

The administrative laws and instruments of the local, public board in the battle against undermining organized crime

Qualitative research in the district Gelderland-Midden

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1. INTRODUCTION

1.1 INTRODUCTION OF ORGANIZED CRIME

‘Organized crime is nothing more than a guerilla war against society’, is what Lyndon B. Johnson said about sixty years ago. Organized weed crime, human trafficking, fraude in the real estate sector, money laundering and financial and economic crime are phenomena of organized crime that nowadays are mostly called: ‘undermining’. Organized crime roots and flourishes at a local level, where local infrastructures are abused by criminal entrepreneurs. Simplified, the ‘underworld’ needs the ‘legal world’ to execute their criminal activities. The consequence of this is that the local public government unintentional, or maybe intentional, bears the risk to facilitate criminal entrepreneurs. In 2006, it was estimated that in the Netherlands approximately criminals used 18,5 billion for money laundering, at that time it was 5% of the Gross Domestic Product (GDP) (Unger et al, 2006).

The research from Kruisbergen et al. (2012) shows that the local character of organized crime is of key importance for organized crime to be successful. This finding has several causes: criminals with a strong local character have strong relationships with the local, legal environment and with potential fellow criminals. Besides that, they often have deep knowledge about their local environment and have their daily activities within this local network. This ‘undermining’ crime is strangled on a local level, there is a key position for municipalities to act against this undermining crime. The local public government has three layers, the national government, the province and the municipality. The importance to deal with these forms of criminality is also kept in mind in the national budget where for 2017 the government booked 10 million euros for municipalities and provinces to deal with this form of crime¹. Therefore, it is interesting to explore which roles municipalities take in the battle against undermining crime.

Criminals use, according to Kruisbergen et al. (2012), legal and juridical infrastructures of local municipalities. In this way, economic sectors like the catering- and real estate’s industry are misused to execute criminal activities and to launder criminal money with complicated investments. These types of organized crime demand an organized government. This responsibility was at first with the national government, but in the last 25 years this responsibility moved to the local governments where they play a key role in the fight against organized crime. This process is called the ‘governmental method against organized crime’. The prevention of the facilitation of ‘undermining crime’ by the government and the blending of ‘legal worlds’ with ‘underworlds’, is the essence of this ‘governmental method against undermining crime. This ‘governmental method’ is a gathering of instruments municipalities can use to create interferences and disturbances against undermining (Prins, 2016). The National government created in 2008 the ‘Programma Vesterking Aanpak Georganiseerde Misdad’ (PVAGM), where the

¹ Rijksbegroting Artikel 33. Veiligheid en criminaliteitsbestrijding

importance was stated to invest money in this ‘governmental method’. In a Parliamentary Paper ², it was officially announced that the Ministry of Internal Affairs wants to create an integral method against these forms of crime. In these parliamentary paper, they state that it is necessary to develop a jointly method where these forms of crime are fought in preventive as well as repressive ways. That’s why the Regional Information and Expertise Centers were founded. In the next paragraph, it will be explained how these RIEC’s were structured and founded.

1.1 BACKGROUND RIEC

RIEC is a partnership between municipalities, the Police, the Public Prosecutor, the Tax Authority, FIOD, the Social Inspection, Customs and the Military Police. The objective of RIEC is to prevent that criminals will be facilitated by the government, to prevent the blending of the ‘legal world’ and ‘underworld’ and to break the economic status and power of persons who increased their capital by criminal activities. To reach these goals, the RIEC partnership is documented in the ‘RIEC Pact’³ where it is juridical grounded that these partners can share certain information among each other. Besides that, the RIEC’s support municipalities in the fight against organized crime, which is seen as the ‘tenability of the municipalities’. Besides that, the RIEC’s deliver a local analysis of undermining per municipality, by having integral information sessions where partners share suspicions and facts about undermining phenomenon’s they face in their daily practice, the employers of RIEC combine this information and bring these suspicions together in a local analysis of undermining.

1.2 REASON OF RESEARCH

The reason for this research is ‘the pact of Ellecom’, this agreement is concluded on 03-09-2015, by the Districtal Safety board Gelderland-Midden. Mayors, Public Prosecutors, Safety Boards and Chiefs of the Police notice in this pact that undermining is a sincere problem in Gelderland-Midden and that situations demands an integral method to fight undermining (Pact van Ellecom, 2015). ‘There are several big criminal networks active in the Gelderland-Midden, where most of these networks are active in the farming- and dealing of marijuana’. As a response to this information the project ‘Samen Weerbaar’ is started, where project groups work together on the tenability of the Netherlands against organized crime. The project group ‘Weerbare overheid’ has the primary goal to increase the tenability of the government, and make the mayors and aldermen are the figurehead of the fight against crime. This project group raised the question what local governments can use in the fight against crime and therefore the following research question was formulated: ***‘Are the municipalities in the safety district Gelderland-Midden***

² Kamerstuk ‘Plan van aanpak georganiseerde misdaad’, 2008
<https://www.tweedekamer.nl/kamerstukken/detail?id=2008D03913&did=2008D03913>

³ RIEC-convenant <https://www.riec.nl/doc/liec/LIEC-A4Convenant06.pdf>

tenable against organized crime according to the instruments of the administrative law, and if they aren't, why not?'. The goal of this research is to answer this research question.

1.3 SUB-QUESTIONS

To answer the research question, the following sub-questions are formulated.

1. In what ways does organized crime abuse municipalities?
2. What kinds of instruments of administrative law can be used by the government in the fight against undermining by organized crime?
3. What administrative laws do the Safety Boards of the region Gelderland-Midden use against organized crime?
4. What are explanations for the difference between municipalities in this use of administrative laws against organized crime?

1.4 SOCIAL- AND ACADEMIC RELEVANCE

As earlier discussed in this chapter, the political- and media attention for the subject of undermining is rising in the Netherlands. In the study 'Ondermijning Ondermijnd' of the NSOB, (the Dutch school for Public Boards), it is reasoned that a revision of the 'administrative law toolbox' is necessary. They state that it is important to create a clear image of the local phenomena and make national decisions upon these regional situations. This research will contribute to a deeper understanding of the factors influencing the way municipalities act upon organized crime. This question is also highlighted by the project group. They stated the importance to insights about the use of administrative laws by the local governments in the fight against crime to explore if the National government should create more instruments for municipalities to use. The municipalities in the Safety Region Gelderland-Midden can adjust their policy according to the answers on sub-question three. And the answers of sub-question four can contribute to a deeper understanding of factors influencing the ways in which municipalities act against organized crime.

2. THEORY

To answer the third and fourth research question, it is of high importance to state which variables could be influencing the ways in which governments act against undermining by organized crime.

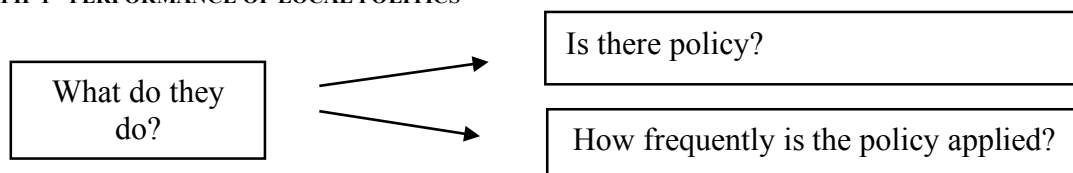
2.1 THE ACTING OF MUNICIPALITIES AGAINST CRIME

The acting of the boards of municipalities exists, according to the Algemene Rekenkamer, out of the functioning- and achievement of the board of municipalities. The achievements of the municipalities is according to them, separated into two questions, being: ‘how is the policy formed?’ and ‘how is the policy executed?’ (Algemene Rekenkamer, 2010 p.11). The management of achievement got, since the late 80’s a bigger subject inside governments by the trend of ‘New Public Management (NPM)’. NPM is stated shortly, ‘the approach of the private sector applied to the public sector’(e.g. Aucoin, 1990 p. 134; Osborne & Gaebler, 1992, p.326-329). Since the development NPM, several methods of measuring the achievements of the government are developed. These methods are not applicable for this research because they go way deeper than necessary for this research.

To explore how municipalities, act on the area of undermining by organized crime, it is interesting to explore what administrative laws can be used. To use an administrative law, it is necessary to develop policy on how these instruments can be used by local governments. On top of that, policy supports the municipality when it is dawn in front of a judge to explain why and on which ground the municipality used administrative laws. This appears in a lot of precedents in the administrative law. ‘On the one hand, there is some freedom of policy given, but on the other side it goes hand in hand by the duty to develop policy. Guiding by policy is in the administrative law seen as a condition: the freedom in policy contains an obligation, that results in the duty to develop policy’ (Heldeweg, 2005, p. 22).

Therefore, it is relevant for this research to explore of municipalities have policy, and how they apply this policy. This is shown in Graph 1.

GRAPH 1 - PERFORMANCE OF LOCAL POLITICS



2.2 INFLUENCE ON THE ACHIEVEMENT OF THE GOVERNMENT IN THE FIGHT AGAINST UNDERMINING CRIME

To answer the fourth sub-question, it is of importance to identify which factors could have an influencing effect on the achievements of the local government in the fight against crime. These factors could be an explanation for differences between the achievements per municipalities. There are different factors that could be of influence of both processes. Saetren (1975, p. 34) identifies five different theoretical orientations on the process of policy. Two of his theories are a basis for this research, those are the organizational- and the political-bureaucratic orientation. Ringeling (1979, p.39) summarizes the organizational orientation as an approach where a municipality is a network of parts that are poorly connected. 'The forming and execution of policy are inherent to the functioning of complex organizations'. In this policy theory, the importance is stated of influence of internal- and external actors on the policy process. Ringeling summarizes the political-bureaucratic orientation as an approach that municipalities are a gathering of different individuals, bureaus and departments. These stakeholders have such a big variety of problems which causes a competition. 'The forming and execution of policy is influenced by this competition', therefore differences between policy forming and execution can originate. These two approaches are used as the ground theory to identify influence factors of the policy process.

Based on these theories a difference between internal- and external factors can be identified. At the Algemene Rekenkamer (2010, p.12) they state that it is about a balance between: ambition, available time, money, people and resources. Besides that, information processes are important because the government needs information to execute tasks. These are all internal factors, the factors that de Algemene Rekenkamer discuss are important as a basis to think about influencing factors on the achievement of governments on organized crime. For this research, a difference is made between 'contextual factors' and 'organizational factors'. The contextual factors are the factors that assess the context where the organization operates. The organizing factors are the factors that are within the organization influencing the policy processes on the area of undermining by organized crime.

2.2.1. Contextual factors

Rural area

Tops & Tromp (2017) presented in their book 'de backside of the Netherlands' an overview of the structures and phenomenon of 'undermining crime' in the Southern part of the Netherlands. They state that rural areas are a perfect area for criminals to execute criminal activities, as for example the dumping of drug waste. In the report 'Ondertussen in het Buitengebied' it is stated that municipalities have a limited overview on the rural area⁴. That the rural area is an interesting and relevant factor for this research appears from the fact that Gelderland as a province is on the number three of the Netherlands

⁴ Ondertussen in het buitengebied, 2017 BMC Advies

as it comes to drug waste dumping's, and this number is triplicated in two years. Besides that, Gelderland is on the number four of the Netherlands when it comes to registered drugs production places⁵.

Number of inhabitants

The size of the population and its influence on the scope of criminality in a municipality is a popular subject in the existing literature (e.g. Braithwaite, 1975, Chamlin & Cochran, 2004). Smits et al, (2013, p. 64) state that it appears that bigger municipalities (>50.000 inhabitants) use administrative laws more frequently than smaller municipalities. Therefore, it is interesting to explore whether these findings can be confirmed or disproved.

Influencing by organized crime

In the literature and news about this 'undermining crime' the influencing of the municipal board by organized crime is a frequently rising subject (e.g. Tops and Tromp, 2017). Examples are, the attack on the city hall of Waalre⁶ and several mayors that were threatened by an Outlaw Motorcycle Gang (OMG)⁷. Struiksma, Akerboom & Boxum (2017), state that mayor, more than other government staff members are threatened. 24% of their interviewed mayors had to deal with threats with a criminal ground, where the majority had to do with drug crime. Inside the province of Gelderland, 32 mayors joined the interviews, and 10 out of 32 had to deal with threats. From their research, it appears that there were 124 cases where the respondents knew, or presume that there was infiltration by organized crime in the last five years. Because of these findings, it is relevant to explore whether this statement is to be confirmed for the district of Gelderland-Midden, and if this is influencing the achievement of municipalities in policy processes.

Effectiveness of the administrative laws

The effectiveness of the administrative laws that are available for the municipality to use could be of influence on the achievement of the municipality on the policy processes. Smits et al. (2013) state that 90% of the municipal staff members consider the available administrative laws considerably to highly effective. It is interesting to explore if the achievement of municipalities is influenced by this contextual factor because this would be an argument for the legislator to explore if the municipalities need more or other administrative laws.

⁵ Ondertussen in het buitengebied, 2017 BMC Advies

⁶ <https://www.nu.nl/binnenland/2861332/gemeentehuis-waalre-verwoest-brand.html>

⁷ <https://www.nrc.nl/nieuws/2016/11/01/acht-burgemeesters-bedreigd-door-motorbendes-a1529692>

2.2.2 Organizational factors

Role perspective of a mayor

Traditionally, the criminal laws were responsible for the repressive jurisdiction that was responsible for the correction of norm crossing behavior. 'Because of the introduction administrative fine (1994), the administrative sanction is in the last fifteen years frequently used as an alternative for the criminal law (Crijns, 2014, p. 24). Board members are given more and more instruments to act without the interference of a judge. The judge is still the controlling institution over the board, because when for example a mayor uses the administrative law, a penalized person or organization can protest this decision always. The administrative laws are (mostly) not designed to 'penalize' criminals but to change an unwanted situation. Ever since the administrative laws evaluated, there is a tension between the multifarious role of the mayor. Sackers (2014) explains that a mayor is expected to be a shepherd, pastor and a maintainer. Where he wants to explain that a mayor is expected to be the 'caring leader' of inhabitants of the municipality and in that role, executes the public tasks. That the mayor is expected to be watch and protect the municipalities for internal- and external threats and the mayor is expected to use the administrative laws to maintain order. Muller (2006, p. 98) confirms this statement by saying that a mayor cannot be the sheriff and the shepherd over its inhabitants. Especially in the domain of public safety this tension is big, and therefore, the way in which a mayor interprets its role in the fight against organized crime can be of influence on the achievement of a municipality against 'undermining crime'.

The municipality as an organization has several characteristics that could be of influence on the 'achievement' of the municipal board on the area of undermining crime. Resources as, municipal capacity, information, expertise and instruments could have influence on targeted goals (Huisman et al. 2005, p. 125).

Municipal capacity

The Algemene Rekenkamer (2010, p.12) states that the time- and money available, have influence on the achievement of the municipal board in the policy processes. Available time and money are for this research combined in the factor: capacity. The budget available determines how much time there is spend about a certain domain.

Municipal information position

The municipal information position is key in the execution of policy processes (Broekhuizen et al., 2010, p. 23; Muller et al., 2007, p. 49). Huisman et al. (2005, p.22) state that 'the keyrole of the gathering of information in the administrative fight against crime is for the municipality'. The information position of the municipality is expected to be of influence on the forming and on the execution of policy. When

the municipality knows, what is happening within its borders, it can use the administrative laws to decrease the ‘undermining crime’.

Expertise

The expectation is that, as Huisman et al. (2005) stated, that the available expertise within the organisation is influencing the ‘achievement’ of the municipal board on the policy processes concerning ‘undermining crime’.

Cooperation with partners

The municipality is expected to have a direction role in the fight against ‘undermining crime’ with respect to their partners in this integral method, as the Public Prosecutor, the Police, and the Tax authority⁸ (Broekhuizen et al. 2010, p.22). Because of this responsibility, this variable is considered to be an organizational factor, whereas it has to be mentioned that the municipality is in some form also dependent on the efforts of its partners.

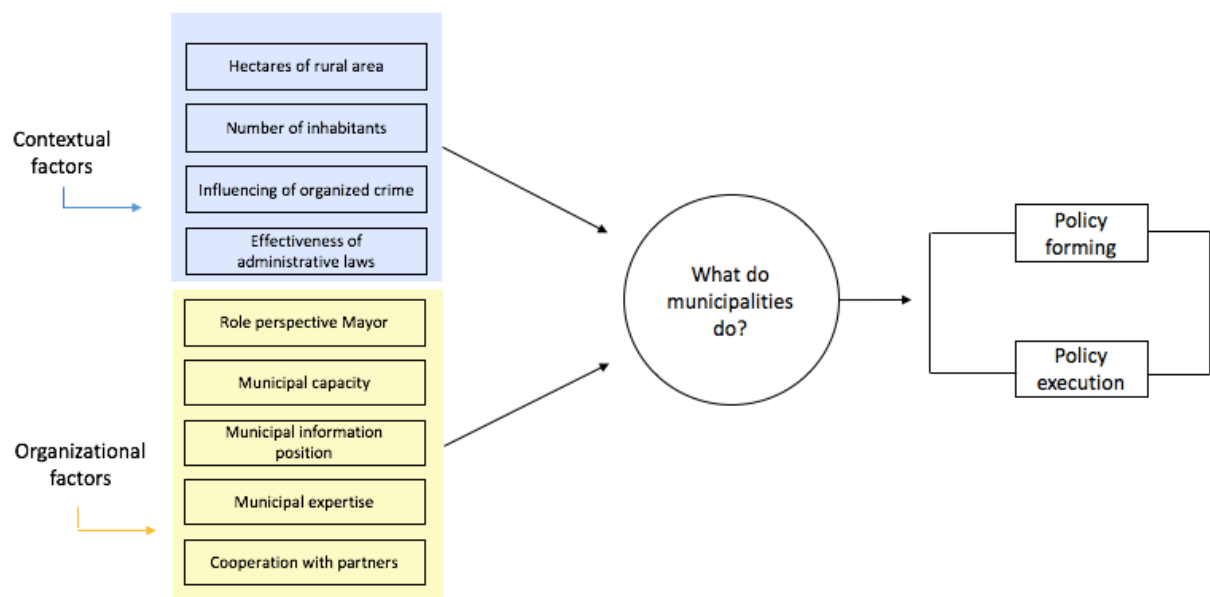
⁸ kst-32459-3 ISSN 0921 -7371 's-Gravenhage 2010

2.2.3 Model

These variables are schematically shown in the figure presented below. If there were no limitations to the possibilities to research, it is also relevant to explore whether these factors are bilateral related, but to delineate this research it is only explored if these factors independently have influence on the policy processes policy forming and execution, on the domain of ‘undermining crime’.

Is er geen beperking zat in de onderzoeksmogelijkheden zou het interessant zijn om de onderlinge

FIGURE 1-FACTORS INFLUENCING POLICYPROCESSES



3. METHODS

The central research question in this study is focused on creating insights about the administrative laws that are available for the municipal board to apply in the fight against crime. The use of administrative laws is a complex and dynamic process with different influencing factors. To find out how these processes work, and to find out what factors explain differences between municipalities on this subject, for this research, a qualitative analysis is chosen.

Gelderland-Midden is the area of research, therefore it is necessary to gain insights about every municipality within this district. The unique possibility to interview the mayors of all municipalities within Gelderland-Midden was created by the project group. As described before, the mayor is responsible for the enforcement of the public order and safety and is given the administrative laws to act. Therefore, interviewing these mayors is a good and unique way to gather data with which the research question could be answered.

The meetings with the mayors were made by the secretariat of RIEC-Oost Nederland and took approximately 35 minutes per interview. When interpreting the results, it is important to keep in mind that there is a certain 'bias' because the mayors could speak with a certain reticence concerning administrative sensitive subjects. Although it was expected that this reticence would be big, the feeling during the interviews was that the mayors were speaking freely about most subjects. About the cooperation with partners the highest reticence was experienced. Besides that, the experience during the interview was that the mayors gave a clear overview about the real situation as it is in the municipality and the mayors were not recoiling and surely mentioned at which point the municipality was not functioning in a good way. This observation makes the interviews a qualitative source of information.

For this research, the benchmarking method is the most suitable to use. With this method, a comparison is made between units that are measured to create a 'best practice', where mutual learning is key. By the benchmarking method it is possible to see if there are differences between the municipalities. Where there are differences between the achievements about 'undermining crime' it can be explored, what factors could explain these differences. The 'Council for Public Governing' states that benchmarking is a good method to test achievement for local governments, with the goal to gain a 'best practice'⁹. The type of benchmarking in this research is the 'soft methodology' as it is described by the 'Council for Public Governing': 'in the soft benchmarking methodology is the best practice not the means of the benchmark because the character of the best practice is problematic. In this methodology 'good practices' or even just 'practices' are used to shown differences. The main goal of soft benchmarking is

⁹ Adviesrapport Raad voor Openbaar Bestuur - 'Presteren door leren- benchmarken in het binnenlands bestuur' (Oktober 2002)

the comparison between processes and products of organizations on which an organization should be able to improve itself. Therefore, this type of soft benchmarking is most suitable for this research.

The sub-questions will be answered as follows. Sub-question one is a descriptive question, which is answered by using literature and experience from within the field. This question is asked to create an overview about how the ‘underworld’ needs the ‘legal world’ to develop their criminal activities. It is important to gain insights about how ‘undermining’ criminals ‘abuse’ municipalities, to explore if municipalities have enough administrative laws and instruments to deal with these forms of abuse. Furthermore, the second sub-question is a descriptive research question, where by means of literature and governmental resources, an overview of the administrative laws that are available to a municipality to use in the fight against ‘undermining crime’. The third sub-question is answered by structured interviews on the phone with the municipal officer responsible for the public order and safety and using the semi-structured interviews with the mayors. Via these interviews an overview can be made from the administrative laws and how these laws are used in the district of Gelderland-Midden. The choice is made to make a combination between interviews on a municipal governance level and on municipal official level, to guarantee the credibility of the interviews by a data-triangulation strategy (Baarda, 2009). The fourth sub-question will be answered by explaining differences between municipalities and how the variables influence these differences. To answer this research question, the interviews on the municipal governance level and the municipal officer level are combined to gather insight about explaining factors, by comparing the municipalities.

The district of Gelderland-Midden exists out of sixteen municipalities being: Arnhem, Barneveld, Doesburg, Duiven, Ede, Lingewaard, Nijkerk, Overbetuwe, Renkum, Rheden, Rozendaal, Rijnwaarden, Scherpenzeel, Wageningen, Westervoort en Zevenaar. From these sixteen municipalities, fourteen municipalities were questioned, Arnhem and Renkum were not questioned because in these municipalities a deputy was stationed on the position of mayor. These deputies pointed out that they did not have enough affinity with the matter of ‘undermining crime’ within their municipality to be of added value for this research. On a municipal officer level all municipalities were questioned, to guarantee the results of this research are valid.

The factors as presented in chapter 2 are questioned in the interviews. For each of the factors the mayors were asked one or more questions. The role interpretation of the mayor, municipal capacity (fte for public safety), municipal information position, municipal expertise, cooperation with partner, effectiveness of administrative laws and influencing by organized crime are asked directly. The square meters of rural area and the number of inhabitants are based on the data of the Central Bureau for Statistics.

4. ORGANIZED CRIME AND THE MUNICIPALITY

To answer the research question, it is necessary to answer the sub-questions. As described in the introduction, criminals abuse legal infrastructures that are offered by municipalities (Kruisbergen et al., 2012). To gain a clear overview about which municipal provisions and systems are abused by organized crime, the following research question is asked: ‘How does organized crime misuse municipalities?’. The goal of this chapter is to answer this sub-question one.

4.1 HISTORY OF THE DEFINITION OF ORGANIZED CRIME

To answer this sub-question, it is important to have a deep understanding of the concept ‘organized crime’. Organized crime as a concept, is frequently discussed in the existing literature. The origin of the concept is in America, where the term ‘organized crime’ was used for the first time in 1896. In the American researches to focus was mainly on the criminal laws and illegality, what can be seen as the ‘what question’ of organized crime (Marty, 2011).

In these government financed researches, the mafia structures in America were investigated and this led to the mindset that organized crime is perpetrated criminal ‘syndicates’ with a strong hierarchy and an internal sanctioning system (e.g. Cressey, 1969). A different tendency arose, where it was stated that organized crime is more like an ‘illegal company’ which goal is to meet demands. They believed that the demand for illegal goods, leads to illegal companies that will meet these demands. These illegal businesses barely differ from ‘normal, legal’ businesses (Potter, 1994; Passas, 1998). In the recent literature, the term ‘criminal networks’ is used more frequently, they argue that these forms of crime happen in the structure of orders, with a fluid character, that is variable over time and where relations change fast (Kleemans, Brienen & van de Bunt, 2002; Kleemans, 2007).

Globally, three trends are to be recognized, where the first trend is focusing on the structure of organized crime, the second line focuses on the activities, and the third line focusses on the social, cultural and historical aspects of organized crime (Le, 2012).

4.2 PARLIAMENTARY SURVEY DETECTIVE METHODS

In 1996, there was a big parliamentary research in the Netherlands about the detective methods used in the fight against crime. This parliamentary survey committee, under direction of Maarten van Traa, was designed to do research to detective methods that were brought to light by the IRT-affair. The IRT was a detective team that was founded by the Minister of Justice, because data was published about the scope and phenomenon of organized crime in the Netherlands. These numbers were alarming and led to the founding of the IRT. The IRT had as key task to detect organized crime. Doubts about the work ethics

of this IRT rose among the region Police forces and after a lot of rumors the parliament chose to investigate their working methods by a parliamentary survey committee which has the goal to research:

1. The character, severity and scope of the organized crime,
2. The implementation, legality, responsibility, and effectiveness of the detective methods and
3. The organization, functioning and control on the detective organizations.

The research group Fijnaut et al. (1996) was responsible for the first question in this parliamentary survey. They stated that there was no clear knowledge about the character and scope of the organized crime in the Netherlands. They concluded that the character of the organized crime in the Netherlands in fewer form is structured by hierarchic organizations, then it was thought before. The main activity for organized crime in the Netherlands is crime related to drugs.

Fijnaut et al. (1996) defined organized crime as follows:

The research group Fijnaut et al. (1996) states that it is organized crime when:

‘Groups or persons which primary aim for illegal profit, systematically perpetrate crimes with serious consequences for the society and are able to fence off these crimes on effective ways by being willing to use violence or to extinguish persons by corruption, to protect the organization from acting by the government.’

This definition has as goal to broad the scope of the concept from hierarchic, mafia-organizations to a bigger, wider range, but specifically distinguish in the goal of the illegal activities: illegal profit. With this addition, they exclude two types of crime: activities that are executed with a different goal then profit (for example political power), and activities with an illegal character that are executed within a legal company for which certain positions are abused (this is organizational crime or ‘white collar crime’.)

4.3 DEFINITION 'UNDERMINING CRIME'

In the political- and science world increasingly the term 'undermining crime' is used when speaking about organized crime. 'Undermining crime' is a relatively new concept which gets a lot of attention in the media, but the scientific literature about this concept is not extensive (yet). 'Undermining' is a conjugation of 'to undermine'. Which means something like: to subvert, to weaken or to affect. This component is to be recognized in the different definitions given in the literature. The National Police defines 'undermining crime' as the: 'blending of the underworld with the legal world' (Nationale Politie, z.j.). This is a rather vague definition because it is not clear what is meant by 'underworld' and 'legal world'. RIEC defines 'undermining crime' as: 'The weakening or abuse from the structure of our society with disruptive consequences for societal processes'¹⁰. A comparable definition is given by Tops & van der Torre (2014). They say: 'undermining crime' is about 'crime that affects the formal, legal structures or informal decent relations which are the foundation of our society'. This definition doesn't pay attention to the fact that the main motive of the criminal activities is illegal profits. They do show the negative effects of 'undermining crime' for the society and state that undermining crime causes: 'infraction of authority and prestige of police and administration, infraction of the trust of frontline staff, slow acceptance of criminal money, infraction of the market mechanisms and infraction of institutes that focus on fair chances'. The Dutch School for Public Administration (2016) states that undermining is about: 'infraction of institutional authorities that secure societal structures'. The consequences of 'undermining crime' on the society is the fundament of this definition. For this research, the definition of undermining crime is: *'the infraction or abuse of legal- and communal structures with disruptive consequences for the society'*.

The concept 'undermining crime' is, in many policy papers, used as a synonym for 'organized crime', this is confusing and it makes the meaning of the concept rather vague, because why shall we use the term 'undermining crime'?. Not every form of undermining crime is organized crime according to the definition of the PEO. Fraud in the healthcare perpetrated by an individual for example, is according to the definitions discussed before, 'undermining crime' but not 'organized crime'. For this research, the definition of organized crime is: *'persons or groups that systematically cooperate and are primary focused on illegal profit with 'undermining effects' consequently'*.

¹⁰ https://www.riec.nl/doc/handboek_bestuurlijke_aanpak.pdf3

4.4 PHENOMENON

To demarcate this research, the choice is made to zoom in to the phenomenon: marijuana related crime, money laundering, 1% Motorclubs and humantrafficking. There are more phenomena that are a part of ‘undermining by organized crime’, but these are, according to two experts of RIEC-Oost Nederland, not occurring frequently in Gelderland-Midden (personal communication, Maarten de Wever & Iwan Drupsteen, 2017).

4.4.1 *Marijuana related crime*

It is difficult to express phenomena of organized crime in hard numbers, because the dark number of organized crime is big, all these activities happen ‘under the radar’. Marijuana related crime has, according to the Dutch monitor for organized crime (Kruisbergen et al., 2012), the biggest scope of all phenomenon. According to the CCV, yearly approximately 6000 cannabis farms are discovered¹¹. In 2014 in a research from the WODC it was estimated that in the Netherland approximately 171-965¹² tons of marijuana are produced. Marijuana related crime contains, the growing, processing and trading of marijuana (Kruisbergen et al, 2012).

4.4.2 *Money laundering*

Perpetrators of organized crime want to use the money that they earned with illegal activities and protect it from the Police and the Public Prosecutor. These last two can, when they have more information about illegal money for example, gather more and more information about the character and the structure of the illegal activities, this method is even called ‘follow-the-money’. Besides that, it is difficult to spend criminal money in the ‘legal world’ because in that case the properties are way higher than the taxable income that is known at the tax authority. This can be the reason to conduct a fiscal or legal investigation and that is something criminals want to avoid. To spend this criminal money, criminals want to create a ‘legal origin’ for the money and therefore they will try to use money laundering for criminal money. The legal definition of money laundering is as follows: ‘the hiding from the true origin, character, location, estrangement or removal of an object, while it is known that this object is obtained by criminal activities¹³. Undermining by organized crime is, explained before, based upon illegal profits, therefore moneylaundering goes hand in hand with the other organized crime phenomenon (Kruisbregen et al. 2012; Soudijn & Akse, 2012).

¹¹ <https://hetccv.nl/onderwerpen/drugsbeleid/hennepcriminaliteit/>

¹² <https://www.wodc.nl/onderzoeksdatabase/2651-cenr-2014.aspx>

¹³ www.wetrecht.nl/witwassen

4.4.3 1% Motorclubs

1% motorclubs are a popular item for the media. Quite recently, 20-12-2017 a judge decided that a specific 1% Motorclub is forbidden¹⁴. Blokland et al. (2017) found out that the percentage of Dutch members of a 1% Motorclub with a criminal record is 2,8 times higher than for Dutch riders that are not a member of a 1% motorclub and that a 1% membership is positively related to a criminal record.

4.4.4 Human trafficking

The National council for Human Trafficking (Nationale Rapporteur Mensenhandel = NRM) explains that human trafficking is: ‘the recruitment, transport, transfer or accommodation of a person, with the use of force (in a broad way) with the goal to exploit this person¹⁵. The NRM makes a difference between sexual exploitation and non-sexual exploitation. In the Netherlands, the estimated number of victims is about 6.250. This is five times as big as the number of registered victims, which means that in the Netherlands a lot of victims are out of the reach of the aid institutions. From Dutch girls between the 12 and 17 years old, 257 on 100.000 becomes a victim of human trafficking. For persons with a foreign background 311 on 100.000 is estimated to become a victim of human trafficking. Human trafficking has big consequences on the victims¹⁶. For their research a Multiple Systems Estimation (MSE) is used to make an estimation of the number of victims.

4.5 UNDERMINING EFFECTS ON THE MUNICIPAL ORGANIZATION

To know which administrative laws the municipalities can use to act upon the undermining effects of organized crime it is important to get a clear picture of the undermining effect on the municipal organization. As explained before the municipal organization gets misused by the undermining criminals. In this chapter, sub-question one is answered: ‘in what ways does organized crime abuse the municipality?’. The ways in which organized crime can abuse municipalities is divided into three categories.

- Abuse of the provisions offered by the municipality
- Abuse of the municipality as a business partner
- Influencing by organized crime on the decision-making process

These categories will be discussed in the following paragraph.

4.5.1. ABUSING THE PROVISIONS OFFERED BY THE MUNICIPALITY

¹⁴ <https://www.nrc.nl/nieuws/2017/12/20/rechtbank-motorclub-bandidos-verboden-a1585617>

¹⁵ <https://www.nationaalrapporteur.nl/mensenhandel/>

¹⁶ UNODC ‘A multiple systems estimation of the numbers of presumed human trafficking victims in the Netherlands’

There are two types of provisions that are offered by a municipality to organizations and citizens: subsidy and permits.

4.5.1.1. Permits

A permit is, is ‘an ordinance given by a governmental organization for a person or organization to have an impediment for certain rules and laws ¹⁷’. This means, that to unfold activities in a certain domain, a permit must be requested at the municipality or province. Permits that are part of this category are:

- Alcohol- and catering permit
- Environmental permit
- Permit for a sex business
- Municipal permit (e.g. coffeeshop)
- Accommodation permit (e.g. changing in a building to rent)

All these permits are given by the municipality, which means that the municipality decides whether to assign a permit to an organization or citizen. These permits are valuable for organized crime. The two main purposes wherefore these permits are misused by organized crime are: de legitimization of criminal money (money laundering) and the logistic support for criminal processes (human trafficking, or drugs transports). When a company gets assigned a permit and misuses this permit to conduct criminal activities, the municipality is facilitating these criminal processes. The perpetrators abuse a legal structure to conduct illegal activities which are mainly focused on illegal profits.

4.5.1.2. SUBSIDIES

A subsidy is an allotment of financial resources given by the government for the execution of certain activities that are registered on forehand (Artikel 4:21 Awb). The main goal for the government for assigning a subsidy is that the government wants to stimulate or influence certain activities for the public purpose. Municipalities assign subsidies to citizens and organizations on a big scope of different subjects, for example, sports, safety, healthcare, education, renewable energy and so on. With the knowledge that organized crime is about profits, it is highly plausible that subsidies are misused by organized crime. There are no numbers known about the scope of this misuse, but a research of the Minister of Safety and Justice found out that it is quite easy to commit fraud with subsidies (Ministerie van Veiligheid & Justitie, 2015).

¹⁷ www.juridischwoordenboek.com/vergunning

4.5.2. ABUSING MUNICIPALITY AS A BUSINESS PARTNER

Besides the fact that municipalities are facilitating, they can also be demanding for facilities. This means that they need products and services in many municipal processes. These so-called assignments from the municipality for organizations and companies are called ‘tenders’. These tenders, sometimes have millions of dollars involved and therefore there is a big opportunity to money launder criminal money or to commit fraud. There are scientific numbers about the scope of this type of frauds. But at the RIEC the experts say that there are signals that there is fraud among these tenders. Tenders are mostly involved in the real-estate sector. The real estate sector is a branch where money laundering happens a lot (Boerman et al, 2017; Soudijn, 2012; Gestel et al, 2008).

4.5.3. INFLUENCING BY ORGANIZED CRIME ON DECISION-MAKING PROCESSES

Within a municipality decisions are made about local public affairs. For the municipal board the mayor and alderman are accountable for these decisions. As discussed before, the mayor is given the accountability for the public order and safety. The city council is the controlling institution over the mayor and alderman and plays a big role in the municipal budget. These positions have big influences on the decisions made in the local society, therefore a risk exists that organized crime tries to influence these decision-making processes. Influencing exists in various forms being: lobbying, bribery, threatening or infiltration.

Lobbying

Lobbying is the process of ‘justifiable actions that are undertaken to influence the municipal decision making’ (Public affairs, 2010, p.2). Organized crime could, by lobbying in local politics, try to influence this decision-making in a way which is beneficial to commit their illegal activities. In this form, the municipality is, deliberately or unintentional, a facilitator of organized crime.

Bribery

Bribery is the activity where a certain facility or product (mostly money) is offered to a municipal officer or board member, in exchange for a certain decision or act. Bribery is according to the definition of Huberts (2005) a form of corruption. The research of van den Heuvel et al. (2010) shows that there were 44 investigations to corruption matters in 134 questioned municipalities for 2008 and 2009. They expect that this is a smaller number than the reality, because even for corruption a big ‘dark number’ exists.

Threatening

More and more, there are organized crime related threats to mayors, alderman and municipal officers, coming tot he surface ^{18 19 20 21}. These types of threats make the work of municipal officers and board

¹⁸ <http://www.ad.nl/woorden/enlsquo-bedreiging-burgemeester-van-woerden-onacceptabelenrsquo~a2d0ee694/>

¹⁹ <http://www.nu.nl/binnenland/4556976/jan-b-niet-vervolgd-bedreiging-burgemeester-gilze-rijen.html>

²⁰ <https://www.nrc.nl/nieuws/2017/05/05/je-denkt-die-bedreiging-raakt-me-niet-maar-dat-is-niet-zo-8695830-a1557412>

²¹ <https://www.nrc.nl/nieuws/2017/05/05/brabantse-burgemeesters-ambtenaren-geintimideerd-8699470-a1557479>

members harder and harder. The goal of these threats is mainly to enforce a different decision than intended.

Infiltration of influential positions

In the book of Tromp & Tops (201&), it is stated that organized crime tries to infiltrate by the city council to influence the municipal decision-making. Regarding these signals, the Minister of Safety and Justice started two big investigations, the first on the integrity of law enforces and municipal staff members in combination with organized crime, and the second focused on the influence on the municipal board by organized crime^{22 23}.

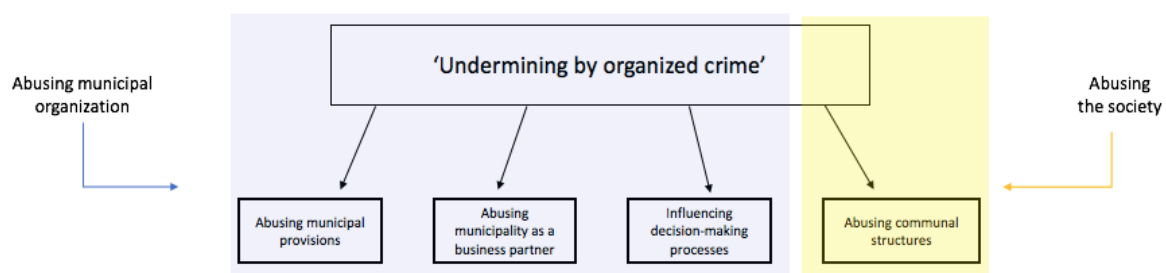
4.6 ABUSE FROM THE COMMUNAL STRUCTURES OF A MUNICIPALITY

As discussed before in the third paragraph of this chapter, organized crime abuses communal structures of a municipality. An example of this statement is, a social rented apartment, which is used as a weed farm, this living is now occupied by organized crime, and not available for a small family which needs this social provision. Another example is the infraction of market mechanisms, while because of the big amounts of criminal money a café led by a perpetrator of organized crime can offer lower prices than the fair, ‘legal’ competitors. This causes illegal competition and that ruins the market mechanism.

4.7 CONCLUSION

To answer sub-question one, ‘*In what ways could organized crime abuse municipalities?*’, organized crime could abuse municipalities in four ways. This is schematically shown in figure 1.

FIGURE 2 – ABUSE OF THE MUNICIPALITY BY ORGANIZED CRIME



For organized crime, the abuse of communal structures within a municipality is important because they look for circumstances and situations where they can conduct activities as weed farming or human trafficking. Besides that, the permits that are questioned for at the municipality to launder the criminal money of these activities is important for organized crime too. These two forms of abuse are of main importance to earn the criminal money (think of the definition of organized crime) and to use the money

²² <https://www.wodc.nl/onderzoeksdatabase/2748-georganiseerde-criminaliteit-versus-integriteit-handhavers.aspx>

²³ <https://www.wodc.nl/onderzoeksdatabase/2721-fenomeenanalyse-ondermijning-lokaal-bestuur.aspx>

(money laundering). Additionally, the influencing of the decision-making processes could be of importance for organized crime to prevent the municipality to act toughly upon for example a 1% motorclub. The abuse of the municipality as a business partner is the least important form of abuse because organized crime is not dependent on these tenders to conduct their criminal activities.

The abuse of a communal structure is an *indirect* form of abuse for the municipality, because there is organized crime conducted within the geographic boundaries of the municipality and where the municipality is able to act upon administrative laws and the mayor is responsible for the enforcement of the public order and safety. The forms of abuse of the municipal organization is a *direct* threat for the integrity and quality of the organization. Which results in the blending of the organized crime and the municipal organization, because the municipality acts as a facilitator of organized crime. Therefore, these forms of abuse are a bigger threat for the municipality than the abuse of the communal processes. The abuse of the municipal provisions and the abuse of the municipality as a business partner, are important forms of abuse because the municipality is assigning an ordinance to organized crime to conduct criminal activities. This is highly undesirable, because these ordinances are meant for a different purpose and this increases the 'blending' between the 'underworld' and 'legal world'. The biggest threat for the municipality is the influencing of the decision-making process because this form is directly jeopardizing the integrity of the municipal organization.

In the next chapter the administrative laws, which are available for the municipality in the fight against organized crime, are discussed.

5. DE MUNICIPAL FIGHT AGAINST ORGANIZED CRIME

'It's about time law enforcement got as organized as organized crime' – (Rudy Giuliani)

As discussed in the previous chapter, it is important for a municipality to defend itself against threats and forms of abuse of organized crime. Therefore, the second sub-question is asked: *'What kinds of instruments of administrative law can be used by the government in the fight against undermining by organized crime?'*. In this chapter this sub-question will be answered.

A difference can be identified between, 'defending' the municipal organization against threats and abuse and about 'fighting' against the organized crime in the municipality. Defending is about protecting the municipal organization and fighting against organized crime is about decreasing the numbers organized crime in the municipality. These two area's do have a lot in common but it is important for policy processes to distinct them.

5.1.1 ABUSING THE PROVISIONS OFFERED BY A MUNICIPALITY

'Bibob law'

The Bibob law, is a law which origins out of 2003 and is created to prevent the facilitation or organized crime by the municipality. The instrument is a means for municipalities to test applicants for a permit or subsidy, on their integrity. Through this law, the municipality has the permission to decline or revoke a request for a permit or subsidy, if there is a sincere danger, this permit or subsidy is abused to launder criminal money or the increase criminal profits²⁴. The municipality will provide the applicant with a survey, based on the answers to the questions in this survey an assessment about the 'level of danger' will be made. If there are suspicions that there is a sincere danger, but it cannot be argued, there is a National Bureau Bibob, which is permitted to undertake a deeper investigation about the applicant. This bureau gives an advice to the municipality about the permit or subsidy.

5.3.2. ABUSING THE MUNICIPALITY AS A BUSINESS PARTNER

Surveillance and enforcement

The municipality possesses the 'Surveillance and Enforcement service', which is a communal enforcing institution which has as focus to guarantee quality of live in a municipality. Enforcement is 'every reaction which is focused on the compliance to laws and rules and to improve and accomplish this compliance, if necessary by applying sanctions' (VNG, 2013). These sanctions can be: preventive penalties, recovery penalties and punitive penalties.

²⁴ Art. 3 lid 1 AWB

Bibob law

The Bibob law as discussed previously in this chapter, is besides applicable on provisions, applicable on tenders about IT, Real-estate and environment. This broadening of the law is made possible by an amendment of the law in 2013²⁵. By this test, a municipality can gain insights about the integrity before they are committing to a deal in the real-estate business (buying and selling).

The integrityclause

If the government is committing to a private deal, as for example with a real-estate deal or a contract with a healthcare bureau, the private laws are enforced not the administrative laws. This means that the municipality has the freedom of contract as a key principle. The municipality is free in the choice to make a deal with a company. Because of this freedom, the municipality is free to determine the meaning of this agreement. This is the key on which the municipality has a freedom to defend itself against undermining effects by organized crime, by recording an integrity demand in the agreement, and if the integrity is questioned the municipality will not do business with this party. The municipality can guarantee its integrity by a clause like this. The clause is an addition to the Bibob law, where sometimes the Bibob law has proven to be bureaucratic and a ‘sincere danger’ is not always given in a situation where it is preferable, because the municipality has enough integrity questions for an organization.

5.3.3. INFLUENCING DECISION-MAKING PROCESSES

There are currently no administrative laws that are available to prevent the municipality from the influencing of decision-making processes.

5.3.4 ABUSE OF THE COMMUNAL STRUCTURES IN SOCIETY

Opiumlaw

Article 13 b from the Opiumwet, also called the law Damocles, is law which is designed to equip the mayor with the possibility to act against illegal selling points for drugs. Upon this law, the mayor is able to close a building when there were found drugs that are on the Narcotic-drugslist²⁶.

Victoria law

The Victoria law gives the mayor the opportunity to enforce the public order and safety to close a house or accomodation.

APV

The city council can decide to equip the mayor with certain authorities, if these authorities are not conflicting with regional or national laws. The APV (municipal regulations). The APV is in practice

²⁵ Kamerstukken II 2011-2012, 32676, nr. 7 (nota van wijziging)

²⁶ Artikel 13b OPW

used as an instrument against undermining by organized crime. These regulations are examined in front of an administrative judge²⁷. In Rotterdam, they are experimenting with a imposable permit, where the mayor can decide to oblige a certain building or a certain person or location to request for a permit before exploring business activities. ‘We are conscious about the risk we take with experimenting with rules like these, but it is the case that we really need something, something we can act upon, that’s what we created ourselves now’ (Rene Turien, personal communication, 4th of april 2017).

Stoptalk

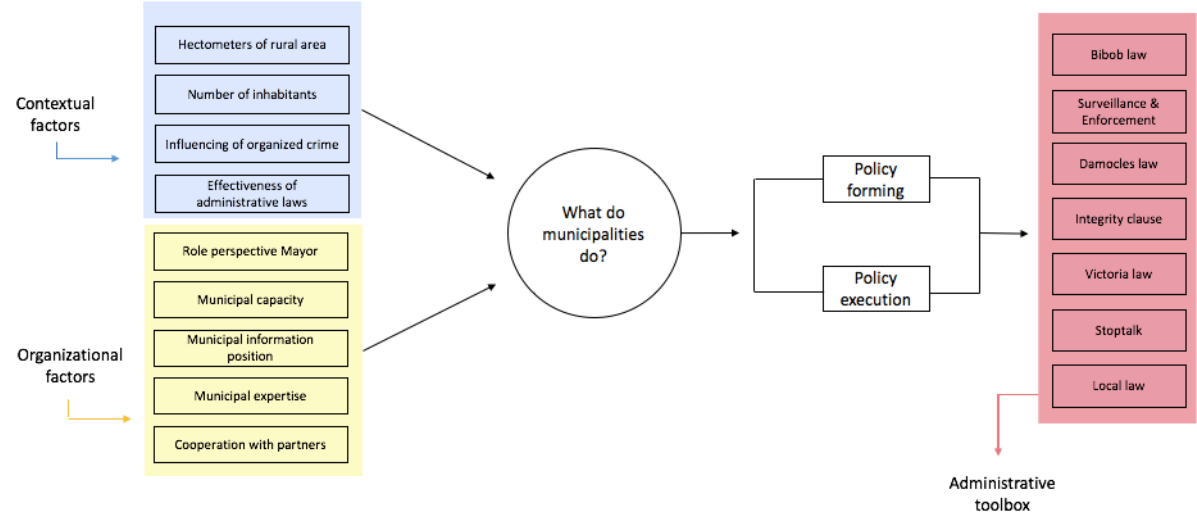
Besides these administrative instruments, a new instrument is frequently used in the problems affiliated the 1% Motorclubs, which as discussed before is stated to happen a lot in the district of Gelderland-Midden. This is not an administrative instrument, but it is an instrument that mayors without a judicial ground use, the so called: stoptalk. When there are reasons to believe that a 1% motorclub is establishing in municipality, it is more frequently seen that a stoptalk is initiated by a mayor. A stoptalk has as main goal to treat the club as a full-fledged conversation partner and to give them the opportunity to clear their statement about their interests in the location within the municipality. Besides that, the municipal officers can explain the policy according to the admission of 1% motorclubs within the municipal boundaries (Iwan Drupsteen, personal communication, 4 april 2017). This stoptalk is not an administrative law, but according to the experts it is a frequently used instrument in the fight against organized crime, therefore it is chosen to explore the effects of this instrument as well.

5.4 CONCLUSIE

In order to answer the second sub-question: *‘What kinds of instruments of administrative law can be used by the government in the fight against undermining by organized crime?’*, all administrative instruments where discussed in this chapter. The municipalities are on the area of ‘abuse of the municipality as a facilitator of provisions’ broadly equipped with the Bibob law. Addiotional, the Bibob law is used to prevent the abusing of the municipality as a business partner and the municipality could use the integrity clause. The municipality is sufficiently equipped on these two forms of abuse. On the influencing the decision-making, the municipality does not have an instrument to prevent itself from this abuse and therefore the municipality is insufficiently equipped for this form of abuse. On the abuse of communal structures, the municipalities are equipped with several administrative laws. In this matter the question rises, till what extend a mayor has to be equipped in the fight against crime, when especially some researchers claim this is not a responsibility of the mayor. The research model is presented below.

²⁷ <https://vng.nl/onderwerpenindex/veiligheid/openbare-ordebevoegdheden>

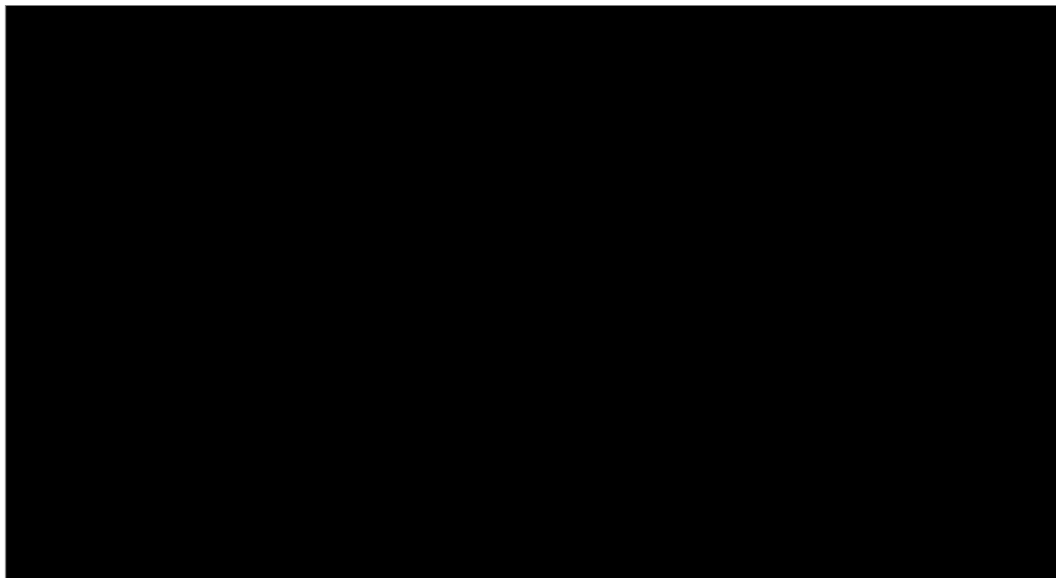
FIGURE 3-MODEL PUBLIC INSTRUMENTS



6. THE FIGHT AGAINST UNDERMINING ORGANIZED CRIME IN GELDERLAND-MIDDEN

It appears out of the interviews that severe problems exist concerning undermining by organized crime within the municipalities in Gelderland-Midden (n=16). As to be seen in figure 3 [REDACTED] of the municipalities is, in the last three years (2014-2016) confronted with issues concerning [REDACTED] related crime. [REDACTED] of the municipalities is confronted or presumes that [REDACTED] occurs within the municipality, in [REDACTED] of the municipalities the mayor stated that the municipality is confronted with issues concerning [REDACTED] and in [REDACTED] of the municipalities it is stated that they are confronted with human trafficking.

GRAPH 2-PRESENCE OF PHENOMENON



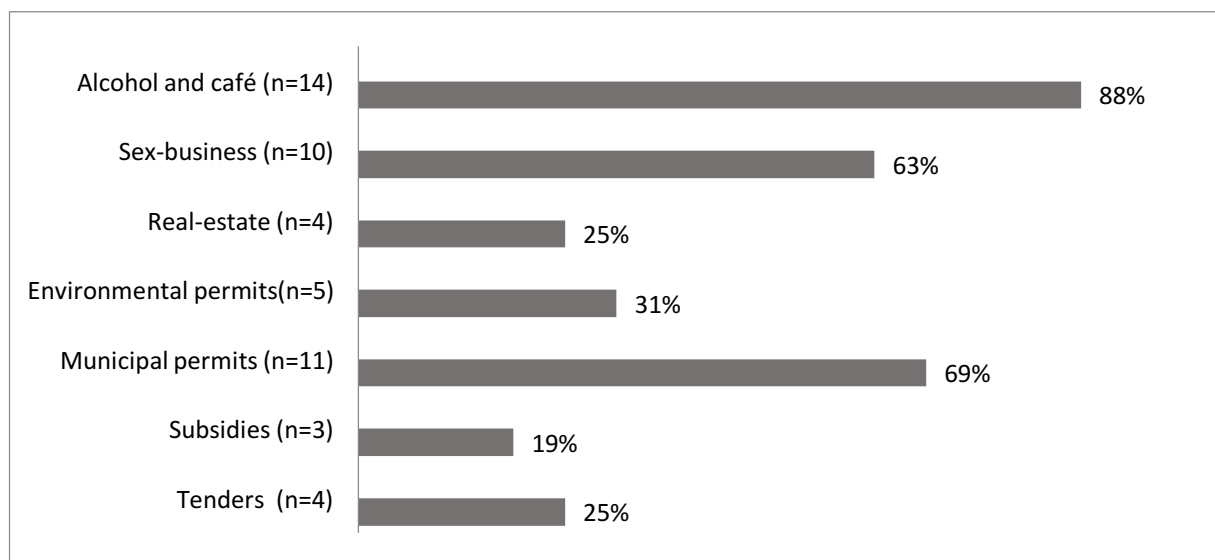
The phenomenon that cause problems in Gelderland-Midden is generally comparable with the National situation. What appears is that in the research of Smits et al. (2016), [REDACTED] had to deal with problems according [REDACTED] while out of the research it appeared that [REDACTED] of the municipalities in Gelderland-Midden had to deal with [REDACTED] This means that Gelderland-Midden had to deal with [REDACTED] double as much as the rest of the Netherlands. In order to answer sub-question three it is relevant to research whether the municipalities formulated policy and how it is used.

6.1 BIBOB LAW

6.1.1 Formation of policy

In 87% of the municipalities, there is policy formulated concerning the bibob-law, this is below the national average where 92% of the municipalities has policy formulated concerning the bibob-law²⁸. After the amendment of the law in 2013, as discussed in the previous chapter, it is made possible to use the bibob-law in a broader sense. 42% of the municipalities changed their policy concerning bibob, after the amendment of the law, with this 42% there are also some municipalities that did not have a policy concerning bibob, before the amendment of the law. In 88% of the municipalities a bibob policy for the alcohol and café industry is formulated, in 63% of the municipalities policy is formulated for the permits for a sex-business. Bibob policy concerning real-estate is formulated in 25% of the municipalities. For environmental- and municipal permits in both respectively 31% and 69% of the municipalities, policy according Bibob was formulated. Subsidies and tenders are in respectively 19% and 25% of the municipalities a part of their Bibob-policy.

GRAPH 3-SECTORS BIBOB



Most of these results are in line with the National averages. The most striking result is that in only 25% of the municipalities the real-estate sector is part of the bibob-policy, while the National average is that 49% of the municipalities a policy for Bibob is formulated²⁹.

²⁸ Smits, Struiksmā, Schudde (2016) WODC- 'Tweede meting bestuurlijke aanpak'

²⁹ Smits, Struiksmā, Schudde (2016) WODC- 'Tweede meting bestuurlijke aanpak'

6.1.2. Implementation of policy

Within the municipalities where a bibob policy is formulated, it is stated by the respondents that the bibob law is applied for 100%. This means that every applicant for a permit concerning Bibob must fill in the questionnaire where subsequently the municipality makes the integrity judgement. For the national institution concerning the bibob law, the LBB there where, in the last three years (2014-2016), 20 applications for a consult for Gelderland-Midden. Out of fact from the LBB it appears that, in that same period, 1038 applications for consults were done at the LBB. If we devide this number by the inhibtants, it means that in the Netherlands 0,618 bibob-consults are submitted at the LBB per 10.000 inhabitants, for Gelderland-Midden 0,301 bibob-consults are submitted at the LBB per 10.000 inhabitants³⁰³¹³²³³. This means that in Gelderland-Midden, there are once as less bibob-consults submitted at the LBB than the average of the Netherlands. Out of annual report for the LBB of 2015 an increase of submitted consults is identified³⁴. Gelderland-Midden generally performs below the National average when it comes to the bibob-law. The most striking results where the findings according to the bibob-policy for the real-estate sector and the number of consults at the LBB.

6.2 SURVEILLANCE AND ENFORCEMENT

6.2.1. Formation of policy

Surveillance and enforcement is in 88% of the municipalities used as an instrument against undermining by organized crime. In the Netherlands, 90% of the municipalities formulated policy for the use of surveillance and enforcement for the area of public order and safety³⁵. This means, these results are comparable to the national situation.

6.2.2. Implementation of policy

The respondents say that they frequently and consequently give penalties based on their surveillance- and enforcement policy. Most respondents gave to notice that they do not have tangible results about the actual numbers of use for this instrument. This origins from the fact that the civil servant for public order and safety in most cases is not directly involved in the management of surveillance and enforcement.

6.3 DAMOCLES LAW

³⁰ Jaarverslag 2014 Landelijk Bureau Bibob

³¹ Jaarverslag 2015 Landelijk Bureau Bibob

³² Jaarverslag 2016 Landelijk Bureau Bibob

³³ Centraal Bureau voor de Statistiek

³⁵ Eindrapportage BZK Teozicht en Handhaving 2016

6.3.1. FORMATION POLICY

In 75% of the municipalities, policy is formulated for the implantation of the Damocles law. There aren't numbers known about the wet Damocles for the total of the Netherlands.

6.3.2. Implementation Policy

In the district of Gelderland-Midden, in the last three years (2014-2016), [REDACTED] were closed based on the Damocles Law, in this period [REDACTED] of warning were send. From the municipalities that formulated policy for the Damocles law (n=13), [REDACTED] municipalities closed closed a building. According to research from Vols, Hof & Brouwer (2017), their respondents (n=44) closed in 2016, 793 buildings and this was done by 38 of the 44 respondents. However, it is not clear in these results what the size of the population was for these municipalities, so it is difficult to compare these results.

6.4 STOPTALK

The stoptalk as discussed in chapter four, is used [REDACTED] in the district of Gelderland-Midden This is in line with the results of this chapter, where it was stated that [REDACTED] the municipalities in Gelderland-Midden is confronted with issues concerning 1% Motorclubs. [REDACTED] of the municipalities executed a stoptalk once or more in the last three years (2014-2016). There aren't actual know numbers available about the use of stoptalk for the Netherlands. The difficulty in having a stoptalk, is according to the respondents, that there is no juridical ground on which such a conversation is based.

6.5. VICTORIA LAW

For all 16 municipalities (100%), policy is formulated for the Victoria law, however none of the respondents closed a house based on this law. This is in line with the findings of Vols, Hof & Brouwer (2017), where the majority of the respondents states that they didn't closed a house based on the Victoria law. According to the civil-servants, this origins in the fact that the closing of a house is very radical. Mostly there are more people living in such a house than the person of interest. Besides that, the municipality is responsible for finding a temporary accommodation, where the residents could stay. This instrument is by the civil-servants seen as an instrument with which a problem is not solved but moved.

6.6 OTHER INSTRUMENTS

The other instruments, like the integrityclause and the municipal-laws, as mentioned in chapter four, are not formulated or implemented in the policies of the municipalities in Gelderland-Midden. In the next chapter, it will be analyzed if the variables as discussed in chapter two, have influence on the performance of municipalities on the policy processes concerning undermining by organized crime.

6.6 CONCLUSION

The answer to researchquestion three: *'What administrative laws do the Safety Boards of the region Gelderland-Midden use against organized crime?'* is that the municipal boards formulate and

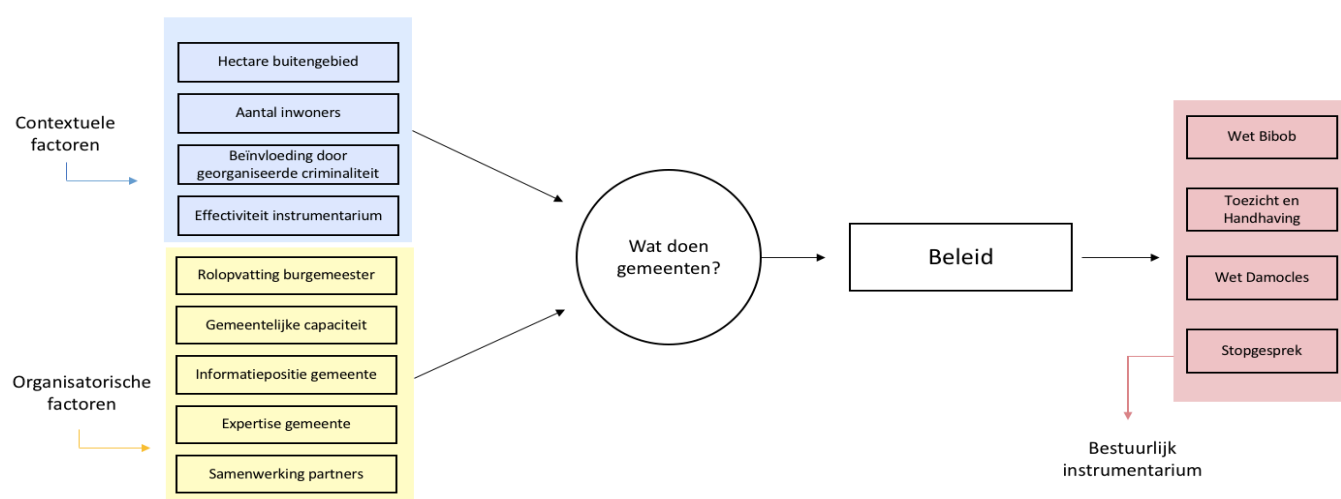
implement policy concerning undermining by organized crime. For the Bibob-law, the municipalities have the opportunity to develop their selves. Because only 42% of the municipalities changed their bibob policy after the amendment of the law, the majority of the municipalities are not as well equipped as they could be.

7. INFLUENCING FACTORS FOR THE PERFORMANCE OF MUNICIPALITIES IN GELDERLAND-MIDDEN FOR UNDERMINING BY ORGANIZED CRIME

In dit chapter it will be explored if the contextual- and organizational factors as discussed in chapter two are influencing the policyprocesses of the municipalities concerning undermining by organized crime. When the term ‘respondents’ is used in this chapter, it is about the fourteen mayors that were interviewed. In this chapter, the differences in the performance via the instruments Bibob, Damocles, Surveillance & Enforcement and stoptalks are analyzed. The instruments Victoria, APV and other instruments where not used in 100% of the municipalities or in 0% of the municipalities, there are no differences to be analyzed, therefore these instruments where not taken into account in this chapter.

Out of the interviews, it appeared that the implementation of policy is difficult to compare between different municipalities in Gelderland-Midden, because the implementation is dependable on the level of problems. For example, municipality X has never coped with a weedfarm, but uses the Damocles law for 100%, while municipality Y daily deals with weedfarms daily, but doesn’t use the Damocles law for 100%. From these results, it should appear that municipality Y performs better on the Damocles law than municipality X, but these situations can hardly be compared. Besides that, it is easy for municipality X to state that they apply the Damocles law for 100%. The answers of the respondents where so different, that these results where not valid, therefore the numbers of implementation are not further taken into account for this research. From now on, only the differences in the formulation of policy are analyzed in this research, this is shown in figure 4.

FIGURE 4-RESEARCH MODEL



The exception on this new ‘rule’ is the ‘stoptalk’ because this is not a policy driven instrument because it isn’t a juridical instrument. When interpreting the results, keep in mind that fourteen mayors were interviewed.

7.1 RURAL AREA

As discussed in chapter two, the rural area could function as a hotbed for undermining by organized crime. The total surface of the district Gelderland-Midden is 1181 km². Based on numbers of the CBS, the municipalities can be divided in three categories. Category 1 are the municipalities with less than 500 hectares of rural area. Category 2 are the municipalities with hectares of rural area between the 500 hectares and 2000 hectares. Category 3 are the municipalities with more than 2000 hectares of rural area.

TABLE 1 POLICY FORMING PER RURAL AREA

	<i>Category 1 (n=8)</i>	<i>Category 2 (n=4)</i>	<i>Category 3 (n=4)</i>
Bibob	88%	75%	75%
Bibob after 2013	0%	50%	50%
Bibob real-estate	0%	50%	50%
Damocles	100%	50%	75%
S & E	100%	50%	50%
Stoptalk	100%	100%	67%

* N = THE NUMBER OF MUNICIPALITIES THAT ARE IN A CATEGORY, ALL MUNICIPALITIES TOGETHER ARE 100%

As to be seen in table 5, for the Bibob law, in general a pattern is to be recognized that in the first category, Bibob is used more frequently than in category two and three, however this difference is highly minimal. For the adjustment of the bibob-law after the amendment of the law and for the Bibob law on the real-estate sector a stronger pattern is to be recognized. In 0% of the municipalities in category 1, policy is formulated for the real-estate sector and the policy is changed after the amendment of the law in 2013. For the Damocles law, all municipalities in category 1 formulated policy. For Surveillance & Enforcement is in 100% of the municipalities applied, the percentage for category 2 and 3 are lower, for this instrument a reversed pattern is to be recognized. The stoptalks are only in category 3 not for 100% used. This originates in the fact that there is one mayor in category three that has the opinion that a 1% Motorclub not necessarily has to be averted in a municipality. Concluding, out of these results it appears that the number of rural area in a municipality influences the formulation of policy in a municipality concerning undermining by organized crime.

7.2 NUMBER OF INHABITANTS

The total number of inhabitants for the district Gelderland-Midden is 627388³⁶. The municipalities are to be subdivided into three categories being: 1. Small municipalities (inhabitants < 15000), 2. Middle municipalities (inhabitants 15000-45000), 3. Big municipalities (>45000).

TABLE 5 POLICY FORMING PER NUMBER OF INHIBITANTS

	<i>Small municipalities (n=5)</i>	<i>Medium municipalities (n=6)</i>	<i>Big municipalities (n=5)</i>
Bibob	60%	100%	100%
Bibob after 2013	0%	50%	40%
Bibob real-estate	0%	33%	40%
Damocles	80%	100%	80%
S & E	80%	86%	100%
Stoptalk	100%	100%	80%

As to be seen in table 6, most municipalities that not formulated a policy fo bibob are the smaller municipalities. Besides that, none of the small municipalities changed their policy after the amendment of the law in 2013. None of these small municipalities formulated bibob policy for the real-estate sector. For the Damocles law, there is no pattern to be identified. Surveillance & Enforcement is in the small- and medium municipalities not applied for 100%, but in the big municipalities it is used for the 100%. For the stoptalk the same situation occurs as for the previous variable, the one mayor which has the point of view that a 1% motorclub should not be averted from a municipality. This means that the number of inhabitants within a municipality influences the fight against undermining by organized crime.

7.3. INFLUENCING DECISION-MAKING

From the mayors that where questioned (n=14), 21% (n=3) had to deal with threats affiliated to undermining by organized crime, where they tried to force a different decision than the decision that was intended by the mayor.

In two of these cases, the treat was directed to the mayor and in one case the threat was directed to an alderman. [REDACTED].

³⁶ CBS, 2017 Bevolking op 1 januari; leeftijd, geboorteland en regio

[REDACTED]

[REDACTED]

The respondents stated that they didn't let the threats influence their decisions and reported the threats directly to the police and made an official statement. The respondents say that they invested in their policy processes after the threats, to make it possible to act upon those threats.

There were no signals of Infiltration, bribery and lobbying by organized crime known among the respondents. However, the majority of the respondents claim that they are worried about these phenomena because it is sincerely difficult to signal these phenomena. And that they are willing to invest money to conduct research concerning this matter.

[REDACTED]

Therefore, it can be stated that the influence of the decision-making doesn't declare the difference among the municipalities concerning the applying of the instruments against undermining by organized crime. To support this finding, it is interesting to see, if there are differences in the formation of policy in the municipalities where there were threats and where there weren't threats.

TABLE 6 POLICY FORMING THREATENED OR NOT

	<i>Not threatened</i> (n=9)	<i>Threatened</i> (n=3)
Bibob	78%	100%
Bibob after 2013	44%	33%
Bibob real-estate	22%	33%
Damocles	80%	100%
S & E	78%	100%
Stoptalk	66%	100%

The difference between the formation of policy between municipalities where there was a mayor or aldermen threatened is so small, that no pattern is recognized. Therefore, it is stated that the influencing the decision-making does not influence the policy about undermining by organized crime.

7.4 EFFECTIVENESS OF INSTRUMENTS

The respondents are questioned about the effectiveness of the instruments that they can apply. Because there were no experiences with the Victoria law, this instrument is not considered in this paragraph.

7.4.1. Bibob law

Aight respondents wanted to say something about the effectiveness of the Bibob law. The preventive effect of the bibob law is the most striking result, the respondents claim that this instrument is effective.

[REDACTED]

The sidenote is, according to the respondents, that the Bibob-law is an instrument, which doesn't always lead to the desired result. This is mainly because of the 'structure' on which an advice of the LBB is based and the duration before an advice is given.

[REDACTED]

The Bibob law can be applied on all permits that are given by a municipality. Therefore, the respondents were asked if they foresee a brighter future when this permit system is expanded to sectors where problems exists among undermining by organized crime. The reactions of the respondents are mixed. One group of respondents (n=4) does not want to expand the permit system.

[REDACTED]

One group of respondents says that they are not able to make a proper prediction about the expansion of a permit system (n=6).

[REDACTED]

The last group of respondents (n=4) has the point of view that a broader permit system would be an effective instrument in the fight against undermining by organized crime.

[REDACTED]

7.4.2 Damocles law

Seven respondents wanted to say something about the Damocles law. The majority (n=5) of these respondents claims that it is a proper instrument to include the owner of a building in the signaling of marijuana related crime.

[REDACTED]

[REDACTED]

Nevertheless, there are some respondents (n=2) that state that it is a juridical instrument with a lot of risk included for the municipality to apply this tool. This causes a certain withhold for the mayors to use this closing tool.

[REDACTED]

7.4.3. Surveillance & Enforcement

Four respondents wanted to say something about the effectiveness of the Surveillance & Enforcement in the fight against undermining by organized crime. It is, according to them, a tool where control moments lead to a bulk of information and to enforce the law on small non-essential issues, to have grip on a big case concerning organized crime.

[REDACTED]

7.4.4 Stoptalk

Six respondents had to say something about the effectiveness of a stoptalk. In just one of the six cases, it didn't direct into the desired effect.

[REDACTED]

[REDACTED]

[REDACTED]

7.4.5 Suggestions for the toolbox

The respondents were asked, to give suggestions about the toolbox and if they are running short on this toolbox for the fight against undermining by organized crime. Most respondents claim to have a broad toolbox already, and have no suggestions for additions to this toolbox.

[REDACTED]

Concluding, out of the results it appears that the respondents do not miss tools in the toolbox and are quite positive about the effectiveness of the tools. This means that there is no explanation in the effectiveness of the instruments in the performance of municipalities in the fight against undermining by organized crime.

7.5 ROLE INTERPRETATION MAYOR

The statements about the role of a mayor in the fight against undermining by organized crime is to be divided into three categories. The first category are the respondents that state that this fight is not a responsibility of the municipality. The second category are the respondents that state that the municipality has a signaling/directing role but not a crime fighter role. The third category are the respondents that state that the mayor must be a crime fighter and has full responsibility for the fight against crime. 22% of the respondents is to be subdivided in role 1, 64% is to be divided in role 2 and 14% is to be divided in role 3.

7.5.1. Role 1

The respondents that describe the fight against undermining by organized crime is not a responsibility of the mayor, claim that they do not want to bear responsibility for this fight because they think this is the responsibility of the Police and the Public Prosecutor.

[REDACTED]

Besides this argument, some of these respondents claim that they do not want to possess this type of information because it is not appropriate for a mayor to have insight in this type of information.

[REDACTED]

From the municipalities where the mayor is in role 1, 67% formulated a policy for the Bibob law, from this 67%, 33% changed their policy after the amendment of the law in 2013. 100% of the respondents has a policy for Damocles. Surveillance & Enforcement is used in 100%.

7.5.2. Role 2

The respondents that are to be sub-divided into role 2 describe that the municipality has a key role in signaling and combining information and has a unique information position.

Daarnaast beschrijven veel van deze respondenten dat de gemeente een coördinerende maar ook signalerende functie heeft, mede door de rijke informatiepositie waar gemeenten zich in bevinden.

[REDACTED]

[REDACTED]

The respondents claim the importance to take the responsibility in the fight against organized crime but also state they do not want to be a crime fighter, because the mayor also has the 'shepherd role' over its citizen.

[REDACTED]

From the respondents in role 2, 78% has a policy for bibob. 22% changed this policy after the amendment of the law in 2013. 88% of the respondents has a policy for the Damocles law. Surveillance & Enforcement is applied in 100% of the municipalities and 100% of the municipalities where there were problems according to 1% motorclubs used a stoptalk.

7.5.3 Role 3

The respondents in role 3 emphasize the fact that final responsibility is for the mayor and state that the mayor and municipality are the final responsible institution for the safety and are the authority over the Police.

[REDACTED]

100% of the municipalities in role 3 has a policy for the bibob law. 50% changed their bibob policy after the amendment of the law in 2013. 50% of the municipalities has a policy for the Damocles law. Surveillance & Enforcement is in 100% of the municipalities used in the fight against organized crime. In 50% of the municipalities problems occurred concerning 1% Motorclubs (n=2) the mayor had a stoptalk.

TABLE 7 POLICY FORMING PER MAYOR ROLE INTERPRETATION

	<i>Role 1</i> (n=3)	<i>Role 2</i> (n=9)	<i>Role 3</i> (n=2)
Bibob	67%	78%	100%
Bibob na 2013	33%	22%	50%
Bibob vastgoed	33%	11%	50%
Damocles	100%	88%	50%
T & H	100%	78%	100%
Stopgesprek	100%	100%	50%

7.6 MUNICIPAL CAPACITY (FTE SAFETY DEPARTMENT)

All respondents (n=14) claim that they do not have enough capacity in the fight against undermining by organized crime.

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Among the majority of the respondents, the opinion rises that they are not the only institution responsible for this fight and that all partners jointly have to give capacity for this fight.

[REDACTED]
[REDACTED]

It is also clear that the respondents are worrying about the capacity of the RIEC's and the sequence of the local analysis of the level of undermining by organized crime in municipalities. These analyses are conducted by the RIEC's with the goal to combine the information of the police, tax authority and public prosecutor.

As discussed in the second chapter, the number of fte for public order and safety is a proper indicator for the capacity available. The capacity available for public order and safety is to be divided into three categories. Category 1 is capacity available < 1,6 fte. Category 2 has fte for public order and safety between 1,6 and 3,1 fte and category 3 with capacity >3 fte.

TABLE 8 POLICY FORMING PER FTE OOV

	<i>Category 1 (n=6)</i>	<i>Category 2 (n=6)</i>	<i>Category 3 (n=3)</i>
Bibob	67%	100%	100%
Bibob after 2013	17%	33%	67%
Bibob real-estate	17%	17%	67%
Damocles	67%	100%	67%
S & E	83%	86%	100%
Stoptalk	100%	100%	67%

As to be seen in table 8, a pattern is to be recognized for the Bibob law, the difference between category 1 and category 2 and 3 together. The only municipality in Gelderland-midden where no policy was formulated for the Bibob law are in category 1, the municipalities with less than 1,5 fte for the public order and safety department. The same pattern is to be recognized for the policy change after the amendment of the law and for the real-estate sector. For the Damocles law, there is no pattern to be identified. For the stoptalk the same situation occurs as for the previous variables, the one mayor which has the point of view that a 1% motorclub should not be averted from a municipality. This means that the number of inhabitants within a municipality influences the fight against undermining by organized crime. Concluding, if the number of fte is below the 1,6 for public order and safety, the number of fte has influence on the performance on policy processes of the municipalities in the fight against undermining by organized crime.

7.7. INFORMATIEPOSITION MUNICIPALITY

The answers of the respondents are for this variable, are not to be divided into categories. Out of the results, it appears that the municipalities have strong information position because the municipality has a lot of knowledge about the local society.

[REDACTED]

Some respondents claim that they have this information position, but do not use this source of information efficient enough.

[REDACTED]
[REDACTED]

Concluding, out of the results it cannot be determined if this information position is influencing the performance of municipalities in the fight against undermining by organized crime.

7.8 EXPERTISE

The respondents were asked if the level of expertise is big enough for the fight against undermining by organized crime. All respondents (n=14), state that they do not have this expertise within the municipal organization.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Besides this result, most respondents claim that they do not need to have this expertise all within the municipal organization.

[REDACTED]
[REDACTED]

Therefore, the following question was asked: 'Is it possible to mobilize this expertise if necessary?' This question was by all respondents (n=14) answered with a simple 'yes'.

[REDACTED]
[REDACTED]

Furthermore, the respondents claim that it is important for municipalities to create a network with expertise to use if necessary.

[REDACTED]

Concluding, out of the results it cannot be determined if the expertise available is influencing the performance of the municipalities in the fight against undermining by organized crime.

7.9 COOPERATION WITH PARTNERS

The partners within the integral fight against undermining by organized crime, that are named by the respondents are the Public Prosecutor, the Police, the Tax authority and the RIEC's. The cooperation within the 'triangle', which is the cooperation between police, the public prosecutor and the municipality is, according to the respondents, on the desired level.

[REDACTED]

One respondent claims, that it is the responsibility of the mayor to make sure this cooperation is going smoothly.

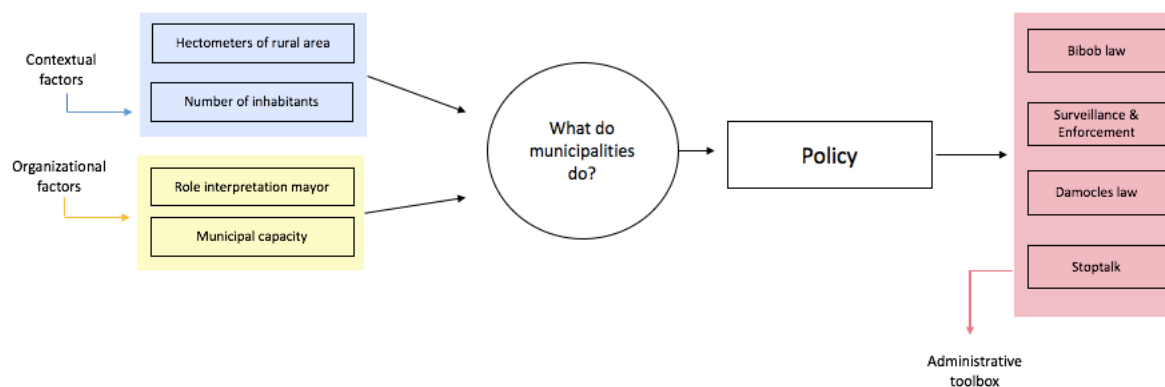
[REDACTED]

Out of these findings it appears that there is one partner in the fight against undermining by organized crime about which the respondents where not satisfied.

7.10 CONCLUSION

The answer to sub-question four: ‘What are explanations for the difference between municipalities in this use of administrative laws against organized crime?’ is that it appears out of the results that the contextual factors: ‘rural area’ and ‘number of inhabitants’ and the organizational factors: ‘role interpretation mayor’ and ‘municipal capacity’ an explanation could be found in the performance of municipalities in the fight against crime. This is to be seen in the figure as shown below.

FIGURE 9-MODEL



7. CONCLUSION & DISCUSSION

8.1 CONCLUSION

The central research-question for this research was: *'Are the municipalities in the safety district Gelderland-Midden tenable against organized crime according to the instruments of the administrative law, and if they aren't, why not?'*. The unique change to interview the mayors of this district led to unique results. This research showed that there are in Gelderland-Midden in [REDACTED] of the municipalities issues concerning undermining by organized crime. The most striking result is the frequency of occurrence of issues concerning 1% motorclubs, because this percentage is remarkably higher than the National average. To be tenable, municipalities use their administrative laws. To be able to say something about the tenability of the district Gelderland-Midden, the results for this district were compared with National numbers. Additionally, these results were mutually compared. This analysis showed that, [REDACTED] of the municipalities in Gelderland-Midden has a Bibob-policy formulated, where [REDACTED] of the municipalities changed their policy after the amendment of the law in 2013. In only [REDACTED] of the municipalities the real-estate sector is part of their Bibob-policy, where nationally [REDACTED] of the municipalities embedded this in their policy. Bibob-policy is in the district Gelderland-Midden less formulated and implemented than the National numbers. Consequently, in this research it was searched for this 'negative' numbers, by mutually comparing the municipalities. This comparison showed that there are two contextual factors influencing the performance on policy and two organizational factors. And with that finding, the research-question could be answered, the district-Gelderland-Midden is not fully tenable against undermining by organized crime and there are contextual and organizational factors which cause this shortcoming. The results of this research are presented in the DVO from Gelderland-Midden and are used to prevent the district for the 'waterbedeffect'. These results are used as a 'baseline' for the level of tenability for the municipalities to ensure that in the future the municipalities will be at the same level.

8.2 DISCUSSION

The results for the policy processes in this research are reliable because the mayor as well as the civil-servant were questioned on the policy forming. That the district is falling short on the National numbers, is when looking at the demographic and geographic structure of this district in line with the findings of this research. However, it is important to notice that the interviewer had the feeling that the municipalities were really motivated to jointly develop their selves in the fight against undermining by organized crime. Besides that, the results showed an influence of the role interpretation of the mayor, but not as big as expected and experienced in practice. This could origin in the fact that the units of research was a district with 16 municipalities and that with a bigger number of municipalities this influence, could have been bigger. Besides that, it is within an integral approach often the case the partners are discussing about responsibility and because of this tension, mayors will speak less freely

about the other partners. The feeling during the interviews was that the mayors were talking sedated about the frustrations among partners.

When interpreting the results, it appeared that the meaning of one single mayor could have a big influence on the results. Although, for this research a full overview was reached by interviewing all municipalities, future research is needed in a bigger quantity. Besides that, it could be interesting to conduct a research about the mutual influence of the organizational- and contextual factors. Additionally, it is of high importance to get a clearer view of the scope of the 'blending from the underworld with the legal world', this appeared to be a hardly reachable result and is not obtained by interviewing the mayors. For the RIEC it is important that they are focusing on the guidance of municipalities with the sequence of the local analysis of undermining organized crime, because the mayors were worried what to do when they have all the information. The municipalities within the district must determine their common goals, because money is invested to solve this problems on a regional level.