# Greedy of crime-money
# The reality and ethics of asset recovery

*Petrus C. van Duyne, Wouter S. de Zanger* and *François H.G. Kristen*[1]

## Threat and greed of crime money

"Money makes greedy" is a platitudinous observation and of almost universal validity. It applies to individuals, corporations as well as states. Greed is a powerful motive and its satisfaction is frequently at odds with what is ethically and legally admissible, in particular if satisfied by crime. This leads to the second platitude: "Crime should not pay". This is the basic principle to deny law breakers the ill-gotten gains they obtained from their deeds. In addition, there are many subsidiary reasons for reclaiming those illegal profits. In the past decades these subsidiary reasons have attracted more attention than the simple crime-should-not-pay principle for which reason we bring this to the fore in this introduction.

These subsidiary reasons for attacking crime-money concern unwanted law enforcement and economic effects of leaving the crime-monies with the offenders. In terms of law enforcement it may lead to an erosion of the rule of law while saved crime-money remains available for re-investments in new criminal undertakings. That concern applies mainly to the underground economy of prohibited substances; most economic crimes, such as VAT or environmental fraud do not require must investment (Pashev, 2008). There are also unwanted macro-economic side-effects: the erosion of the integrity of the financial industry, destabilisation of the financial system and inflation because of the circulation of black money (Tanzi, 1996; Quirk, 1996; Barlett, 2002, ch. III).

These economic effects have been central in the presentation of the crime-money problem by the IMF: it sketched a kind of financial doom hovering above us, as a matter of fact, for decades. These have been widely accepted. But have they come true? Reuter (2013) looked for historical evidence, but found no unambiguous

---

1 The authors are: Professor of Empirical Criminal Law, Tilburg University; PhD Candidate at Utrecht University and Professor of Criminal Law, Utrecht University. The project has been funded by the Dutch Central Recovery Agency.

confirmation: yes there are many laundering scandals but no evidence of macro-financial systemic instability due to laundering.[2] Actually, these crime-money threat messages rather remind us of the prophesied doom of the biblical Nineveh by Jonah. But Nineveh was saved because its inhabitants converted to the 'right path', which is not a likely scenario in the world of criminal finances and crime-entrepreneurs. Instead, criminal finances continue to play a role in our society though their effects remain a matter of speculation: there are no indications the economists' doom prophesies have come true. In contrast, it was not the *existing* crime-monies in circulation, but the phantom credits deceptively created by greedy bankers *that* wreaked havoc on the global financial system. The deceptive creation of this phantom money proved to be more dangerous than stealing and laundering 'existing' money. Surprisingly, there is not a single line of reference in the money laundering literature to a potential laundering of the proceeds of this bankers' intentional deception.[3]

Despite this difference, virtually all jurisdictions have enacted a legal system to reclaim ill-gotten funds (not bankers' bonuses) as their undisturbed availability is considered a threat to society, whether in terms of jeopardising upperworld finances or undermining the morality of the financial system.

Following the IMF and later the FATF (gu)estimates, there are strong internationally held beliefs about the staggering volume of crime-money earned each year of which an unspecified part is 'available for laundering' (FATF, 1990; Keh, 1996; UNODC, 2011). Such strong beliefs cannot but strengthen the threat image as well as the expectations about the potential volume of recoverable crime-monies. How far are such expectations free of greed? Naturally, from the perspective of restorative justice ill-gotten profits should be returned to the victims and the public in general. However, there are indications that law enforcement recovery enthusiasm is also fuelled by greed or bounty hunting (Rasmussen and Benson, 1994; p. 137;). Extravagant manifestations of asset recovery in the US should be taken as a serious warning that the greed of the authorities may grow on a par with that of criminals. Criminal assets recovery policy turned into a budget targeting independent of the principles of restoring justice (Blumenson and Nilsen, 1997).

2 Reuter refers the mention by the IMF of Latvia in the 1990's and the Dominican Republic in 2002, to which he adds that it remains unclear whether financial problems should not be attributed to the predicate offences.

3 Though the selling of pretended triple A mortgages to clients was a 'white money' business, the trade and thereby the profit was based on criminal deception of the clients, contemptuously called 'muppets'. This profit is proceed. Likewise, the profits made from the Libor-fraud produced proceeds and receiving these in the form of a 'white' bonus fall under the definition of laundering.





Is the Dutch criminal asset recovery policy exempt *from* such tendencies? Not *a priori*, though examples of US-style excessive confiscations are lacking. Nevertheless, this does not rule out a greedy policy driven by unrealistically high expectations leading to unfounded criminal assets recovery targets. Is that only window dressing or has it also practical consequences? This chapter will investigate the practice of the Dutch criminal asset recovery system, its turnover, yield and its extra coercive powers against the background of (high) expectations and related targets.

## High expectations

As elsewhere, Dutch policy makers and politicians share the general belief of the existence of a (threatening) huge volume of criminal funds. Since reports issued by the United Nations estimated the amount of crime-money worldwide at one trillion US dollar *per year*, this has become a kind of the official tenet (Keh, 1996; Van Duyne *et al.*, 2005), though some zealots go beyond this number (Walker, 1999; Walker and Unger, 2009). Governments elaborating or implementing legislation against crime-money and laundering have no reason to question this official international stand which justifies their efforts. This also applies to the Dutch government: the Ministers of Justice and Finance equally expressed their strong belief of the vast amounts of crime-money in The Netherlands. This belief was strengthened by a research project conducted by Unger *et al.* (2007), commissioned by the Ministry of Finance, the FATF-portfolio holder and not likely to deviate from the official FATF stand.[4]

Given this official stance it is interesting to observe the creation of a political reality. Unger's research project worked with a debatable hypothetical economic model[5] and filled here and there some blanks with hypothetical numbers of money flows and also some empirical observations of diverse reliability. Based on this mixture of hypothetical assumptions and observations the report concluded there was a hypothetical volume of crime-money of € 18,5 billion *either transiting* through or being laundered within the Netherlands. Irrespective of this ambiguous formulation, in the end the figure of € 18,5 billion obtained a political 'reality by citation' in the subsequent parliamentary debate on crime-money in the Netherlands (see Harvey, 2011). Though such a creation goes against the idea of 'evidence based' policy

4 Unger e.a., *The amounts and the effects on money laundering. Report for the Ministry of Finance*, Den Haag 2006.

5 Walker, 1996. Reuter (2013) points at the incredibly high profit margins. Van Duyne and Soudijn (2010) point at grave methodological flaw, such as ratings by unqualified officers who have no broader view than the little desk they are sitting at.

making, it is not exceptional. This shift from 'maybe' to fact could already be observed with the wording of the FATF 1990 report and the following debate: the report's wording is in the subjunctive mode – '*may*' and '*could-be*' – which in the general debate soon turned into the indicative *is*-mode (Van Duyne *et al.*, 2005) and after a few rounds of citations turned into an iron cast truth.

Unsurprisingly there proved to be a gap between belief and reality: the (gu)estimate of € 18,5 billion versus about € 30 million recovered at the time (2011).[6] As belief usually prevails, this did not lead to a reassessment of expectations but to a strengthening of the existing belief, because "there *must* be more!" and: "criminals are always one step ahead of us". This bolstered conviction found its expression in the political debate and policy-making concerning this topic. In the parliamentary introduction to enhanced (legislative and policing) efforts, references were made to these assumed flows of illegal proceeds to justify this more severe policy.[7] High expectations of the rise of income for the state from confiscations can also be found in the parliamentary debate preceding the amendment of the bill on the Extension of Recovery Possibilities (2011). Under the heading 'financial consequences', the Minister wrote that due to the proposed amendments of the law[8], the expected revenues from assets recovery will rise to € 30 million in 2011 and then structurally to € 35 million as of 2013.[9] However, it was pure feel-good speculation and window dressing. When members of the liberal party (VVD) asked for an explanation as to the source of these numbers[10], the minister evaded a clear answer: the numbers were simply extrapolated from the sums recovered in the previous years, and it was expected that the increased intensification of the combat against financial crime would lead to a further (linear) increase of the recovered proceeds.[11] This did not satisfy all MPs. An MP (Recourt, PvdA-labour party) confronted the minister of Justice with the 'fact' that the amount of criminal assets is estimated at around € 15 billion, while only around € 35 million was budgeted as prospective recovery (discussion March 2012). In the ensuing discussion the minister promised to increase

6 *Kamerstukken II* 2009/10, 32 194, no. 3, p. 19 (Memorie van Toelichting).

7 *Kamerstukken II* 2009/10, 32 194, no. 5, p. 2-3 (Verslag), *Handelingen II* 2009/10, 77, 15 April 2010, p. 6565, 6567, 6570, 6575,

8 De *Wet Verruiming mogelijkheden Voordeelsontneming*. Staatsblad 2011, 171. It concerned, among others, the introduction of a legal presumption concerning the illegality of proceeds (*bewijsvermoeden*) and the extension of the seizure possibilities of property under a third person (*anderbeslag*).

9 *Kamerstukken II* 2009/10, 32 194, no. 3, p. 19 (MvT). This expected rise in income for the state was at that point already accounted for in the budget of the Ministry of Justice.

10 *Kamerstukken II* 2009/10, 32 194, no. 5, p. 15 (Verslag).

11 *Kamerstukken II* 2009/10, 32 194, no. 6, p. 20 (Nota naar aanleiding van het verslag).





the amount of recovered assets and in addition promised to achieve concrete targets: while € 48 million was recovered that previous year (2011), the target was to increase with around 100%, to € 100 million the following year (2013).[12]

This was little else than a juggling with figures, let alone an educated guess, rather a kind of thoughtless political reflex: reassuring Parliament by raising unfounded expectations gullibly accepted by them without any further questions. Certainly not a display of evidence based policy making. A driving factor was not only an understandable concern about the extent of crime-money in the economy, but also the consideration of filling the state coffer by intensified asset recovery. Concrete and detailed expectations of potential income for the state were expressed. With such high expectations (or greed) and lofty promises few asked whether this was realistic.

An important underlying driving force is the 'organised crime' theme which has an enormous policy making leverage. Measures that serve the fight against 'organised crime' (and terrorism) are easier justified or less criticised than if put forward under another more general criminal policy umbrella.[13] From the beginning of the anti-organised crime policy in the late 1980s, this theme has been ever present in policy documents and parliamentary history (Van Duyne, 2004).[14] However, this time the organised crime issue was juxtaposed by another theme: *financial crimes* as an additional source of recoverable criminal assets. It is interesting to observe that less attention was paid to the right of *victims* (enterprises and persons) to compensation from the recovered assets. While the principle of restorative justice was referred to (bringing criminals back to their financial *status quo ante*), the emphasis also was on the revenues for the state: as mentioned, wishful thinking without facts or figures. No questions were raised about the effectiveness of the present criminal assets recovery regime or the functioning of the most important agency in this field, the *Central Recovery Agency* (CRA).

This CRA is the essential executive body in the chain of freezing, confiscation and the execution of the recovery orders. Functioning literally as a final stop in the criminal revenue recovery procedure, its 'yield' can be considered as a proxy for criminal wealth still available after conviction. Apart from the normal – civil law – debt recovery powers, the CRA has a special power to 'induce' debtors to pay: it can request the Public Prosecution to address the Court to apply a *coercive custody of*

12 *Handelingen II* 2011/12, 68, 27 March 2012, p. 11. There is some confusion: according to a press release that figure would be reached in 2018 (ANP 26-1-2011).

13 For example the Law on Integer Decision Making in the Administration (BIBOB, 2003).

14 Among many others: proposal for a Directive of the European Parliament and of the Council on the freezing and confiscation of proceeds of crime in the European Union, COM(2012) 85 final, p. 3 and *Kamerstukken II* 2009/10, 32 194, no. 3, p. 1.

*maximum three years* for defaulting convicts who are suspected of 'unwillingness to pay'. That is not a punishment but a (tough) recovery measure that is intended to yield full payment. What are its effects in terms of recovered assets? And how does that reflect on the high expectations and targets set by policy makers?

## The Dutch recovery procedure in a nutshell

According to the Dutch criminal system the Public Prosecutor can file a request for a recovery of the illegally obtained profits. With the exception of fiscal offences, the recovery order can concern all kinds of criminal offences and all profits (even if spent or lost) which are plausibly derived from crime ("sufficient indications"). The recovery Court has much latitude in determining the amount of the criminal profits, which also includes saved expenses. The judge can deduct some (not all) of the criminal business costs in which he is rather free to use assumptions and 'rules of thumb' which is characteristic for the whole criminal profit assessment procedure. Some of these rules of thumb are debated as they may lead to a higher recovery sum than what the convict has actually earned: for example extrapolating the turnover by multiplying one the weekly average by the number of weeks the dealer was assumed to be in operation irrespective of periods of slack trade. The judge is also free to moderate the amount of the recovery sum if there are reasons for such a moderation, *e.g.* a disabled drug dealer without capacity for paid work.

Once the recovery order is final, the CRA gets the task to execute it.[15] To that end it can first of all sell off the confiscated assets. If that is less than the recovery sum or if there are no confiscated assets, the convict is summoned to pay. If the latter claims to have no money and no income he can file for a payment reduction or even remission of debt to the Court. The CRA can also settle for an instalment scheme. If the CRA has serious doubts about the sincerity of the defaulting debtor, for example it has reasons to suspect that assets are hidden somewhere, it can propose the Public Prosecution to file a request at the Court to apply the measure of *coercive custody*. If the Court shares the opinion of the Public Prosecutor that the non-payment is due to lack of willingness it can impose a number of "coercive custody days", proportionate to the amount of unpaid money with a maximum of 3 years. This is not a "replacement custody", serving time instead of paying: this has been abolished in

15 The CRA has the legal obligation to execute all financial sanctions. It functions 'on behalf of' the Public Prosecutor's Office and under the responsibility of the Minister of Security and Justice.





2003 (for recovery orders only) but is still applied to cases finalised before September 2003. If the convict is still at large without known residence an arrest warrant can be issued. Otherwise he can be put on the 'wanted list' (a system not changed by the 2003 law).

Once the coercive custody is imposed the convict still can negotiate a settlement with the CRA: suspension or release in exchange for a down payment and/or an instalment scheme. If the convict fails to comply with the instalment scheme he can be arrested to serve the remainder of his custody days. This system allows for much flexibility to coerce convicted criminals to pay off the recovery order. This indicates that the full execution of a recovery order can take much time and effort: getting crime money cost money and time. We will provide more details in a later section.

## Method of research

This chapter presents the selected outcomes of a larger research project that consisted of a legal study and analysis as well as an empirical investigation. This chapter will only present the findings of the empirical part of the project for which reason, we will only elaborate the methodological aspects concerning the analysis of the data from the CRA database and criminal files. These consist of the administrative database of the CRA and a selection of criminal recovery files.

### The CRA database

The CRA provided the research team with two separate sub-databases: *finalised* and *on-going* recovery cases. The databases have identical variables, but despite that they cannot be fused: the '*on-going* database' contains only cases from an initial recovery sum of € 10.000 and more. This means that the low-end tail of the frequency distribution is cut off. This has consequences for the comparison of the finalised with the on-going cases of which the 'lower legs' have been cut off.

Another impediment is the large number of missing values, particularly concerning the *predicate offences* which were very often missing. This means that cross-break analyses with the predicate offences as one of the lead variables resulted in a significant reduction of the number of cases. The total number of *finalised cases* is 10.012 with 2.377 (23,7%) missing values on the *offence* variable. In terms of money involved: the total initial recovery sum for *all* cases is € 133.027.389, while the deduction of records because of missing values (offences and other) resulted in a shrunken database of 7.635 cases with a recovery sum of € 63.454.861. That implies

that with the criminal offence variable failing, more than half of the total value of all the finalised recovery orders remains in the 'missing value box'.

This is not the only *caveat*. The fact that a case has been marked as 'finalised' does not imply that all the money mentioned in the column 'initial recovery sum' has actually been paid. In fact, in 1.204 cases (12%) the last category of 'finalising activity' contains mode of *non*-payment. For example, 640 convicted debtors were imprisoned under the old regime of '*replacement* custody' ('sitting' instead of paying); 131 died before (full) payment; in 203 cases the Court reduced the debt without the amount recorded in the database; or the case terminated as "uncollectable" (94), etc. In these 1.204 cases, € 29.783.748 remained unpaid. That is 75,2 % of the total payment obligations in these cases.

Furthermore, in 121 other cases the Court in the execution phase had already mitigated the payment obligation before the finalising activity. So, when taken together with the 1.204 mentioned cases above, a total of 1.325 (13,2%) finalised cases ended without ever being fully paid: in total € 33.291.401 remained unpaid in these cases. This represents 25% of the total initial payment obligation in all the (10.012) finalised cases. So the column under the heading 'finalised' does certainly not mean 'paid'. Indeed, 25% remained unpaid. A little more than twelve million Euros have been 'earned' by criminals by doing time in replacement custody. Almost 11 million Euros was reduced from the main debt by the Court in the execution phase on the request of the debtor in view of his insolvency.

Of the *on-going* cases 7% went into the box of 'inactive' and 'bankrupt' cases, representing 20% (€ 44.103.131) of the *unpaid* debt. Though this represents a considerable part of the total recovery sum, the databases still do not make clear how much has to be written-off (see section a, Table 1).

The sub-database of the *on-going* cases does not show the defect of missing values on the offence variable: of the 2.756 cases there are only 98 with missing values on the offence variable. However, as mentioned above, the subset of < € 10.000 cases have not been included, allegedly being the 'easy' recoveries (which is questionable in view of the processing time of small debts: see section b table 3). If we were allowed to extrapolate from the *finalised* database the estimate would be that this recovery class could be about 79% of the on-going cases. This is hypothetical as there are too many uncertainties for such an extrapolation from one database to another. All together a clear warning never to take an official database for granted.

Apart from a unique case number, codes for the court region, birth date, confiscation and the initial recovery sum, date of inflow and the predicate offence(s) (if not missing and otherwise in many cases more than one), both databases mention the last recorded recovery activity such as: "preparing for settlement", "monitoring settlement", "putting on the warrant list", preparing for "coercive custody". The *on-*





*going* database mentions also the sum still unpaid at the time of the last recovery activity. Naturally in these on-going cases this is only a temporary mention. The *finalised* database contains the date of finalisation and the way of finalising the case, such as "payment to the bailiff", "payment to the police", "death of debtor", "custody", "uncollectable", etc.

The offence variable consists of four columns which provides room for multiple offences per case. In the official criminal statistics offences are usually listed in order of decreasing seriousness according to their maximum penalty. In these two databases it was uncertain whether this order was also maintained. In addition, various offences were 'instrumentally connected' in the sense that one offence is enabling the commission of the main profit making offence. For example, cannabis growing requires much energy which is very often obtained by illegally tapping into the electricity grid. This is recorded as 'theft' or 'breaking' (if the meter is broken) as a secondary offence. Subsequently handling the revenues from the cannabis growing counts as laundering, being the third offence. All this can be done in cooperation with other perpetrators, which results in the additional offence of 'participating in a criminal organisation'. We simplified this complexity by taking the most likely *money making* offence and inspected whether it was mentioned in conjunction with *participation in a criminal organisation* (+OC). For example we created the two categories: 'soft drugs' and 'soft drugs + OC'. Further differentiation with additional offences was possible, but would lead to ever smaller absolute numbers and to half empty cross-breakdown tables.

## The criminal file analysis

In addition to this statistical survey of the two total databases it was considered of interest to explore how the threat of custody worked in real life cases. To this end a sample of 35 cases has been drawn from 738 'coercive custody cases' (a coercive measure was prepared or executed) for more detailed examination. This was not a *random* but a layered selection to get a cross-section through the levels of criminal revenue in the recovery set. Our main interest concerned the cases with the high recovery sums: the supposedly 'rich' criminals to find out how the coercive recovery worked at this criminal echelon. Therefore, the largest group (20 criminal files) facing a coercive custody threat or actual custody had a high recovery order: above € 300.000. Five cases had a lower recovery sum around the general midpoint of € 15.000 and five cases were at the absolute low end of the recovery distribution, ranging from € 400 – 570. Besides these thirty cases, five additional cases with a *successfully applied coercion* were studied to explore the contribution of coercion to a successful finalisation.

# Findings

## a. General overview and uncertainties in the databases

The general overview has to be divided into the two sets of on-going cases and finalised cases. As explained above, the truncated on-going database lacks the < € 10.000 cases for which reason it cannot be fused with the set of finalised cases. This implies that presenting the cases by year of inflow has to be done separately.

Table 1 provides an overview of the total on-going recovery cases from 1995 onwards.

**Table 1**
***On-going* cases: number, recovery sum and unpaid proportion**

| Year inflow | N | Recovery order € | Unpaid € | % of recovery sum unpaid |
|---|---|---|---|---|
| 1995 | 3 | 53.474 | 36.159 | 68 |
| 1996 | 17 | 693.417 | 450.854 | 65 |
| 1997 | 12 | 450.957 | 333.800 | 74 |
| 1998 | 13 | 509.985 | 270.012 | 53 |
| 1999 | 18 | 983.441 | 730.682 | 74 |
| 2000 | 26 | 2.343.612 | 1.484.138 | 63 |
| 2001 | 13 | 1.193.587 | 1.050.758 | 88 |
| 2002 | 41 | 4.332.347 | 2.103.522 | 49 |
| 2003 | 79 | 10.648.244 | 8.112.032 | 76 |
| 2004 | 197 | 47.956.571 | 41.846.582 | 87 |
| 2005 | 213 | 19.595.277 | 12.667.599 | 65 |
| 2006 | 269 | 22.099.917 | 18.135.362 | 82 |
| 2007 | 349 | 45.548.337 | 22.438.427 | 49 |
| 2008 | 368 | 24.864.186 | 20.525.061 | 83 |
| 2009 | 345 | 43.375.372 | 38.307.596 | 88 |
| 2010 | 349 | 24.939.109 | 22.406.882 | 90 |
| 2011 | 434 | 42.601.592 | 37.958.858 | 89 |
| 2012⋆ | 10 | 298.139 | 298.139 | 100 |
| **Total** | 2.756 | 292.487.565 | 229.156.464 | **78** |

⋆ The database was produced in March 2012: Therefore 10 cases in that year are still open.





As Table 1 shows 78% of the imposed recovery sums in the set of on-going cases is still not paid (2012). Is there a 'coercive custody effect'? If we take September 2003, the year of the introduction of the coercive custody measure as the dividing line, the average unpaid custody sum before 2004 is 69%. From 2004 onwards 79% of the recovery sum is still unpaid, which does not look like an improvement. However, the time factor may compound the outcome: older cases (before 2003) tend to be more often settled. There is a moderately significant correlation between year of registration and the percentage of unpaid recovery sum: Spearman's rho = 0,56; sign. 0,024. However, there are extreme values that can affect the outcomes per year. For example, the exceptional high rate of payment in 2007 is determined by one case with a recovery sum of € 22,5 million of which € 18 million was paid (the remainder went into the 'inactive stock').

If we look again at differences of the recovery sums between the years, we observe a steep rise in the recovery sum of the case inflow but also a relative rise in unpaid debts. Can we differentiate the years before and after the 'coercive custody law'? With all reservations, looking at the averages per year we find substantial differences before and after 2004: for 1995-2003, a mean of unpaid debts of € 65.639 and for the 2004-2011 time span, a mean of € 107.361. Is this a coincidence or a causality?

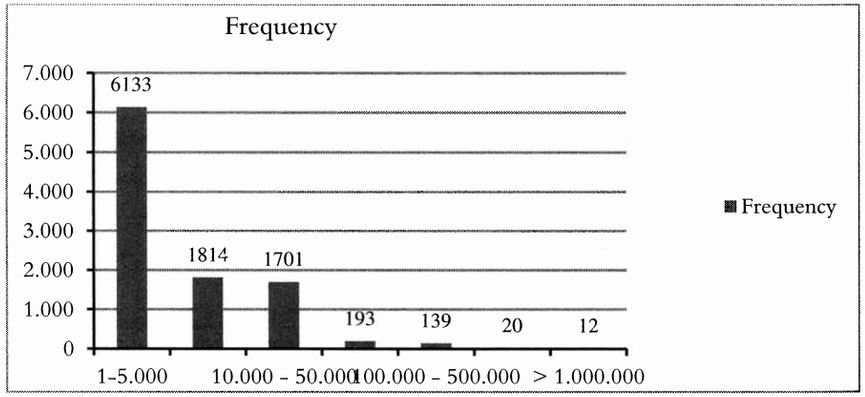
**Table 2**
***Finalised* cases: number and statistics of initial recovery sum**

| Year inflow | N | Mean € | Median € | Sum € | Maximum € |
|---|---|---|---|---|---|
| 1995 | 86 | 25.497 | 5.604 | 2.192.732 | 850.838 |
| 1996 | 141 | 15.550 | 5.445 | 2.192.488 | 453.780 |
| 1997 | 244 | 28.184 | 4.538 | 6.877.000 | 3.785.339 |
| 1998 | 192 | 10.425 | 3.310 | 2.001.561 | 181.512 |
| 1999 | 331 | 14.110 | 3.442 | 4.670.259 | 695.320 |
| 2000 | 305 | 24.781 | 3.959 | 7.558.110 | 1.878.650 |
| 2001 | 411 | 10.760 | 3.403 | 4.422.450 | 453.780 |
| 2002 | 613 | 10.656 | 3.015 | 6.532.047 | 920.000 |
| 2003 | 1.052 | 11.785 | 2.723 | 12.397.822 | 593.998 |
| 2004 | 1.076 | 12.764 | 2.990 | 13.733.728 | 1.183.137 |
| 2005 | 1.110 | 10.869 | 3.000 | 12.064.680 | 1.250.000 |
| 2006 | 1.162 | 13.811 | 3.500 | 16.130.226 | 1.486.514 |
| 2007 | 1.053 | 10.422 | 3.414 | 10.974.477 | 945.000 |
| 2008 | 842 | 10.669 | 3.469 | 8.983.190 | 600.000 |
| 2009 | 634 | 14.686 | 3.287 | 9.311.036 | 1.217.000 |
| 2010 | 450 | 20.557 | 3.820 | 9.250.531 | 2.273.844 |
| 2011 | 309 | 12.007 | 4.000 | 3.710.054 | 565.760 |
| Total | 10.011 | 13.286 | 3.310 | 133.002.389 | 3.785.339 |

When we look at the database of finalised cases, as presented in Table 2, we find interesting differences between the central indexes of mean and median.

As can be observed, the difference between the mean and median is large indicating a *skewed* distribution. This means that lower sums have a high frequency and high recovery sums are rare. Of the maximum recovery sums for each year, in only seven years it is above one million Euros, while the median as midpoint remained roughly around € 3.500. The mean shows a larger deviation over the years: from € 10.422 in 2007 to € 28.184 in 1997. The skewness of the frequency division is visualised in figure 1.

**Figure 1**
**Recovery sum intervals and their frequencies of finalised cases**




Against 6.133 cases of less than € 5.000 on the low end we have 364 cases with recovery sums of € 50.000 or more of which only 12 are more than one million Euros. This is not unique: the recoveries received by the UK Asset Recovery Agency had an equally skewed distribution: 50% was under £ 50.000 and 6% in the interval of > £ 1 million (National Audit Office, 2007).

When we repeat our question concerning the potential effects of the 2003 coercion custody law and compare the averages between the two time spans of 1995-2003 and 2004-2011 in this finalised database, we do not observe any noticeable difference: the respective means are € 14.472 and € 12.684. This contrasts with the on-going cases where the effect was negative: a larger proportion of unpaid debts after 2003.





## b. Getting the money: how long does it take?

From an efficiency perspective it is important to know how much time it takes to get the recovery orders fully paid. We have already seen in Table 1 that *on-going* cases can have a long history: the oldest stemming from 1995 while 45% of the cases was older than 5 years measured from end 2011. This gives already an indication that it takes time to achieve a full payment of the recovery orders. Therefore we have to look at the *finalised* cases for the full execution time. This is represented in Table 3 in which the execution time is broken down by intervals of the recovery sum.

**Table 3**
**Execution time (in years) of finalised cases by recovery sum interval**

| Intervals of the recovery sum in € | N | Mean year | Median year | Maximum years |
|---|---|---|---|---|
| 1-5.000 | 6.133 | 2,3 | 1,2 | 16,1 |
| 5.000-10.000 | 1.814 | 2,8 | 1,8 | 15,9 |
| 10.000-50.000 | 1.701 | 3,1 | 2,1 | 16,1 |
| 50.000-100.000 | 193 | 3,5 | 2,5 | 14,9 |
| 100.000-500.000 | 139 | 3,5 | 2,8 | 12,0 |
| 500.000-1.000.000 | 20 | 3,7 | 2,1 | 16,1 |
| >1.000.000 | 12 | 3,5 | 1,8 | 14,6 |
| Total | 10.012 | 2,6 | 1,5 | 16,1 |

As is clear from Table 3, making criminals pay takes time: on average 2,6 years (median 1,5). As the comparison of the mean and median shows, not only the money variable, but also the time distribution is skewed with a few number of extremes pulling the mean to the high end: 18,6% lasted more than 5 years; four cases of them lasted 16 years; other cases ended after 14 and 15 years with custody; or finally with the admission that further execution efforts will be fruitless.

If we look at the median we see that biggest deviation from the mean, and therefore high extremes, can be found in the ≥ € 1.000.000 cases though their absolute frequencies are low. However, taking the median values, the main delays are not found within this highest recovery category, but lower, in the € 100.000 – 500.000 group followed by the next lower group. The low recovery category of € 1 - 5.000 had the shortest execution time, but still on average 2,3 years (median 1,2 years also indicating large extremes). The correlation between execution time and recovery sum was low: $r = 0{,}053$, but still significant at .05 (due to a large N). If execution time could be interpreted as a proxy-indicator to the inability (or unwillingness) to pay, this seems to be spread across all debt levels of the criminal debtor population.

What is the picture of the *on-going* cases? Naturally we cannot speak here of an execution time span, though we can measure the time between the entry date of the cases and the latest known recovery task, which we call the '*arrear time*'. We remind again of the *caveat* of not having the lower interval cases (< € 10.000) in this data base. This is reflected in the higher arrear time average: 2,8 year; median 2,1 year (compare: finalised cases 2,5 year; median 1,4).

The recovery tasks that have the longest arrear time are: issuing an arrest warrant plus monitoring it (5,3 years: 20 cases) and monitoring the execution of the coercive custody (4,6 years). A special category is the 'inactive work stock': 4,6 years. One may also call them 'sleeping cases' to be reactivated when the debtor is able to pay or emerges again. There was no correlation between the volume of the recovery sum and the arrear time (R = 0,017). Again: making criminals pay is apparently at all levels a time consuming task. A further differentiation according to crime type is presented in section d.

## c. 'Squeezing' the criminal debtor: coercive measures (or not)

1. *The general picture*

As few profit oriented criminals will hand in their ill-gotten gains because of pangs of conscience, the awareness of some ultimate 'strong hand' measure in the form of the coercive custody can act as an anticipating 'encouragement' to comply with the recovery order. This would imply that with such an awareness coercion may remain in the background. This is not always the case: the criminal debtor can pretend not to be able to pay when he has hidden the 'loot'. Or he has squandered the criminal revenues on the usual trinity of slow horses, fast cars and expensive women. But extravagance and dissipation does not liberate him from the duty to pay his ill-gotten revenues back: as long as he has some income he is supposed to have a 'payment capacity', either to pay in full or in agreed instalments and if he defaults on this arrangement the threat of the coercive custody is activated (again) and suspended as a kind of 'sword of Damocles' – but without any prospect of debt reduction: doing time does not wipe out debt. But that does not come down unexpectedly: it is suspended with a lot of warnings and rattling while the criminal debtor has the opportunity to explain to the Court that he is willing but 'really' insolvent. How often is that threat invoked and how does that work?

The threat of coercion is not often used. It appears that most cases could be finalised without rattling 'Damocles' sword': only in 6,8 % of the cases was custody threatened or actually applied with a total recovery sum at stake of € 12.887.948 which is 9,7 % of the recovery sum of the finalised cases.





In the on-going cases the use of coercive measures occurred (thus far) in 337 cases which is 12% of the cases (above € 10.000) and in which € 40.596.178 is involved. That is 14% of the recovery sum in on-going cases. Because of the 'amputation' of the < € 10.000 category in the on-going database, a very large subset, we restrict the rest of the analysis to the finalized cases.

What is the precise picture of the coercion cases, taking account of the amount of money, execution time, type of offences and coercion? Table 4 provides a first more detailed overview of the finalised coercion cases with the imposed recovery sums divided in intervals.

**Table 4**
**Coercive measures broken down by intervals of recovery sum & mean and median of the recovery sums**

| Coercive measure | € 1-5.000 | € 5.000-10.000 | € 10.000-50.000 | € 50.000-100.000 | € 100.000-500.000 | € 500.000-1.000.000 | € >1. million | Total N | Mean € | Median € |
|---|---|---|---|---|---|---|---|---|---|---|
| Preparation custody (incl. replacement) | 76 | 20 | 17 | 3 | 2 | 1 | 1 | 120 | 25.863 | 3.244 |
| | 63,4% | 16,7% | 14,2% | 2,5% | 1,7% | 0,8% | 0,8% | 100% | | |
| Submission custody request | 10 | 5 | 4 | 1 | 1 | 0 | 0 | 21 | 22.589 | 5.000 |
| | 47,6% | 23,8% | 19% | 4,8% | 4,8% | 0 | 0 | 100% | | |
| Issuing arrest war-rant | 15 | 6 | 6 | 0 | 2 | 0 | 0 | 29 | 15.438 | 4.538 |
| | 51,7% | 20,7% | 20,7% | 0% | 6,9% | 0 | 0% | 100% | | |
| Forwarding and monitoring arrest warrant | 154 | 49 | 103 | 14 | 13 | 0 | 0 | 333 | 19.318 | 5.604 |
| | 46,2% | 14,7% | 30,9% | 4,2% | 3,9% | 0 | 0% | 100% | | |
| Monitoring custody execution | 85 | 40 | 43 | 6 | 4 | 0 | 0 | 178 | 13.649 | 5.433 |
| | 47,8% | 22,5% | 24,2% | 3,4% | 2,2% | 0 | 0% | 100% | | |
| Total coercion | 340 | 120 | 173 | 24 | 22 | 1 | 1 | 681 | 18.925 | 5.000 |
| | 49,9% | 17,6% | 25,4% | 3,5% | 3,2% | 0,1% | 0,1% | 100% | | |
| Coercion in % of finalised cases | 5,5 | 6,6 | 10,2 | 12,4 | 15,8 | 5 | 8,3 | 6,8 | | |
| **Total finalised** | 6.133 | 1.814 | 1.701 | 193 | 139 | 20 | 12 | 10.012 | 13.287 | 3.311 |
| | 61,3% | 18,1% | 17,0% | 1,9% | 1,4% | 0,2% | 0,10% | 100% | | |

The coercive measures appear to be the smaller part of the activities to collect the recovery sums: as mentioned they occurred in 6,8% of the cases (681). These

coercive actions concerned: 'preparing' the coercive custody procedure (120 cases[16]), actually executing the custody order (178) or putting someone on the warrant list (333 cases after a court order of a custodial term *in absentia* and no known residence). The total initial recovery sum of the coercion cases is € 13 million.

Exerting coercion (encompassing all actions from light to severe: from preparing to locking up) occurred relatively most often in the € 100.000 - 500.000 interval: 15,8%, but rarely in the next higher level; € 500.000-1.000.000. In the lowest interval (< € 5.000) the least coercion cases occurred: only 5,5% though this interval accounts for 61% of the total finalised database. Nevertheless, it should be noted that the measure of coercive custody is not reserved for the 'high earners': 48% of the 178 *executed custody* orders concerned debts of less than € 5.000.

Compared to the frequency distribution of all the coercion cases, in the cases of filing a request for custody or executing a custodial order, there appears to be a small overrepresentation in the € 5.000 - 50.000 intervals. The same applies to arrest warrants. Otherwise the coercive custody measures (and follow-up steps such as arrest warrant) is applied proportionally across the whole range of debtors and are not only reserved for 'high earners', of which there are not many anyhow.

2. *Execution time and coercion*

An important aspect of the recovery procedure is the relationship between the various execution steps and the execution time as has already been indicated above. Table 5 provides a picture of the execution times broken down by the coercion steps.

**Table 5**
**Coercion and execution time of *finalised* cases. In years.**

| Coercive measures | N | Mean | Median | Maximum |
|---|---|---|---|---|
| Preparation replacement custody* | 22 | 7,9 | 7,2 | 14,3 |
| Preparation coercive custody | 98 | 2,8 | 2,4 | 7,7 |
| Issuing arrest warrant | 29 | 5,1 | 3,9 | 13,7 |
| Submission custody request | 21 | 3,8 | 3,4 | 7,1 |
| Forwarding and monitoring arrest warrant | 333 | 6,3 | 5,8 | 14,8 |
| Monitoring custody execution | 178 | 6,9 | 6,6 | 15,0 |
| **Total** | 681 | 5,9 | 5,5 | 15,0 |
| **All cases** | 10.012 | 2,6 | 1,5 | 16,1 |

* Cases under the old recovery regime of replacement custody before Sept. 2003

16 These included 22 cases of replacement custody under the pre-2003 law.





Unsurprisingly, cases which finally lead to coercion measures last on average longer: they take twice the execution time than is the case with non-coercive cases: 5,9 years compared to 2,6 years (median 1,5 year). This is partly due to the old cases under the previous recovery law of replacement custody (till Sept. 2003). But apart from that, it is clear that putting debtors in jail (letting the sword of Damocles come down = 'monitoring custody execution'), occurs only after a very long processing time: on average almost seven years.

Coercive measures, or the threat thereof, also occurred in on-going cases. A direct comparison with the finalised cases is not possible as with on-going cases the last recorded recovery task of threatening custody can be followed up by one or more others execution actions. Nevertheless, it is of interest to compare the execution time as a temporary delay concerning coercive measures. In 161 cases, no execution time till the coercive measures was known. Because of these missing values the total N is therefore 2.595 instead of 2.756.

**Table 6**
**Execution time till coercive measures: *on-going* cases. In years**

| | N | Mean | Median | Maximum |
|---|---|---|---|---|
| Preparation replacement custody* | 1 | 4,0 | 4,0 | 4,0 |
| Preparation coercive custody | 127 | 3,1 | 3,0 | 7,9 |
| Submission custody request | 93 | 2,6 | 2,1 | 7,1 |
| Forwarding and monitoring arrest warrant | 20 | 5,3 | 4,3 | 14,5 |
| Monitoring custody execution | 96 | 4,6 | 4,2 | 13,8 |
| Total | 337 | 3,5 | 3,2 | 14,5 |
| Total all ongoing case | 2.595 | 2,8 | 2,1 | 15,8 |

* Cases under the old recovery regime of replacement custody before Sept. 2003

Also in this database, the coercive cases last on average longer than is the case with the total set, although the difference is less substantial than with the finalised cases. Also, the distribution is less skewed. It is a matter of speculation whether these distribution characteristics will disappear as soon as these on-going cases reach the 'finalised' status.

3. *Outcome of coercive actions*

What is the outcome of the coercive actions? What happens as a response to the decision to prepare coercion measures, such as submitting a request to the Court or subsequently, issuing an arrest warrant or finally executing a custody order? The

outcomes are displayed in Table 7. It presents what happened after the last recovery action: whether paid or not and the outcome of the last recovery action.

**Table 7**
**Last recovery action and results of coercion cases: defaulting and paying debtors**

| | Outcome of defaulting debtors | | | | | Paid | | |
|---|---|---|---|---|---|---|---|---|
| **Last recovery action with coercion** | Custody | Reduction | Other | N | Initial recovery sum € | Settled sum €[17] | N | Total initial recovery sum € |
| Preparation replacement custody | 1 | 1 | 5 | 7 | 33.770 | 214.231 | 15 | 248.001 |
| Preparation coercive custody | 0 | 7 | 5 | 12 | 248.005 | 2.607.613 | 86 | 2.855.618 |
| Submission custody request | 0 | 4 | 0 | 4 | 381.881 | 92.493 | 17 | 474.374 |
| Issuing arrest warrant | 2 | 0 | 1 | 3 | 26.029 | 421.671 | 26 | 447.700 |
| Forwarding & monitoring arrest warrant | 150 | 0 | 3 | 153 | 3.568.751 | 2.864.011 | 180 | 6.432.762 |
| Monitoring custody execution | 73 | 3 | 2 | 78 | 1.314.479 | 1.115.014 | 100 | 2.429.493 |
| Total | 226 | 15 | 16 | 257 | 5.572.915 | 7.315.033 | 424 | 12.887.948 |

As can be observed in Table 7, most debtors found the means to pay: 424 (62,3%): being aware of an arrest warrant (180) or actually facing imprisonment. Of the 257 debtors who still could not or did not want to pay most served time: 226 (33% of all coercion cases = 681). Against most of them an arrest warrant was issued (153). 15 cases resulted in a request for debt reduction, in 4 cases the prosecution waved further execution and 9 debtors died pending the custody procedure. In terms of money value the 'success' was less pronounced: the initial sum for which the debtors settled (62,3% of these cases) represents 56,8% of the total recovery sum of this coercion subset.

[17] The debt settlement does not necessarily imply that the whole debt has been paid: there could be a reduction which was not recorded. It only says: "remaining debt = 0".





It is clear that the coercive custody remains a pressure tool while to most of the debtors it is also clear that it is a real sword of Damocles which has to be averted because of its reality value. Nevertheless, from these figures one cannot deduce any yardstick for estimating efficiency or effectiveness.

## d. Recovery per crime category: money, time and coercion

**Table 8**
**Recovery sums and execution time of finalised cases. In € and years per crime category**

| | | | Recovery sum € | | Execution time in years | |
|---|---|---|---|---|---|---|
| **Offences** | **N** | **Total €** | **Mean €** | **Median €** | **Mean years** | **Median years** |
| Soft drugs | 3.497 | 20.568.406 | 5.882 | 3.000 | 1,6 | 0,8 |
| Soft drugs + OC | 81 | 1.507.043 | 18.605 | 5.370 | 2,0 | 0,8 |
| Hard drugs | 1.468 | 13.831.956 | 9.422 | 3.000 | 3,2 | 2,1 |
| Hard drugs + OC | 116 | 2.579.115 | 22.234 | 5.913 | 3,5 | 2,7 |
| Fraud and other | 641 | 7.281.597 | 11.360 | 2.500 | 3,4 | 2,6 |
| Fraud and other + OC | 33 | 2.051.202 | 62.158 | 15.429 | 4,8 | 5,8 |
| Property crime | 1.120 | 3.550.909 | 3.170 | 1.361 | 3,8 | 3,3 |
| Property + OC | 56 | 1.114.288 | 19.898 | 8.612 | 3,6 | 1,9 |
| Hum. traff. & smuggling | 73 | 830.969 | 11.383 | 3.403 | 2,6 | 1,2 |
| Hum. traff. & smuggl + OC | 17 | 386.407 | 22.730 | 3.959 | 3,2 | 2,7 |
| M. laundering | 210 | 1.693.900 | 8.066 | 1.825 | 2,4 | 1.1 |
| M. laun.+ OC | 9 | 160.466 | 17.830 | 10.494 | 3,5 | 1,8 |
| OC + other | 28 | 2.352.666 | 84.024 | 8.177 | 3,2 | 2,0 |
| Other crimes | 286 | 5.545.937 | 19.391 | 2.711 | 1,6 | 0,2 |
| Total | 7.635 | 63.454.861 | 8.311 | 2.723 | 2,5 | 1,3 |
| Missing values | 2.377 | | | | | |

In the previous sections we grouped all the predicate offences together, thereby hiding potential differences related to the nature of the crimes. In this section we will differentiate according to offence categories we have designed on the basis of the reported criminal codes. As described in the section on methodology, in cases of

multiple offending we took the main money making crimes with the highest maximum penalty and subsequently looked whether "participation in a criminal organisation" was also mentioned which is coded in the table as "+ OC", as presented in Table 8. We remind that the number of missing values on this offence variable is large: 2.377 which restricts the potential for extrapolation.

The breakdown of the outcome variables (money and time) by type of crime allows more detailed observations, assuming that the missing values (no crime recorded) is equally divided over all crime categories. The categories with the highest (total) recovery sums are the soft and hard drug cases (not in organised setting). But they do not have the highest average: that is to be found with 'organised crime + other offences' (mean € 84.024 but median € 8.177) and 'organised fraud' (mean € 62.158 and median € 15.429). Further, the money and time variables are per crime type (again) very skewed, though the degree of skewness is more pronounced with the *money* variable: there are in all categories many low and moderate and a only few very high recovery sums. This is particularly the case with convictions for the commission of crimes mentioned in conjunction with *participation in a criminal organisation* (+ OC).

As far as the *execution time* variable is concerned, we observe a less pronounced skewness: the mean is 2,5 year and median 1,3. There are some marked differences between the average execution times per crime category. The execution times of convicted *soft drug* dealers or growers, whether or not in organised setting, is the lowest: median 0,8 year or a mean of 1,6 year (non-organised) or two years (in organised setting). The '*other crimes*' category shows a record low execution time of less than three months (median). But *fraudsters*, in particular in organised crime setting, prove to be very tenacious in handing in the illegal profits (or had nothing left). It should be observed that – contrary to common findings – in this fraud category the median is higher than the mean implying that the frequency distribution for this category is not determined by a few occasional stragglers (unwilling or incapable debtors), but by many, shifting the median upwards above the mean.

As remarked before, coercive custody is and remains a credible and not a fictional sword of Damocles. Nevertheless, it must be used parsimoniously. Letting that sword down and executing the custody order should not be considered a success: putting a defaulting debtor in prison must be considered an expense in the execution: about € 180 per day. Therefore, we should look at the cases in which the threat of custody worked by inducing the debtor to settle his debt as well as where it failed and the custody order had to be executed.





**Table 9**
**Coercive measures (from preparing to execution) and Settling/payment of recovery order**

| Crime category | N cases 'coercive acts' | N settled settled debt | % settled | Total initial recovery sum € | Initial recovery sum settled* € | % of initial order |
|---|---|---|---|---|---|---|
| Soft drugs | 119 | 95 | *80* | 781.094 | 476.018 | *60,9* |
| Soft drugs + OC | 2 | 2 | *100* | 13.239 | 13.239 | *100* |
| Hard drugs | 114 | 59 | *52* | 1.644.668 | 853.655 | *51,9* |
| Hard drugs + OC | 18 | 12 | *67* | 327.461 | 232.992 | *71,2* |
| Fraud and other | 86 | 54 | *63* | 1.033.906 | 336.815 | *32,6* |
| Fraud and other + OC | 3 | 3 | *100* | 28.112 | 28.112 | *100* |
| Property crime | 115 | 66 | *56* | 412.902 | 193.637 | *46,9* |
| Property + OC | 6 | 4 | *67* | 171.211 | 122.657 | *71,6* |
| Hum. traff. & smuggling | 2 | 1 | *50* | 6.353 | 454 | *7,1* |
| Hum. traff. & smuggl + OC | 1 | 1 | *100* | 20.420 | 20.420 | *100* |
| Money laundering | 10 | 7 | *70* | 72.179 | 46.087 | *63,9* |
| Money laundering + OC | 0 | 0 | *0* | 0 | 0 | *0* |
| OC + other | 1 | 0 | *0* | 4.538 | 0 | *0* |
| Other crimes | 8 | 4 | *50* | 20.514 | 12.430 | *60,6* |
| Total | 485 | 308 | *64* | 4.536.597 | 2.336.515 | *51,5* |
| Missing values | 196 | | | | | |

* In this table 'settled' means a finalisation other than reduction, remission, bankruptcy, death and other "non-payment" finalisations. The settled sum is that of the initial recovery order, though part of it may have been paid as instalment before defaulting and the 'announcement' or initiation of coercion measures.

As can be observed from the figures of Table 9 the missing values reduced the number of coercive cases to 485 which is now our 100%. As Table 9 shows, the coercive activities of the CRA 'worked' in 64% of the cases in which the threat of a execution became real. But in terms of the paid debts the success rate was less

shining: the money received represented only 51,5% of the outstanding recovery sum (of this subset).

The soft drug offenders, hard drug offenders (in organised setting), property offenders (in organised setting) and money launderers paid on average more often: > 60%. From *fraudsters* and property offenders (without an organised setting) a comparatively lower portion of the total debt was received: about 30% and 47% (but these represented 63% and 56% of the offenders). Success of coercion appears to be crime category dependent.

Does this crime category differentiation also apply to the execution time? For the total database we have already observed that there are differences in average execution times per crime category. Does this also hold for the 'coercion cases'? Table 10 presents the breakdown of time and crime category.

**Table 10**

**Execution times of all 'coercion cases' per crime category in years**

| Crime category | N cases with 'coercive acts' | Mean execution time | Median execution time |
|---|---|---|---|
| Soft drugs | 119 | 4,2 | 3,9 |
| Soft drugs + OC | 2 | 5,3 | 5,3 |
| Hard drugs | 114 | 6,6 | 6,3 |
| Hard drugs + OC | 18 | 5,7 | 5,0 |
| Fraud and other | 86 | 5,9 | 5,6 |
| Fraud and other + OC | 3 | 7,6 | 7,7 |
| Property crime | 115 | 6,9 | 6,6 |
| Property + OC | 6 | 6,9 | 6,1 |
| Hum. traff. & smuggling | 2 | 9,2 | 9,2 |
| Hum. traff. & smuggl + OC | 1 | 8,1 | 8,1 |
| Money laundering | 10 | 5,1 | 4,5 |
| Money laundering + OC | 0 | 0 | 0 |
| OC + other | 1 | 12,9 | 12,9 |
| Other crimes | 8 | 7,1 | 6,1 |
| **Total** | **485** | **5,9** | **5,6** |





As can be observed there is little difference between the mean and the median execution times in this subset of coercion cases, for which reason we use the mean, which is 5,9 years. The range around the mean is large: from 7,6 years for fraud in organised setting (but only three observations), 6,9 years for property crimes, to 'only' 4,2 years for the soft drugs group. A comparison of these outcomes with the average execution times for the whole database, differentiated by crime category as presented in Table 8 accentuates the long execution times of the coercion cases which for most crime categories more than doubled.

Summarising the coercion findings: the picture is that it is relevant for 6,8% of the total debtor population; it yields about 57% of the recovery sum of these coercion cases; but which on average takes about five years and eleven months to realise. Indeed, there are not many 'easy pickings'. The range of the execution time was large: from more than four years for the 'easy' soft drug cases to over eight years and more for human trafficking cases.

Before continuing with the more detailed study of criminal case files one may wonder whether this statistical analysis can provide a justification of an extra investment in 'squeezing capacity'. That is not the case: these statistical outcomes do not shed light on cost-benefit issues and cannot give a formula to estimate the extra gain from an extension of staff. They highlight that collecting money from reluctant or insolvent criminals is a time consuming costly process, and as the next section will make clear, often an arduous job.

## e. A closer view on recovery in action

Apart from full access to the raw database for statistical analysis, we also had access to the criminal recovery files. This provided us the opportunity to explore directly the recorded steps and processes of collecting the ill-gotten gains. The collection of the files took place in the office of the CRA where we used their computer. This gave us the opportunity to experience directly the daily work of the "Serious Crime Team" (tasked with cashing debts of more than € 100.000.) Studying criminal files is a time consuming undertaking, which implied that we had to make a selection. As we expected that cases with high recovery sums would contain convicted criminals with a high degree of stalling and struggling to avoid payment or real insolvency, we selected 20 cases of the € 100.000 + class in which the CRA *considered or initiated a coercive custody request*: these represent real 'squeezing cases'. For reasons of comparison we also studied 10 files of lower recovery classes: five cases around the median and five cases "at the bottom" of the recovery scale: about € 500. In addition to these 30 cases five custody cases with the *highest fully paid* recovery orders (the 'success cases') were investigated, adding up to a total of 35 cases.

1. *The 'high earners'*

The assessed criminal income to be recovered from the 'high earners' ranged from € 310.830 to € 1.942.000. The division is as follows:

1. 5 cases > € 1 million, highest € 1.942.000
2. 4 cases € 500.000 – € 1 million
3. 11 cases € 310.830 – € 500.000

The first question is: How successful was the CRA in coercing these 'rich' criminals, allegedly 'sitting on their assets', to pay the recovery sum? This is a misleading picture, if only because of the time span elapsed between the money-making offences and the final 'pay day': that was on average *nine* years and *six* months (in four cases more than twelve years), part of it spent in prison. This means that much can happen with the assets during nine to twelve years since they were acquired: some got divorced and complained that the 'ex' took everything (or the divorce was a construction to frustrate recovery); others still supported their school going children; but conversely two were supported by their family ('living with mom')[18] because 'there was nothing left'.

The wide variety of financial adventures is reflected in the ways coercive recovery measures are applied and its eventual success. That proved to be meagre: in only one case was the debt fully paid; the others recoveries are still pending. However, this was not because these are all wily evading criminal debtors. Some were: those whose home country was out of the reach of the Dutch authority, withdrew to that safe haven: Turkey (2x), Togo or Singapore. A few others 'withdrawers' who tried to hide assets abroad had a less secure escape country in the EU: Belgium, Spain and Portugal, which rather led to a considerable delay then to a lasting successful frustration of the recovery.

There is one surprise: an *absent* phenomenon. In all this struggling and evading to keep the loot out of the hands of the CRA we miss the 'exotic' offshore centres or other kinds of sophisticated constructions which abound in the money laundering literature. There were no loan back constructions or complicated structures of multiple corporate layers. Instead, we find simple constructions such as an 'ex' in whose name the assets were placed. This was not only shallow, but sometimes also dangerous as the 'ex' could eventually become a *real* ex instead of the 'divorced' faithful partner playing her or his role: "My properties have been snatched by my ex!" (which can be a lie too). Nevertheless there were constructions to put companies and assets in the name of ex-s or other relatives permitting the debtor to

[18] Paraphrased from S.D. Levitt and S.J. Dubner (2005): ch. 3; *Why do drug dealers still live with their moms?*





use corporate assets such as cars in the name of the firm of his ex-partner. All to no avail: the custody threat remained as it is 'laundering neutral'.

Opposite the hiding-withdrawing debtors we have the sad dopes with high recovery obligations and no money left to pay, living "at mom's" (disabled) or in a miserable student room on social security (2x) or without permanent address. Two debtors declared bankruptcy (to the disadvantage of the CRA), divorced (all assets in ex's name). In two cases the debtor declared never to have received the criminal revenue for which they were convicted (€ 538.182 and € 380.000). Though the Court rejected this defence on formal grounds, the financial situation and non-payment lend some credibility to this claim. Three of them have been taken into custody, which failed to make them pay. One debtor even stayed in prison for 642 days, which made the CRA and the Prosecution more nervous than himself. So they arranged a meeting to talk about a debt settlement of € 150 per month. However, appearances can be deceptive as three years later a house is confiscated in Spain which appeared to be in his name. The other two cases of executed custody (180 and 189 days) had to be interrupted too, "because the debtor did not pay". It appears that though the sword of Damocles has a 'three years length' threat, when it is put to the test by an insolvent (or recalcitrant) criminal debtor.

Between these extremes we have a varied category of 'wheelers and dealers': much irregular income and few assets, if at all, and an endless arguing, stalling, evading and last minute proposals to avert immediate execution. Execution of the recovery was also sometimes halted because of a new detention elsewhere for new crimes.

Summarising the financial outcome of the recovery from these 'high earners': one case was fully paid (of which later), in thirteen cases the recovery remained below 10% and in six cases on average 26% of the recovery sum was paid; three debtors were detained for a long term. The sword of Damocles can also be blunt.

2. *The 'median and low earners'*

The vicissitudes of these ten criminal debtors is determined by social-psychology and the 'warrant list'. As far as the social-psychological variable is concerned, half of this groups consists of '*les misérables*': two of them live at the Salvation Army and are under financial supervision of social workers (recovery sum: € 15.000 and € 400); one is in an AA-group (€ 500), another (€ 440) is mentally defective with more fines than he is able to count and finally there is one 'normal' small drug dealer who still had to pay € 410. The latter would have been detained if he was not 'rescued' by his new girlfriend who intervened, telephoned the CRA and arranged a payment by instalment with the CRA.

The other cases (one small embezzler for € 570 and four 'median' earners of slightly more than € 15.000) had also varied outcomes. In two cases the payment failed: one debtor moved to Germany and stopped after his first instalment of € 150. The CRA rattled loudly with Damocles' sword, but nothing happened. In a second case the CRA made three times a formal mistake in serving the writ. The two other cases ended with a successful recovery due to the 'warrant list' factor which made the debtors pay as soon as they were apprehended for the execution of the coercive custody days.

3. *The threat effect*

Knowing to be on a warrant list for direct arrest appears not to be taken lightly: the debtors know that any police contact, traffic control or otherwise can lead to immediate apprehension and detention. And if detained they know they may have to serve a considerable time in prison unless they pay the whole recovery sum or make an acceptable and credible proposal for payment by instalment. It is a threat which prompted many reluctant debtors to pay.

> A major drug entrepreneur was convicted for wholesale cannabis growing and had to pay € 392.066. All the moveable assets had been reported as 'stolen in a burglary' (but no traces of forcible entry), planes (used for dropping drugs in England) suspected being his property were registered in the name other people while his house was in the name of a firm of which his partner was managing director. He had no permanent home or address. He filed several requests for reduction of his payments, which were rejected. In the end the Court ruled 540 'custody days'. Then he paid an instalment of € 145.700 which suspended the execution of the custody. But he failed to pay the remainder and was placed on the 'warrant list'. Arrested during a traffic control he was detained for the execution of his 540 'custody days'. After two days he paid the full outstanding debt of € 244.021.

Four other debtors also paid: either under the threat of immediate execution of the coercive custody or after having spent a short spell behind bars. They were able to pay directly the recovery sum ranging from € 18.000 to € 80.000 despite the fact that shortly before they filed a petition for reduction or a full remission of their debt.

Do these observations justify the conclusions that these criminal debtors are just dragging their feet while 'sitting on their money' and are only moved to pay when Damocles' sword was dangling dangerously on a very thin thread? That would be a rash conclusion. In two cases that may have been the case, but then there are indications that they wasted much of their ill-gotten fortunes on incompetent barristers to stay out of prison. This was held against them as evidence that they were





not incapable to pay the recovery sum: € 25.000 in one case and € 185.000 in another case were paid for legal aid. In the last case it was paid to a notoriously dishonest lawyer who was later disbarred because of grave misconduct and neglect of client's interest. Indeed, with a wrong lawyer their ability to pay (if present) evaporated quickly.

Is the threat of being locked up for not paying effective? Though our set of selective cases is small and used for illustrative purposes to shed light on the functioning of this regime, it cannot be denied effectiveness. To many reluctant debtors who are stalling and evading a clear sign is given: "with us your hiding, disguising and delays don't work anymore. If we don't believe you are incapable to pay, we have you incarcerated!" On the other hand, there can be a negative side: the debtor has to spend his custody days while he is really insolvent. In some cases the CRA had to admit this, but then the debtor had served his custody already: coercion proved to be unjustified.

## Conclusion

Juxtaposing the empirical findings from the CRA data and the political expectations reveals a gap which is difficult to bridge. On the one hand, we have the political expression of high expectations concerning what can be exacted from the 'criminal wealth'. On the other hand, we have the empirical findings of this research project, casting a different light on that 'criminal wealth'. They show that coercing, up until custody, is not ineffective, but that there are reasons to admonish moderation of expecting flows of money from 'rich' criminals. As far as the criminal wealth is concerned, the empirical findings are in line with the results of earlier studies: yes there is a large amount of crime-money but its distribution is very unequal (Levi and Osofsky, 1995; Van Duyne and Miranda, 1999; Van Duyne *et al.*, 2009; Van Duyne and Soudijn, 2010). Whether we look at the ownership of real estate, valuables, cash or bank accounts, the frequency divisions have a similar inverted J-like shape: a high frequency at the low-value end and a low frequency at the high-value end. It would not be exaggerated to state that the 'criminal wealth distribution' is as skewed as wealth and income is in the licit upperworld. Perhaps it is not too farfetched to project a criminal proletariat, a 'middle class' and a few top level earners.

Of course, this 'class division' may be unrealistic as it tacitly assumes a financial stability or criminal wealth consolidation as far as the higher earners are concerned. But how much criminal wealth consolidation can be observed? Apart from studies on

Italian organised crime (Paoli, 2003), relevant empirical data are scarce and mainly anecdotal.[19] Naturally, our view is biased as we see only 'known' cases in which the authorities have intervened. Also, we must recognise that after the intervention of law enforcement, many criminals entered into a phase of 'downward wealth mobility'. This can be a protracted phase. A time span of ten years between the last money generating criminal act, prosecution and final recovery (with evasions or insolvency) is not uncommon. With time passing by much earnings may have 'evaporated'. Perhaps with the exception of property, that does not evaporate of course, but can be put in the name of a third person, for example the 'ex' with the risk that she turned into a *real* ex. Many convicts, 'rich' as well as poor, had to resort to a payment by instalment settlement while facing a coercive custody procedure. This became a reality for only a small minority, but sufficiently often to be taken seriously.

Were these non-payers just braving the authorities with wily tricks? With a few exception we observed that the ways they try to dodge new incarceration were anything but manifestations of a self-confident attitude or a stoic resignation. Looking at our 'end of the journey' data when convicted criminals finally have to pay back their ill-gotten gains, we only find intermittent examples of a suspected consolidated criminal ownership, often in the form of real estate, bank accounts, cash and valuables (in that order of recovery importance). These cases coincided with the opportunities to hide assets as well as the own person abroad.

Opposed to these empirical findings since 1999 we find a public image of a huge accumulated criminal wealth as derived from speculative extrapolations from economic models (Unger *et al.*, 2007). These are often characterised by broad ranges and fuzzy definitions, particularly concerning such an important concept like 'organised crime' (Schneider, 2012). At a more concrete level we have the figures of the Financial Intelligence Units concerning unusual and suspicious transaction – still to be proven really criminal of which we know little due to lack of feedback from the police or prosecution. We also have the accumulated confiscation figures, though without proper conversion of into what remains of them in the eventual recovery procedure. There is also the claim that criminals are getting smarter (an eternal complaint) and that they use increasingly off-shore corporate vehicles in which they figure as vanishing 'ultimate beneficiary owners'. That may be true, but in this database of more than 15 years we found less than a handful of cases in which legal persons have been used, all easily traceable. This is in line with previous research

[19] This is largely due to the non-cooperative attitude of the authorities requested to release (anonymised) data for research. Levi (2013) observes that The Netherlands are in this regard the most open country for doing criminological basic research.





(Meloen *et al.*, 2003; Van Duyne; 2003) which revealed some financial itineration along off-shore centres, but mainly determined by own social preferences.

All these statements and 'observations' convey a similar message: there is so much crime-money while the authorities constantly fail to exact their 'pound of flesh'. Is that true? Does law enforcement really fail? Or does it rather face a financially disorderly and floating criminal reality of which one should not have too high expectations of tapping it orderly to the full? Much can end differently than intended or simply go wrong: in our database 25% was partially or fully not cashed. This is part of the job and part of the costs of recovering. But what is known about recovery costs? How do we integrate the cost element into the whole recovery balance sheet? Levi (2013) indicates that instead of making a net profit, we may be happy if law enforcement becomes a bit less costly. Setting profit targets may lead to disappointments: it was expected that the UK Asset Recovery Agency (ARA) would become self-financing by 2005-06, but it failed to reach this target. One of the reasons was the high costs of the receiver, whose case handling exceeded 15% of the value of the assets: they constituted the second largest expenditure of the ARA: £ 6,9 million in 2005-06 (National Audit Office, 2007; p.8). The expectation of a self-financing criminal justice agency proved to be a fallacy.

The expectation of a net income from recovery may be based on the tacit assumption that criminals still possess the revenues they once acquired: they 'sit on it' and just have to hand it over at no or low costs. As a matter of fact, few criminals proverbially 'sit' on their money. But whether criminals 'sit' on their money or on empty bags, the execution of the recovery orders takes much time and effort with rich and poor criminals alike. Irrespective of the amount to be paid, the execution time last in half of the cases more than 1,5 to 2,5 year (median or mean), but sometimes up to 16 years. That is the general picture. In cases in which coercion has to be threatened or applied the execution time more than doubles. Whether in these cases the recovery costs also double is in the absence of data difficult to determine, but given the involvement of the CRA staff, a Public Prosecutor and the Court (two to four staff) all high-qualified and paid, the coercive custody procedure is expensive, even if one abstracts from the custody costs per day the debtor spends in jail. Perhaps we should be satisfied to learn that a proper recovery policy makes law enforcement less costly and reflect on one of the basics of asset recovery: restoring justice which should not be determined by the amount of money that can be raked in.

There is no single formula to address this dilemma as the population of the criminal debtors is too heterogeneous, that is, measured by the nature of their offences, persons as well as outcome variables. For example, the soft drug entrepreneurs' cases represent an 'easy' subpopulation: their cases are reasonably quickly dealt with (50% within nine months) but the average yield is low. In contrast

to this 'easy' group, cases with fraudsters in organised setting took on average more than five years to finalise: 50% more than five years and nine months.

Law enforcement has to face the fact that the execution of asset recovery orders covers a chaotic spectrum ranging from the once rich criminal who ends broke and the low earner who proves to be a tenacious feet-dragger and in between per crime type much procedural variety. One could greet this observation with some sober resignation. However, this contrasts with the prevalent political landscape. Instead of resigning to the world of facts we find the well-tried threat images of criminal finances and a self-reinforcing political activism. In some jurisdictions this has contributed to setting recovery targets or to provide incentives to law enforcement agencies (Levi, forthcoming). This is not objectionable as such, however, in the absence of proper evaluation figures to assess the added value of incentives and target setting, this approach is at risk of leading to deceptive success inflation or reporting mainly the 'easy pickings', such as cash seizures from low level drug dealers while the costs of the procedural aftermath is left out of the books: "The great majority of these [confiscations] are low value cases, which currently have to be expensively adjudicated in Crown Courts" (Levi, 2013). This means that policy makers please the audience with high confiscation figures from only the first stage of the lengthy recovery procedure while omitting the sequel. What remains of the seized wealth and claimed criminal revenues after the full criminal procedure: that is from first instance to cassation followed by the recovery procedure (see Meloen *et al.*, 2003; ch. 4)? The initial high targets are set and publicised, figures of the realised (shrunken) targets and recovery expenses remain hidden.

In the UK this target setting has been abandoned by now. How surprising is it that the Dutch authorities (Minister of Safety and Justice) actually embark on this target setting policy. Neither demonstrating any knowledge of this experience abroad, nor being informed (or letting themselves to be so) of the outcomes of previous research, they jump to questionably high targets. € 100 million has to be confiscated from 2018 onwards[20] while extra staff (officers of the Fiscal Police and National Police) have to earn back three times their salary. One may question the ethics of this political endeavour and wonder whether this is a display of irresponsible, greed driven day-dreaming or knowingly embarking on an unrealistic policy.

[20] RTL Nieuws | 08 januari 2013





## References


Barlett, B.L., *The negative effects of money laundering on economic development.* Asian Development Bank, May, 2002

Blumenson, E. and E. Nilsen, *Policing for profit: the drugs war hidden agenda.* 1997. Http://www.fear.org/chicago.html

Duyne, P.C. van, Money laundering policy. Fears and facts. In: P.C. van Duyne, K. Von Lampe and J.L. Newell (eds.), *Criminal finances and organising crime in Europe.* Nijmegen, Wolf Legal Publishers, 2003

Duyne, P.C. van, The creation of a threat image: Media, policy making and organised crime. In: P. C. van Duyne, M. Jager, K. von Lampe and J.L. Newell (eds.), *Threats and phantoms of organised crime, corruption and terrorism.* Nijmegen, Wolf Legal Publishers, 2004

Duyne, P.C. van and H. de Miranda, The emperor's cloths of disclosure: hot money and suspect disclosures. *Crime, Law and Social Change*, 1999, *no. 3*, 245-271

Duyne, P.C. van, M. Soudijn and T. Kint, Bricks don't talk. Searching for crime money in real estate. In: P.C. van Duyne, S. Donati, J. Harvey, A. Maljevic and K. von Lampe (eds.), *Crime, money and criminal mobility in Europe.* Nijmegen, Wolf Legal Publishers, 2009

Duyne, P.C. van and M. Soudijn, Crime-money in the financial system: what we fear and what we know. In: M. Herzog-Evans (ed.), *Transnational Criminology Manual, Volume 2*, Nijmegen, Wolf Legal Publishers, 2010

Duyne, P.C. van, M.S. Groenhuijsen and A.A.P. Schudelaro, Balancing financial threats and legal interests in money-laundering policy. *Crime, Law and Social Change*, 2005, vol. 43, *no 2-3*, 117-147

Financial Action Task Force on Money Laundering, *Report on money laundering*, Paris, 1990

Harvey J., Money laundering, phantoms, imagery and facts. In G.A. Antonopoulos, G., M. Groenhuijsen, J. Harvey, T. Kooijmans, A. Maljevic, and K. von Lampe (eds), *Usual and Unusual Organising Criminals in Europe and Beyond.* Maklu, Antwerp, 2011

Keh, D.I. *Drug money in a changing world: economic reform and criminal finance.* Vienna, UNDCP, 1996

Levi, M. and L. Osofsky, *Investigating, seizing and confiscating the proceeds o crime.* London, Home Office Police Research Group, 1995

Levi, M., *Drug Law Enforcement and Financial Investigation Strategies.* International Drug Policy Consortium, September 2013

Levitt, S.D. and S.J. Dubner, *Freakonomics.* London, Penguin books, 2005

Meloen, M., R. Landman, H. de Miranda and J. van Eekelen, *Buit en besteding.* Zoetermeer, Elsevier Overheid, 2003

National Audit Office, *The Assets Recovery Agency. Report by the Comptroller and Auditor General.* London, the Stationery Office, 2007

Pashev, K., Organised VAT fraud in an enlarged Europe. In: P.C. van Duyne, A. Maljević, M. van Dijck, K. von Lampe and J. Harvey (eds.), *Crime business and crime money in Europe. The dirty linen of illicit enterprise.* Nijmegen, Wolf Legal Publishers, 2007

Quirk, P.J., *Macro economic implications of money laundering.* IMF Working paper, IMF, 1996

Paoli, L., *Mafia brotherhoods. Organised crime Italian style.* Oxford, Oxford University Press, 2003

Rasmussen, D.W. and B. Benson, *The economic anatomy of a drug war. Criminal justice in the commons.* Lanham, Rowman and Littlefield, 1994

Reuter, P., Are estimates of the volume of money laundering either feasible or useful? In: B. Unger and D. van der Linden (eds.), *Research handbook on money laundering.* Cheltenham, Edward Elgar Publishing, 2013

Schneider, F., The hidden financial flows of organised crime. In: C.C. Storti an P. de Grauwe (eds.), *Illicit trade and the global economy.* Cambridge (Mass.), The MIT Press, 2012

Tanzi, V., *Money laundering and the international financial system.* IMF Working paper, IMF, 1996

Unger, B., *The scale and impacts of money laundering.* Cheltenham, Edward Elgar, 2007

UNODC, *Estimating illegal financial flows resulting from drug trafficking and other transnational organized crimes.* Vienna, 2011

Walker, J., 1999. How big is global money laundering?, *Journal of Money Laundering Control*, 1999, vol. 3, *no. 1*, 25-37

Walker, J. and B. Unger, Measuring global money laundering: "The Walker gravity model". *Review of Law and Economics*, 2009 Vol. 5, no. 2, 822-853



# Land of opportunities
# The illicit trade in cigarettes in the United States

*Klaus von Lampe, Marin Kurti* and *John Bae*[1]

## Introduction

The illegal cigarette trade is a global phenomenon. The smuggling and sale of contraband cigarettes is pervasive in many parts of the world and trafficking routes span the globe. Much of the recent criminological research, however, has focused on the situation in just a few regions, namely Australia, China, Europe and Canada.[2] Comparatively little attention has been paid to the cigarette black market in the United States even though the US has been associated with a major problem of cigarette smuggling. According to recent estimates the US has the third largest illegal cigarette market in the world in terms of the absolute number of illegal cigarettes traded, only surpassed by China and Russia. In relative terms, the same estimates suggest that between 13% and 25% of US smokers purchased illegal cigarettes in 2007 (Joossens, Merriman, Ross & Raw, 2009: 10, 12).

The purpose of this study and review is to examine and to interpret the illegal cigarette trade as it pertains to the United States against the backdrop of developments in Europe. A close-up look will be taken at New York City, arguably the largest local cigarette black market in the country. It seems that the state of affairs over the past few years is somewhat reminiscent of the situation of the illegal cigarette

1 Klaus von Lampe is Associate Professor at John Jay College of Criminal Justice, New York, Department of Law, Police Science and Criminal Justice Administration; Marin Kurti is a doctoral student at the Rutgers School of Criminal Justice, Newark, New Jersey; John Bae is a student in the joint BA/MA program in Criminal Justice and a McNair Scholar at John Jay College of Criminal Justice.

2 On the situation in Australia, see Geis, Cartwright & Houston (2004). On the situation in Canada, see Beare (2002; 2003). On the situation in China, see Shen, Antonopoulos & von Lampe (2010) and von Lampe, Kurti, Shen & Antonopoulos (2012). For a collection of criminological writings on the illegal cigarette trade in Europe, see Van Duyne & Antonopoulos (2009). See also Antonopoulos (2006; 2008), Coker (2003), Griffiths (2004), Hozic (2004), von Lampe (2006; 2010).