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MANAGEMENT SUMMARY

On 1 June 2003 the Public Administration (Probity in Decision-making) Act (BIBOB Act) became effective. The BIBOB Act offers authorities and public services obliged to apply tendering procedures new instruments to prevent criminals making use of specific government provisions. The Act applies to three sectors, namely to permits (specified in the BIBOB Act), subsidies, and the tendering of government contracts in the area of the environment, construction and ICT. Authorities may reject applications for permits and subsidies and withdraw permits or subsidies already granted if there is a risk that the permit or subsidy can be used for criminal activities (the risk of criminal facilitating). For the same reasons candidates for government contracts can be excluded from participation with regard to tendering procedures. Government contracts already awarded can for this reason also be withdrawn if this has been stipulated in the agreement with the contractor. In order to be able to determine whether there is a risk of criminal facilitating, authorities can ask Bureau BIBOB (Public Administration Probity Screening Agency) for advice. In order to give advice Bureau BIBOB has access to all kinds of confidential information sources, including those of the judiciary and the police. In addition, Bureau BIBOB is entitled to ask foreign authorities for information. Moreover, the BIBOB Act provides that the public prosecutor entrusted with the implementation of the BIBOB Act (the BIBOB Public Prosecutor) can advise authorities (give tips) to consult Bureau BIBOB about a certain application or administrative decision granted or government contract to be put out to contract.

Three years after the BIBOB Act became effective, an evaluation study was carried out. This study was carried out on the basis of an analysis framework developed in 2002-2003. On the basis of this analysis framework a zero measurement was made in 2002-2003. Where relevant the results of this evaluation study are compared with the results of the zero measurement. The evaluation study was carried out on the basis of an electronic questionnaire and analysis of registration data of Bureau BIBOB, (scientific) literature and case law. In addition, interviews were held with administrators, with BIBOB Public Prosecutors, and with members of the BIBOB Support Commission, and two expert meetings were held with scientists and experts in the practical field.

The electronic questionnaire was held amongst all civil services with authorities able to apply the instruments of the BIBOB Act in granting permits or subsidies or awarding government contracts. This means that all the ministries, provinces, municipalities, water boards, police regions and commodities and industry boards received a questionnaire. This survey was also carried out amongst 148 ZBOs (autonomous administrative authorities) able to apply the instruments of the BIBOB Act. In total 347 authorities completed the questionnaire: this boils down to a 50% response. This is a progression in comparison with the zero measurement; at the time of the zero measurement, the total response was 44%. The separate categories of authorities all had a response of at least 28%. The response from the ministries was 62% (n=8), from the provinces 83% (n=10), from the municipalities 53% (n=243), from the water boards 74% (n=20), from the police regions 62% (n=16), from the ZBOs 28% (n=42) and from the PBOs (regulatory industrial organizations) 50% (n=8).

The questionnaire showed that 16% of the authorities had been involved at some point with unintentional criminal facilitating. Municipalities with over 50,000 inhabitants had been relatively more involved with unintentional criminal facilitating than municipalities with less than 50,000 inhabitants.

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Authorities with a BIBOB policy line are more aware of the risks of criminal facilitating than authorities which have not yet formulated a BIBOB policy line, those which are busy formulating this or which have no intention of formulating a BIBOB policy line. The same applies to authorities which have already received one or more recommendations from Bureau BIBOB. In order to counter criminal facilitating, authorities are not only using the BIBOB Act, but also other means and instruments including the Certificate of Good Behaviour. On granting permits 67% of the municipalities with over 100,000 inhabitants make an estimate of the possible risk of criminal facilitating with regard to each application.

The implementation of the BIBOB Act took quite considerably longer to get going than was expected beforehand by the legislator. In particular from 2004 onwards authorities started to develop a policy indicating when and how they would use the BIBOB Act (the 'BIBOB policy line'). In the meantime 45% of the authorities have formulated a BIBOB policy line; 87% of the authorities with a policy line are municipalities. 6% of the authorities are busy formulating a BIBOB policy line and 17% plan to formulate a BIBOB policy line.

From 1 June 2003 until 1 August 2006 Bureau BIBOB gave 193 recommendations, 72 of which were in 2005 and 101 in 2006 (until 1 August 2006). The estimate in advance was that Bureau BIBOB would issue about 500 recommendations per year. Of the 193 recommendations given by Bureau BIBOB there was a serious risk of criminal facilitating in 108 cases and in 26 cases there was a risk of criminal facilitating to some extent. 17% of the authorities which received a questionnaire indicated having asked for advice on one or on more occasions in connection with processing a permit application; 92% of this category of authorities were municipalities.

In the meantime provinces and municipalities in particular have made use of the instruments of the BIBOB Act. ZBOs, PBOs, water boards and ministries use the BIBOB Act considerably less. Municipalities with more than 50,000 inhabitants use the BIBOB Act more than municipalities with fewer than 50,000 inhabitants. The BIBOB Act is especially applied in granting permits and in particular where municipalities grant permits for the hotel and catering industry, coffee shops and prostitution establishments. 10% of the municipalities and provinces have rejected one or more permit applications on the basis of the BIBOB Act; 70% of the provinces and 32% of the municipalities think of doing this in the future. The BIBOB Act is also used to withdraw previously granted permits, but to a lesser extent. The application of the Act to tendering invitations is slowly starting up. The application of the Act to granting subsidies is also lagging behind.

22% of the authorities indicated that they experienced a preventative effect from the BIBOB Act, whereas 15% of the authorities did not experience a preventative effect. 52% of the municipalities with between 50,000 and 100,000 inhabitants and 72% of the municipalities with over 100,000 inhabitants experienced a preventative effect from the BIBOB Act. Authorities with experience of the BIBOB Act generally see an added value in the Act and experience a certain preventative effect from the Act. 40% of the authorities with a BIBOB policy line experienced a preventative effect, while 58% of the authorities which received one or more recommendations from Bureau BIBOB experienced a preventative effect from the BIBOB Act.

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Many of the authorities with experience with the BIBOB Act see the Act particularly as a valuable supplement to the instruments for combating criminality at an administrative level. Many authorities and administrators regard the BIBOB Act especially as an instrument to combat criminality and less as an integrity instrument. Moreover, authorities indicated that the BIBOB Act should also be applicable to phone shops, temping agencies and the property sector.

Authorities are increasingly working together with other authorities in order to implement the Act. 32% of the municipalities are already collaborating whereas 21% of municipalities intend to start collaboration. In addition, authorities are entering into covenants for the exchange of information, for instance with the tax authorities, in order to obtain sufficient information about an applicant prior to the possible application of the BIBOB instruments. The implementation of the Act leads to considerably longer decision-making procedures. The statutory period of not more than eight calendar weeks within which Bureau BIBOB has to issue a recommendation, is too short in the majority of cases. In practice it appears to be particularly difficult for Bureau BIBOB to receive information from foreign authorities. The function of the BIBOB Public Prosecutor of giving tips has particularly got off the ground in cities such as Amsterdam and Rotterdam. Elsewhere this function of giving tips has had difficulties in getting off the ground.

The case law with regard to the application of the BIBOB Act does not give much reason to doubt the legal tenability of the Act or the extent of care with which the authorities apply the Act. The implementation of the BIBOB Act by authorities has few obstructions in practice. If there is only one obstruction, this would be the capacity and expertise of staff. The fact that the application of the BIBOB Act results in most cases in a longer decision-making procedure and even in exceeding the term, is no impediment for the majority of the authorities to request advice from Bureau BIBOB. Neither is the cost of a recommendation by Bureau BIBOB (€100) any reason not to ask for advice. Authorities which have applied for a BIBOB recommendation are usually satisfied with the quality of the advice received except for the aspect of speed.

The number of experiences with the BIBOB Act is still too low to be able to make unequivocal statements about the question of whether and to what extent the criminality moves to municipalities or provinces where the BIBOB Act is not implemented or moves to sectors to which the BIBOB Act is not applicable. There are no indications that the BIBOB Act leads to a stigmatisation of certain occupational groups, legal entities or individual persons.