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Evaluation of the Dutch Law on Expanding Measures for Combating Financial and Economic Crime

Summary

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- SUMMARY -

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S.1 Background

Financial-economic crime is characterized by a combination of relatively high profits, a low risk of being caught, and relatively light criminal sanctions. To intensify efforts to combat financial-economic crime, the Dutch government has provided funding on various occasions since 2010. In addition, the Dutch Law on Expanding Measures for Combating Financial and Economic Crime (*Wet verruiming mogelijkheden bestrijding financieel-economische criminaliteit,* hereinafter the Finec Act) came into effect on 1 January 2015. The Finec Act includes legislative changes that expand the measures for the detection, prosecution, and prevention of financial and economic crime.

The main objective of the Finec Act is to reduce the social damage caused by financial and economic crime by limiting the attractiveness (or supposed attractiveness) of this form of crime. This has been translated into three concrete sub-goals:

- Reduce the profits from various forms of financial and economic crime.
- Increase the probability of perpetrators being caught by improving the investigative powers for various forms of financial and economic crime.
- More adequate (more severe) criminal sanctions by increasing the maximum sanctions and broader criminalization of various forms of financial-economic crime.

To achieve these sub-goals, ten amendments were implemented in the Dutch Criminal Code (*Wetboek van Strafrecht*), the Code of Criminal Procedure (*Wetboek van Strafvordering*), and the Economic Offences Act (WED). Together, these expansions in scope are referred to as the Finec Act:

1. faster complaints procedure against seizure;
2. restrictions to cost deduction;
3. updated and more severe criminal sanctions for official corruption;
4. more severe criminal sanctions for non-official corruption;
5. broader criminalization of non-official corruption;
6. more severe criminal sanctions for money laundering;
7. criminalization of money laundering in the course of a profession or business;
8. introduction of a flexible ceiling for fines;
9. more severe criminal sanctions for repeated violations of the provisions of the Economic Offences Act (WED);
10. criminalization of the misuse of public funds.

When discussing the Finec Act, the Dutch House of Representatives (*Tweede Kamer*) adopted a motion that provided for an evaluation of the effectiveness, feasibility, and results of the ten expansions five years after the introduction of the law. In 2017/2018, a baseline measurement was carried out by the Law Enforcement and Crime Control Directorate (*directie Rechtshandhaving en Criminaliteitsbestrijding, DRC*) at the request of the Ministry of Justice and Security (*ministerie van Justitie en Veiligheid, JenV*), which forms the bases for this evaluation. In the context of this evaluation, the implementation practice, bottlenecks, and side effects of the ten expansion measures in the Finec Act were studied, along with the evolution of the results of the ten expansions and the contribution of the ten expansions to the goals of the Finec Act.

S.2 Study design

The aim of the study is to evaluate the ten expansion measures in the Finec Act. This evaluation was aligned with the previous baseline measurement. For each of the ten expansions in the Finec Act, the study answers questions about implementation practice, effectiveness, and achievement of goals. See Chapter 1 for a more detailed description of the research questions.

To answer the study questions, a document study was carried out, individual and group interviews were held with various partners in the criminal justice system, and records were studied. A document study was carried out to prepare for the individual and group interviews. In this context, policy documents,

other documents, scientific and semi-scientific literature on the implementation practice of the ten expansions, and trends in the broader context of the fight against financial and economic crime were studied.

To obtain understanding into the implementation practice of the ten expansions, four individual interviews and three group interviews were held with partners in the criminal justice system. These partners exercise a supervisory role or are involved in the investigation, prosecution, and resolution of financial and economic offences within the scope of the expansions in the Finec Act: The Financial Supervision Office (*Bureau Financieel Toezicht, BFT*), Financial Intelligence Unit Netherlands (*Financial Intelligence Unit Nederland, FIU-NL*), the Ministry of Justice and Security (JenV), the police force, the Public Prosecution Service (*Openbaar Ministerie, OM*), the Fiscal Information and Investigation Service (*Fiscale inlichtingen- en opsporingsdienst, FIOD*), and the judiciary.

Prior to the study into records, a working session was organised with the police force, the Public Prosecution Service (OM) and the judiciary. Based on the indicators drawn up in the baseline measurement,[1] an inventory of the availability of quantitative data on the ten expansions was compiled. In the study into records, quantitative aggregated data was then requested from the Public Prosecution Service (OM) and the judiciary about the ten expansions. The request for records was aligned as closely as possible with the definitions and demarcations used in the baseline measurement. A number of comments are relevant here:

- As was the case during the baseline measurement, data was available on some, but not all indicators for this study. Missing data includes police data, data on sentences imposed, and data on the indicators for the criminalization of misuse of public funds.
- It became clear during the study into records that some of the indicators concern a relatively small number of cases per year. Due to privacy considerations, there are no reports on the precise number of cases for indicators where the number of cases per year is ten or less. Where possible, this data is presented over a period of several years.
- The data collected during the study into records at the Public Prosecution Service (OM) and the judiciary (including the Supreme Court) comes from ‘dynamic files'. This means that the files are continuously changing, and records can also be updated retroactively. The numerical data in the study into records can therefore differ from data shown in other sources, including the baseline measurement from 2017/2018.

Finally, two expert meetings were organized to validate the findings and examine them in more detail. Representatives of the legal profession, the Financial Supervision Office [BFT]), the police force, the Fiscal Information and Investigation Service (FIOD), the Public Prosecution Service (OM), the judiciary and a scientific expert participated in the first expert meeting. At the second expert meeting, only substantive experts from the Public Prosecution Service (OM) were present.

S.3 Findings on implementation practice, effectiveness, and achievement of goals

The findings are presented based on the threefold division of the research questions: implementation practice, effectiveness, and achievement of goals.

Procedural expansions

Expansion 1: Faster complaints procedure against seizure;

- Implementation practice: a reduction in the legally required deadlines to accelerate the complaint procedure against seizure of potentially privileged documents is generally adhered to. As a result, the partners in the criminal justice system consider the expansion positive. In practice, however, there is no evidence that this also results in substantially or even moderately faster access to docu-

[1] Wilms, P., Van der Veen, S., Kluft, S. & Huisman, W. (2018). *‘Nulmeting wetswijziging bestrijding financieel-economische criminaliteit’* (Baseline measurement preceding amendments to the law on combating financial-economic crime). The Hague: APE (research and advisory firm).

ments and less delay in criminal investigations; the complaint procedures remain drawn-out, because there are no legal deadlines attached to parts of the complaint process, assessing large quantities of digital documents is complex, and handling of complaint procedures with care requires specific expertise. The long duration of complaint procedures, and the perception of this, even after the implementation of the Finec Act, may also have a negative impact on the investigation options and the risk of being caught. If the assessment of privileged material takes too long, some criminal investigations can grind to a halt and the capacity for further investigations disappear.

- Effectiveness: in the period 2010-2021, the number of court chamber proceedings that the Supreme Court has dealt with due to the seizure of privileged documents was virtually less than ten each year. The duration of these court chamber procedures has decreased sharply since the Finec Act came into effect in 2015, but still took an average of about eight months in 2021. The shortening of the statutory periods in the complaints procedure may have played a part in this.
- Achievement of goals: because the processing times for complaint procedures against the seizure of privileged documents have remained relatively long since 2015, the extent to which the expansion has had a direct or indirect impact on the achievement of goals is uncertain. If investigative capacity is lost during complaint procedures, the faster complaint procedure will probably fail to provide the incentive intended by the legislator for investigations of financial and economic crime, and the increased probability of detecting such crimes. This possible bottleneck already emerged in the baseline measurement.

Expansion 2: Restrictions to cost deduction;

- Implementation practice: restricting cost deductions is used very little in practice. The main reason for this appears to be the change, both real and perceived, from the reparative to the punitive nature of the cost restriction. This leads to cautiousness in restricting cost deductions. The expansion has contributed to more transparency about the arguments for the deduction of costs in the event of confiscation, so partners in the criminal justice system are generally positive about this expansion.
- Effectiveness: neither the total number of cases in which confiscation amounts have been imposed nor the number of cases in the context of Finec offences in which confiscation orders have been imposed appear to have changed, and certainly not substantially, after the cost deduction restriction came into effect. Moreover, each year there have been relatively few cases involving Finec offences in which confiscation orders were imposed. The average amount confiscated in cases with Finec offences in which confiscation orders were imposed fluctuated greatly in the period 2010-2021 due to a number of major confiscations. The added value of the expansion in practice is doubtful given the cautious attitude towards restricting cost deductions.
- Achievement of goals: the relatively low numbers of civil and criminal confiscation cases in Finec cases per year seem to support the conclusions from the baseline measurement: in practice, there appears to be no need to restrict cost deductions, so the expansion is used to a limited extent and no substantial change in implementation practice has been achieved. As a consequence, the impact on reducing criminal profits by restricting cost deductions is expected to be limited.

More severe criminal sanctions and broader criminalization

Expansion 3: Updating and increasing criminal sanctions for official corruption (Art. 363 of the Dutch Criminal Code [Wetboek van Strafvordering])

- Implementation practice: in general, the partners in the criminal justice system are aware of these legislative changes. Both legislative changes have had a positive impact on the possibilities for investigating official corruption. The update of the legal text has simplified it and thereby reduced the burden of proof, especially in cases involving official corruption outside the Netherlands. The more severe criminal sanctions mean that official corruption as a primary offence is sufficient for the deployment of special investigative powers. The change in the law has also extended the limitation periods for official corruption cases. This puts investigative services in a better position to take on often complex cases, not least because official corruption generally comes to light relatively late. The partners in the criminal justice system are also satisfied with the message sent out by the more severe criminal sanctions, and the alignment with the criminal sanctions for other serious crimes. By broadening criminalization, the update also appears to benefit the development of codes of conduct in government bodies to combat official corruption. Furthermore, the more severe maximum criminal

sanctions for official corruption is now more in line with the international situation, such as the recommendations from the OECD Anti-Bribery Convention. A less positive side effect of the more severe criminal sanctions appears to be that investigative services are deployed more intensively during an investigation, as a result of which persons who are not involved in committing a criminal offence are sometimes confronted with drastic investigative powers.

- Effectiveness: the number of submissions of official corruption cases at the Public Prosecution Service (OM) was relatively low in the period 2010-2021; in most years, less than ten cases per year. The number of official corruption cases that are taken to court each year is therefore also small. The scope of anti-corruption cases under Art. 363 of the Dutch Criminal Code (Wetboek van Strafrecht) has not increased since the introduction of the update and more severe criminal sanctions for official corruption. In the official corruption cases in which the judge imposed a custodial sentence, the average length increased by approximately three months to more than eighteen months (in 2019-2021). This shows that the updating and more severe criminal sanctions for official corruption have not led to substantial changes in implementation practice. A possible explanation for this is that the update of the article of law corresponded with implementation practice before the Finec Act, which had already largely been included in case law, entered into force. Moreover, the burden of proof for official corruption pursuant to Art. 363 of the Dutch Criminal Code (Wetboek van Strafrecht) is considered relatively high compared to related criminal offences, such as forgery.
- Achievement of goals: these findings are in line with the expectations arising from the baseline measurement: the criminalization of official corruption has been simplified and the investigation options have been expanded, but the legislative changes have not led to a higher number of cases. In addition, the average custodial sentences for official corruption cases pursuant to Art. 363 of the Dutch Criminal Code (*Wetboek van Strafrecht, Sr*) after 2015 do not indicate frequent imposition of maximum sentences. It follows that although the detection options have improved, the intended effect (increased probability of being caught and more adequate (more severe) criminal sanctions) cannot be determined.

Expansion 4 and 5: More severe criminal sanctions and broader criminalization of non-official corruption (Art. 328ter of the Dutch Criminal Code [Wetboek van Strafrecht])

- Implementation practice: the more severe criminal sanctions and broader criminalization of non-official corruption are generally known to the partners in the criminal justice system. They view the changes in the law positively, because of the extended limitation periods and the message sent out by the more severe maximum criminal sanctions. The simplification of investigation and prosecution of non-official corruption through the amended criminalization in Article 328ter of the Dutch Criminal Code (Wetboek van Strafrecht) is also considered positive. In practice, the implementation of broader criminalization still appears to be hampered by some bottlenecks. For example, the precise interpretation of the concept of 'authority' and the required burden of proof for acting 'in violation of the duty' are still too vague. In addition, the amended legal text is still perceived as overly complex. However, given the nature of the criminal offences, the partners in the criminal justice system do admit that a complex description of the offence appears inevitable. The prevalence of non-official corruption cases in the criminal justice system is relatively low, so their use in practice is limited.
- Effectiveness: the number of incoming cases of non-official corruption at the Public Prosecution Service (OM) has increased since 2016. In 2010-2014, there were fewer than 10 cases per year. This trend is also evident in the cases that have been concluded and in cases in which the Public Prosecution Service (OM) has proceeded with prosecution. The number of non-official corruption cases with a judicial decision follows the same trend. In non-official corruption cases, the courts have imposed more custodial sentences since 2015, but the custodial sentences were on average shorter than before 2015. The number of community service orders imposed by the courts also increased after 2015, as did their average duration. However, these trends should be interpreted with some caution because the number of cases is relatively low. A possible explanation for the increase in submissions of non-official corruption cases since 2016 is that the central government made additional funds available in that year for the criminal prosecution of corruption, among other things, which created additional capacity. The figures on non-official corruption cases handled by the Public Prosecution Service (OM) and the judiciary in 2020 and 2021 were affected by the consequences of the COVID-19 pandemic measures. The COVID-19 pandemic measures meant virtually no hearings took place in

March-May 2020, which led to a sharp increase in the workload. In the subsequent period, the Public Prosecution Service (OM) therefore reassessed cases itself, and, where possible, dismissed them. In 2021, efforts were made to reduce the backlog of criminal cases for hearing.[2]

- Achievement of goals: due to the relatively low prevalence of cases involving non-official corruption, the impact of more severe criminal sanctions and broadening the criminalization of non-official corruption pursuant to Art. 328 of the Dutch Criminal Code (Wetboek van Strafrecht) on the policy goals of 'increasing the chance of being caught' and 'more adequate/severe punishments' is uncertain. The number of cases increased after the Finec Act came into effect, but this appears mainly due to the incentive provided by additional resources. The longer custodial sentences and community service sentences could, with some caution, be interpreted as signs of more adequate sentences, which was the intention of the expansions.

Expansion 6: More severe criminal sanctions for money laundering;

- Implementation practice: the more severe criminal sanctions for intentional money laundering '*opzetwitwassen*' (Art. 420bis of the Dutch Criminal Code [Wetboek van Strafrecht]), inadvertent money laundering due to negligence '*schuldwitwassen*' (Art. 420quater of the Dutch Criminal Code [Wetboek van Strafrecht]) and repeated intentional money laundering '*gewoontewitwassen*' (Art. 420ter Dutch Criminal Code [Wetboek van Strafrecht]) are generally known within the criminal justice system. This change in the law can count on support because it positions money laundering as a serious criminal offence, just like the more severe criminal sanctions for official and non-official corruption. The more severe criminal sanctions have expanded the investigative powers, extended the limitation periods, and emphasized the urgency of prosecuting money laundering. In addition, the increased criminal sanction is in line with the desired maximum criminal sanctions for money laundering in the context of organized crime. The increase in the maximum criminal sanction for the various forms of money laundering also provides more room for differentiation in sentencing. This reflects the seriousness of the criminal offence better.
  Implementation practice has encountered two bottlenecks. Firstly, the investigation, prosecution, and resolution of money laundering cases requires the specialist knowledge of criminal law parties, and drawing up case files is a relatively long procedure. This means that other forms of crime are more likely to be given priority, especially when there are limited personnel available. Secondly, there are undesirable differences in the sanctions demanded and imposed for money laundering. This may be related to the use of different guidelines by the Public Prosecution Service (OM) and the judiciary, as pointed out in the 2022 FATF report.[3] A side effect of the more severe criminal sanctions is that they benefit international cooperation in money laundering cases: the extension of the limitation periods offers more room to complete the time-consuming procedure for a European Investigation Order.
- Effectiveness: the number of incoming cases at the Public Prosecution Service (OM) regarding intentional money laundering and inadvertent money laundering due to negligence has increased significantly since 2018. Submissions of cases involving repeated intentional money laundering actually decreased slightly after 2015. The money laundering cases in which the Public Prosecution Service (OM) prosecuted and the money laundering cases that were concluded followed the same trend as submissions of cases. A possible explanation for the increased submissions since 2018 that involved intentional money laundering and inadvertent money laundering due to negligence is the corrective legislation that came into effect that year in response to the introduction of the disqualification clause in 2016 by the Supreme Court (*Hoge Raad*). The fact that submissions of cases involving repeated intentional money laundering have not increased since 2018 could be explained by the real

[2] Dutch Parliamentary Papers II, 2952497. (2020). Consulted via: https://www.rijksoverheid.nl/documenten/kamerstukken/2020/06/25/tk-contouren-aanpak-achterstanden-strafrechtketen // Dutch Parliamentary Papers II, 3026347. (2020). Consulted via: https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/kamerstukken/2020/09/18/tk-vervolg-aanpak-corona-achterstanden-strafrechtketen/tk-vervolg-aanpak-corona-achterstanden-strafrechtketen.pdf //Temporary general arrangement for handling of cases by the Judiciary. Preamble. (2021). Consulted via: https://www.rechtspraak.nl/coronavirus-(COVID-19)/Paginas/COVID-19-tijdelijke-algemene-regeling-zaaksbehandeling-Rechtspraak.aspx#urgentezaken. //Dutch Parliamentary Papers II, 2952497. (2021). Consulted via https://zoek.officielebekendmakingen.nl/kst-29279-651.html.

[3] FATF (2022). *Anti-money laundering and counter-terrorist financing measures – The Netherlands.* Paris: FATF.

or perceived heavy burden of proof of this article. For this reason, in cases involving a charge of repeated intentional money laundering, intentional money laundering and inadvertent money laundering due to negligence are normally also included in the indictment.
The increase in the number of cases involving intentional money laundering and inadvertent money laundering due to negligence in which the courts made a decision started earlier than at the Public Prosecution Service (OM), namely in 2016. The number of cases with a court decision on a charge of repeated intentional money laundering was relatively stable in the period 2010-2021. Only the average number and duration of custodial sentences imposed for inadvertent money laundering due to negligence have increased since the more severe criminal sanctions were introduced. Furthermore, only the fines imposed by the courts for intentional money laundering increased after 2015. The average number of custodial sentences for repeated intentional money laundering decreased after 2015, while the average length of custodial sentences increased. Just like the figures for non-official corruption cases, the number of money laundering cases handled by the Public Prosecution Service (OM) and the judiciary in 2020 and 2021 were affected by the consequences of the COVID-19 pandemic measures.

- Achievement of goals: the increased submissions of cases involving intentional money laundering and inadvertent money laundering due to negligence that came into the jurisdiction of the Public Prosecution Service (OM) appears to be mainly attributed to the corrective legislation on money laundering that came into effect in 2018. Nevertheless, it is possible that the more severe criminal sanctions for money laundering in the Finec Act, as part of the increased focus and additional funds for tackling financial and economic crime, helped boost submissions of cases. It is also possible that the more severe criminal sanctions and the resulting expansion of investigative powers played a role in this. Furthermore, the longer custodial sentences for inadvertent money laundering due to negligence and repeated intentional money laundering and the increased fines for intentional money laundering may be an indication of more adequate punishment for money laundering, in accordance with the goal of the expansion.

Expansion 7: Money laundering in the course of a profession or business;

- Implementation practice: the criminalization of money laundering in the exercise of a profession or business pursuant to Article 420ter(2) of the Dutch Criminal Code (Wetboek van Strafrecht) appears to be limited in practice mainly by the relatively difficult provability of the provision 'in the exercise of a business or profession', and the resulting preference for using the provision on repeated intentional money laundering (Art. 420ter(1) of the Dutch Criminal Code [Wetboek van Strafrecht]). The main added value of criminalizing money laundering in the course of a profession or business is thought to lie in money laundering cases against gatekeepers.
- Effectiveness: the submissions of cases involving money laundering in the exercise of a profession or business (Art. 420ter(2) of the Dutch Criminal Code [Wetboek van Strafrecht]) at the Public Prosecution Service (OM) since this article came into effect has been very small every year: with the exception of the years 2020 and 2021, it concerns fewer than 10 cases. Records in these years may also have been affected by the consequences of the measures to combat the spread of COVID-19.
- Achievement of goals: the low prevalence of money laundering cases in the exercise of a profession or business is in line with the findings from the baseline measurement: in practice, there appears to be no need for the change in the law. In practice, this means the expansion does not appear to have any impact on the intended goal, namely more adequate (more severe) criminal sanctions for money laundering in the exercise of a profession or business.

Other expansions

Expansion 8: Introduction of a flexible ceiling for fines

- Implementation practice: the criminal justice system is aware of the introduction of the flexible ceiling for fines. Although the partners in the criminal justice system are satisfied with the possibilities offered by this change in the law, they believe that using it is mainly useful when applied to companies with a large or very large annual turnover. In practice, this expansion seems to be used mainly in the small number of cases against such companies; in other cases, its deployment is considered disproportionate by the partners in the criminal justice system. Even in cases against companies with a

relatively large annual turnover, a fine of ten percent of annual turnover is considered disproportionate to the seriousness of the criminal offence. This is in line with expectations based on the baseline measurement. In any event, determining the annual turnover of the previous financial year also proves difficult in some cases. The introduction of the flexible ceiling for fines does appear to have several side effects which are considered positive. For example, the change in the law improves alignment with the maximum fines in administrative resolutions and fines in other European countries, which has a positive impact on international cooperation. In addition, the threat of a fine of ten percent of annual turnover, pursuant to Article 23(7) of the Dutch Criminal Code (Wetboek van Strafrecht), appears to encourage companies to cooperate in criminal investigations.

- Effectiveness: in the period 2010-2021, there were some fluctuations in the total number of cases against legal entities at the Public Prosecution Service (OM) and the number of cases against legal entities regarding financial and economic crime. In all the years during this period, the Public Prosecution Service (OM) initiated fewer than 50 cases against legal entities regarding financial and economic crime. After 2015, the average amount in both Public Prosecution Service (OM) transactions and criminal orders increased for all cases against legal entities. Cases against legal entities regarding financial and economic crimes involved a handful of transactions and criminal orders each year throughout 2010-2021. The number of cases against legal entities for financial and economic offences in which the courts made a decision has increased since 2015. This does not apply to cases against legal entities in general. The amount of fines imposed by the courts for cases against legal entities regarding financial and economic offences fluctuated in the years 2010-2021. The fluctuations may have been caused by some higher or substantially higher fines.
- Achievement of goals: the records of the Public Prosecution Service (OM) and the judiciary seem to indicate that, although submissions of cases against legal entities regarding financial and economic offences is relatively low, the number of cases handled by the judiciary and average fines imposed have both increased since the Finec Act came into effect. It can be cautiously concluded from this that more severe, and therefore more adequate, criminal sanctions were imposed after 2015. The impact of the introduction of the flexible ceiling for fines is uncertain given the specific case studies in which added value was found in the expansion.

Expansion 9: More severe criminal sanctions for repeated violations of the provisions of the Economic Offences Act (WED)

- Implementation practice: it appears that the criminal justice system is not generally aware of the more severe criminal sanctions for repeated violations of the provisions of the Economic Offences Act (WED). In practice, the prevalence of cases based on provisions in the Economic Offences Act (WED) is very low, so the expansion measure is only usable in a small number of cases. Nevertheless, it is expected that this expansion could promote the investigation, prosecution, and resolution of financial and economic cases covered by the WED, because more investigative powers have become available in such cases with the introduction of these more severe criminal sanctions.
- Effectiveness: since 2013, a small number of cases regarding a selection of WED offences have been submitted to the Public Prosecution Service (OM) every year. Only in 2016 and 2017 did the number of cases reach around forty. In other years, submissions of such offences were smaller or even considerably smaller. This temporary increase can possibly be attributed to the 'Non-Reporters' (*Niet-melders*) project, in which cases against gatekeepers regarding the failure to report unusual transactions were taken up by various parties, in order to promote compliance with the Law on the Prevention of Money Laundering and Financing of Terrorism (*Wet ter voorkoming van witwassen en financieren van terrorisme, Wwft*).[4] The baseline measurement, which was carried out at the time of the Non-Reporters project, shows that partners in the criminal justice system expected at the time that the main impact of the change in the law would be to tackle non-reporters through the Law on the Prevention of Money Laundering and Financing of Terrorism (Wwft), through the expansion of investigative powers.

[4] Public Prosecution Service (2017). *'Advocaat gehoord voor niet melden ongebruikelijk transactie'* (Lawyer heard for failure to report unusual transaction). Consulted via: https://www.om.nl/actueel/nieuws/2017/05/01/advocaat-gehoord-voor-niet-melden-ongebruikelijke-transactie.

- Achievement of goals: due to the low prevalence of cases involving WED offences, it cannot be determined whether the Finec Act has had any lasting impact on improving investigation and prosecution, or on ensuring criminal sanctions for repeated economic crimes are more adequate or more severe.

Expansion 10: Criminalization of the misuse of public funds (Art. 323a of the Dutch Criminal Code [Wetboek van Strafrecht])

- Implementation practice: those involved in criminal law do not appear to be generally familiar with the criminalization of misuse of public funds, pursuant to Article 323a of the Dutch Criminal Code (Wetboek van Strafrecht). In practice, the expansion appears to have only a limited impact. One explanation is that this criminalization is of particular added value in cases where there is no written record of the purpose of the funds. In cases where the purposes of the funds have been recorded in writing, action can be taken against misuse of public funds on the basis of Article 225 of the Dutch Criminal Code (Wetboek van Strafrecht); forgery. Since the purpose of the funds is often specified, the added value of this expansion is limited to a specific type (and small number) of cases. It is expected that the possibilities for utilizing this criminalization have not been fully utilized, at least not yet. The criminal justice system views the criminalization of the misuse of public funds in line with the international obligations arising from the UNCAC treaty[5] as a positive step.
- Effectiveness: in the period 2010-2021, a very limited number of cases involving the misuse of public funds (Art. 323a of the Dutch Criminal Code [Wetboek van Strafrecht]) were submitted to the Public Prosecution Service (OM). In most years, there were fewer than 10 cases. The number of cases involving misuse of public funds pursuant to Art. 323a of the Dutch Criminal Code (Wetboek van Strafrecht) that is settled annually by the court is therefore very low.
- Achievement of goals: due to the low prevalence of cases involving misuse of public funds pursuant to Art. 323a of the Dutch Criminal Code (Wetboek van Strafrecht), it cannot be determined that this change in the law contributes to more adequate (more severe) criminal sanctions for such crimes. These findings are in line with the findings from the baseline measurement: it was noted at the time that no need was seen for a change in the law, because the options for tackling the issue through criminal prosecution before the change in the law were considered sufficient.

S.4 Conclusions and reflections

The Finec Act includes ten expansions that are designed to extend the measures for the detection, prosecution, and prevention of financial and economic crime. The effectiveness, goal attainment, and implementation practice of the various expansions appear to vary widely.

Despite this, there is a general consensus in the criminal justice system that the expansions should be supported. The majority of the expansions are considered a positive addition to the measures for tackling financial and economic crime. The most important comment is that the expansions are often of added value for very specific, relatively rare cases. This does not make the expansions less valuable, but it does dampen the real impact of the expansions on limiting the attractiveness of financial and economic crime and reducing social damage.
This comment does not apply to two of the expansions: the faster complaint procedure against the seizure of privileged documents and the more severe criminal sanctions for money laundering. The reduction of the terms in the complaint procedures has a broader scope due to the legally mandatory nature of the expansion. The potential scope of the more severe criminal sanctions for money laundering is also broader, because several thousand money laundering cases are submitted to the Public Prosecution Service (OM) every year.

[5] United Nations (2004). *United Nations Convention Against Corruption.* New York: Office on Drugs and Crime.

The positive impact of the ten expansions on achieving the intended goals was made clear on the basis of the policy theory and the associated indicators drawn up in the baseline measurement in 2017/2018.[6] Most of the expansions are used or mainly used in specific case studies, so the amount of the data on the indicators has proven to be limited. As a consequence of this, the low prevalence of the indicators limits the possibilities of drawing reliable conclusions, based on numerical trends, about the effectiveness of the expansions and their ability to attain the intended goals. The conclusions from the study of records must therefore be interpreted with some caution.

There are three parts to the general picture of effectiveness and goal attainment that, with some caution, emerge from the study. Firstly, the entry into force of several expansions have increased the legal investigation options. This applies to the faster complaint procedure against privileged documents, the updated and more severe criminal sanctions for official corruption, the updated and more severe criminal sanctions for non-official corruption, the more severe criminal sanctions for money laundering, and the more severe criminal sanctions for repeatedly violating WED provisions. The study did not reveal any firm conclusions about the extent to which the expansion of the investigation options has actually helped increase the probability of being caught (of the offences in question): there are no indications in the numerical trends.
Secondly, the limitation of the cost deduction has limited the possibilities for deducting criminal costs (which are incurred to obtain criminally obtained benefits) when unlawfully obtained benefits are seized. In practice, however, there appears to be no need to make use of this option due to the change, whether real or perceived, from a reparative to punitive nature of the cost deduction. This study found no impact of this expansion in reducing criminal profits.
Thirdly, the majority of the expansions are intended to contribute to more adequate, in other words more severe, punishment for financial and economic crime. The only two expansions to which this does not apply are the faster complaint procedure against the seizure of privileged documents and the restrictions to cost deduction. A trend towards more adequate punishments would require more severe average sentences for official corruption (Art. 363 of the Dutch Criminal Code [Wetboek van Strafrecht]), non-official corruption (Art. 328 of the Dutch Criminal Code [Wetboek van Strafrecht]), and money laundering (Art. 420bis, 420quater, and 420ter of the Dutch Criminal Code [Wetboek van Strafrecht]), possibly combined with an increase in the number of cases. The more severe criminal sanctions for repeated violation of WED provisions would also have to result in stiffer sentences. The criminalization of money laundering in the exercise of a profession or business (Art. 420ter(2) of the of the Dutch Criminal Code [Wetboek van Strafrecht]) and misuse of public funds (Art. 323s of the Dutch Criminal Code [Wetboek van Strafrecht]) should result in at least somewhat substantial numbers of convictions on the basis of these articles. In practice, these trends are not observable in a large part of these expansions since the entry into force of the Finec Act; non-official corruption and money laundering are the exceptions to the rule.
The number of convictions and the severity of the sentences in non-official corruption cases have increased since 2015, although the numbers are relatively small. In addition, the number of convictions and the duration of the custodial sentences for inadvertent money laundering due to negligence (Art. 420quater of the Dutch Criminal Code [Wetboek van Strafrecht]) and the fines for intentional money laundering (Art. 420bis of the Dutch Criminal Code [Wetboek van Strafrecht]) have increased after 2015. However, these trends seem to be mainly attributable to other developments, less so to the entry into force of the Finec Act. The independent impact of the Finec Act here is uncertain, because the Finec Act came into effect in a period when the social and political attention for tackling financial and economic crime increased. In addition, the Dutch central government made additional funds available five times in the period 2010-2021, to promote the use of criminal law to tackle criminal profits. These resources have benefited the capacity within the criminal justice system, the development of the required expertise, and therefore the criminal law approach to financial and economic crime, according to the partners in the criminal justice system.

[6] Wilms, P., Van der Veen, S., Kluft, S. & Huisman, W. (2018). *'Nulmeting wetswijziging bestrijding financieel-economische criminaliteit'* (Baseline measurement preceding amendments to the law on combating financial-economic crime). The Hague: APE (research and advisory firm).

All in all, the majority of the expansions appear to be a helpful addition to the options for the detection, prosecution, and prevention of financial and economic crime. However, the contribution of the expansions to tackling financial and economic crime lies mainly in increasing the detection options and thus the potential to increase the chance of being caught in specific cases. However, the extent to which the expansions of the Finec Act have actually contributed to more adequate (more severe) criminal sanctions and reduced profits from financial and economic crime in implementation practice appears to be relatively small. Although the study does not point to bottlenecks in capacity and knowledge development in implementation practice, the criminal law approach to financial and economic crime appears to have been stimulated in recent years mainly by the additional financial resources, which boost capacity and expertise development in the criminal justice chain for investigation, prosecution, and resolution of these cases.

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