

Unintended undermining.

Exploratory research about the way in which the Dutch government unintentionally facilitates organized drug crime.

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English summary

Introduction

In recent years, tackling organized drug crime has been prioritized in the Netherlands. This logically follows from the fact that the Netherlands is an important transit country for cocaine and production country for synthetic drugs and cannabis. Organized drug crime also has a seriously disruptive effect on society. To strengthen the approach to organized drug crime, the government made additional financial resources available in recent years, among other things to better intervene in criminal opportunity structures. The government (and other societal actors such as citizens and companies) therefore have a role in preventing opportunities for organized crime by, among other things, raising barriers or exercising supervision and control. To date, however, much less attention has been paid to the role of public policy development and implementation in unintentionally creating the societal conditions in which organized crime can emerge and thrive. To meet this need, the Directorate-General for Subversion [DG Ondermijning] of the Ministry of Justice and Security (JenV) set out to have this topic of unintentional government facilitation of organized drug crime researched,¹ via an exploratory study, commissioned by the Research and Documentation Centre (WODC).

Research aims and questions

The aim of this exploratory study was to provide insight into the way(s) in which the Dutch government unintentionally facilitates organized drug crime. The research questions were:

- (1) What does the scientific literature tell us about the way in which organized drug crime is unintentionally facilitated by the government?
- (2) How do academics and experts from public and private organizations think the Dutch government is unintentionally facilitating organized drug crime? How can unintended state-facilitated organized drug crime be understood and explained?
- (3) How can unintended state facilitated organized drug crime be prevented and/or counteracted?

¹ This study was commissioned as part of the Knowledge Agenda Subversion [Kennisagenda Undermining]. The Knowledge Agenda Subversion aims to generate more knowledge about the nature, extent, seriousness, and approach to subversive crime. This is a collaboration between the Research and Documentation Centre (WODC) and the Directorate-General for Subversion (DGO) of the Ministry of Justice and Security. <https://www.wodc.nl/onderzoek-in-uitvoering/kennisagenda-ondermijning>

- (a) Which organizations should play a role in this?
- (b) Which bottlenecks can be expected and what solutions exist for this?
- (c) To what extent and in what way can prevention become part of an assessment framework such as the Policy Compass [*Beleidskompas*]²?
- (d) What lessons can be learned from how other countries prevent and/or counter unintended state facilitation of organized drug crime?

Methods

The research questions were answered based on a combination of research methods. We carried out a *scoping review* of the existing (scientific) literature. In addition to scientific literature, we also included Dutch-language policy reports that were published in recent years on the approach to organized (drug) crime or the related problems in specific sectors. In addition, 24 interviews were conducted with employees of public and private organizations involved in tackling organized drug crime as well as ten interviews with scientists from the Netherlands and abroad. The *scoping review* and the interviews allowed developing an analytical framework to understand and explain unintended government facilitation of organized drug crime. Finally, this analytical framework was discussed in three reflection interviews with the respondents and further refined on that basis.

Unintended state-facilitated organized drug crime

In this study, state-facilitated organized drug crime was defined as the *behavior, decisions or omissions of the government that unintentionally create a breeding ground for organized drug crime*. This research focused on the way(s) in which the government *unintentionally* facilitates organized drug crime. Examples of *deliberate* facilitation of organized crime through corruption of individual government employees were not part of this study. However, we did include unintended consequences of *deliberate* policy choices which insufficiently anticipated those consequences. Unintended state-facilitated organized drug crime refers to governmental behavior, decisions, and omissions. It concerns various decisions and behaviors that are related to the development and implementation of (new) policy which aims to achieve something, to counteract something, but it also concerns policy contradictions. In addition, unintended state-facilitated organized drug crime refers to insufficient implementation of policy, to insufficient accountability of the possible vulnerabilities, risks and harms of policy, to the shifting of responsibilities, or to the failure to supervise, control and monitor. In the narrowest sense, the term refers to the actions of the government that create opportunities that can be abused. In the broadest sense, it refers to systemic causes, such as the way in which the government is organized, the way in which the government motivates action, or (lack of) supervision, which can create a breeding ground for organized drug crime. Unintended state-facilitated organized drug crime is therefore inherently connected to policy choices that insufficiently

² The Policy Compass (formerly the Integrated Policy and Regulation Assessment Framework [IAK]) offers policymakers and legal advisors of the government the opportunity to guarantee the quality of policy and regulations and to ensure that all relevant policy information is considered. This concerns, for example, the question whether government intervention is necessary at all, questions about the feasibility and enforceability of the policy, and questions about the effects, potential side effects and monitoring and evaluation of policy. <https://www.kcbr.nl/beleid-en-regelgeving-ontwikkelen/integraal-afwegingskader-voor-beleid-en-regelgeving>

anticipate and understand the criminogenic consequences these policies have or that consciously weigh these consequences against other interests.

Analytical framework

This research builds on findings about, on the one hand, organized crime in studies on routine activities and situational crime prevention and, on the other hand, state-organized and state-corporate crime. The former helps to understand the specific context in which a particular criminal activity emerges, and the conditions or actors shaping it. The latter assumes that governments, companies and organized crime do not function as independent systems, but rather that (organized) crime arises from the interactions of these actors and their interests. Our analytical framework distinguishes three causes or catalysts that go back to three basic explanations for crime: an offender with a motive, an opportunity and the absence of supervision. Unintended government facilitation of organized drug crime draws attention to the ways in which the government has (partly) created or facilitated the motives of potential offenders, the opportunities for committing organized drug crime and the ineffective supervision. Finally, we consider that organized drug crime can be facilitated not only by public policy development and implementation in the field of security and justice and more specifically drug policy, but also by initiatives in other policy areas, such as the economy, logistics and policy in the field of the digital, financial or legal infrastructure of the Netherlands.

How can unintended government facilitation of organized drug crime be understood and explained?

In our analytical framework, government facilitation is the result of a government that motivates or stimulates the behaviors of others, of the way in which the government is structured and of the way in which that government does or does not supervise. For each of these causes, different factors, mechanisms and illustrations specific to drug and crime policies and factors going back to other policy areas have been identified based on the scientific literature and interviews.

The first catalyst of government facilitation is the way in which the government motivates or (economically) stimulates the behavior of others via its communication about drugs- and crime and through the priorities set in drug and crime policy. This concerns situations in which the government provides the narrative to which others in society relate and adapt their behavior accordingly. This includes the message that the government sends out about drugs or the normalization or moralization of drug use. One can also think of the example function of the government and its representatives and how negative examples can lower the threshold for committing crime. However, it also concerns economic policies that make certain groups and sectors economically more vulnerable or marginalized. In addition, by prioritizing certain types of drugs, certain trafficking routes, short term approaches and traditional criminal groups and phenomena, the government is signaling that other drugs, other trafficking routes, underlying explanatory mechanisms and less traditional criminal groups or phenomena are less important. Of course, the government cannot give all types of norm violations the same priority, but it does set the tone of the conversation. In addition, government policies can create socio-economic vulnerabilities that can influence one's experiences with and perception of those policies and of the government. This view can lower the threshold for participating in organized drug crime or facilitating the participation of others in it. Whether that ultimately results

in committing crime also depends on other aspects, such as the opportunities and absence of supervision, as well as personal circumstances of those involved.

The second catalyst is the way in which the government is organized in drug and crime policy and other policy areas. This concerns how the government has organized itself to anticipate what is at risk and how it may therefore unintentionally create opportunities for organized crime. This mainly refers to cases in which a government makes it more difficult for itself to be successful in tackling drug crime and thus creates a system in which organized drug crime can unintentionally be facilitated. A first factor is the ability to learn and reflect. This is about how the Netherlands relates to developments in the international political landscape and whether the government sufficiently thinks about and anticipates possible side effects while developing and implementing policy and monitors these in the long term. Secondly, symptom management can encourage government facilitation. When drug and crime policy focus on combating symptoms rather than addressing the underlying causes, this prevents the broader problem from being recognized, and results in reactive rather than proactive approaches. Thirdly, there is the difficult alignment between different public authorities and between different tracks in tackling drug crime (compartmentalization) and the sometimes-difficult interagency management of overarching problems (mono-disciplinarity). These challenges are not new, but they remain topical, and are typical for the broader system in which both the preventive and repressive approach to drug crime takes place. A fourth factor is the resilience of public and private organizations against criminal involvement. When a (local) government is insufficiently able to prevent criminals from gaining a foothold in companies, real estate or associations, this can facilitate organized drug crime. Fifthly, challenges in terms of capacity and personnel policy affect both the government and companies. Due to shortages in the labor market or a high workload, government employees are less able to invest in the approach and drug criminals may be able to gain a foothold in companies a little easier. A sixth and final structural feature of unintended government facilitation via drug and crime policy lies in the accountability structures that have an impact on interagency cooperation but can also distort internal objectives of organizations. Finally, the unintentional government facilitation also goes back to the way in which the government is organized in other policy areas and thus possibly unintentionally creates opportunities for organized drug crime. This refers to free trade and subsidy schemes, and the way in which the government anticipates potential risks that these entail.

The final catalyst is the way in which the government supervises or omits to supervise. Firstly, it concerns situations in which the government creates opportunities for drug-related organized crime in its drug and crime policy through a lack of or insufficient supervision or control. This concerns asymmetries in regulations and supervision at the (inter)national and local level between certain sectors, locations or products, the creation and continuation of legal gaps, the underutilization of legal instruments and the insufficient monitoring and evaluation of policies. The examples show that intervention in a particular location, market or services can have immediate displacement effects to other unregulated markets or services. A government that is insufficiently aware of this mechanism or that does not sufficiently monitor potential displacement will (further) lose sight of organized drug crime. Secondly, supervisory or enforcement activities can create opportunities for organized drug crime. This concerns the criminal law approach in which the chance of being caught, punishment and (de)criminalization can possibly and unintentionally facilitate crime, but there is also a lot of uncertainty about how exactly this plays a role. In addition, the respondents indicated that the government is not always sufficiently able to respond to developments in the digital domain, so that crime by digital means remains partly unaffected. According to the respondents, the continuing

challenge of the exchange of information and the discrepancy between, on the one hand, the desire and felt urgency to be able to exchange information and, on the other hand, the legal and technical infrastructure to make this possible, also reduces the visibility of the problem. For example, the government may be less able to identify new developments and risks in time. Finally, this catalyst also refers to the broader context of government supervision in other policy areas where privatization, self-regulation, certification, and risk assessment may conceal crime risks.

In considering these three types of causes and factors to explain the unintended facilitation of organized drug crime across the different policy areas, we can distinguish three main types. A first type is when a certain policy or approach leads to shifts to other phenomena (e.g. a ban on some goods and services), to other locations (e.g. other ports) or causes a waterbed effect for other policy areas. This is not necessarily facilitating, as it depends on whether such a shift is anticipated in the best way possible. Such anticipation, learning and reflection, does not always happen. As a result, we might lose sight of the phenomenon, and sometimes even assume that the problem has disappeared, so that capacity is used elsewhere, and the accumulated expertise and institutional knowledge may also be lost. A second type concerns the conscious balancing of interests within policy on organized (drug) crime or crime in a broader sense, but also between policy areas such as safety, economy, housing, or health. In this assessment, a higher priority can be given to other interests than to the prevention of certain risks of (organized drug) crime. A third type is when policies are made without even considering their criminogenic effects, think of the example of liberalizing brokerage. However, it often proved difficult to relate drug and crime policies and other policy areas directly to concrete examples of organized drug crime. Respondents from the private sector had examples of the unintentional facilitation of organized crime but found it more difficult to interpret the role of the government in this and to indicate which factors contributed to it. Scientists and respondents from the public sector were often able to explain how government action creates opportunities or blind spots for organized drug crime, but it was not always clear whether those opportunities – however plausible – were realized or whether those blind spots led to a clouded view of and therefore reduced approach to organized drug crime.

How can unintended government facilitation of organized drug crime be prevented or countered?

The prevention and countering of unintended government facilitation of organized drug crime corresponds to measures that intervene on each of the three types of causes (catalysts) that help explain the phenomenon. The question which concrete measures could be taken and who or which organization is best equipped for this were difficult to answer based on our analysis of the literature, policy reports and interviews with experts and academics. Most respondents believed that this does not require the development of new policies, but rather the (much) better use of existing possibilities. They explained that the potential risks of policy ought to be assessed better and more systematically, especially in the first stages of policy development. Moreover, they stressed the importance of coordinating this across different policy areas because the causes relate to drug and crime policy as well as other policy areas. And the many actors and government organizations involved, each have their own interests, goals and accountability structures, which prevent them from seeing the problem in its entirety.

A first cluster of recommendations is related to the way in which the government sets the tone (motivation). The questions about how the government views drugs in society, what principles underlie drug policy and what message the government sends out about drug use, production and trafficking are central to this. This requires a discussion about the fundamental principles of Dutch drugs policy. This particularly requires policies that are less guided by moral or political arguments about how we (should) view drugs and are therefore more evidence-based. This necessitates a discussion in which there is room to put all possible scenarios to approach organized drug crime and drugs on the table, and to engage in a conversation about a wide range of interests such as reducing organized crime, but also caring for users and the credibility of and trust in the government's approach. This will not immediately lead to a fundamental change of direction, because decisions about the regulation of drugs are highly politicized and, moreover, depend on agreements made in an international context. Nevertheless, more attention should be paid than is currently the case to the adverse consequences of policymaking, both to the capacity of organizations involved in the approach to organized drug crime and to the effects it has on how criminal groups operate. In addition to a wide range of possible scenarios, this also requires the involvement of a range of perspectives and actors from the ministries, experts from law enforcement agencies and (addiction) care, businesses, NGOs and science who can think along as well as think critically, starting at the phase of policy development. A structural platform where this discussion can be had is currently missing, which brings us to a second cluster of recommendations.

A second cluster of recommendations concerns the establishment of structures that can better enable the government to combat organized drug crime (structure). Policies affecting organized drug crime cover not only the areas of justice, security and public health but also virtually all areas of public policy. Moreover, it is impossible to address all possible explanatory factors identified in this study. After all, it is always about weighing divergent and sometimes conflicting interests and therefore setting priorities without having ready-made answers. What deserves more attention, however, is the establishment of structures that enable government organizations that deal with the subject of drugs to look beyond the boundaries of their own organization or policy. This would allow more systemic problems, such as information sharing and accountability, management and cooperation, to be put on the agenda and addressed. Several respondents argued for the establishment of a(n) (independent) committee in which the problems surrounding organized drug crime and drugs can be looked at from different policy domains. Such a committee should not move along with political trends, but should be able to design long-term policies in which systemic problems are analyzed, assessed and addressed based on a thorough understanding of the explanatory factors for organized drug crime and with a learning, monitoring and reflective capacity that allows for regular reassessment of interests and priorities. According to some respondents, such a committee could also benefit from an independent chairman who brings coordination, connection, and energy.

Finally, the prevention of unintended government facilitation of organized drug crime is about designing ways to better account for the criminogenic and potential displacement effects of those policies while developing and implementing them (monitoring). It is therefore about improving risk assessments of the potential side effects of various policy instruments, which also pay attention to differences in supervision and the (continuous) evaluation of policy. Various possible instruments were discussed in the literature and during the interviews. Firstly, crime proofing of policy, in which a risk assessment is made of the probability that the policy will be used for criminal purposes today or in the future. This concerns policies on drugs and crime, but also in other policy areas for which a crime

risk analysis (or crime impact assessment) should take place. Secondly, when new policies or legislation on organized drug crime are introduced, a thorough problem analysis should take place. Different alternatives to respond to a problem could be identified and an analysis could be made of the costs, benefits and risks of the different options. Such a risk analysis should include the interests of various stakeholders such as government, business, and societal actors (e.g. neighborhoods, but also drug users). Today, impact assessments are used regularly, but often too late in the policy cycle. Moreover, they usually do not concern crime risks in other policy areas. A third idea 'thinking like a thief' is an extension of crime-proofing, but more specifically tries to think about possible adaptation strategies of potential perpetrators during the development of policy. A fourth method is so-called 'red-teaming' in which a policy is tested theoretically or, possibly, in practice, by someone who takes on the role of opponent. The Integrated Policy and Regulation Assessment Framework, which was continued as the Policy Compass from 2023 onwards, also allows policymakers to weigh goals, impact and interests and think about the best possible instrument to achieve those goals. Our research shows the importance of making these interests as explicit and transparent as possible and of organizing critical feedback loops. Overall, this does not necessarily imply that all possible opportunities for organized drug crime are prevented, but rather that the intended effects and the likely side effects are weighed as best as possible, and that the choices made are also made explicit. Each of these examples discussed is about identifying the risks in policy development at the front end (*ex ante*), but risks of unintended government facilitation are also hidden in policy implementation (*ex durante*). It is therefore essential that the implementation is properly monitored and evaluated at a pre-agreed time, and adjusted where necessary, as is the case with so-called horizon provisions in the tax laws and regulations. Here, too, consideration could be given to an independent body where such risk analyses about policy and legislation are carried out by a diversity of experts.

In conclusion, our respondents said that asking the question how the government unintentionally facilitates organized drug crime is courageous. After all, the answer refers to fundamental choices and principles that underly the Dutch drug and crime policy as well as other policy areas. It therefore requires the government to look critically at its own role. Although the problem is deeply rooted in the domain of justice and security, and is historically linked to health policy, many other domains are relevant. It relates to economic policy, business climate, subsidies in all kinds of sectors, social policy and opportunity (in)equality. The approach therefore bears relevance to the fundamental choices, priorities, principles and attitudes connected to the way in which the government deals with societal challenges in various shapes and forms. Moreover, the problem of organized drug crime and the potential unintended government facilitation of it are inherently international. Initiating such a discussion will be challenging, but it is necessary to prevent the identified causes of government facilitation from thriving.