



How to get started with the administrative approach

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Preface

The European Network on the Administrative Approach (ENAA) aims to promote the concept of the administrative approach in the EU, in addition to the implementation of that concept in practice. The ENAA reaches these objectives by undertaking several kinds of activities, such as delivering training, offering guidance in the development of barrier models, fulfilling a consultancy role, organising field visits, enhancing cooperation across border, etc. Another of these activities, specifically aimed at supporting the implementation of the administrative approach in practice across the EU, is the development of this roadmap. The goal of this paper is to guide (local) governments in the EU towards the implementation of the administrative approach towards organised crime.

Because the administrative approach exists in many forms and is evolving at different speeds, it is challenging to offer a step-by-step programme. This is especially challenging, taking into account the variety of ways in which governments organise their administrations and in which competences belong to which administrative bodies. The recommendations in this roadmap are therefore drawn from the route that some of the more experienced Member States in the EU have followed.

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A

The need for the administrative approach

On 8 November 2019, the ENAA agreed on a definition of the administrative approach:

“An administrative approach to serious and organised crime is a complementary way to prevent and tackle the misuse of the legal infrastructure through multi-agency cooperation by sharing information and taking actions in order to set up barriers.”¹

There are several arguments that advocate for the implementation of the administrative approach. First of all, governments have a particular interest in preventing criminals either from using the economic infrastructure to acquire a legal income or from misusing businesses to facilitate crimes and directing their criminal proceeds towards this purpose. People involved in organised crime do not limit their activities to purely illegal ones such as drug trafficking, fraud or property crimes. They also invest money in legal activities and businesses to exploit the revenues of their crimes or to generate a legal income. Moreover, the business processes of most types of organised crime also require legal facilities.²

Another important argument in favour of investing in the administrative approach can be borrowed from the explanatory memorandum of the Dutch Public Administration (Probity Screening) Act (BIBOB). It calls upon governments, on a national and local level, to take responsibility by not facilitating organised crime and by safeguarding the integrity of the government. *“It is unreasonable that, on the one hand, the government invests a lot of time, energy and money in investigating and prosecuting crime, and on the other, it runs the risk of unintentionally directly or indirectly facilitating criminal organisations and activities. This affects the credibility of the government and poses risks to the integrity of the public administration. The government needs to be resilient and able to act against criminal activities not only in its criminal law role, but also in its administrative role and as a contracting party in civil law activities.”*⁵

Also, criminal law does not always affect a professional criminal. Criminals generally perceive a prison sentence as an occupational hazard, whereas administrative measures are capable of thoroughly disrupting the modus operandi of a criminal business and can therefore be more effective, when applied in a complementary way.⁴

Next, the administrative approach also protects a governments' integrity. It also forms the baseline of the Dutch policy on the administrative approach. Internal and external integrity form the baseline of Dutch policy under the administrative approach as a means of preventing criminals from abusing public services or public funds or infiltrating legal economies. This approach involves the personal integrity of civil servants, governors and politicians; organisational integrity with regard to internal processes and relational integrity in the case of third parties related to the government. There are three

main reasons why the prevention of close ties between governments and criminal organisations is deemed so important. Firstly, large criminal companies have the means to try to corrupt law enforcement in order to reduce the chances of getting caught. Secondly, there are many legal activities – requiring a licence – that are intended to conceal criminal processes or launder money. Thirdly, the government is possibly a partner in these activities such as in the case of government contracts for major construction works, for example. In all cases, the integrity of the government is at risk and must be protected.⁵

Overall, it is recommended to develop an administrative approach policy towards crime in addition to traditional law enforcement. Across the EU, some Member States have systematically implemented a national policy, others have no national policy in place but have gained experience with the concept and yet another group of Member States have no national policy and have little to no experience with the concept. Nevertheless, in at least the ten Member States studied in 2015, the legal potential of an administrative approach is very much present.⁶ Even more, these Member States have an administrative regulation in place to prevent persons with a criminal background from undertaking certain jobs or economic activities. In many cases, the objective is a good functioning economic sector, rather than to prevent crime.⁷

B

How to get started with the administrative approach: recommendations

Although a government ministry will always be the body that decides on the establishment of law and regulations, the ways in which governments organise themselves vary significantly. In some countries, the administrative approach is considered as a competence of the police authorities, whilst in other countries, it forms part of the authority of Home Affairs or Justice. Moreover, country-specific events and experiences with organised crime often impact the course of events. Identifying recommendations and concrete steps towards putting the administrative approach into practice that are valid for all national or local authorities across the EU to follow is therefore a challenging undertaking. The following recommendations have been drawn from the experiences of several experienced Member States throughout the past decennia.

1. Take stock of available instruments

“In most of the Member States studied here, the local authorities can take specific measures to maintain public order. Municipalities may regulate economic activities in local by-laws, for example, or use spatial planning for this purpose. Although public order is the main concern, local regulations can also be used to prevent crime.”⁸

Some countries have useful regulations in place, but do not apply them in the context of fighting crime.⁹ The first step towards the administrative approach involves making an inventory of the many administrative elements that are useful in the fight against organised crime in general or against specific phenomena that are widely spread in the given region.

What legislation is available or which partners are competent on a national level in order to tackle crime on an administrative level? What mandates can you use? Likewise for local authorities, what instruments are available at that level? Concerning the practical application of the administrative approach, Spapens et al. state that generally speaking, there are three types of measures and cooperation aimed at preventing and combating organised crime.

The first of these involves using business regulations to prevent persons with criminal background or linked to criminal organisations from entering specific types of economic activities.¹⁰ Many Member States know such regulations, however, in most cases they were developed to ensure that a business can function properly, rather than to keep out criminals.¹¹

The second involves using administrative measures such as carrying out inspections, imposing fines, revoking licences or closing premises. Again, many Member States allow their local authorities to take such specific measures, with the purpose of maintaining public order. Nevertheless, these

2.2. Instruments to screen and monitor persons and legal entities

2.2.1. The granting of licences by administrative authorities

2.2.1.1. Licences for pubs, restaurants and hotels

2.2.1.2. Gaming licences

2.2.1.2.1. General principles

2.2.1.2.2. The operation of a casino

2.2.1.2.3. The operation of a slot machine arcade

2.2.2. The regulation of prostitution

2.2.2.1. Municipal regulations

2.2.2.2. The sale of alcohol in brothels

2.2.3. The suspension and withdrawal of licences as administrative sanctions

2.2.4. The suspension of a licence as an order preservation measure

2.2.5. Public procurement law

2.3. Instruments directed at preventing the disturbance of public order

2.3.1. Municipalities and the maintenance of public order

2.3.2. The closure of an establishment as an administrative sanction

2.3.3. The closure of a place or establishment as an administrative police measure

2.3.3.1. Non-fulfilment of operation conditions

2.3.3.2. Disturbance of public order around an establishment

2.3.3.3. Disturbance of public order in an establishment

2.3.3.4. Infringements of the drug legislation

2.3.3.5. Indication of trafficking or smuggling in human beings

2.4. The information position of administrative authorities

Example of inventory of administrative regulations in Belgium¹⁵

administrative measures can also be used to prevent and fight crime. For example, by revoking the liquor licence of an establishment that is used as a front for money laundering.¹²

The third type of measure involves 'working apart together', which may include forming an agency with staff from various public bodies.

¹³Fewer examples of this form can be found in the EU today than the first two forms.

Nevertheless, they can be found in Italy (DIA), the Netherlands (RIEC/LIEC), Belgium (ARIEC) and Sweden (A-krim).

A large quantity of work has been done in the study by Spapens, et al., 2015. For ten EU Member States, an inventory was made of all the administrative regulations that are relevant for use in the fight against organised crime. Although this work dates back to 2015 and new developments may have taken place in the meantime, it remains a promising starting point from which to take stock. Overall, useful instruments can often be found in the regulation of catering businesses, the sale of alcohol, casinos and gambling, and the disturbance of public order etc.¹⁴

Once an inventory of available instruments has been prepared, the next step is to take action.



2. Put into practice what you can

Once an inventory of available instruments has been prepared, the next step is to take action. Although this step might seem redundant, it is important to stress that if not implemented on a practical level, the administrative approach will have no effect on the prevention or disturbance of organised crime. In Belgium, for example, the concept was first introduced in 1996 and since then in consecutive policy documents and research reports, before it was put into practice in the form of pilot projects at the end of 2017.¹⁶

It is important to try out these possibilities and to discover where, within the legal framework, opportunities lie to fight organised crime. Often, it is coordination that is lacking to put existing instruments effectively to use against organised crime.

Taking action and putting the administrative approach into practice involves establishing an organisational structure, attracting partners, raising awareness on a local level, exchanging information, etc. These elements are further elaborated upon below.

Finally, the more these existing regulations are used in practice in the fight against crime, the more apparent the added value of the administrative approach becomes. This, in turn, might lead to a permanent organisation structure or a national legislative framework formally consolidating instruments that form part of the administrative approach.

3. Spread the word at local level

The insight that local governments play a vital role in the administrative approach against organised crime came from the United States to Europe in 1990 during the Dutch-American conference on Organized crime.¹⁷ By informing and bringing together relevant partners and services, an understanding of the impact of organised crime on local policy is generated. More importantly, it is crucial to achieve a generally supported and integral approach.¹⁸

Organised crime hides in plain sight and in many cases, local authorities must be coached so that they know where to look. There is room for improvement when it comes to understanding the unconscious facilitating role a local administration plays in the criminal business process through the issuing of licences, permits, subsidies or the awarding of government contracts. When made aware, all these vulnerable points become promising opportunities to make things as difficult as

ISEC-project: 'Administrative approach to organised crime; support European local authorities in combating local outcomes of organised crime.'

The City of Genk tested the administrative approach as shaped in the Netherlands. The project ran for two years and resulted in a handbook containing procedures, best practices, crucial partners, case studies, local instruments etc.²⁰

Within the ISEC project, no time or effort was spared to create a broadly supported administrative approach towards the trafficking of human beings in the City of Genk.

1. Services which were most directly impacted were informed by means of local consultation: the departments of environment, housing, local economy, enforcement, population, the police, economic inspectorate, social inspectorate, etc.
2. The City Council Executive and the management team were given explanations.
3. The entire middle management of the City, consisting of all heads of department, were informed.
4. A specific training course was delivered to 80 members of staff on how to recognise signs of human trafficking in collaboration with the Belgian Federal Police. These members of staff could be confronted with the phenomenon on a daily basis and belong to several departments such as Population, Economy, Housing, Gardening, Neighbourhood Management, Community Guards, Nuisance officers, the fire brigade and the police.
5. A report template and e-mail address to be used in order to report relevant phenomena was created
6. Staff members are more vigilant and self-assured, dare to ask follow-up questions and note information.
7. A warning system was provided through marking assets in the geographical information system. The geographical information system (GIS) is an information system which can store, manage, process, analyse, integrate and present (spatial) data or information on geographical objects, so-called geo-information. Using this system, the City of Genk is able to carry out searches on the owner(s), licences/permits, violations, history, residence etc.
8. An iterative process; the more the local administration is aware, the more relevant signals are detected, which in turn can be used to fine-tune the administrative approach.²¹

possible for people with criminal intentions.¹⁹ The local level is crucial in the case of criminal business processes. Consequently, it is vital to inform and equip the local governments so that they can effectively detect and exclude criminal persons and organisations from their services.

The step of strengthening and maintaining awareness and support is crucial and the specific example from Belgium in the box below shows that this step requires a lot of effort.

Finally, clear communication regarding the implementation of the administrative approach policy to combat criminal practices is necessary for several reasons. Sharing results with other municipalities and security partners will strengthen support and further cooperation. As far as people running a business are concerned, the rules and their consequences must also be clear, in order to fulfil the principle of legal certainty. Last but not least, by communicating efforts and results, the local government is able to demonstrate that it is aware that criminal activity is present on its territory and that it will not be ignored. This may serve to deter criminals and reassure the general public.²²

4. Set up an organisational structure with partners

An organised government is needed to fight organised crime, so a municipality will not succeed in applying the administrative approach on its own. The administrative approach is often referred to as 'working apart together', meaning that different authorities and administrations tackle serious and organised crime within their merits. Clearly, the administrative approach depends for its success on cooperation with other partners in and adjacent to the security field.²³

Potential partners with relevant competences, tools and information must be identified and cooperation with them must be sought and coordinated. In addition to the more mainstream parties such as the

police, regional authorities, public prosecutor or universities, cooperation with the public centre for social welfare, the fire brigade, the tax department is also needed. Even more, depending on the issues faced, involving police units to combat the trafficking of human beings or the organisations such as the Gaming Commission would be recommended.²⁴

With such multitude of parties involved, it is advisable to set up an organisational structure. The advantages of such agreements are that specific responsibilities are assigned to specific parties and that standard operating procedures are in place.²⁵ A concrete example taken from professional practice can be found in the Belgian ISEC project (see box below).

The organisational structure of the ISEC Project²⁶

The **Executive Committee** (ExCom) is responsible for the day-to-day management and is in charge of the overall control of the project, for the plotting of the lines, for approaches to deal with possible difficulties and for the following-up of results. The ExCom consists of

- › the project team: project coordinator (responsible for contacts, the progress of the activities, reporting, implementation and communication, budget, assessment and the assurance of the project and much more) and the administrative assistant/data analyst who supports the coordinator in these activities, including from the point of view of administration, organisation and logistics
- › the social affairs department and its director, the prevention officer and the city's in-house legal counsel.
- › a representative of RIEC Limburg, who had a lot of expertise to offer, was 50% seconded from the Netherlands
- › a police representative

The **Local Operational Meetings** (LOM) form the operational heart of the administrative approach. Here, urban and external partners come together to share their information and prepare enforcement actions. Cases are discussed there and depending on the issue, experts may be invited to share information, knowledge and insights with one another (for example the Gaming Commission, the OMG Division etc.). Consultation takes place at an administrative level and with administrative purpose. No specific cases are discussed in the presence of the police and public prosecutor. After all, they are not allowed to take part in the proactive detection of acts and crimes. If necessary, the criminal law partners will leave the consultation, and the reporting will be adjusted in this case.

The **steering group** functions on a strategic level and monitors the general progress of the project and attempts to counter any weak points.

The **centralised pilot committee** (Mayor, Local Police Chief, the Director of Social Affairs and the Prevention Officer/department head of the Safety House) coordinates the city's overall security policy. The administrative approach was created here and remains a fixed item on the agenda. In this way, we are able to guarantee the harmonisation and integration of the administrative approach to organised crime within the overall integrated security and prevention policy.

5. Ensure a strong information position

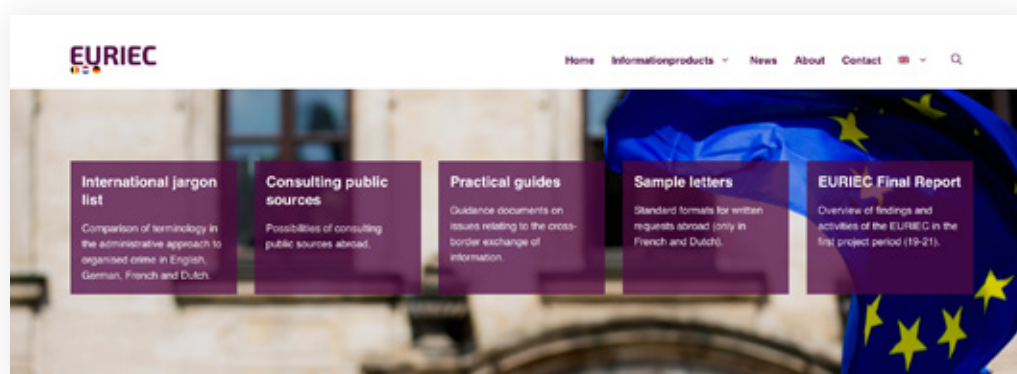
Working apart together or the cooperation between several agencies forms a crucial component within the administrative approach and the key to working apart together is information exchange. For (local) authorities, access to information and open sources is fundamental to take substantiated decisions.²⁷ Furthermore, by putting together the different pieces of information that different partners have, it is possible to achieve a richer intelligence picture.²⁸ Intelligence is needed to identify risks and to act in a preventative way. This was also the conclusion of preparatory studies during the process towards an administrative approach in the Netherlands. The studies concluded that the lack of access to police and judicial information is one of the main reasons why, at that time, it was impossible for the public sector to identify the risks and to prevent them and consequently excluding any criminal involvement.²⁹

In the Italian administrative approach towards organised crime, anti-mafia communication and anti-mafia information are core concepts. The objective of 'anti-mafia communication' is to communicate to the public authority any final criminal convictions or applied personal preventive measures in place concerning any party applying for a subsidy, permit or

government contract. The term 'anti-mafia information' indicates in a more discretionary way the presence or absence of mafia infiltration in a given company. More information can be found in the chapter below on the administrative approach in Italy.³⁰

Unfortunately, the exchange of information is one of the biggest challenges in the domain of the administrative approach due to several factors.³¹ Luckily, examples of possible solutions to these challenges can be found in the EU.

An initial factor are the barriers in the frame of professional secrecy. Information exchange within the administrative chain is challenging in Belgium. Partners fall within the competence of different governments (six!) and governing bodies, and have to adhere to the rules of professional secrecy in force for them. Each of the partners has relevant intelligence but has to adhere to their own rules and limitations regarding sharing it with others. Luckily, in 2017, the new art. 458ter Sw. was created. The 'case consultation' provides new opportunities for those under professional secrecy to come to an interdisciplinary cooperation. Amongst other purposes, this case consultation can be applied for crimes committed by criminal organisations.³²



Overview of reports on the website of EURIEC

6. Set up joint actions on the ground

A second factor is the challenge of exchanging information across borders for administrative purposes. The Area of Freedom, Security and Justice is unfortunately beneficial for criminals to conduct their business. What is more, displacement effects can also be detected following the implementation of certain policies. This therefore presents an argument in favour of a strong international information position for governments.³³ EURIEC, the Euro-regional Information- and Expertise Centre, supports local authorities in the exchange of information for the purpose of the administrative approach towards organised crime. On its website, you can find reports on the cross-border exchange of several types of data between Belgium, the Netherlands and Germany³⁴:

- > Administrative data
- > Administrative fines and recovery claims
- > Population register
- > Police data
- > Judicial data
- > Tax data
- > Social security data

A multidisciplinary cooperation is not limited to a joint strategy or the sharing of information. It is also important to set up joint actions on the ground, more specifically as a coordinated joint inspection. These activities are taking place in Belgium, Italy, the Netherlands and Sweden and possibly elsewhere. The underlying concept is that different governments or administrative inspection services carry out inspection based on their own competences at the same time at the same location. This takes the form of administrative inspection: the police are present for security reasons, and not in a criminal investigation capacity.³⁵

Such a coordinated inspection follows an operating process. In the preparation phase, the available information is collected, analysed and compiled. The cooperation is truly multidisciplinary in nature, as each partner examines within their own domain which issues should be questioned or inspected during the action. The preferred approach is to engage the authority/inspection service that is able to exercise the most effective powers to carry out the inspection and may impose administrative fine or settlement, temporary sealing, temporary closure, etc. The police prepare the action with a focus on the safety of the inspection team. This includes surveying the location, including any escape routes.³⁶

It is important to announce the coordinated inspection to the respective authorities such as the Mayor, the public prosecutor and the chief of police, and those authorities must give their explicit approval for the action. They may also express reservations or impose conditions on the action at this stage. It is only natural that a coordinated action cannot interfere with an ongoing criminal investigation.³⁷



Start of a flex action in Belgium, March 2022.

On the joint action day itself, a preliminary briefing is held under the direction of the coordinator. The coordination lies in the hands of a pre-established organisational structure (see Step 4) or the local administration itself. At the briefing, the case is discussed and it is determined how the way of working will be after arriving on site.³⁸

Usually, the inspection services will be the first to enter the premises, based on their own mandates. After all, they need to be able to make a number of conclusions based on what they have seen themselves, such as undeclared work or a violation of smoking laws. The administrative services then ask the manager for written permission to carry out their inspections without any time or space restrictions. If permission is not granted, each administrative department will act within the limits of its own powers (e.g. under the operating licence, the environmental supervisor's powers, fire safety, etc.).³⁹

When all departments have made their determinations and conducted the necessary interviews, the coordinator decides to conclude the inspection.⁴⁰

After the action, a concise debriefing takes place in which all findings are disclosed for each inspected location. Of course, the legality of the mutual information-sharing must be ensured so that participating partners do not breach professional secrecy (see Step 5). Arrangements are made for further follow-up. The coordinator ensures that all authorities receive a brief report (verbal or written) of the initial findings. Based on the sum of all of the results, the locally competent authority issues administrative measures. It is the Mayor who then decides whether the results of the action will be communicated to the media.

Members of the DIA during the debriefing following a coordinated inspection in Italy, October 2022.



Debrief following a coordinated inspection in the framework of A-krim in Sweden, October 2023.

A multidisciplinary cooperation is not limited to a joint strategy or the sharing of information. It is also important to set up joint actions on the ground, more specifically as a coordinated joint inspection.

C

Curriculum vitae of some experienced Member States

The steps towards the administrative approach are not clear cut or easily transposable to another Member State. Each country has its own history with organised crime and its own legislative frameworks that might support the development of the administrative approach, or not. We will therefore describe the steps that more experienced Member States have taken over the past decennia to understand what the common factors are when developing an administrative approach. In addition to that, we provide a brief summary of the current state of play regarding administrative approach policies in those Member States.

In order to gain a much more effective understanding of this history, we will mainly draw from the important and extensive work undertaken by Spapens, et al., 2015.

Origin: New York

The fight against the corrupted construction industry in New York City is often referred to as the origin story of the administrative approach. In the 1980s, thousands of public schools were in dire condition despite enormous investments as a result of crimes such as opportunistic theft or extortion of contractors by crew affiliated with the mafia.⁴¹ Because the complicity of public officials is needed in order to commit these crimes, it simultaneously signalled widespread corruption in construction regulation and administration as well.⁴² With construction being the biggest industry, this problem was of great importance. Some of the major negative consequences were inflated prices, honest construction companies withdrawing from public tenders because they could not compete with malicious companies, the waste of government funds, the corruption of government officials and families involved in organised crime building power and wealth in New York.⁴³ In that period of time, Italian and Russian mafia, as well as Chinese triads had the metropolis in its grip. Classic methods such as telephone interception or undercover operations appeared to be insufficient. Additionally, it was possible to observe how local governments unknowingly facilitated the criminal world through unlawfully obtained subsidies or other incentives.⁴⁴

The 1990s, under Mayor Giuliani, ushered in a change in strategy. The New York City government received stronger regulatory powers, which were granted by means of an anti-mafia law from the 1960s aimed at the Cosa Nostra. As a consequence, new businesses had to pass a stringent anti-mafia screening before they could receive permits and once obtained, permits could be withdrawn whenever links with mafia organisations or the criminal underworld could be proven. In addition to this, controls were tightened in sectors vulnerable to mafia infiltration such as catering, healthcare, waste management, etc.⁴⁵ This change in strategy is a 'double

strategy'. Both methods had to complement each other, due to the fact that administrative measures enhance the efficiency and efficacy of the traditional criminal justice approach, and the criminal justice approach is crucial as a means of maintaining a strong information position.⁴⁶

Corrupted construction industry

The Organized Crime Task Force (OCTF) researched and analysed the New York construction sector to identify irregularities and concluded that an integral approach, surpassing prosecution and incarceration, is crucial.⁴⁷ The Inspector-General Office (IGO) was established. This institute had to prevent a range of irregularities in the large-scale school renovation. The construction programme needed to be protected from criminal monopolies and cartels, fraud, corruption, bribery, extortion... The IGO exerted a defining influence upon the procurement policy as no contract could be signed between the SCA and construction companies without approval.⁴⁸

The Inspector-General Office (IGO) has the responsibility of preventing organised crime. An IGO was added to each industry or government organisation in which organised crime has a strong presence.⁴⁹

The Department of Investigation (DOI) is the anti-corruption service of New York City.⁵⁰

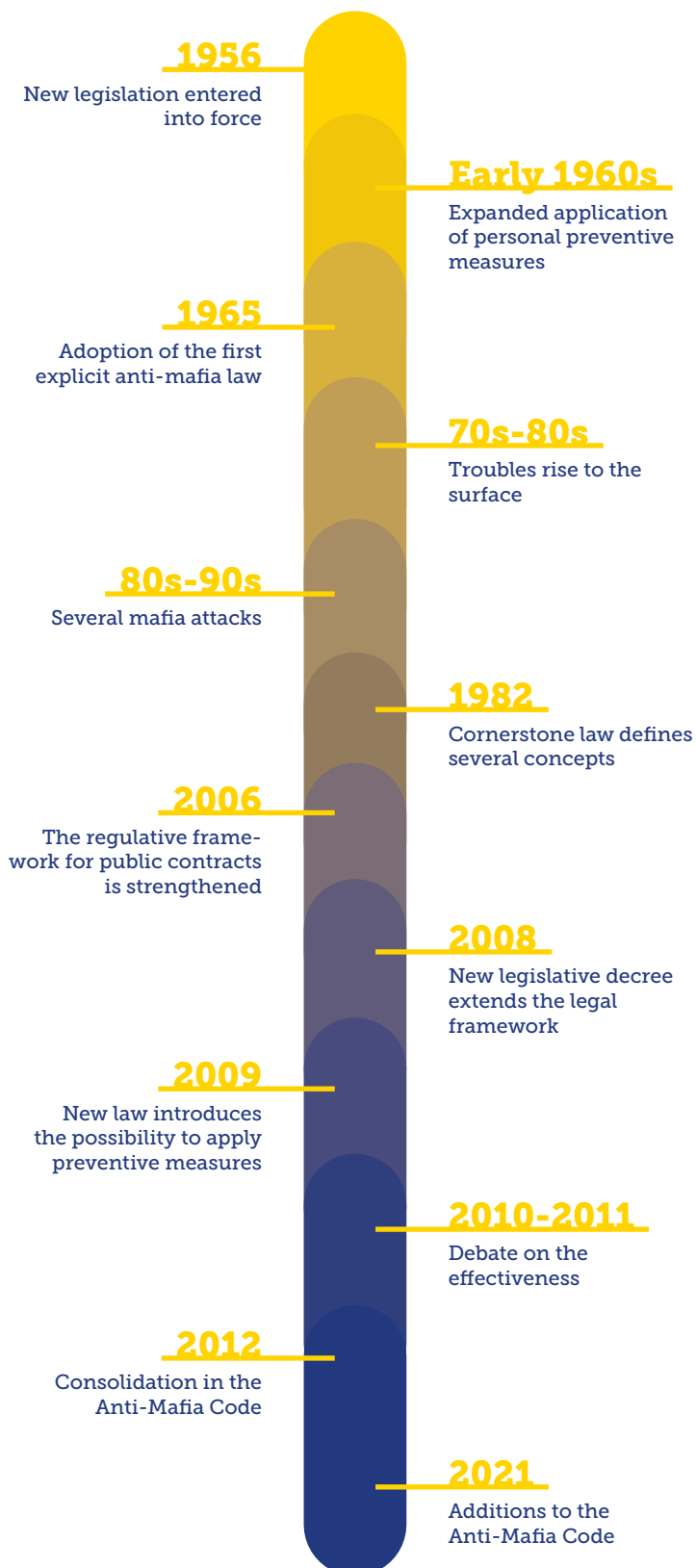
The 'criminal investigation and prosecution unit' is composed of three law enforcement agencies. The presence of this service offers access to criminal justice instruments - normally not available to administrative bodies - which can be used within the IGO. Additionally, it contributes to deterrence and places crucial information at its disposal.⁵¹

The 'counsel's office' is a unit of legal experts with the crucial role of overseeing the complex tangle of different specialised laws. Additionally, this unit advises on the most efficient way forward in a given case: civil, criminal or administrative proceedings.⁵²

Italy

Historical background

Since the 19th century, Italy has been dealing with different types of mafia-type associations, including the Sicilian Cosa Nostra, the Neapolitan Camorra and the Calabrian 'Ndrangheta.⁵³ In the 1990s, brutal mafia attacks against politicians, members of the judiciary and of the law enforcement agencies peaked, with the assassination of Judge Falcone engraved in the memory of Italians. After this, Italy has witnessed a significant decrease in mafia violence. The approach has shifted "from slaughters to business", highlighting the mafia infiltration in the economy.⁵⁴ According to scholars, most relevant anti-mafia measures were adopted as a result of specific events. The anti-mafia legislation could be seen as the product of an ongoing emergency which lead to problems of coordination and consistency, until the consolidation in the Anti-Mafia Code.⁵⁵ Based on this history, it is not surprising that within the European Union, Italy was first to systematically investigate the antecedents of companies and to conduct 'criminal audits'.⁵⁶



Timeline notes

1956

New legislation entered into force as an instrument for tackling the dangerous infiltration of the public system.

Early 1960s

The expanded application of personal preventive measures adopted by administrative authorities

1965

the adoption of the first explicit anti-mafia law

70s-80s

Troubles rise to the surface

- › Loopholes become apparent as a result of the term mafia not sufficiently clearly defined

80s-90s

Several mafia attacks

- › Several innovations as a reaction to several mafia attacks against politicians, members of the judiciary and of the law enforcement agencies

1982

Cornerstone law defines several concepts

- › Definition of the concept of a 'mafia-type association', criminalising participation in them and the introduction of patrimonial prevention measures.⁵⁷

2006

The regulative framework for public contracts is strengthened

- › The Code of public contracts for works, services and supplies was reshaped to improve control over the field

2008

A new Legislative Decree extends the legal framework by introducing several new measures

- › A new Legislative Decree extends the legal framework with several new measures: extended patrimonial prevention measures, apply preventive measures for persons suspected of kidnapping, drug and human trafficking, the extended application of personal and patrimonial prevention measures; including against heirs, the introduction of equivalent confiscation for persons convicted for being member of mafia-type association

2009

A new Law introduces the possibility to apply preventive measures regardless of risk to society

- › Possible to apply preventive measures for persons suspected of unjustified possession of assets and to apply the measures separately, regardless of risk to society.

2010-2011

Debate on the effectiveness

- › The subsequent debate on the effectiveness of the system generated a further reform, causing the government to revise and simplify the legal framework.

2012

Consolidation in the Anti-Mafia Code

- › A new Legislative Decree combined all previous legislation into one body of legislation and acts as main point of reference: the Anti-Mafia Code.⁵⁸

2021

Additions to the Anti-Mafia Code

- › Right to be heard
- › Administrative preventive measures for cooperation

The Anti-Mafia Code

“The antimafia certification as a tool of early protection in order to fight infiltration by criminal organisations in the economy.”⁵⁹

Legislative Decree no. 159/2011 introduced the ‘Code of anti-mafia laws, relevant preventive measures and new anti-mafia provisions’ or the Anti-Mafia Code for short. The Anti-Mafia Code consists of four books, reflecting the several ‘lines of defence’ available in the fight against mafia infiltration. The approach is broad and focusses on both preventive and investigative measures, as well as on personal measures and the confiscation of assets.⁶⁰

Anti-mafia documentation

The Anti-Mafia Code regulates the concept of anti-mafia documentation. This concept consists of ‘anti-mafia communication’ and ‘anti-mafia information’, which are administrative provisions. It allows the public administrations to verify the absence of bans, impediments and suspected mafia elements of an applicant.⁶¹ At first sight, one could conclude that both tools are similar; they both have the intent of excluding dangerous persons or entities from the public sphere and government contracts. Nevertheless, the difference can be found in the procedure. Whereas anti-mafia communication is based on convictions, proven beyond reasonable doubt, anti-mafia information is based on a discretionary assessment that is proven more likely than not.⁶²

The anti-mafia communication determines that anyone who is subject to a personal preventive measure issued by the Judicial Authority or subject to a final criminal conviction for serious offences, is excluded from certain activities related to the public sphere. Such persons cannot be granted items such as licences, police or commercial authorisations, a concession on state property or

an assignment of public financial contributions.^{63 64} It is a tool that merely declares specific causes of exclusion for preventive purposes. These causes were established according to criminal law principle ‘beyond reasonable doubt’.⁶⁵

Anti-mafia information proves the presence or absence of mafia infiltration and attests to the presence of any bans, disqualifications or suspensions. The check is mandatory whenever the value of a government contract exceeds €150,000. The administrative measure is a binding act and has a discretionary character. The decision is made in accordance with the civil law principle of ‘more likely than not’ and not the criminal law principle of ‘beyond any reasonable doubt’. This makes the anti-mafia information more flexible and more discretionary than anti-mafia communication.⁶⁶

In order to come to a decision on the anti-mafia information, the Code specifies the elements that can be considered as evidence for mafia infiltration. Examples are a conviction for a crime related to organised crime, facilitating criminal activities or violating the obligation to conduct traceable financial transactions. Additionally, according to the Code, attempted mafia infiltration can be derived from a pre-trial detention or a (non-final) judgement for alert crimes such as money laundering or extortion⁶⁷, the issuing and implementation of a proposal for preventive measures (see further), a failure to report bribery or extortion, checks ordered by the Prefect or to be carried out in other Provinces and the intention to avoid anti-mafia documentation measures by replacing corporate bodies, legal representation and ownership of enterprises and shares.⁶⁸

The right to be heard

In November 2021, a new modification entered the Anti-Mafia Code. When prerequisites are met for adopting a ban under anti-mafia legislation, the Prefect shall inform the concerned party about the indications of attempted mafia infiltration. Nevertheless, if sharing that information would jeopardise administrative or court proceedings, it will not be communicated with the party in question. The party has then 20 days to submit his remarks in writing and to request a hearing.⁶⁹

At the end of the cross-examination stage, the Prefect will make one of three decisions:

- › 'Liberatoria'; a positive anti-mafia information
- › 'Interdittiva'; a negative anti-mafia information
- › Administrative preventive measures for cooperation⁷⁰

Administrative preventive measures for cooperation

Together with the introduction of the cross-examination, the administrative preventive measures for cooperation were also added to the Anti-Mafia Code. These measures are meant as an alternative to the anti-mafia ban in those cases where the support is of occasional nature. For a period between 6 to 12 months, the Prefect can put a company under control measures and appoint 1 to 3 experts to assist him in applying the control measures. These administrative preventative measures for cooperation are of a diverse nature:⁷¹

- › adopting and enforcing organisational measures aimed at removing and preventing the causes for occasional support;
- › transmission to the DIA of documents of purchase or sale made or received, professional consultants entrusted, trusteeships received for a value of €5000 (or value as

determined by the Prefect);

- › obligation for stock companies or partnerships to inform the DIA of any funds provided by partners or third parties;
- › communication to the DIA which silent partnership agreements are signed;
- › the use of a dedicated current account for payments or revenues.⁷²

The Single National Database for Anti-mafia Documentation (BDNA)

The BDNA stores the anti-mafia communication and information in one national database. At the offices of the Direzione Investigativa Antimafia (DIA) also data can be accessed that was gathered during inspections at construction sites where public works are conducted. Finally, the database also contain data from abroad.⁷³

The entities that may consult the BDNA are the public administrations and entities, Chambers of Commerce, Industry, Craftmanship and Agriculture, professional organisations and the authority responsible for the supervision of government contracts.⁷⁴

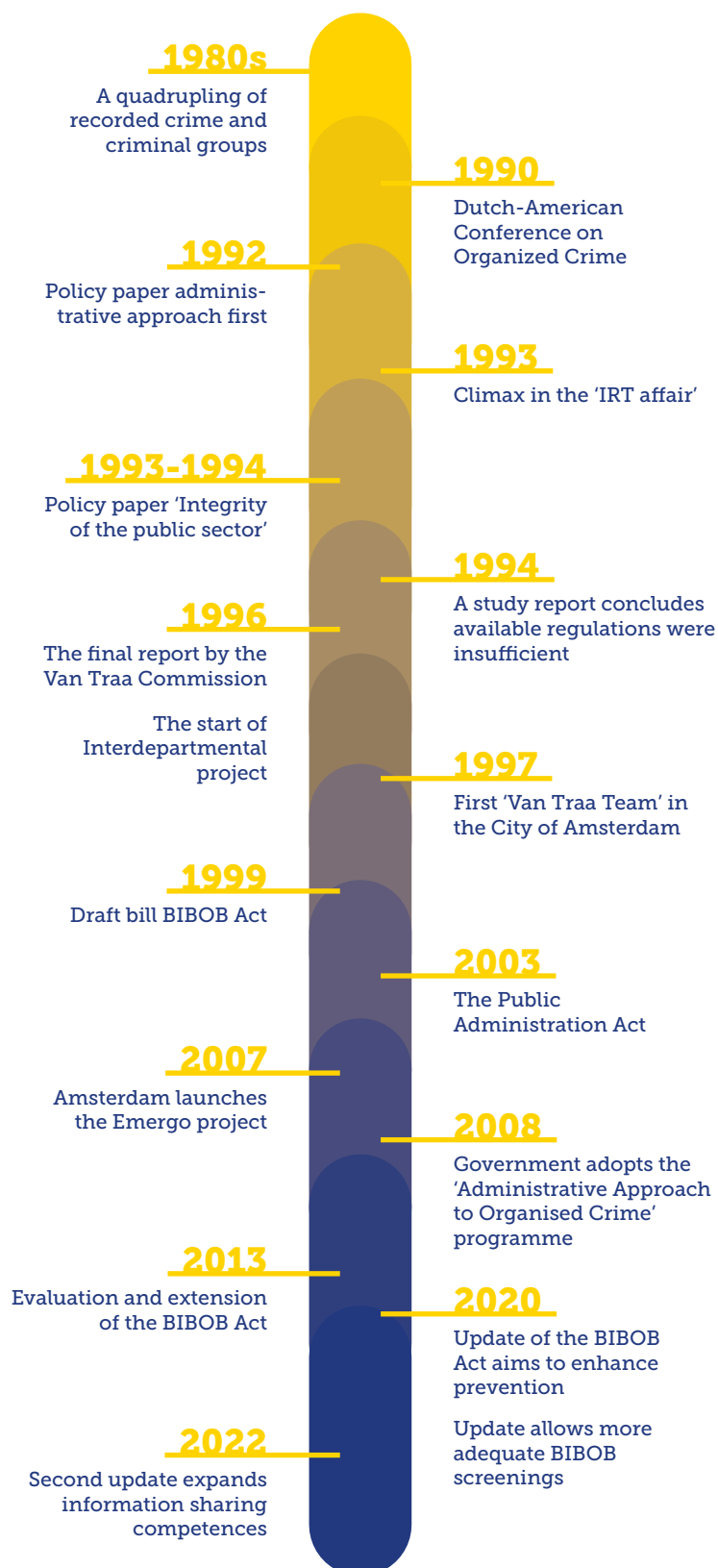
White lists at the Prefettura

Each Prefettura has a list of suppliers which are not subject to attempts of infiltration. The registration to this list is valid for 12 months. During this time, suppliers must inform the Prefettura of any changes regarding the corporate bodies or ownership. The white lists have improved the effectiveness of anti-mafia checks in the most sensitive areas such as catering, waste management, surveillance at construction sites or funeral service.^{75 76}

The Netherlands

Historical background

Several events are worth mentioning in the Dutch evolution towards a legal framework for the administrative approach. In the 1980s, the Netherlands faced a quadrupling of recorded crime. Organised crime groups were also gaining wealth, allowing them to invest in legitimate businesses and property. This of course increasingly worried the authorities and made them to focus on two tracks: increasing the effectiveness of law enforcement and developing preventive measures. In this context, the Dutch interest in the methods deployed in the United States (see above) was met with the 'Dutch-American Conference on Organized Crime' in 1990. A second important event was the IRT affair, an unsuccessful covert operation going on for several years leading to serious suspicions of police corruption, which led to a parliamentary enquiry by the Van Traa Commission. The after-effects of the IRT affair exceeded the domain of criminal procedural law and policy and included complementary approaches to organised crime. The final report of the Commission included important instigations towards a legal framework for the administrative approach in the Netherlands.⁷⁷ In the wake of lessons learned from several reports and policy papers, it was decided to develop new legal instruments. Under the leadership of the Ministry of Home Affairs, the project 'BIBOB⁷⁸ - Public Administration Probity Screening' was established and eventually led to a draft law of the same name in 1999.⁷⁹



Timeline notes

1980s

A quadrupling of recorded crime and criminal groups gaining wealth and investing in legitimate businesses and property

- › Two tracks: need for increasing effectiveness of law enforcement and developing preventive measures⁸⁰

1990

The Dutch-American Conference on Organized Crime

- › The Dutch-American Conference on Organized Crime proved to be critical because it demonstrated that local government plays a crucial role, alongside law enforcement agencies⁸¹

1992

A policy paper highlights the administrative approach for the first time

- › The policy paper 'Organised crime in the Netherlands. A threat analysis and plan of action' highlights the administrative approach for the first time and the government states that the public sector must guarantee its integrity towards third parties, including organised crime.⁸²

1993

Climax in the 'IRT affair'

- › An unsuccessful covert operation going on for several years leading to serious suspicions of police corruption
- › This led to parliamentary enquiry by the Van Traa Commission⁸³

1993-1994

Policy paper 'Integrity of the public sector'

- › Policy focusing on personal, organisational and relational integrity.⁸⁴

1994

A study report entitled 'Reinforced administrative law' concludes that the available regulations were insufficient

- › Study report – 'Reinforced administrative law: an examination of the possibility of combating criminal activity with the help of building permit, environmental permit and procurement regulations' concludes that available regulations do not allow

the public sector to exclude criminal persons or organisations due to a lack of information from the police and the judiciary.⁸⁵

1996

The final report by the Van Traa Commission contains impactful conclusions

- › Recognised the unintended facilitation of criminal activities and the dependency of criminals on government decisions.⁸⁶
- › Stated that several sectors are particularly vulnerable, such as bars and restaurants, hotels, gambling, real estate and road transport.⁸⁷

1996

The start of Interdepartmental project 'Public Administration Probity Screening', known as 'BIBOB' in practice.

- › Its objective was to develop an administrative and legal instrument that allows governments to prevent the facilitation of criminal activities, whilst at the same time guaranteeing the integrity of public governance.⁸⁸

1997

City of Amsterdam was first to establish a 'Van Traa Team'

- › Charged with preventing criminals from obtaining licences to operate a legitimate business in the city. Interventions are initially based on the general municipal by-law, but later on (in 2003), the BIBOB Act substantially extended the framework.⁸⁹

1999

The draft bill 'Public Administration Probity Screening' or BIBOB Act

- › Concept of the administrative approach is given a legal framework⁹⁰

2003

The Public Administration (Probity Screening) Act (BIBOB)

2007**Amsterdam launches the Emergo project⁹¹**

- › A multi-agency approach towards organised crime in the red light district, involving cooperation, between police, public prosecution service, municipal authorities and the tax and customs administration.

2008**The government adopts the 'Administrative Approach to Organised Crime' programme**

- › The establishment of Regional Information and Expertise Centres (RIECs) all over the country. These were modelled on the Emergo project.

2013**The evaluation and extension of the BIBOB Act**

- › Broadened the scope to other more economic sectors deemed vulnerable to criminal infiltration.⁹²

2020**The first update of the BIBOB Act aims to enhance prevention**

- › The update aims to enhance the efficiency of the process that enables persons with criminal wealth or activities to be prevented from applying for a permit to run catering business, for a subsidy to run a sports club or to land a government contract.⁹³

2020**The update of the Decree on Judicial and Criminal Records allows more adequate BIBOB screenings**

- › The update allows local, provincial and national governments to conduct BIBOB screenings even more adequately. Research into an individual's criminal background is no longer limited to applicants for a permit, but is extended to the persons that are in charge in reality. The intention of this is to combat the use of straw man constructions.⁹⁴

2022**The second update of the BIBOB Act expands information sharing competences**

- › The update expands information sharing competences in several aspects. It widens the scope of 'persons of interest' and creates exceptions to professional secrecy allowing local authorities to tip off and inform each other and be informed by tax services. In addition to this, the scope of the BIBOB Act was expanded to include more types of real estate transactions, types of government tenders (especially care sector) and types of construction licences.⁹⁵

The BIBOB Act

The BIBOB Act enables administrative authorities to refuse or revoke permits, subsidies or government contracts whenever the required screening has a negative outcome. The objective is to prevent public authorities from unknowingly facilitating crime, or in other words to protect the integrity of the government.⁹⁶

The 'Landelijk Bureau Bibob' (LBB) or 'National Bureau Bibob' is the competent authority responsible for systematically analysing the background of applicants and based on the results, to advise the authorities about the potential risks for criminal abuse of issuing a licence, subsidy, tender or real estate transaction.⁹⁷ The LBB operates under the authority of the Minister of Justice and Security.⁹⁸

The administrative authority has the discretion to decide on the scope of the background screening. The subject of the screening can be a person or an 'establishment', however it is not defined that this refers only to businesses.⁹⁹

The administrative authority must always first conduct its own screening, before requesting an advice from the LBB. Such research is done using a standardised questionnaire. The authorities are allowed to ask less, but not to ask more than what is demanded in the standardised questionnaires. Based on the results of this screening, the governing body is free to refuse or revoke the request from the applicant. Requesting advice from the LBB is not mandatory. The advice from the LBB only refers to the extent of the risk to which a certain licence,

transaction, etc. would be abused by criminals. The advice from the LBB is not binding. The requesting governing body must assess for themselves how the local situation and the advice from the LBB are related.¹⁰⁰

Based on the BIBOB Act, there are several grounds for refusal for governing bodies to decide to not issue or to revoke permits and subsidies. First, when there is 'serious risk' that the permit or subsidy would be used (a) to make use of assets obtained from crime or (b) to commits crimes. Additionally, the BIBOB Act defines someone being related to said crimes when they committed it, were in charge of or provided money to the person or legal entity that committed the crime. Second, when circumstances point towards criminal acts conducted to obtain or hold on to a permit, such as the falsification of documents or bribery. Third, when the applicant refuses to share requested information.¹⁰¹

The BIBOB Act also stipulates a whole list of bodies, which, with some exceptions, are obliged to cooperate and share requested information. These are government bodies that are in possession of information of the following types; financial, police and criminal justice, work and social benefits, right to lawful residence, food and health and others.¹⁰²

All recommendations formulated by the LBB and all refusals by the local administrative authorities, are centralised in the Central Register. It is also noted in this register whenever an applicant withdraws himself/herself from the application because of the implementation of the BIBOB Act. The data is retained for up to five years and is supplemented by judicial decisions when relevant.¹⁰³

In addition to the LBB and municipalities, the 10 Regional Information and Expertise Centres (RIECs) and the National Information and Expertise Centre (LIEC) reinforce the administrative approach and support the overall integrated strategy. They support the fight against organised crime with the aim of stimulating cooperation and making the government and society more resilient in

order to combat organised crime. The RIECs and LIEC do this by increasing the awareness and resilience of the government and private parties with regard to the problem of organised crime; by supporting and strengthening cooperation within the government and with public-private partners and by sharing knowledge and expertise in the field of the administrative and integral approach of organised crime.¹⁰⁴

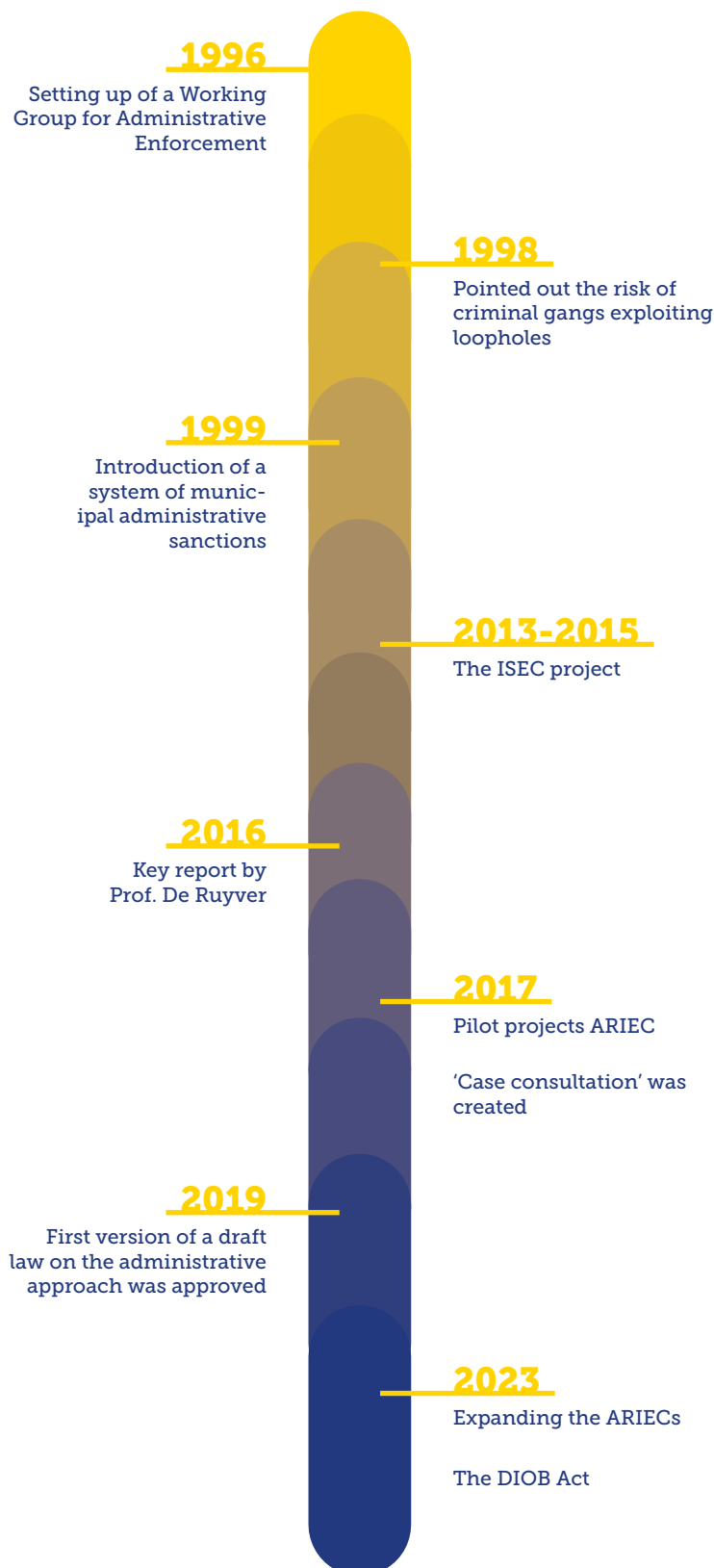
Alongside the BIBOB Act, there are many administrative instruments available to local authorities and mayors, next to the integrity checks. For example, the General Administrative Law Act provides sanctions. As administrative enforcement, authorities can rectify an illegal situation, such as by demolishing an illegally constructed building. An offender can be ordered to pay a penalty for the period of time during which an illegal situation is not rectified. Also, a grant, licence or exemption can be withdrawn if the holder commits a crime. An administrative fine can be imposed. These differ from the administrative enforcement and penalty payments because of their punitive character. Additionally, there are various possibilities that enable authorities to close down premises, facilities or homes, or even expropriate them. This can be done on legal grounds or in accordance with by-laws, in response to disruption and pursuant to the Dutch Housing Act, the Dutch Opium Act, etc.¹⁰⁵

Belgium

Historical background

Although organised crime received increasing attention in the 1980s, the approach was still mainly repressive in Belgium. And although several research and policy reports in the subsequent decades refer to the importance of a multidisciplinary approach, it was not until 2013 that the administrative approach was put into practice.¹⁰⁶ It is safe to say that the developments in the Netherlands were an important impetus to press ahead in Belgium and to increasingly focus on the role of (local) administrative authorities in the fight against organised crime.¹⁰⁷ The successful implementation in the Netherlands led to a waterbed effect, causing several criminal phenomena such as outlaw motorcycle gangs, to expand across the border to Belgium. The Dutch province of Limburg seconded an advisor to develop a similar approach in the adjacent Limburg region in Belgium, which was an opportunity to be seized. This was the start of a true bottom-up story in Belgium regarding the implementation in practice of the administrative approach.¹⁰⁸

Over the span of three decennia, several steps have been taken in the direction of creating a national administrative approach policy and several administrative instruments are available.¹⁰⁹ As of November 2023, Belgium has adopted the newest national policy on the administrative approach in the EU: the bill establishing the Direction Integrity assessment Public Governance' (DIOB).



Timeline notes

1996

The Action Plan on Organised Crime announced the setting up of a Working Group for Administrative Enforcement within the Ministry of the Interior¹¹⁰

1998

The Parliamentary Commission of Inquiry on Organised Crime pointed out the risk of criminal gangs exploiting loopholes in the existing legislation

- › The Parliamentary Commission of Inquiry on Organised Crime pointed out the risk of criminal gangs exploiting loopholes in the existing legislation. The Commission recommended that permits, licences and concessions be incorporated into a broader policy and that the fight against organised crime should not only be waged through the application of criminal law, but should also be one of the main responsibilities of the local, regional and federal governance¹¹¹

1999

The introduction of a system of municipal administrative sanctions

- › A new law allowed municipalities to develop an effective enforcement policy to deal with breaches of their rules and regulations. Possible measures are suspending or withdrawing a permit or licence or closing down establishments temporarily or permanently.¹¹²

2013-2015

The ISEC project

- › The City of Genk tested the administrative approach as shaped in the Netherlands. The project resulted in a handbook with procedures, best practices, crucial partners, case studies, local instruments etc.¹¹³

2016

A key report on the administrative approach by Prof. De Ruyver

- › The Belgian professor De Ruyver delivered a report on the phenomena associated with the administrative approach towards organised crime. One of the key findings was that the legal framework concerning the administrative approach should be strengthened.¹¹⁴

2017

Pilot projects ARIEC

- › Following the Dutch example, three pilot District Information and Expertise Centres (ARIEC) were established. Their goals were to assist local authorities and police forces with implementing, mapping and extending information exchange and to develop an expertise centre.¹¹⁵

2017

'Case consultation' was created

- › It provides new opportunities for those under professional secrecy to come to an interdisciplinary cooperation, amongst others, within the context of crimes committed by a criminal organisation.¹¹⁶

2019

First version of a draft law on the administrative approach was approved

2023

Expanding the ARIECs

- › After successful projects in three regions, the Belgian Federal Police is realising the ARIEC concept in all judicial districts.

2023

The DIOB Act

- › National framework regarding the administrative approach, amongst others, establishing the 'Direction Integrity assessment Public Governance' (DIOB)

DIOB Act

The national policy on the administrative approach in Belgium is by far the newest in this series, having passed through in Parliament in November 2023.¹¹⁷ The 'Directie Integriteitsbeoordelingen Openbaar Bestuur' (DIOB) or 'Directorate for Integrity Assessments of Public Administrations' supports municipalities with their decision relating to the refusal or revocation of licences to operate an establishment. It also develops and updates the Central Register for Integrity screenings and executes an annual risk analysis on the economic sectors and activities in which the destabilisation of criminal activities could take place. The DIOB operates under the authority of both the Minister of Home Affairs and the Minister of Justice.¹¹⁸

The area of application is defined by law, which is based on a risk analysis by the DIOB and a list of economic sectors and activities that are vulnerable to criminal (ab)use. Based on their own risk analysis, municipalities can pick from this list the economic sectors they wish to subject to integrity assessments. Additionally, for these listed economic sectors, municipalities can choose to implement an obligation to obtain a licence by means of a police regulation.¹¹⁹

The administrative authority must always conduct its own screening first, before requesting advice from the DIOB. Currently, there is no standardised questionnaire to conduct screenings of this type. When requesting advice from the DIOB, municipalities must provide reasons why screening resulted in a need for further research before a decision can be made or why screening resulted in the need to refuse/ revoke a licence or close an establishment. Refusing, revoking or closing are only possible after receiving non-binding recommendation from the DIOB.¹²⁰

The DIOB draft law stipulates the grounds for refusing or revoking a licence or closing an establishment. This is possible whenever there is a serious risk that the establishment would be used to profit from benefits

The area of application is defined by law, which is based on a risk analysis by the DIOB and a list of economic sectors and activities that are vulnerable to criminal (ab)use.

emanating from previously committed crimes, a serious risk that the establishment will be used for committed crimes or that crimes were committed in order to run the establishment.¹²¹

The integrity assessment is only applicable to the persons that are running the establishment. However, in the presence of a reasoned justification, the integrity screening can be extended to include other natural persons or legal entities that are related in a specific way, such as having received control, holding a dominant position, (in)directly providing assets or any persons involved in running the establishment.¹²²

The DIOB can turn to other government services to ask for advice. These institutions are in the possession of information in domains such as financial, police and criminal justice, work and social benefits, right to lawful residence, food and health and others.¹²³

A Central Register for Integrity Screenings for the administrative approach towards organised crime will be updated with the municipalities' decisions to refuse, revoke a licence or close an establishment. At the same time, the municipalities will be able to perform a hit/no hit search for previous decisions by other municipalities.¹²⁴

It is worth noting that the Act introduces the possibility for the DIOB to join international networks and set up cooperation agreements



with similar institutions abroad whose activities are related to the missions of the DIOB. It allows DIOB to cooperate with those institutions and networks in accordance with treaty law, supranational and legal rules, amongst others, for the purpose of exchanging good practices and thematic trainings. There are no specific provisions regarding the international exchange of information.

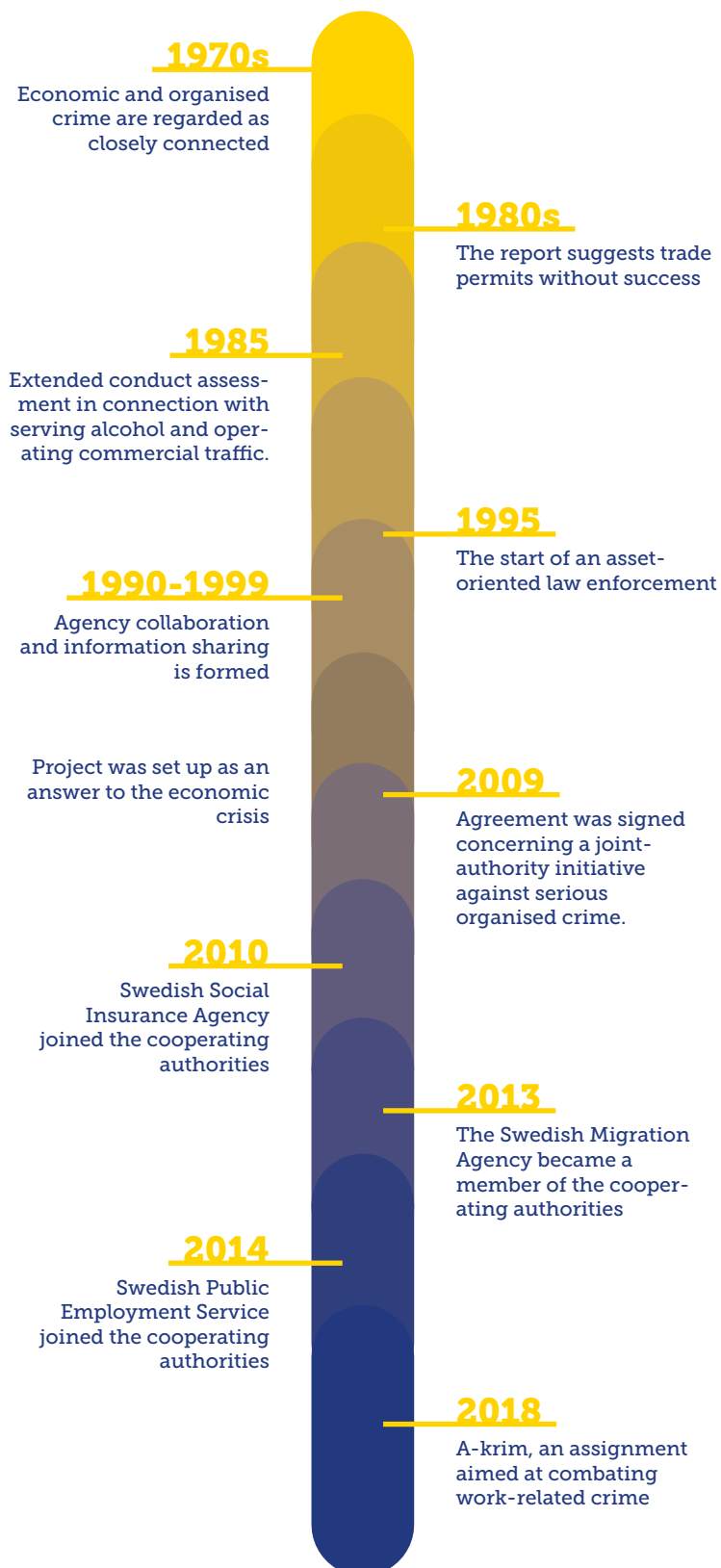
Alongside the DIOB, the ARIECs also play an important role in the administrative approach in Belgium.¹²⁵ In 2017-2018, everything took shape: the Regional Information and Expertise Centres. Three pilot projects were established in Namur, Limburg and Antwerp. The projects ran for four years and the staff consisted of a coordinator-criminologist, a legal expert and an information broker. In order to support local authorities in the prevention and disruption of organised crime within the socio-economic society, the ARIECs have several tasks, ranging from awareness raising towards and supporting of local authorities, coordination and strategy, information management to legal support and knowledge sharing. During these first four years, a safety intelligence picture, a good information exchange system, an adapted regulation system, a solid partnership and multidisciplinary and integral methods have proven to be factors contributing towards success. Following these positive experiences, the ARIECs are no longer temporary and are now official services within the Belgian Federal Police.¹²⁶ A total of 13 ARIECs, one for each district in Belgium, have been established.¹²⁷

Additionally, municipalities in Belgium already have a range of tools to maintain public order that can also be applied in the effort to combat organised crime. The 'New Municipality Act' orders municipalities to guarantee the rule of law and public order through administrative enforcement. The municipal council develops the police order and can impose administrative sanctions on breaches of law. This can take the form of an administrative fine, suspension or withdrawal of a permission or licence or the temporary or permanent closure of an establishment. Additionally, there are two alternative measures such as community service and local mediation. On top of these sanctions, the municipal council can stipulate that an illegal situation be rectified or can order expropriation. The Mayor will be responsible for the overall enforcement of the developed police order and can additionally act on grounds of urgency, indications of human trafficking or smuggling, terrorism, drug-related acts, etc.¹²⁸

Sweden

Historical background

In the early 1970s, economic and organised crimes, which were considered to be connected, became a criminal-political issue in Sweden. A task force with representatives from the police, the Swedish Prosecution Authority and the Swedish Tax Agency advocated for a review of the legislation. It was possibly then that the idea of administrative measures having a larger and wider significance was first formed.¹²⁹



Timeline notes

1970s

Economic and organised crime are regarded as closely connected¹³⁰

1980s

The report 'Commission against economic crime' suggests trade permits without success

- › This Government report suggested the strategy of introducing trade permits for establishing a business in critical or vulnerable industries such as restaurants, transportation, construction, automotive and cleaning industries.¹³¹
- › The trade permits were not introduced. The Government considered the measures too costly, not efficient and felt that they may excessively inhibit entrepreneurship.¹³² In the mid-1980s, the freedom to establish businesses in Sweden was considered to be unique in an international perspective.¹³³

1985

The idea of trade permits did inspire an extended conduct assessment in connection with serving alcohol and operating commercial traffic.¹³⁴

1995

The start of an asset-oriented law enforcement

- › The Government presented a strategy against economic crime which led to an extensive reform, in which the forfeiture of proceeds from crime formed the central focus. 'Following the money' becomes increasingly important.
- › In the same time period, money laundering becomes regulated and the Finance Police is established as well as a special Proceeds of Crime Unit.¹³⁵

1990-1999

Agency collaboration and information sharing is formed

- › Ever since the 1970s, more and more agencies were becoming involved in the investigation of organised crime and this paved the way for a perspective other than the purely criminal. During the 1990s, specific collaborative bodies were formed at county level. These typically consisted of the Police, the Tax Agency, the Enforcement Authority, the emergency services and the alcohol licensing authorities.¹³⁶

1990-1999

The project 'Control function of the State' was set up as an answer to the economic crisis and later to crimes against the welfare system

- › The project 'Control function of the State' aimed to strengthen the control on the use of state funds but also on the funds that the state received. The project was an awakening for many agencies. Though when it was launched, the emphasis lay upon reducing erroneous payments, the project has now shifted its focus to economic and organised crime.

2009

In early June 2009, an agreement was signed concerning a joint-authority initiative against serious organised crime. The participating agencies were the Swedish Economic Crime Authority, the Swedish Prison and Probation Service, the Swedish Enforcement Authority, the Swedish Coast Guard, the Swedish National Police Board, the Swedish Tax Agency, the Swedish Security Service, Swedish Customs and the Swedish Prosecution Authority.

2010

The Swedish Social Insurance Agency joined the cooperating authorities

2013

The Swedish Migration Agency became a member of the cooperating authorities

2014

The Swedish Public Employment Service joined the cooperating authorities

2018

A-krim, an assignment aimed at combating work-related crime

- › Since 2018, nine Swedish Authorities have been participating in a government assignment aimed at combating work-related crime. Part of the work consists of inter-agency inspections of companies and organisations where there is a suspicion that employers are breaking the rules.¹³⁷

A-krim

Researchers concluded that although there is no coherent strategy in terms of legislation to combat economic and organised crime with the help of administrative measures, there is hardly a lack of administrative tools in Sweden: a total of 230 different laws regulate supervision and there are more than 90 government agencies and the supervisory functions of 290 municipalities.¹³⁸ Providing an overview of all administrative measures relevant to organised crime would be too large an undertaking. Therefore, although the following overview is not exhaustive for the entire administrative approach in Sweden, the assignment aimed at combating work-related crime does reflect a recent state of play.

Since 2018, nine Swedish Authorities have been participating in a government assignment aimed at combating work-related crime. Part of that work consists of inter-agency inspections of companies and organisations where there is a suspicion that employers are breaking the rules.¹³⁹

The collaborating authorities are: the Swedish Public Employment Service, the Swedish Work Environment Authority, the Swedish Economic Crime Authority, the Swedish Social Insurance Agency, the Swedish Gender Equality Agency, the Swedish Migration Agency, the Swedish National Police Board, the Swedish Tax Agency and the Swedish Prosecution Authority. The Swedish Work Environment Authority coordinates the assignment.¹⁴⁰

By collaborating, the agencies can benefit from each other's knowledge and information in a completely different way than before, which has been shown to result in a greater impact. Together, the authorities can approach unscrupulous employers from multiple angles and can detect breaches of the regulations in various areas of society.¹⁴¹

Not all authorities participate in on-site inspections. Rather, they assist the participating agencies with information on whether a company's employees have the right to work in Sweden. With the help of the information

obtained through these inspection efforts, the Swedish Migration Agency can, for example, also stop unscrupulous companies from employing foreign labour. Foreign labour is often the subject of work-related crime, as foreign employees are often in a vulnerable situation, for example, because they do not know the language, the Swedish system or the rules that apply in the Swedish labour market.¹⁴²

To enhance efficiency, of the authorities' intelligence-gathering efforts, the Government decided in 2021 that there shall be a total of seven regional centres regarding work-related crime. Two of these were implemented in 2022 and the other five are going to be implemented during the course of 2023. At the regional centre, the Authorities will exchange information with the aim of identifying the workplaces that will be subjected to an inspection.¹⁴³

This collaboration is helping uncover more violations of the rules and is also not only increasing the ability of the Authorities to issue correct decisions, but is also providing greater opportunities to share information with other authorities, which in turn is having a preventative effect on crime.¹⁴⁴

During 2018–2021, more than 6,000 inspection efforts were implemented in industries that are particularly vulnerable, namely the construction, restaurant, beauty, car care, cleaning and transport industries. The inspections revealed companies that violate work environment rules, exploit labour, do not pay taxes and fees, and receive grants to which they are not entitled.¹⁴⁵

Conclusions

Overall, developing a policy that implements an administrative approach towards combating crime to exist alongside traditional law enforcement is recommended as a course of action. Governments have a particular interest in preventing criminals from misusing the economic infrastructure and distorting the economy. Additionally, they must fulfil their responsibility by not facilitating organised crime and must safeguard the integrity of the government. It is also important to recognise the fact that criminal law does not always affect a professional criminal.

Across the EU, some Member States have systematically implemented a national policy on the administrative approach, others have no national policy but have gained experience with the concept and a further group of Member States have no national policy and little to no experience with the concept.

Because it exists in many forms and it is evolving at different speeds, it is challenging to offer a step-by-step programme on how to get started with the implementation of the administrative approach. This is especially challenging, taking into account the variety of ways in which governments organise their administrations and in which competences belong to which administrative bodies. The recommendations in this roadmap have therefore been drawn from the route that some of the more experienced Member States in the EU have adopted.

Firstly, it is recommended to take stock of available instruments. Some countries have useful regulations in place, but do not apply them in the context of fighting crime. Overall, useful instruments can often be found in the regulation of catering businesses, the sale of alcohol, casinos and gambling, disturbances of public order, etc.

Secondly, you should put into practice what you can. Unless implemented in practice, the administrative approach will have no effect on the prevention or disruption of organised crime. The more these existing regulations are used on a practical level in the fight against crime, the more apparent the added value of the administrative approach will become.

Thirdly, keep in mind that local governments play a vital role in the administrative approach towards combating organised crime and they should be incorporated in administrative approach practices. Specifically, informing and equipping local government authorities to effectively detect and exclude criminal persons and organisations from their services is crucial.

Fourthly, the administrative approach is often referred to as 'working apart together' meaning that different authorities and administrations tackle serious and organised crime within their merits. With a multitude of parties involved, it is advisable to set up an organisational structure. The advantages of such agreements are that specific responsibilities are assigned to specific parties and that standard operating procedures are in place.


In fifth position is the need to maintain a strong information position, which forms a key component of the administrative approach. Unfortunately, the exchange of information forms one of the biggest challenges that exist within the administrative approach due to several factors, such as professional secrecy or the need to exchange information for administrative purposes across borders.

A sixth point to consider is that although a strong information position is central,

multidisciplinary cooperation is not limited to a joint strategy or the sharing of information. It is also important to set up joint actions on the ground, more specifically in the form of a coordinated joint inspection. Here, different governments or administrative inspection services carry out inspections based on their own competences at the same time and at the same location. Afterwards, the respective results are shared with all partners.

Overall, and in order to ensure a strong and growing administrative approach in the EU, it is recommended that Member States continue to actively share policies, practices and the types of obstacles they face when implementing the administrative approach towards combating organised crime. In addition, multilateral discussions on the challenge of information exchange are needed in order to oversee the complexity of the issue and possible solutions.

Overall, and in order to ensure a strong and growing administrative approach in the EU, it is recommended that Member States continue to actively share policies, practices and the types of obstacles they face when implementing the administrative approach towards combating organised crime.



Endnotes

- 1 European Network on the Administrative Approach, Third EU Handbook on the Administrative Approach in the European Union, Brussels: ENAA, 2020, 7.
- 2 Ibid., 12.
- 3 Koen Van Heddeghem et al., *Gewapend Bestuursrecht Gescreend*, Antwerpen: Maklu, 2002, 12.
- 4 European Network on the Administrative Approach, Third EU Handbook on the Administrative Approach in the European Union, 12.
- 5 Van Heddeghem et al., *Gewapend Bestuursrecht Gescreend*, 11.
- 6 Antonius Spapens, Maaïke Peters, and Dirk Van Daele, *Administrative Measures to Prevent and Tackle Crime*, The Hague: Eleven International Publishing, 2015, 681.
- 7 Jerome Lam, Ronald van der Wal, and Nicolien Kop, Sluipend Gif. Een Onderzoek Naar Ondermijnende Criminaliteit., Den Haag: Boom criminologie, 2018, 120.
- 8 Spapens, Peters, and Van Daele, *Administrative Measures to Prevent and Tackle Crime*, 573.
- 9 Ibid., 681.
- 10 Ibid., 569.
- 11 Ibid., 571.
- 12 Ibid., 573.
- 13 Ibid., 569.
- 14 Ibid.
- 15 Ibid., x.
- 16 Annemie De Boye et al., *Bestuurlijk Handhaven. Handboek Voor Een Lokale Aanpak Van (Georganiseerde) Criminaliteit.*, Brussel: Politeia, 2021, 95.
- 17 Maaïke Peters and Antonius Spapens, The Administrative Approach in the Netherlands, in: Antonius Spapens, Maaïke Peters, and Dirk Van Daele (Eds.), *Administrative Measures to Prevent and Tackle Crime*, The Hague: Eleven International Publishing, 2015, 266.
- 18 Annemie De Boye et al., Administrative Approach to Organised Crime: Support European Local Authorities in Combating Local Outcomes of Organised Crime Co-Funded by the Prevention of and Fight against Crime Program of the European Union, Genk: City of Genk, 2015, 22.
- 19 Ibid.
- 20 De Boye et al., *Bestuurlijk Handhaven. Handboek Voor Een Lokale Aanpak Van (Georganiseerde) Criminaliteit.*, 34.
- 21 Ibid.
- 22 Ibid., 59.
- 23 European Network on the Administrative Approach, Third EU Handbook on the Administrative Approach in the European Union, 30.
- 24 De Boye et al., Administrative Approach to Organised Crime: Support European Local Authorities in Combating Local Outcomes of Organised Crime Co-Funded by the Prevention of and Fight against Crime Program of the European Union, 23.
- 25 Ibid., 24.
- 26 Ibid., 25.
- 27 European Network on the Administrative Approach, Third EU Handbook on the Administrative Approach in the European Union, 31.
- 28 ENAA, Straw Men in Organised Property Crime: Using the Administrative Approach., Brussels: ENAA, 2023, 14.
- 29 Van Heddeghem et al., *Gewapend Bestuursrecht Gescreend*, 13.
- 30 Direzione Investigativa Antimafia, The Code of Antimafia Laws and Preventive Measures, presentation during field visit in Italy, 5 October 2022.
- 31 European Network on the Administrative Approach, Third EU Handbook on the Administrative Approach in the European Union, 31.
- 32 De Boye et al., *Bestuurlijk Handhaven. Handboek Voor Een Lokale Aanpak Van (Georganiseerde) Criminaliteit.*, 96.
- 33 Spapens, Peters, and Van Daele, *Administrative Measures to Prevent and Tackle Crime*, 615.
- 34 EURIEC, Information products, <https://euriec.eu/informatieproducten>
- 35 {De Boye, 2021 #2367@190}
- 36 {De Boye, 2021 #2367@190}
- 37 {De Boye, 2021 #2367@190}
- 38 {De Boye, 2021 #2367@190}
- 39 {De Boye, 2021 #2367@191}
- 40 {De Boye, 2021 #2367@191}
- 41 Van Heddeghem et al., *Gewapend Bestuursrecht Gescreend*, 118.
- 42 Mark H. Moore and Zachary R. Tumin, Building Clean: The Control of Crime, Corruption, and Racketeering in the Public Construction Markets of New York City. A Preliminary Assessment of Efforts Made by the Office of the Inspector General, New York City School Construction Authority, Cambridge, Massachusetts: Harvard University, 1996, 7.
- 43 Ibid., 8.
- 44 De Boye et al., *Bestuurlijk Handhaven. Handboek Voor Een Lokale Aanpak Van (Georganiseerde) Criminaliteit.*, 27.

- 45 Ibid.
- 46 Ibid., 28.
- 47 Van Heddeghem et al., *Gewapend Bestuursrecht Gescreend*, 118.
- 48 Ibid., 119.
- 49 Ibid., 127.
- 50 City of New York, Units of the Inspector General, <https://www.nyc.gov/site/doi/offices/inspector-general.page>
- 51 Van Heddeghem et al., *Gewapend Bestuursrecht Gescreend*, 123.
- 52 Ibid.
- 53 Francesco Calderoni and F. Di Stefano, The Administrative Approach in Italy, in: Antonius Spapens, Maaïke Peters, and Dirk Van Daele (Eds.), *Administrative Measures to Prevent and Tackle Crime*, The Hague: Eleven International Publishing, 2015, 239.
- 54 ENAA, Antimafia Certificates: A Field Visit Hosted by Italy, Brussels: ENAA, 2022.
- 55 Calderoni and Di Stefano, The Administrative Approach in Italy, 241.
- 56 Ibid., 243.
- 57 Ibid., 239.
- 58 Ibid., 243.
- 59 Direzione Investigativa Antimafia, The Code of Antimafia Laws and Preventive Measures, presentation during field visit in Italy, 5 October 2022.
- 60 Ibid.
- 61 Ibid.
- 62 Emanuele Birritteri and Elisabetta Tati, Cooperative Compliance Measures to Prevent Organised Crime Infiltrations and the Protection of the Eu's Financial Interests. A New Gold Standard in the Implementation of the Italian Recovery and Resilience Plan?: Jean Monnet Network on EU Law Enforcement, 2022, 9.
- 63 Direzione Investigativa Antimafia, The Code of Antimafia Laws and Preventive Measures, presentation during field visit in Italy, 5 October 2022.
- 64 A complete list of activities from which the person in question is excluded from: licences, police or commercial authorisations; concessions for public waters or state property, or for public works and management of works concerning the Public Administration; entry into a public register for contractors, goods and service providers concerning the Public Administration and into the Chamber of Commerce for the wholesale trade; qualification certificate to conduct public works; other entries into public registers or authorisation procedures to conduct entrepreneurial activities; assignment of public financial contributions, soft loans or other funds from public bodies or the EU; licences to possess and carry firearms, production, deposit, sale and transport of explosives.
- 65 Birritteri and Tati, Cooperative Compliance Measures to Prevent Organised Crime Infiltrations and the Protection of the Eu's Financial Interests. A New Gold Standard in the Implementation of the Italian Recovery and Resilience Plan?, 9.
- 66 Direzione Investigativa Antimafia, The Code of Antimafia Laws and Preventive Measures, presentation during field visit in Italy, 5 October 2022.
- 67 The list of alert crimes as defined in the Antimafia Code: bid rigging, interference in the choice of contractors, illicit brokerage and exploitation of labour, extortion, fraud to obtain public funds, usury, money laundering, re-use of money, assets or illicitly gained proceeds, criminal association, mafia-type association, vote exchange between politicians and mafia, organised crime for the purpose of illicit waste trafficking, kidnapping for ransom, illicit drug trafficking criminal association, fraudulent transfer and unjustified possession of values or the criminal association for the purpose of tobacco smuggling.
- 68 Direzione Investigativa Antimafia, The Code of Antimafia Laws and Preventive Measures, presentation during field visit in Italy, 5 October 2022.
- 69 Ibid.
- 70 Ibid.
- 71 Ibid.
- 72 Ibid.
- 73 Ibid.
- 74 Ibid.
- 75 Ibid.
- 76 A complete list of sensitive areas: mining, supply of services and goods, transportation of inert materials, concrete, bitumen, rental of machinery with and without operator, truck transportation, wrought iron, surveillance at construction sites, catering, waste management, cemetery and funeral services.
- 77 Peters and Spapens, The Administrative Approach in the Netherlands, 266.
- 78 In Dutch, the acronym BIBOB stands for Bevordering Integere Besluitvorming Openbaar Bestuur.
- 79 Van Heddeghem et al., *Gewapend Bestuursrecht Gescreend*, 14.
- 80 Peters and Spapens, The Administrative Approach in the Netherlands, 266.
- 81 Ibid.
- 82 Van Heddeghem et al., *Gewapend Bestuursrecht Gescreend*, 14.
- 83 Peters and Spapens, The Administrative Approach in the Netherlands, 266.
- 84 Dirk Van Daele and Sven Bollens, *De Bestuurlijke Aanpak Van Mensenhandel in België En Nederland*, Antwerpen: Intersentia, 2019, 11.
- 85 Van Heddeghem et al., *Gewapend Bestuursrecht Gescreend*, 14.
- 86 Ibid.

- 87 Peters and Spapens, *The Administrative Approach in the Netherlands*, 266.
- 88 Van Heddeghem et al., *Gewapend Bestuursrecht Gescreend*, 14.
- 89 Peters and Spapens, *The Administrative Approach in the Netherlands*, 266.
- 90 Van Heddeghem et al., *Gewapend Bestuursrecht Gescreend*, 14.
- 91 Peters and Spapens, *The Administrative Approach in the Netherlands*, 268.
- 92 *Ibid.*, 274.
- 93 De Boye et al., *Bestuurlijk Handhaven. Handboek Voor Een Lokale Aanpak Van (Georganiseerde) Criminaliteit.*, 30.
- 94 *Ibid.*
- 95 Justis, Wijziging Wet Bibob per 1 oktober 2022, <https://www.justis.nl/producten/wet-bibob/wijziging-wet-bibob-per-1-oktober-2022>
- 96 Peters and Spapens, *The Administrative Approach in the Netherlands*, 272.
- 97 *Ibid.*
- 98 EURIEC, *Vergelijking Van Het Wetsontwerp Belgische Directie Integriteitsbeoordelingen Openbaar Bestuur (Diob) En De Nederlandse Wetgeving Bevordering Integriteitsbeoordelingen Door Het Openbaar Bestuur (Bibob): EURIEC*, 2023, 3.
- 99 *Ibid.*
- 100 *Ibid.*, 4.
- 101 *Ibid.*, 5.
- 102 *Ibid.*, 10.
- 103 *Ibid.*, 11.
- 104 European Network on the Administrative Approach, *Third EU Handbook on the Administrative Approach in the European Union*, 47.
- 105 {Centre for Crime Prevention and Safety (CCV), 2011 #657@41}
- 106 De Boye et al., *Bestuurlijk Handhaven. Handboek Voor Een Lokale Aanpak Van (Georganiseerde) Criminaliteit.*, 34.
- 107 Van Daele and Bollens, *De Bestuurlijke Aanpak Van Mensenhandel in België En Nederland*, 2.
- 108 De Standaard, *Limburg Gaat Strijd Aan Tegen Motorbendes* (GoPress, 2017).
- 109 Van Heddeghem, K. Landt de wet over gemeentelijke bestuurlijke handhaving binnenkort? <https://www.vvsg.be/nieuws/landt-de-wet-over-de-gemeentelijke-bestuurlijke-handhaving-binnenkort>
- 110 Spapens, Peters, and Van Daele, *Administrative Measures to Prevent and Tackle Crime*, 17.
- 111 *Ibid.*
- 112 Dirk Van Daele, *The Administrative Approach in Belgium*, in: Antonius Spapens, Maaïke Peters, and Dirk Van Daele (Eds.), *Administrative Measures to Prevent and Tackle Crime*, The Hague: Eleven International Publishing, 2015, 17.
- 113 De Boye et al., *Bestuurlijk Handhaven. Handboek Voor Een Lokale Aanpak Van (Georganiseerde) Criminaliteit.*, 34.
- 114 Van Heddeghem, K. Gemeentelijke bestuurlijke handhaving van ondermijnende criminaliteit: eindelijk wettelijk kader? <https://www.vvsg.be/nieuws/wettelijke-omkadering-voor-de-gemeentelijke-bestuurlijke-handhaving-van-ondermijnende-criminaliteit-eindelijk-op-komst>
- 115 De Boye et al., *Bestuurlijk Handhaven. Handboek Voor Een Lokale Aanpak Van (Georganiseerde) Criminaliteit.*, 95.
- 116 Openbaar Ministerie. COL 4/2018: Casusoverleg en beroepsgeheim. <https://www.om-mp.be/nl/article/col-42018-casusoverleg-beroepsgeheim>
- 117 Van Heddeghem, K. Landt de wet over gemeentelijke bestuurlijke handhaving binnenkort? <https://www.vvsg.be/nieuws/landt-de-wet-over-de-gemeentelijke-bestuurlijke-handhaving-binnenkort>
- 118 EURIEC, *Vergelijking Van Het Wetsontwerp Belgische Directie Integriteitsbeoordelingen Openbaar Bestuur (Diob) En De Nederlandse Wetgeving Bevordering Integriteitsbeoordelingen Door Het Openbaar Bestuur (Bibob)*, 3.
- 119 *Ibid.*
- 120 *Ibid.*, 4.
- 121 *Ibid.*, 5.
- 122 *Ibid.*, 6.
- 123 *Ibid.*, 10.
- 124 *Ibid.*, 11.
- 125 De Boye et al., *Bestuurlijk Handhaven. Handboek Voor Een Lokale Aanpak Van (Georganiseerde) Criminaliteit.*, 95-7.
- 126 ENAA, *Flexactions: A Field Visit Hosted by Belgian Arieacs: ENAA*, 2022.
- 127 Marc De Mesmaeker, *De Csd's Als Belangrijke Scharnierfunctie Tot Een Goede Geïntegreerde Werking, Blue Minds* 7:5 (2023), 25.
- 128 {De Boye, 2021 #2367}
- 129 {Korsell, 2015 #2389@418}
- 130 {Korsell, 2015 #2389@419}
- 131 {Korsell, 2015 #2389@420}
- 132 {Korsell, 2015 #2389@420}
- 133 {Korsell, 2015 #2389@425}
- 134 {Korsell, 2015 #2389@421}
- 135 {Korsell, 2015 #2389@422}
- 136 {Korsell, 2015 #2389@422}
- 137 {Swedish Police, 2023 #2391}
- 138 {Korsell, 2015 #2389@417}
- 139 {Swedish Police, 2023 #2391}
- 140 {Swedish Police, 2023 #2391}
- 141 {Swedish Police, 2023 #2391}
- 142 {Swedish Police, 2023 #2391}
- 143 {Swedish Police, 2023 #2391}
- 144 {Swedish Police, 2023 #2391}
- 145 {Swedish Police, 2023 #2391}





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