are financial and are due to the relationship between the budget increases and results in combination with a lack of information.

It is uncertain whether the additional budget of at least € 634.1 million was spent efficiently and effectively. The additional budget ‘paid for itself’ but the additional revenue did not come up to expectations. We come to this conclusion by comparing the expected additional revenue with actual revenue from routine confiscation cases. The positive trend seen until 2017 – more new confiscation cases and shorter case times – might have been the result of the initial budget increases. Unfortunately, the trend did not continue after 2017 but reversed, despite the 3 subsequent budget increases. This seems to be confirmed by the revenue from routine confiscation cases, which has fluctuated at around € 83 million per annum since 2015, although there seem to be signs of a very tentative increase in annual revenue since 2015.

We cannot say for certain whether the additional budget was spent efficiently and effectively because it cannot be determined whether the results were a direct outcome of one or more budget increases. Several budget increases were made simultaneously and were accompanied by a widening of relevant laws, regulations and policy. Furthermore, neither the Ministry of J&V nor the OM has monitoring or evaluation information that would enable us to make our own calculations.

5.2.3 Poor information management at ministry and OM

Information management at the Ministry of J&V and the OM is currently not in order. No information is available for policy development; the information that is available is inconsistent and fragmented. There is therefore no comprehensive overview of the results of the confiscation of criminal assets and, in particular, of the budget increases. This frustrates parliamentary debate and control of the confiscation system.

Information and the management information derived from it are necessary to develop policy and steer its implementation. We conclude that where such information is available at the ministry and the OM, it is inconsistent and difficult to access. This is in breach of the Public Records Act 1995, which requires information to be properly arranged and accessible.

Each party in the system has information of relevance to it. The information covers a specific domain, is recorded in the party's own databases, using its own definitions and measuring methods, and kept on its own IT system. There is therefore no overall insight into the results of confiscation policy in general or of the budget increases in particular. This frustrates performance of the system as a whole. The Minister of J&V took measures to introduce monitoring at the end of 2021. It is remarkable that little or no management information is available on 2 aspects of vital importance to the successful confiscation of criminal assets: whether a prejudgment seizure is imposed in a new confiscation case and whether a financial investigation is carried out.

The current state of information management also fragments the minister's accountability to parliament. This impedes parliamentary debate and control of the budget increases.

5.2.4 Financial results affected by poor performance of the confiscation system

The confiscation system stands or falls on the optimal performance of all the parties in it. We found that the budget increases had no audit trail and there were few signs of a system perspective. As a result, the minister's ambitions remained high and the financial goals were not brought into line with actual results.

For the successful confiscation of criminal assets, policy and implementation must be aligned with each other. The strength of a system is determined by the performance of all the parties concerned: the weakest link sets the pace for the

entire system. The minister's ambitions remained high and the financial goals were not brought into line with practice on account of the following factors:

- the budget increases could not be traced;
- there were few indications that the parties concerned took a systemic approach to confiscation.

To arrive at the required policy results, policy must be continuously monitored and evaluated so that it and the underlying principles can be aligned with implementation and the policy cycle can be reiterated. Monitoring and evaluation of the budget increases are inadequate. The rules on the provision of additional budgets were not followed, the financial goals were poorly substantiated and were not subsequently assessed, the protracted nature of confiscation cases was underestimated in multiyear projections, there was no monitoring or system-wide evaluation. The minister and OM, moreover, do not know how the additional budgets were spent. The minister's ambitions accordingly remained high and financial goals were not revised.

The Minister of J&V is responsible for confiscation policy and the OM for the effectiveness of the confiscation system. We found that the two parties restricted themselves to these responsibilities during the period audited. The necessary alignment between policy and implementation was therefore inadequate. Furthermore, steering of the confiscation system was inconsistent. The budget increases led mainly to improvements at individual parties in the system.

We found that no party, not even the ministry, had taken steps to identify and resolve structural problems in the system. The minister formulated new laws and widened the policy scope without taking account of stockpiling elsewhere in the system. Confiscation of criminal assets therefore stagnated. To date, a standardised conceptual framework and database have not been implemented and there is no integrated confiscation monitor. It has also not been determined what common, system-wide support is needed for the overall confiscation process. We did find indications, however, that the minister will have DGO address these points.

5.3 Recommendations to the Minister of J&V

Successive Ministers of J&V have held high ambitions for the confiscation of criminal assets. The recently installed fourth Rutte government has reiterated them in its coalition agreement. Our audit found that reality can be difficult to master. The ambitions should accordingly be more modest. We therefore recommend that the

Minister of J&V first put solid foundations in place for the confiscation system and that the government then build its ambitions on them.

5.3.1 Consult the Board of Procurators General

We recommend that the Minister of J&V consult the Board of Procurators General to discuss structural improvements that will lead to realistic financial results. Discuss how policy and implementation can be aligned and agree realistic financial goals on that basis. Other parties should also be involved in the consultation. The following 2 points should in any event be considered.

5.3.2 Designate a party to take overall responsibility and strengthen the confiscation system in the longer term

Take the initiative to align effective policy and implementation, taking account of ministerial responsibility and the rule of law. Ensure that decisions are taken and that the Minister of J&V always has sufficient information to improve implementation or revise policy where necessary, and that sufficient information is always available to inform parliament fully. This is currently not the case.

Structural problems in the confiscation system's performance must be addressed in order to strengthen the system in the longer term. Study how support functions – e.g. personnel, IT and administrative functions – at the parties concerned can be designed and facilitated. Take the initiative to determine what should be done to strengthen the entire confiscation system in the longer term so that the foundations are solid. Only then can the government achieve its high ambitions.

5.3.3 Put information management at the ministry and OM in order

Put information management at the Ministry of J&V and the OM in order so that the available information is consistent and can be shared. The information should be properly arranged and accessible, as required under the Public Records Act 1995. The Minister of J&V and the parties in the system would then have up-to-date information that provides comprehensive insight into the status of the confiscation system, what is expected of it and what it delivers.

This information should be aligned with the goals of confiscation policy and the available budgets. Formulate a single financial objective regarding the amount to be collected through confiscation of the proceeds of crime. Work the objective out into consistent goals for each party and monitor their realisation across the system as a whole.

5.4 In sum

This audit considers the additional budgets released under the policy to confiscate the proceeds of crime and the additional revenue its implementation was expected to realise. Although the term 'pay back' is regularly used in this report, it should not be assumed that the Court of Audit considers 'paying back' to be an assessment criterion for the use of public funds. The provision of additional public money to combat crime can be a legitimate political objective, without its having to pay for itself through the confiscation of criminal assets. That is not our concern. However, it was this political ambition and the Minister of J&V's declared expectation that additional revenue would be 3 times as high as the budget increases that prompted us to audit the effectiveness of policy and its implementation.

6. Response of the Minister of J&V and the Court of Audit's afterword

6.1 Response of the Minister of J&V

The Minister of Justice and Security (J&V) responded to our draft report on 13 May 2022. We have summarised her response below and published the full response (in Dutch) on our website at www.rekenkamer.nl. We close this chapter with our afterword.

General

The Minister of J&V expresses her gratitude for our audit on the confiscation of the proceeds of crime in the Netherlands. Our conclusions are robust and provide food for thought for her and the parties in the system. She appreciates our recognition of the improvements that have been made and our understanding of the complexity of confiscation cases and the challenges of improving cooperation in the system. The draft report presents valuable recommendations that can contribute to the further strengthening of the confiscation process. The recommendations' clear and wide formulation allows solutions to be found that are realistic, make a true contribution and do justice to the independence of the parties in the system and the ministry's management relationship with them. Nevertheless, the minister adds context and nuance in certain sections in order to place the conclusions and recommendations in a wider perspective. Two important points the minister names are the limited financial scope of the audit and the complex mechanisms available to her to steer the confiscation system.

Conclusion 1: Limited realisation of financial goals

The minister agrees with our conclusion. The additional revenue to be realised through the budget increases had been overestimated with regard to both the amount and the period in which it would be realised. Goals must be realistic and substantiated. The minister refers in this respect to the financial scope of the audit, the selection of confiscation instruments and the omission of high and exceptional out-of-court transactions. She thinks the omission is incorrect because out-of-court transactions are an important aspect of the broad-based approach to combating organised and subversive crime. A comprehensive picture of the financial results of confiscation policy is lacking on account of the limited availability of statistical information.

With regard to this conclusion, the minister describes 3 current projects to improve confiscation results. It will be possible to seize assets faster as from 1 July 2022 and new statutory instruments are being worked out, such as the non-conviction-based confiscation procedure and 'speed seizures'. The third project to be named by the minister is the OM's exploration with the parties in the system of ways to produce an asset file so that it is known what assets can be confiscated up to and including the enforcement phase.

The minister then considers our recommendations. She will act on our first recommendation and consult the Board of Procurators General to discuss realistic goals and results. The minister writes that the goal in the Security Agenda is realistic but inadequately pursued. She will build in additional safeguards for this in the forthcoming Security Agenda. She notes that this recommendation ignores the work of other parties in the system. The confiscation system is an interdependent system without a system manager. Together with the Board of Procurators General and the other parties in the confiscation system, she will study how the financial and qualitative goals can be pursued more realistically. Our second recommendation, to align policy and implementation, is guaranteed, she writes, by a variety of consultation structures and by the sharing of knowledge and experience as widely and as early as possible among the parties in the system. The minister will also consult the parties in the system to consolidate the alignment of policy and implementation.

Conclusion 2: Additional budgets have no audit trail

The minister acknowledges that the definitions and records used by the various parties are not always consistent with each other, which impedes monitoring of the system. The Central Government Audit Service came to the same conclusion in

2019. The minister describes 2 projects to improve the audit trail. Firstly, initiatives have been taken to make systems and records more consistent and the incidental funds from the 2021 Budget Memorandum will help resolve information management problems in the criminal justice system. In consultation with the parties concerned, the minister will consider what other steps can be taken. Secondly, the minister thinks it is important that the aggregate results and impact of the additional budgets to increase confiscation should be better understood, in part in the context of the broad-based strengthening of policy to combat organised and subversive crime. To this end, DG Subversive Crime is setting up a long-term programmatic management and accountability project.

Conclusion 3: Information management at J&V/OM is not in order

Regarding this conclusion, the minister writes that good information management is vital to understand and monitor policy and to account to society and parliament. She mentions the ministry's focus on information policy and archiving, and the steps that have already been taken. The minister refers to the long-term programmatic management and accountability project and the implementation of the new Seizure Information System. The Court's recommendation is an extra incentive for the latter initiative.

Conclusion 4: Financial results are affected by poor performance of the confiscation system

The minister agrees with our conclusion that the confiscation system is not managed consistently. She refers in this respect to our Accountability Audits for 2018-2021. The inconsistency is due to the different management relationships between the minister and the parties in the system and the minister's limited influence on each party's goals. At the same time, the minister indicates that the parties recognise there is a lot to be gained with regard to confiscation policy, management and operations. To this end, the Confiscation Coordination Committee has drawn up a multiyear action plan. Current initiatives for improvement will be paired with new actions. A more consistent picture and thus a more coherent approach will be established jointly, without a management relationship. The minister writes that she intends to enter into talks with the members of the Confiscation Coordination Committee to determine what actions are possible and feasible to identify and permanently resolve shortcomings.

6.2 Court of Audit's afterword

The Minister of J&V acknowledges our conclusions in her response and states that she will use our recommendations to further strengthen the confiscation system. The minister writes that she has power only to direct the management of the confiscation system. We think the minister is underplaying her management powers. Under section 18 of the Police Act 2012, she can set priorities for the National Police. In consultation with the Board of Procurators General and the regional mayors, she sets national policy goals for the National Police. Under section 127 of the Judiciary (Organisation) Act, the minister can also issue general and specific instructions regarding the OM's performance of its tasks and powers. Consultation between the minister and the Board of Procurators General should consider investigation and prosecution priorities. In both areas the minister is a leading actor and not a passive participant. The priorities discussed, including the OM's production performance in the following financial year, could then be laid down in the minister's framework letters to the Board. This would also create an opportunity to link the intended results to the use of additional budgets.

Confiscation of the proceeds of crime is an instrument of government policy to combat organised and subversive crime. Realistic and clear confiscation goals must be aligned with the prioritisation of tasks. The minister would then be able to request the necessary financial and human resources from parliament. This would create a learning practice with policy-rich accountability to explain the results of confiscation policy in the light of the instruments used.

Appendices

Appendix 1 Conclusions and recommendations

Court of Audit's conclusion	Court of Audit's recommendation	Minister of J&V response
Limited achievement of financial goals.	We recommend that the Minister of J&V consult the Board of Procurators General to discuss our recommendations.	The minister agrees with our conclusion but notes that the financial scope was limited and not all confiscation instruments were audited. In addition to ongoing projects, the minister will: <ul style="list-style-type: none"> • seek additional assurances in the Security Agenda to achieve her goals; • with all the parties in the system, study ways to consolidate the alignment of policy and implementation.
Additional budgets have no audit trail.	We recommend that the Minister of J&V: <ul style="list-style-type: none"> • designate a party to take overall responsibility for the confiscation system and strengthen the system in the long term; • put information management at the Ministry of J&V and the OM in order. 	The minister accepts the conclusion and acknowledges the inconsistency of definitions and databases and that information management systems are not connected to each other. In addition to ongoing projects: <ul style="list-style-type: none"> • the minister will consult the parties in the system to determine what further steps can be taken; • DGO is setting up a long-term programmatic management and accountability project.

Court of Audit's conclusion	Court of Audit's recommendation	Minister of J&V response
<p>Information management at the Ministry of J&V and the OM is not in order.</p>	<p>We recommend that the Minister of J&V:</p> <ul style="list-style-type: none"> • put information management at the Ministry of J&V and the OM in order. 	<p>The minister writes that good information management is vital to understand and monitor policy and to account to society and parliament for policy decisions.</p> <p>In addition to ongoing projects, the minister refers to:</p> <ul style="list-style-type: none"> • the long-term programmatic management and accountability project; • the implementation of the new Seizure Information System. Our recommendation is an extra incentive for this system.
<p>Financial results are affected by poor performance of the confiscation system.</p>	<p>We recommend that the Minister of J&V:</p> <ul style="list-style-type: none"> • designate a party to take overall responsibility for the confiscation system and strengthen the system in the long term. 	<p>The minister agrees with the conclusion but notes that the management relationship with the parties in the system is complex and a distinction must be made between management and steering based on the principles of the democratic rule of law.</p> <p>Nevertheless, the minister will consult the Confiscation Coordination Committee to determine what actions are possible and feasible to identify and permanently resolve shortcomings in the confiscation system.</p>

Appendix 2 The confiscation process

Confiscation instruments

A variety of instruments is available under administrative law, fiscal law, civil law and criminal law to confiscate the proceeds of crime. Our audit considered only criminal confiscation.¹¹ The *Confiscation Instructions* state what financial and non-financial instruments are available to the Public Prosecution Service (OM) (see box below). Money and goods can be confiscated or disciplinary action can be taken to prevent further misuse of a profession or office.

Confiscation instruments

The *Confiscation Instructions* identify 9 confiscation instruments. The revenue from 5 of these instruments is recognised in the Ministry of J&V's budget and annual report under the heading 'Revenue, of which Confiscation'. Our data analysis covered 3 of these instruments.

- *out-of-court transaction with financial conditions*
 - *value confiscation*
 - *schikking*
 - penalty order with confiscation element
 - object confiscation
- Ministry of J&V:
budget & annual report*
- *fine to recover illicit gains*
 - *compensations*
 - *dismissal from profession or office*
 - *disciplinary action*
- Court of Audit:
data analysis*

Further scope limitation of our audit

Our audit looked at a number of financial recovery instruments (see box above):

- revenue received by the Ministry of J&V through the 5 recovery instruments. This revenue is recognised in the ministry's budgets and annual reports under the heading 'Revenue, of which Confiscation', article 33 Security and crime prevention. The revenue is currently recognised in general funds (see endnote vi).
- outcomes of our data analysis of the first 3 recovery instruments listed in the box above; this information was accessible and reliable.

To assess the revenue received, we confined ourselves to the amounts disclosed in the Ministry of J&V's budgets and annual reports. The amounts received by other ministries under the confiscation policy were not considered. That revenue is not accounted for separately under the heading 'Confiscation' (e.g. by the Tax and Customs Administration) or falls outside our audit scope (e.g. revenue received by municipalities). Furthermore, our audit did not consider proceeds of crime in the Netherlands confiscated by foreign government organisations. Similarly, revenue from compensation measures or penalty orders to recover illicit gains were not audited.

Types of recovery instrument

Dutch criminal law recognises a number of recovery instruments to settle cases. The OM can apply them at various stages of a criminal investigation. The table below shows the 5 instruments we audited. We first explain the instruments and then look at seizure, an important instrument to enforce a confiscation order.

No.	Instrument	Legal article	Court	Out of court	Characteristic
1.	Out-of-court transaction: transaction with confiscation element	74 CC		x	Prevention of prosecution
2.	Value confiscation: confiscation of criminal assets	36e CC	x		Criminal prosecution required
3.	Out of court settlement: written out-of-court settlement	511c CCP		x	Criminal prosecution required
4.	Penalty order with confiscation element	257a CCP		x	Criminal proceedings
5.	Object confiscation	33 and 33a CC	x		Additional sanction

CC = Criminal Code

CCP = Code of Criminal Procedure

1. Out-of-court transaction: transaction with compensation element

Before a suspect is taken to court, the public prosecutor can set one or more conditions to prevent criminal prosecution for minor offences and for serious offences with a maximum sentence of 6 years' imprisonment. The conditions that

can be set are summarised in article 74 (2) of the Criminal Code. The main conditions regarding the recovery of the proceeds of crime are:

- the suspect must relinquish assets that have been seized and that may be subject to an object confiscation order;
- the suspect must pay a monetary fine to the State or transfer seized assets to it.

If the suspect meets all the conditions, the out-of-court transaction is completed and the public prosecutor can no longer prosecute the suspect for the criminal offence. After completion of the transaction, a separate written out-of-court settlement cannot be agreed (see point 3 below). If other or more criminal assets are to be recovered, any out-of-court transaction must include value confiscation.

2. Value confiscation: confiscation of criminal assets

Value confiscation (article 36e, CC) entails the recovery of illicit gains obtained 'by means of or from the proceeds of criminal offences'. Under the Code of Criminal Proceedings, the public prosecutor must issue a value confiscation order within 2 years of judgment being passed in first instance in a criminal case. The decision to commence value confiscation will usually depend on whether the illicit gains obtained by a suspect in a criminal case can be recovered (e.g. by means of object confiscation).

To enforce a value confiscation order, the court must first decide that the suspect has committed a criminal offence. It then estimates the value of the illicit gains and decides on the amount to be confiscated.

3. Out-of-court settlement: written out-of-court settlement

Unlike an out-of-court transaction, a written out-of-court settlement (article 511c, CCP) can be agreed only to settle recovery proceedings against a suspect. A written out-of-court settlement can be agreed in respect of the benefit a suspect has enjoyed by means of or from the proceeds of crime. Unlike an out-of-court transaction and a penalty order (see point 4 below), the criminal offence may also exceed the maximum prison sentence of 6 years.

A written out-of-court settlement allows the OM to prosecute a suspect for a crime but also allows the suspect to prevent the court ruling on a confiscation order. This can be achieved by reaching agreement with the public prosecutor on the amount of the settlement and other conditions and on the term or terms in which the settlement must be paid.

Written out-of-court settlements can be agreed until the court has completed its criminal investigation. A written out-of-court settlement cannot be agreed on appeal. The court decides on a value confiscation order. One condition for an out-of-court settlement is that the suspect is convicted of a crime.

4. Penalty order: penalty order with confiscation element

In addition to out-of-court transactions and written out-of-court settlements, cases can also be settled out of court by means of a penalty order. A penalty order, like a transaction, simultaneously completes both the criminal case and the recovery of the proceeds of crime.

The power to enforce a penalty order is laid down in article 257a, CCP. A penalty order, like a transaction, is available for minor offences and for serious offences with a maximum prison sentence of 6 years. Unlike a transaction, a penalty order is an act of prosecution. The public prosecutor must therefore establish that the suspect has committed a criminal offence.

To enforce a penalty order the public prosecutor can not only impose penalties and take further measures (article 257a (2), CCP) but also issue instructions to the suspect (article 257a (3), CCP). The instructions provided by law are:

- relinquish assets that have been seized and are liable to an object confiscation order or removal from circulation;
- pay a monetary fine or transfer seized assets to the State.

A penalty order with an instruction can be issued only if the suspect declares during a hearing that he or she is willing to pay the penalty and will follow the instruction (article 257c (1), CCP).

A penalty order is the first remedy for legally relevant offences. In certain circumstances an alternative instrument can be applied. A penalty order with a confiscation element is such an instrument, but it cannot be imposed at this stage. In such cases, an out-of-court transaction with a confiscation element can be agreed.

5. Object confiscation

Object confiscation (article 33/33a, CC) is an additional sanction that a court can impose if there is a direct or indirect link to a proven criminal offence. As a result of this property sanction the State becomes the owner of the asset. Assets do not need to be seized to issue an object confiscation order. Assets that have not been seized and are still in the suspect's possession can also be subject to object confiscation (article 34, CC).

Seizure

Seizure is an important and effective instrument to combat organised and subversive crime. It is used to establish the truth (for instance, by means of DNA evidence), to seize and destroy weapons or drugs and to recover the proceeds of crime. Seizure also prevents an asset being used to prepare or commit new criminal offences.

Assets can be seized if a natural or legal person is suspected of committing a crime. There are two kinds of seizure:

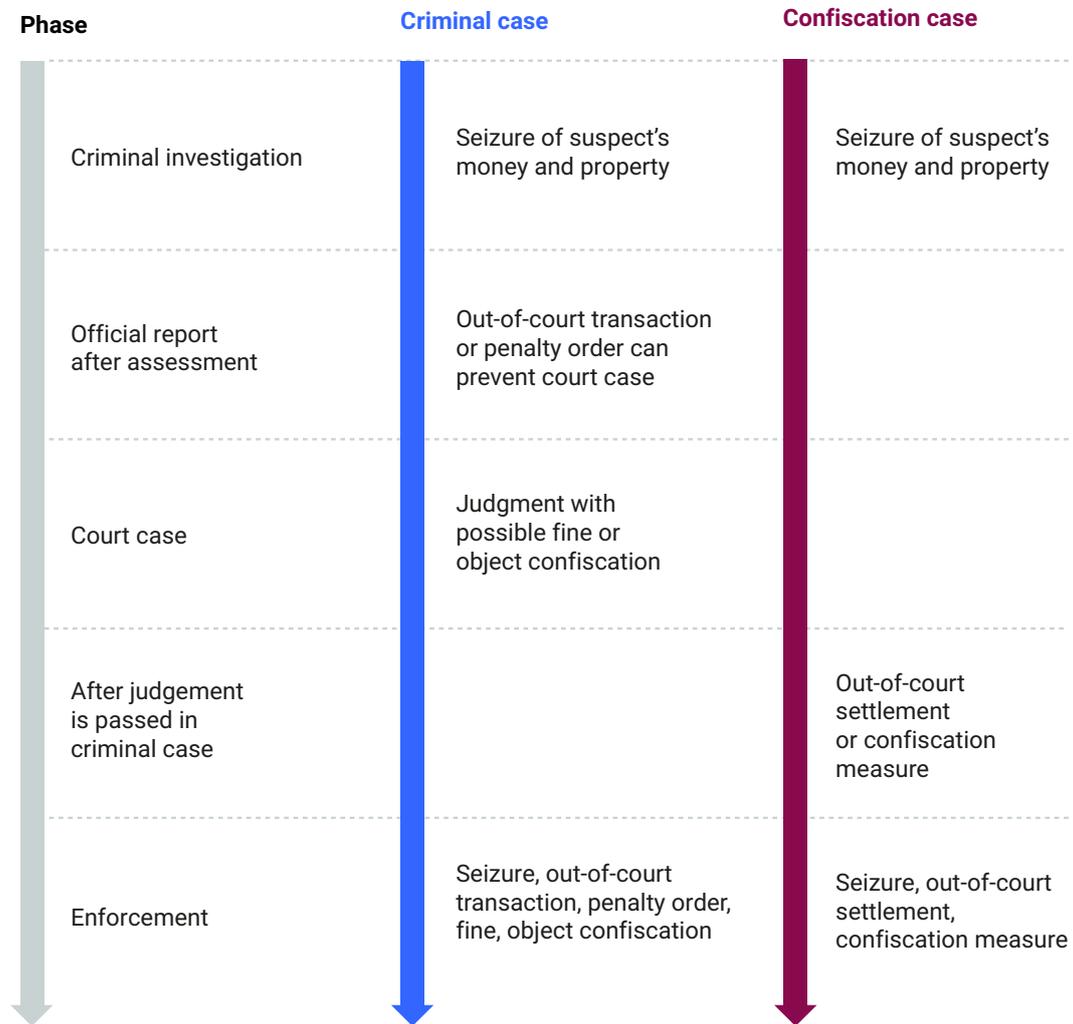
- post-judgment seizure (article 94, CCP): assets can be seized if they are liable to object confiscation. Object confiscation is possible if there is a direct or indirect link between an asset and a proven criminal offence. There is an indirect link if the asset is a 'fruit' of an asset that has a direct link to a criminal offence;
- prejudgment seizure (article 94a, CCP): to ensure that a suspect settles a payment order issued by a court, assets belonging to the suspect can be seized before judgement is passed (article 94a, CCP). When the court's judgment becomes irrevocable, prejudgment seizure can be applied to enforce an irrevocable recovery measure, compensation measure or monetary fine. Prejudgment seizure requires the prior authorisation of the examining magistrate. It does not require a direct or indirect link between the asset seized and a criminal offence. Assets obtained legally (i.e. before the criminal offence was committed) can also be seized. Prejudgment seizure is possible up to the moment that both the criminal case and the recovery measure become irrevocable. Prejudgment seizure can complete an out-of-court transaction or written out-of-court settlement.

Confiscation process

Each recovery instrument has its own procedure. The figure below shows the main features, starting with a criminal investigation, including financial investigation, and ending with the collection of money or sale of seized assets.

Figure 9. Recovery procedures

A different procedure for each recovery instrument



Source: Ministry of J&V, OM.

Appendix 3 Audit method

Audit: Key audit question and objective

In the period 2010-2021, successive Ministers of J&V took a raft of measures to confiscate more proceeds of crime. The measures included 5 budget increases. The ministers expected the additional budgets to lead to the confiscation of additional criminal assets.

The Court of Audit carried out this audit in order to assess the efficiency and effectiveness of the 5 additional budgets the ministers released to confiscate more proceeds of crime. The audit focuses on the financial goals and results in the period 2020-2021. In keeping with the nature of the budget increases, we considered the results achieved from routine cases, i.e. excluding high and exceptional transactions.

Audit questions

1. What has been the policy on confiscation of the proceeds of crime since 2010 and how have the Ministry of J&V and the OM implemented it?
2. To what extent were the 5 budget increases efficient and effective in the period 2010-2021? The 5 budget increases related to:
 - a. Police Financial and Economic Investigation programme (FinEC), 2008 – 2011;
 - b. Confiscation System programme 2011-2018, including a one-off budget increase for Taskforce B5 Brabant in 2012;
 - c. Confiscation of Criminal Assets in the Southern Netherlands and Rotterdam, with effect from 2016;
 - d. Budget increases for the FIOD and Public Prosecution Service to combat corruption and money laundering, with effect from 2016;
 - e. Incidental additional budget released by the second Rutte government, 2018-2022.
3. To what extent has the Minister of J&V accounted to parliament for the implementation of confiscation policy since 2010?

Standards applied

Minister of Justice and Security

- Under the Constitution and the Government Accounts Act 2016, the Minister of J&V is:
 - responsible for confiscation policy;
 - tasked with managing the Ministry of Justice and Security, the ministerial

budget, the ministry's operational management and the records kept for those purposes.

- Under the Government Accounts Act 2016, this minister's responsibility for confiscation policy requires him/her:
 - to ensure that the proposed policy, including any budget increases, is properly substantiated (in accordance with the integrated assessment framework, Parliamentary Paper II 2010/11, 29515 no. 330);
 - to account to parliament for the implementation of confiscation policy and provide all necessary information, including information on the performance of the confiscation system;
 - to periodically assess the efficiency and effectiveness of confiscation policy.

Public Prosecution Service

- The Public Prosecution Service is tasked with maintaining law and order and with other duties laid down in law. For these purposes, the OM has the power to investigate and prosecute suspects that may have obtained a financial benefit by means of and/or from the proceeds of crime. The OM must work effectively and promote cooperation in the confiscation system (Judiciary (Organisation) Act, Confiscation Instructions).
- The Minister of Justice and Security is responsible for the OM's fulfilment of its confiscation duties (Judiciary (Organisation) Act).
- The OM should impose a prejudgement seizure and carry out a financial investigation in each confiscation case, the latter either as a preliminary investigation or as part of a criminal investigation (Confiscation Instructions).

Budget increases

- A budget increase is effective if it meets both the qualitative and quantitative expectations held prior to the increase (Netherlands Court of Audit).
- A budget increase is efficient if the amount of confiscated criminal assets is higher at the end of the budget period than before the budget increase (Netherlands Court of Audit).

Information

- Public bodies must ensure that the records they keep are in good condition, are properly arranged and are accessible, and arrange for their destruction when required to do so (Public Records Act 1995).
- Information must be specific, current and consistent (Netherlands Court of Audit).

Audit approach

This audit took a mixed methods approach. Use was made of each method's strengths and the data obtained were linked to each other. The following audit techniques were used.

Document analysis

The audit was underpinned principally by document analysis. We analysed both public and confidential documents. They included information from the Ministry of J&V, OM, National Police, Council for the Judiciary, courts, CJIB, WODC and other institutions that have investigated this subject.

Interviews

To gain an insight into the current state of the confiscation of the proceeds of crime and the reasons for it, we held in-depth interviews with experts and implementers in the system. The interviewees worked for various organisations across the entire system. We held interviews with persons active at both strategic and operational level. In total, we interviewed about 40 experts.

Data analysis

The data we analysed from the OM, Council for the Judiciary and CJIB covered various aspects of the confiscation system. We requested data on confiscations, out-of-court settlements and out-of-court transactions initiated by the OM between 2010 and 2020.

In the light of the information on recovery cases provided by the OM, we requested and received additional information from the Council for the Judiciary and the CJIB based on the public prosecution service number. All the data in the audit were aggregated at the level of the public prosecution service number. This means that criminal offences in the OM's files and the case numbers in the CJIB's files were linked to unique case numbers in our files.

The next step was to link the case numbers to the first recovery instrument used by the public prosecutor: confiscation, out-of-court settlement or out-of-court transaction. It is possible that the type of recovery instrument changed during the recovery process.

We carried out two analyses of our dataset:

- we analysed certain characteristics of the annual inflow of new cases: the number of cases, the type of recovery instrument and seizures;
- case development during the period audited: changes in case times and/or confiscated proceeds of crime, by recovery instrument in so far as possible.

Case study

The aim of the case study was to gain a better insight into how the confiscation system works. We selected 4 cases for the study:

- a straightforward routine confiscation case
- a complex confiscation case
- an out-of-court settlement
- an out-of-court transaction.

These 4 cases also involved seizures and object confiscations. We describe 2 of them in this report.

Additional revenue from budget increases

The audit objective was to assess the efficiency and effectiveness of 5 budget increases. We compared the expected additional revenue from the 5 budget increases with the actual revenue from routine confiscation cases relative to the situation in 2010-2012. To this end we used the amounts stated by the Ministry of J&V, based on the following definition: recovery results arising from out-of-court transactions with financial conditions, value confiscations, out-of-court settlements, penalty orders with confiscation element and object confiscations (see appendix 2).

- Expected additional revenue:
 - additional revenue expected by the minister due to 3 of the 5 budget increases where the minister tasked the parties in the system with achieving the results. We took the amounts from internal documents at the Ministry of J&V;
 - additional revenue per annum on top of the average revenue received in 2010-2012 (i.e. € 50 million per annum). This reference amount is the revenue collected before the start of the budget increases. The expected additional revenue is in addition to this € 50 million per annum.
- Actual additional revenue: in line with the goal of the 3 budget increases, we limited the actual additional revenue to the revenue received from routine confiscation cases. This is the total amount received, as disclosed in the Ministry

of J&V's annual reports under the heading 'Revenue, of which Confiscation', article 33, excluding high and exceptional transactions. We excluded these transactions because:

- the goal of the 5 budget increases was to improve awareness of the importance to society of confiscating the proceeds of crime and to strengthen the financial investigations carried out by the parties in the system, such as the National Police, FIOD and OM;
- the minister had prioritised the fight against subversive crime and money laundering;
- the high and exceptional transactions related principally to systematic contraventions of the Money Laundering and Terrorist Financing (Prevention) Act by banks, and corruption and forgeries by businesses.

There were 8 high and exceptional transactions during the period audited, 2010-2021. The revenue received and the reasons for these out-of-court transactions are summarised below.

- Indexation: for consistency's sake, expected and actual revenue and the additional budgets have not been indexed. Amounts are stated per annum, whereby an additional budget of € 20 million in 2010 could do more than the same budget in 2021.

Eight high and exceptional transactions, 2010-2021

- Rabobank Libor:
 - criminal offences: interest rate manipulation in 2006-2011
 - out-of-court transaction of € 70 million and full recovery
 - payment in 2014.
- SBM Offshore N.V.:
 - criminal offences: bribery and forgery in 2007-2011
 - out-of-court transaction of USD 240 million of which USD 200 recovered
 - payment spread over the period 2014-2016.
- Pon's Automobielenhandel (PAH):
 - criminal offences: bribery in 2001-2011
 - out-of-court transaction of € 12 million and full recovery
 - payment in 2016.

- Vimpelcom Ltd and its Silkway Holding BV subsidiary:
 - criminal offences: bribery and forgery in 2006-2012
 - out-of-court transaction of USD 397.5 million, of which USD 167.5 million recovered
 - payment in 2016.

- TeliaSonera/Telia Company AB:
 - criminal offences: bribery and forgery in 2007-2010
 - out-of-court transaction of USD 228.2 million, of which USD 144.9 million recovered and payment in 2017
 - through a clause in the transaction the OM confiscated and received a further USD 183.7 million in 2019.

- ING Bank N.V.:
 - criminal offences: systematic contravention of the WWTF in 2010-2016
 - out-of-court transaction of € 775 million, of which € 100 million recovered
 - payment in 2018.

- ABN AMRO Bank N.V.:
 - criminal offences: systematic contravention of the WWTF in 2013-2019
 - out-of-court transaction of € 480 million, of which € 180 million recovered
 - payment in 2021.

- Subsidiaries of SHV Holdings N.V., (Econosto Mideast B.V., Econosto N.V., ERIKS N.V.):
 - criminal offences: bribery, forgery and breaches of international trade sanctions in 2009-2015
 - out-of-court transaction of € 41.6 million, of which € 29.5 million recovered
 - payment in 2021.

Abbreviation: WWFT stands for Money Laundering and Terrorist Financing (Prevention) Act

Terms and definitions

- confiscation policy: measures taken by the Minister of J&V to confiscate the proceeds of crime; a budget increase is such a measure;
- proceeds of crime: includes both illicitly obtained gains confiscated and amounts recovered or to be recovered through out-of-court settlements, object confiscations and the confiscation element of penalty orders and out-of-court transactions;
- 5 budget increases: additional budgets provided by the Minister of J&V to confiscate more proceeds of crime;
- confiscation system: the parties involved in the investigation, prosecution and trial of suspected criminal offences and the enforcement of recovery instruments;
- recovery cases: confiscations, out-of-court settlements and out-of-court transactions;
- routine cases: confiscation cases excluding high and exceptional transactions.

External access to the Court of Audit's data

Under section 2.2 (1e) of the Open Government Act (WOO), the Court of Audit is subject to the WOO. Under section 7.41 (2) of the Government Accounts Act 2016, information the Court of Audit gathers during the conduct of its statutory duties (e.g. audits) is exempt from the WOO. Requests for such information are referred to the organisation, person or board that provided it.

Appendix 4 Literature

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Appendix 5 Abbreviations

	Description
CJIB	Central Judicial Collection Agency
CW	Government Accounts Act
DGO	Directorate-General on Subversive Crime
FIOD	Fiscal Information and Investigation Service
FIU-NL	Financial Intelligence Unit – the Netherlands
J&V (V&J)	Justice and Security (Security and Justice)
OM	Public Prosecution Service
WODC	Research and Documentation Centre
Wwft	Money Laundering and Terrorist Financing (Prevention) Act

Appendix 6 Endnotes

1. The Minister of Justice and Security is responsible for confiscation policy. Until 2018 the ministry was known as the Ministry of Security and Justice. In this report we refer to the responsible ministers as the Ministers of Justice and Security.
2. In the report *Justitiële Verkenningen; Georganiseerde criminaliteit en ondermijning* (WODC, December 2021), Edwin Kruisbergen states that the amount of €16 billion is not based on a reliable empirical method. In his opinion, it cannot be said from the information currently available how much illicit money is laundered in the Netherlands.
3. There were 8 high and exceptional out-of-court transactions in 2010-2021, involving the following parties:
 - Rabobank Libor
 - SBM Offshore N.V.
 - Pon's Automobiëlhandel (PAH)
 - Vimpelcom Ltd and its Silkway Holding B.V. subsidiary
 - TeliaSonera/Telia Company AB
 - ING Bank N.V.
 - ABN AMRO Bank N.V.
 - Subsidiaries of SHV Holdings N.V. (Econosto Mideast B.V., Econosto N.V., ERIKS N.V.).
4. Following clearance at ministerial level, figure 2 includes a further breakdown of the bottom half of the figure in the Foreword.
5. All implementing organisations are subject to the Constitution and the legal doctrine of the separation of powers. The Government Accounts Act 2016 applies specifically to the proposed policy and the ministerial responsibility for the policy implemented. A legal framework is also provided by the Police Act 2012 (for the police), the Special Investigative Services Act (for the FIOD), the Judiciary (Organisation) Act (for the OM and the Council for the Judiciary) and the Government Agencies Order (for the CJIB).
6. Revenue from confiscations is recognised under the heading 'Revenue, of which Confiscation', article 33 of the Ministry of J&V's budget. Until the end of 2015, the Ministry of J&V was exposed to the risks attaching to this revenue and could apply windfalls to compensate for shortfalls on other budget articles. This was changed in steps as from 2015. In 2016, a distinction was made between small and large confiscations (less and more than € 10 million) in order to improve the ministry's budget management. The risks attaching to cases with revenue of less than € 10 million ('business as usual') were for the ministry's budget and those of more than € 10 million were treated as general risks. As from the Spring Memorandum 2021 and the Budget Memorandum 2022 all confiscation revenues have been recognised as

general risks in the ministry's budget and the Ministry of J&V is no longer exposed to the entire financial risk.

7. A selection has been made from among the budget increases. Budget increases in recent years were not considered because their impact during the period audited could not be gauged. A budget increase in the Spring Memorandum 2021, for instance, included an additional € 29 million per annum 'to combat money laundering, fraud and subversive crime'.
8. Following clearance at ministerial level, a limited number of editorial changes were made for the sake of consistency and accuracy regarding our audit scope and methodology, calculation principles and conceptual framework. Terms and definitions were also briefly explained in accordance with the description in the relevant appendix.
9. We carried out 3 evaluations of 2 budget increases:
 - Police FinEC programme: Security and Justice Inspectorate (April 2012). Follow the money!; Study of financial investigations by the police in the light of the national Police FinEC programme. Publication number: j-13490.
 - Confiscation System programme: 2 evaluations, one by the OM (March 2019) and one by the FIOD (July 2020), which have not been published.
10. For its annual Accountability Audit, the Court audits the ministries' operational management and information on operational management. Where we refer to a shortcoming, in our opinion a specific aspect of operational management did not meet legal or regulatory requirements during the year.
11. Following clearance at ministerial level, this section was revised because other parties apart from the Minister of J&V, e.g. mayors, are responsible for confiscation of the proceeds of crime under various laws. Ministerial responsibility has therefore been removed from this section.

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Photo cover: Kick Smeets

The Hague, June 2022