

Promotion of Integrity Reviews by the Public Administration Act; zero-measurement

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Summary

The 'Promotion of Integrity Reviews by the Public Administration' (*Bevordering Integriteitsbeoordelingen door het Openbaar Bestuur*, henceforth 'BIBOB') Act will go into effect on 1 June 2003. This act will enable administrative authorities to refuse - under strict conditions - permits, subsidies or government contracts if there is a serious danger that the applicant is planning to commit punishable offences with them. Those bodies can request advice from the BIBOB Bureau as to the degree of the danger.

To facilitate an evaluation of the 'BIBOB' Act - which will take place three years after the act goes into effect - a zero-measurement has been conducted. The results of that study will offer comparison material for the evaluation three years later. In preparation for the zero-measurement, an evaluative framework was set up. The zero-measurement was conducted by means of a written survey of 732 administrative authorities. In addition, there was a meeting of experts in order to test and supplement the results. The most important conclusions from the zero-measurement are presented here below.

The inadvertent facilitation of crime is relatively infrequent

The written survey showed that only a relatively small number of administrative authorities (11%) indicated ever having been inadvertently involved in facilitating criminal activity. The inadvertent facilitation of crime usually involves the issuing of permits. In terms of government contracts and subsidies, only 2 and 1% of the administrative authorities, respectively, indicated ever having regretted - in terms of the facilitation of crime - having worked together with the party in question.

One-third of the administrative authorities is unaware of the risks of the inadvertent facilitation of crime

At one-third of the administrative authorities, the risk-awareness level hardly seems high. 34% of the administrative authorities answered 'don't know' to the question as to whether the organisation had ever been involved inadvertently in facilitating crime. Likewise, when asked if they had ever issued a permit or granted subsidy or government contract that they later regretted having done (with an eye to the facilitation of crime), some one-third of the administrative authorities answered 'don't know' or did not answer the question.

Administrative authorities see added value in the 'BIBOB' Act

46% of the administrative authorities think that the 'BIBOB' Act offers a good opportunity for combating or preventing the facilitation of criminal activities. Only 8% of the administrative authorities - primarily independent administrative authorities and statutory trade organisations - do not think that the 'BIBOB' Act will add value to their organisation.

The administrative basis of support for the 'BIBOB' Act is greater than the administrators' familiarity with the 'BIBOB' Act

Generally speaking, administrative basis of support for working with the 'BIBOB' Act is considerable (43% of the administrative authorities). It is therefore striking that only 36% of the administrators were familiar with the 'BIBOB' Act.

The 'BIBOB' Act will lead to administrative authorities being more attentive to fighting the facilitation of crime

41% of the administrative authorities believe that the 'BIBOB' Act will lead to more attention being paid to combating the facilitation of criminal activities. In other words: the 'BIBOB' Act will be able to play a role in creating greater awareness among administrative authorities with regard to the risks of facilitating crime.

The 'BIBOB' Act will lead to a reduction in facilitating crime

Nearly all of the experts expect that the 'BIBOB' Act will lead to a reduction in the facilitation of crime by administrative authorities. They also expect longer procedures, higher administrative burdens and more litigation, however. A number of experts see a shift in criminal activities (to other sectors, to other administrative authorities or to the 'black market') as a real danger.

The 'BIBOB' Act is still an unknown factor for many administrative authorities

The 'BIBOB' Act is still an unknown factor for many administrative authorities. The zero-measurement showed that some one-third of the administrators and the officials in charge at administrative authorities were not yet aware of the existence of the 'BIBOB' Act. The consequences of the introduction of the 'BIBOB' Act are unclear for 60% of the administrative authorities. In general, police districts and ministries are the best informed about the 'BIBOB' Act and statutory trade organisations and water district boards the least well informed (1).

Administrative authorities expect to make use of the authority that Article 3 of the 'BIBOB' Act gives them to refuse or retract permits and subsidies.

22% of the administrative authorities expect to make use of the possibility of refusing permits on the basis of Article 3 of the 'BIBOB' Act. This holds in particular for 'coffeeshops' (hash bars), sex establishments, the 'wet' and 'dry' catering sector and construction permits. 17% also expect to apply Article 3 of the BIBOB Act in order to retract permits. With regard to subsidies, 10% expect to make use of the authority to refuse and 9% of the authority to retract, based on Article 3 of the BIBOB Act.

One-third of the administrative authorities expects to make use of the possibility of requesting BIBOB advice

35% of the administrative authorities expect to make use of the possibility of requesting advice from the BIBOB Bureau, especially with regard to permits (28%) and public-works contracts (27%). 16% expect to consult the BIBOB Bureau with regard to subsidy applications.

The price of requesting advice from the BIBOB Bureau forms more of an obstacle than anything else, including the time involved

The price of 500 euros for advice from the BIBOB Bureau forms an obstacle, especially for municipalities (45%) and statutory trade organisations (69%). None of the provinces found the price to be an obstacle. Only a few administrative authorities (8-14%) consider the throughput time of four weeks to be an obstacle for requesting advice. Very few of the administrative authorities consider a throughput time of more than six weeks for advice from the BIBOB Bureau to be acceptable, however. Remarkably, administrative authorities generally think that a somewhat longer throughput time is acceptable for government contracts than for permits. The expectation would be correct that in the case of public-works contracts - where the administrative authority itself stands to benefit from a rapid procedures - a shorter throughput time would be more desirable than for permit procedures. An explanatory factor with regard to this result might be that construction permits also have a so-called fatal term. Applications for construction permits that do not require exemption will be granted according to the law - assuming there is no conflict with the development plan - if the municipal executives have not made a decision within thirteen weeks from the day on which they received the application.

One-third of the administrative authorities has insufficient staffing or financial capacity to work with the 'BIBOB' Act.

35% of the administrative authorities believe they have insufficient staffing capacity to be able to work well with the 'BIBOB' Act. 32% thinks they have insufficient financial capacity. 13% of the administrative authorities believe they have sufficient financial capacity for working well with the 'BIBOB' Act.

One-third of the administrative authorities considers the current set of instruments to be inadequate

The written survey showed that 29% of the respondents is of the opinion that his or her organisation currently has too few possibilities for refusing subsidies, permits or public-works contracts. It is also striking that 32% of the administrative authorities disagree with the statement that they currently have too few possibilities for

refusing permits, subsidies or public-works contracts, while only 10% of the administrative authorities considers the 'BIBOB' Act to be unnecessary since the current set of instruments is adequate.

The implementation of the 'BIBOB' Act is not enough of a priority for many administrative authorities

32% of the administrative authorities say they are currently working on the introduction of the 'BIBOB' Act. Remarkably, this is a higher percentage than the 16% for whom the consequences of the 'BIBOB' Act for the organisation is clear. An even lower percentage (6%) has a sufficient idea of the burden that the introduction of the 'BIBOB' Act will involve for the organisation. This means that some of the administrative authorities have already begun implementing the 'BIBOB' Act without understanding much about the consequences for their respective organisations.

The introduction of the 'BIBOB' Act has a high enough priority at just 9-14% of the administrative authorities. This is lower than the administrative basis of support for the 'BIBOB' Act (43%). At 35-36% of the administrative authorities the priority of the introduction of the 'BIBOB' Act is not high enough.

While administrative authorities have yet to draft policy lines, the majority is planning to do this

57% of the administrative authorities are engaged in setting up policy lines or are planning to do this. 34% of the administrative authorities have no such plans. This is remarkable, since the making of such a policy line is required.

Experts expect the 'BIBOB' Act to lead to procedural burdens first of all

Experts expect that the 'BIBOB' Act will lead primarily to longer procedures, greater governmental burdens, greater burdens for the judiciary, more litigation and greater administrative burdens for applicants. The degree to which this is the case has not been quantified, however.

(1) The unfamiliarity with the 'BIBOB' Act also appears from the fact that governing bodies gave answers to several questions that were not fully in line with the legal reality. 8% of the statutory trade organisations indicated that they will seek advice on permits from the BIBOB Bureau for example, while there are no statutory trade organisations that grant permits that fall within the scope of the 'BIBOB' Act.