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# Continuity in the funding of the police, the public prosecution service and the judiciary

## Summary

### Authors

Carl Koopmans, Marilou Vlaanderen, Ward Rougour, Nils Verheuel (SEO)  
Tiddo Folmer, Hilke Grootelaar, Ivo van Duijneveldt (AEF)  
With the cooperation of Peter van den Berg, Johannes Hers, Johan de Kruijf



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**Andersson Elffers Felix**

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## Summary

*Over the past ten years, changes in funding as a result of both cutbacks and extra financial resources have led to problems for the police, the public prosecution service and the judiciary. It is important that the method of funding remains in line with the cost structure and the roles of the three organizations. Funding can focus more than now on the criminal justice system as a whole and on broader societal benefits and goals such as crime prevention.*

This research was prompted by a motion by Member of Parliament Rosenmöller et al. (2019)<sup>1</sup>, passed by the Dutch Senate:

*“... Noting that in recent cabinet periods the organizations that serve the rule of law, namely the police, the public prosecution service and the judiciary, have been confronted with varying policies and financing, of the opinion that our rule of law benefits from a long-term vision and continuity in funding, calls on the government to have an independent study carried out into the possibilities and conditions under which this continuity can be better safeguarded and the rule of law is sustainably strengthened, and to inform the Senate about this.”*

### **Problem definition**

The research is based on a starting memorandum from the Research and Documentation Centre (Dutch abbreviation: WODC) which proposed the following problem definition:

#### *Funding agreements*

- “What are the main or basic agreements regarding the funding system of the police, the public prosecution service and the judiciary since 2010, to what extent can we speak of continuity and what is the underlying policy theory in this respect, and what is the role of the special characteristics of the organizations involved: the police as a ‘sui generis’ organization, the legal position of the public prosecution service and the independence of the judiciary? Do these main agreements also attend to issues of coordination within the criminal justice system?”

#### *Fluctuations in funding*

- “Which fluctuations (cutbacks and investments) have occurred in the funding of the police, public prosecution service and judiciary since 2010 and which vision/objectives/policy considerations were the basis for this, what can be said about their realization, and what were the consequences for the organizations and the level of cooperation within the criminal justice system?”

#### *Lessons for future funding*

- “Are there specific examples in the budget system of other policy areas that can contribute to increasing the continuity of funding?”
- What are the experiences with two system-wide programs in criminal law, namely “*Justice done as soon, and as appropriately as possible*” (Dutch abbreviation: ZSM) and the system-wide digitization program?
- What significance do the findings, including those under two and three, have for the possibilities of better safeguarding the continuity of policy and funding of these organizations, in order to sustainably strengthen the rule of law?”

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<sup>1</sup> Motion by member Rosenmöller c.s., Senate, 35 300 VI, C, 29 October 2019.

## Methods

The research was conducted in three parts:

1. The main agreements regarding the funding system for the police, the public prosecution service and the judiciary have been mapped out, based on literature and interviews. Economic theory has also been included. The advantages and disadvantages of the funding systems have been mapped out.
2. The fluctuations (extra financial resources, cutbacks and other changes) in the period 2010 to mid-2020 have been presented and analyzed. This concerns both the causes and the consequences of fluctuations in funding. Special attention has been paid to the programs ZSM and Digitization of the Criminal Justice System.
3. Conclusions have been drawn from the analysis and recommendations have been formulated. Use was also made of a brief international comparison and of considerations from the funding of three other organizations: the Council of State, the Central Agency for the Reception of Asylum Seekers (Dutch abbreviation: COA) and Higher Education.

## Economic theory of funding systems

First, it was mapped out how different funding systems ‘score’ on criteria, based on ‘principal-agent’ theory. Four funding systems were considered:

- Role-oriented funding: aimed at the availability of a service. This is often based on historical data.
- Performance funding based on:
  - inputs that drive the (variable) costs (for example the number of police officers)
  - desired outputs (for example the number of legal cases settled)
  - medium to long-term outcomes (for example, a decrease in crime).

The analysis shows that all the funding systems considered have both advantages and disadvantages (see table below). As a result, there is no general preference for a particular funding system. It also means that characteristics of organizations play an important role in the choice of funding systems.

**Table S.1 Scores of funding systems on criteria**

Criteria	1. Role-oriented	Performance funding, based on:		
		2. Input	3. Output	3. Result (outcome)
Incentives for:				
Efficiency	-	+/-	+	+
Quality	+/-	+/-	-	+
Equitability	-/+	+	+	-
Stable funding	+	+/-	+/-	+/-
Transparency, explainability	-	+	+	-
Practicality	+	+	+	-

Source: SEO/AEF (2021)

## Funding for the police, public prosecution service and judiciary, 2010-2020

### *Police*

The police funding is input-based, i.e. on the basis of the desired number of staff members. The funding is carried out by the Ministry of Justice and Security<sup>2</sup> (Article 33 of the Police Act 2012). The method of funding remained constant in the period 2013-2020. The level of expenditures increased at an accelerating pace, as expenditures started to rise faster from 2014 onwards. Meanwhile, some long-term policing budgets still showed a downward trend. Police executives responded by reduction in staffing levels with respect to the intended operational strength. At the end of the research period, the reduction goals were realized.

The cutbacks increased to € 488 million in 2020, which is equivalent to eight percent of the total budgeted expenditure. At the same time, extra financial resources in the same year amounted to € 1,110 million, which amounts to 18 percent of the budgeted expenditure for 2020. The additional resources were largely linked to specific goals. The net effect of cutbacks and extra resources was plus ten percent in 2020.

Because input funding is linked to the so called ‘double lock’, the scope for making choices in spending the available resources is limited. The budget is largely tied to the size and distribution of operational strength. Large budget fluctuations are difficult to absorb, other than interventions in the intake of candidates, which cannot be reconciled with a stable strategic personnel planning. At the end of the research period, the desired staffing levels have increased. The decrease followed by the increase that this entailed in the numbers of candidates has had major consequences for police education (‘first grinding to a halt, and now gathering speed again’) and subsequently for strategic personnel planning. The previously reduced influx and the upcoming high replacement demand play an important role in this.

### *Public prosecution service*

In 2019, the public prosecution service switched from a lump sum (flat-rate) budget to a ‘mix’ of output funding based on ‘P times Q’ (quantities multiplied by prices) and lump sum. Periodic reviews of prices and performance, quality surveys, basic funding and a hardship clause for special circumstances, serve as safeguards not to lose sight of ‘the story behind the figures’.

Over the past ten years, expenditures have first decreased due to budget cuts, and increased again from 2015 onwards. In terms of total budget, the public prosecution service has had relatively higher budget cuts than the police and the judiciary. By 2019, the cutbacks amounted to 111 million, over 19 percent of the expenditure in that year. The public prosecution service was also the organization with relatively the largest additional budgets: 31 percent of the expenditure in 2019. The vast majority of the additional budgets resulted from additional tasks for the public prosecution service. Due to the fluctuations in the budget, the public prosecution service has not continuously and consistently invested in IT and information provision. In 2020 this still causes problems.

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<sup>2</sup> Article 33 Police Law 2012. <https://wetten.overheid.nl/BWBR0031788/2013-01-01>

At the same time, a certain shift is taking place in the societal task of the public prosecution service. Over the years, instead of mainly repression, more emphasis has been placed on prevention. In addition, the public prosecution service has a growing task in care. Criminal offenses (including relapses into crime) must be prevented by combining punishment with care. Effective prevention leads to a reduction in the number of criminal cases. Seen in this way, prevention is at odds with output funding, which is based on the number of criminal cases.

### *Judiciary*

Since 2010, the macro budget of the judiciary has fluctuated in a range from € 919 (2010) to 1072 million (2016) to 987 million (2019). Fluctuations were almost entirely driven by changes in the performance-related budget ('P times Q'). Up to and including 2019, approximately 95 percent of the total budget was funded through 'P times Q'; five percent was lump sum.

In case law, partial 'P times Q' funding seems appropriate because the number of legal cases has a major impact on the costs. Yet there are also fixed costs, such as housing. As the influx of cases continued to decline, the average fixed costs per case increased and funding came under pressure. In addition, BCG (2019) shows that not all aggravating factors - including the disappearance of 'light' cases in terms of average workload, professionalization of the legal profession, and a more complex assessment framework - translated into higher prices in the period 2008-2017. As a result, the workload and shortages increased further.

The above-mentioned developments led to a revision in the funding of the judiciary with a relatively larger lump sum component: approximately 40 percent from 2020 onwards. In addition, the ministry of Justice and Security supplied an additional 50 million euros in 2020 to solve the current financial shortages and to counter the increased workload. Between 2019 and 2020, the share of additional budgets as a fraction of the total expenditure rose from 11 to 20 percent. The fraction of cutbacks decreased between 2019-2020, from 13 to 11 percent of the total budget.

Interviewees declare the quality of justice to be still satisfactory. In order to prevent the rule of law from being jeopardized in the future, the Council for the Judiciary calls on the cabinet in the financial claim 2022-2025 to make the judiciary a High Council of the State.

### **Cooperation in the criminal justice system**

The fluctuations in the funding of the various organizations and the degree to which the funding of organizations within the criminal justice system is aligned, have consequences for cooperation. In addition, managing the performance of the organizations separately leads to 'compartmentalization' within the system. This does not sufficiently support cooperation.

The intended societal effects are not leading in the funding of individual organizations. Funding is not explicitly aimed at the criminal justice system as a whole. The funding does not automatically match societal needs and in some cases even provides opposite incentives.

### *ZSM<sup>3</sup> - good cooperation, despite funding structure*

The cooperation in ZSM is primarily the result of a shared ambition and a shared sense of urgency among the system partners involved. The good cooperation was created despite rather than because

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<sup>3</sup> *"Justice done as soon, and as appropriately as possible"* (Dutch abbreviation: ZSM)

of funding. There is no specific system financing, which leads to an inevitable tension between the interests of individual organizations and the interests of cooperation. The current financing structure means that the partners can achieve less societal impact with ZSM than they could potentially do. The funding of the individual parties in ZSM is strongly based on the settlement of criminal cases, not on other interventions. An alternative is formulating a joint result (system-wide outcome agreements) and creating underlying funding arrangements. The intended societal effect should be leading in this.

*Digitization - incidental funding with structural costs*

An innovation program such as the Digitization of the Criminal Justice System Program (Dutch: *Programma Digitalisering Strafrechtketen*) can both stimulate and slow down existing cooperation in the criminal justice system. In innovation programs where extra money is invested, it is important to consider that costs of digitization do not stop after the duration of a program. The digitization of the criminal justice system requires more than a one-off investment via coalition agreement funds. The organizations also need structural financing for the use of these projects. Moreover, the criminal justice system is one of the largest systems in the Netherlands. In addition to culture, this requires habituation, skills and exemplary behavior.

**Exploration of alternative funding systems**

The issue of funding continuity is also an issue in other countries and other organizations. Too great an emphasis on variable funding and additional targets can have a negative effect on performance. Management agreements and task-resource analysis can ensure sufficient resources that are geared to new developments.

*International comparison – the Dutch case judiciary*

Compared to other countries, the Netherlands scores relatively high on the independence of the funding of the judiciary. The way in which the funding of the judiciary in Denmark and Norway is organized is very similar to the Dutch situation and the role of the Netherlands Council for the Judiciary. In Germany and Norway, funding strongly depends on the budgets in previous years, which promotes continuity. The international comparison did not reveal whether or how other countries deal with subsequent costing of budgets, for example in the case of a lower than estimated number of cases. No comparative study has been found for the public prosecution service, therefore no statement can be made about this. Finally, an international comparison of the funding of the police is not feasible due to the large differences in tasks, organizational structures and insufficient evidence.

*Council of State - management agreements, task-resource analysis and mixed funding*

We distil three active elements in the budget system of the Council of State. The first element is management agreements. These describe the practical elaboration of (constitutional) legal frameworks and thus guarantee the institutional independence of the Council of State. The second active element is task resource analysis. A periodic analysis of developments in tasks and resources prevents the performance of tasks from suffering from a persistent shortage of resources. The third effective element is the combination of a 'P times Q' funding with lump sum (flat-rate) funding. The 'P times Q' costs are recalibrated every three years, which also ensures that developments in fixed and variable costs are reflected in the budgetary framework.

### *COA - fixed costs require fixed funding*

Just like the judiciary, the Central Agency for the Reception of Asylum Seekers (Dutch abbreviation: COA) continuously struggles with fluctuating Q. This has widespread repercussions for the organization. This despite the fact that both organizations work with clearly defined products. The COA case shows that strongly varying inflow and outflow lead to higher costs - because of maintaining flexibility to scale up and down quickly – accompanied by reduced quality and unrest within the organization. Due to the unpredictable nature of current P times Q financing, COA wants to move towards a more stable financing with a fixed part in volume (75% of the current level) supplemented with the current P times Q financing for the remaining part.

### *Higher education - autonomy*

The funding system in higher education firstly shows that ‘fixed’ funding contributes to the autonomy of the institution. Second, too much dependence on variable funding has negative effects on the quality of the task performance if institutions can control the inflow. Third, additional tasks without additional resources limit functioning.

### **Conclusions based on the findings**

- **The final adoption of the budget by government and parliament is the result of a broader political consideration.** In addition to the interests of the organizations that serve the rule of law, broader financial-economic policy also plays a role. This has led to downward and upward fluctuations in the budget in the period 2010-2020.
- **In addition to benefits, output funding also has important limitations.** If the mix is based (too) strongly on ‘P times Q’, decreases in the number of cases (Q) or changes in the weight of cases (affecting P) can lead to budgets that do not remain in line with the costs of the organizations. Also, a strong emphasis on ‘P times Q’ can lead to unwanted incentives to increase Q. In addition, output funding does not provide incentives for quality.
- **When investing in individual organizations, the societal effects are not leading.** It seems as if the societal effects of investments are not sufficiently taken into account when investing in assets and digitization.
- **Funding is not explicitly aimed at the system.** Funding is not always supportive for cooperation. The ZSM case shows that mutual agreements and coordination are central. The funding system does not fit in well with the ZSM activities. In the case of Digitization, the extra budgets made available for cooperation were partly spent on projects of the individual organizations. It also turned out that small steps work better than big changes.
- **The funding system does not automatically match societal needs and in some cases even provides opposite incentives.** For example, output funding provides more resources if the number of cases increases. This goes against the increasing emphasis on prevention of recidivism and alternative case handling, which means the number of cases is falling. In times of scarcity, activities that yield societal benefits, but no financial benefits for the implementing organization, come under pressure. A specific example can be found in the ZSM case, where participation is not funded for many parties and is therefore under pressure.

### **Conclusions on the Rosenmøller motion**

#### *Varying policy and funding*

- In the period 2010-2020 there was indeed a varying policy, both with regard to the funding systems and the resources made available. This follows from the findings above.



*Relationship between the rule of law and continuity of funding*

- No clear information was found in this study about the extent to which more continuity in the funding of the police, the public prosecution service and the judiciary contributes to the quality of the rule of law.

*Continuity in funding*

- Rapid successive cutbacks and extra budgets in a relatively short period of time leads to problems within the organizations:
  - Constant adjustments of budgets pose a risk to long-term aspects in terms of the quantity and quality of the personnel, as well as material support.
  - Investments (new projects) are sometimes difficult to implement because no resources are secured for the longer term.
  - Cooperation in the criminal justice system is made more difficult than promoted by the method of financing.

*Guaranteeing continuity*

The extent to which continuity must be safeguarded, just like any budgetary consideration, is ultimately a political matter. There are no conclusive solutions. Moreover, the nature of the activities differs per organization, which makes it necessary to take into account the different positions of the police, the public prosecution service and the judiciary. The independence of the judiciary, the contribution of the public prosecution service to the rule of law and the sui generis functioning of the police are of great importance.

**Recommendations**

The following recommendations can contribute to funding systems that cause fewer problems for the police, the public prosecution service and the judiciary. This in turn may contribute to further strengthening the rule of law, given the crucial roles these organizations play in it.

**Recommendation I - Match the method of funding to the cost structure of the organizations.**

- **Maintain either a mix of fixed funding with output funding based on the cost structure (public prosecution service and judiciary), or input funding (police).** The different funding methods have their own specific advantages and disadvantages. The activities of all three organizations are broad and diverse. It seems appropriate to look for the solution in a mix that matches the roles of the organizations. Because the police is less focused on specific products and because the minister is also not in charge of the specific mix of tasks, input funding is more appropriate here.
- **Match the mix to be chosen for output funding more closely with the cost structure. The guideline here is that fixed costs should also have fixed funding.** Where the activities and costs may vary more, a more flexible 'P times Q' funding can be chosen on the condition that there is sufficient opportunity to absorb windfalls or setbacks in production in any year.
- **Use 'P times Q' approaches as the start of the budget discussion and not immediately as the end point.** 'P times Q' contributes to clarification and concretization of wishes and the choices to be made. More difficult to quantify considerations about quality, broader societal benefits outside the own organization and changes in the composition and quality of production subsequently also deserve their place and require separate consideration when determining the

budget. Applying ‘P times Q’ without taking these aspects into account would be too mechanical a method.

**Recommendation II - Apply an adaptive mix of fixed funding with changing input or output funding**

- **In the event of changes in tasks and working methods, ensure that the method of funding and the funding methodologies used remain in line with the actual cost structure.** If useful and necessary, adjust funding methods more frequently in changing circumstances; After all, funding methods are a tool to achieve stable funding, not an end in themselves. Periodic task-resource analysis can be used to adjust the programs in the meantime, if necessary. A flexible non-core workforce may help organizations to adapt more quickly to changes.
- **Where output funding is considered desirable, it is necessary that the output is reasonably predictable and that forecasting and realization do not show large deviations.** If the output is not sufficiently homogeneous over time, and there is, for example, a trend increase or decrease in case weight, it is important that these effects are also realistically estimated in advance and included in the funding.

**Recommendation III - In all changes, take into account the nature and characteristics of the organizations**

- **Exercise restraint in (unexpected) budget adjustments that have to be implemented in the short term.** Cutbacks and extra budgets are sometimes necessary but lead to difficult situations for the organizations if they have to be realized quickly.
- **Make sure that the pace of budget changes matches the potential speed of change of organizations.** The most important cost items for the three organizations are personnel costs and costs associated to a greater or lesser extent to personnel (for example, buildings, ICT and, in the case of the police, vehicles and equipment). In the case of output funding, it remains the case that many costs can only adapt after a delay to deviating volume developments. It is desirable to incorporate this type of delays into the funding formulas and multi-year plans. Delays of this type should also play a role in setting targets and announcing extra budgets.
- **In the event of incidental macro budget decreases, the effects for strategic personnel planning in particular must be visible.** When structural macro budget cuts are necessary, it is important to match the pace with the speed with which the organization can adjust costs. It must be prevented that the influx of personnel decreases too quickly, because this can lead to an extra burden on training when starting up again.
- **For investments and new tasks, always provide sufficient structural resources for maintenance and operation.** In all three organizations investments are made, both separately and for the system. This often concerns one-off money, but the investments subsequently involve structural costs for operation and maintenance. Distinguish between replacement and expansion investments. A societal cost-benefit analysis is needed for expansion investments related to substantive task changes.
- **Maintain an appropriate degree of autonomy in operational management per organization.** Many of the activities performed by the three organizations are difficult to plan and often unexpected developments have to be anticipated. There must be sufficient room for management to respond flexibly to changing demand and internal processes, not only in volume (Q) but also in type of work. This requires an appropriate degree of autonomy in the operational

management of the various organizations, within the preconditions of the chosen funding system.

**Recommendation IV - Ensure that system effects and intended societal outcomes are also reflected in the funding structure**

- **Introduce a funding component that incentivizes cooperation.** For autonomous ‘sui generis’ organizations that have to operate independently with respect to the content of their work, more cooperation in the field of operational management requires a great deal of effort and change. Cooperation is now mainly dependent on the intrinsic motivation of the three organizations to work together. The desired societal effect can be increased if the funding also challenges the entire system to this jointly. An appropriate balance must be sought between autonomy versus a system-oriented approach.
- **Consider the system of criminal justice and its budgets as a whole, including all performance measures and expectations.** More or less resources for one or more system partners also have far-reaching consequences for the performance and production of other partners. Prevent organizations from getting stuck between what they are expected to deliver, given the budget, and what they can deliver, given the capacity of partners.
- **Align financial incentives with desired societal outcomes, such as an emphasis on prevention of crime and recidivism.** Prevent organizations from having to choose between what is socially desirable and what yields financial returns for the organization. Formulate indicators of effectiveness and efficiency from a broader perspective of societal costs and benefits. Report separately on the societal effects of projects, on the basis of a number of indicators that are monitored on a multi-year basis, or on the basis of a periodic policy evaluation.