



Fact sheet

The Dutch *Bibob* Act

Bibob legislation

The Public Administration (Probity Screening) Act is legislation to protect the integrity of Dutch municipal governments and other public authorities. Following the Dutch abbreviation this act is commonly referred to as the 'Bibob Act'.

This act enables public authorities to request extensive and thorough background checks to assess the criminal risks regarding permits and other governmental decisions. If such a risk is determined, the public authority is allowed to refuse or revoke a permit or other decision. This prevents authorities from unintentionally facilitating criminal activities.

Involved government decisions

The Bibob Act can be applied on a large and varied range of governmental decisions, for instance:

- **Permits**
- **Subsidies**
- **Real estate contracts**
- **Other contracts and tenders**

The Bibob Act is most frequently applied regarding bars, restaurants, nightlife and prostitution establishments. It is however also applicable in branches like construction, cattle breeding, chemical industry and transport by road. Furthermore all government subsidies and tenders are within the reach of the Bibob Act.

A more comprehensive overview of the Bibob Act's reach is visualized on www.justis.nl/bibob.

Involved parties

Multiple parties are involved with the application of the Bibob Act. Most important are:

- **The competent public authority**
The generally competent public authority retains the power to make the final decision in Bibob cases. These authorities can request the National Bibob Bureau for advice.
- **The National Bibob Bureau (NBB)**
The NBB conducts more extensive and thorough investigations and advises public authorities in individual cases. In addition the NBB is tasked with providing general information about the Bibob Act and its implementation.

The NBB is part of Justis, the Dutch national screening authority. As such it resides under the Ministry of Justice and Security.

- **The Public Prosecution Service (PPS)**

The PPS supplies information regarding criminal cases. Additionally, it signals risks of criminal abuse to public authorities so they can start a Bibob procedure. The PPS also functions as an intermediary for information requests by the NBB to foreign authorities.

- **Other government agencies**

Many other government agencies also supply information necessary for application of the Bibob Act. See the next page for a more detailed description of these investigative, enforcement and social benefit agencies.

- **The subject**

The subject is the party whose background and network is investigated. This is the party directly in contact with the involved public authority, for instance the person or corporation applying for a permit or subsidy.

Procedure

Bibob procedures usually start with the application for a permit or other governmental decision. Occasionally a signal from the PPS or for instance a news publication triggers the investigation of an already granted permit.

Preliminary investigations

The competent public authority starts with a preliminary risk assessment. This involves open source investigation and a request of information from the subject. Public authorities also have limited powers to gather criminal records and information from the police and PPS. Regional collaborative arrangements are in place to support (smaller) local authorities with this preliminary research.

Most frequently such preliminary investigation yields no or insignificant risk indicators. In such cases public authorities continue their regular decision making.

Investigations by the NBB

If they do find significant risk indicators, public authorities can request the NBB for a formal advice on the criminal risks. The NBB then conducts an extensive and thorough investigation. During this investigation the following Dutch agencies are obliged to provide the NBB with requested information:

- The Judicial Information Service (JustID) regarding Dutch and European Criminal Records.
- The Public Prosecution Service
- The National Police as well as fiscal, environmental and military investigative agencies.
- The Dutch Tax Service including Customs.
- Social security and benefit agencies
- Administrative enforcement agencies regarding labor, transport, environmental and food safety regulation.

The NBB additionally consults public records and other open sources. Occasionally the subject himself is also requested for information, mostly regarding his organizational and financial structure.

Foreign public prosecution services and government agencies can also supply essential information. The NBB occasionally sends formal requests via the PPS, which acts as an intermediary.

At the end of the investigation the NBB supplies the competent public authority with a report, containing a risk assessment and an account of the facts and arguments supporting it. This only happens after a public prosecutor checks the final draft to safeguard any prosecutorial interests which might be harmed by issuing the report.

Decisions and appeals

The recipient public authority subsequently assesses whether the NBB's advice is carefully constructed. It also judges whether a negative decision is proportionate. If it finds both to be the case and intends to refuse or revoke a permit, the public authority makes its intention known to the subject. The subject receives a copy of the NBB's report.

The subject then has the opportunity to offer its point of view and argue against the intended decision. If the public authority decides to continue the refusal or revocation the subject sometimes has the opportunity to ask for a revision and always to appeal to a court of law. These procedures are regulated by regular Dutch procedural law. If the case is referred to a court, the court will be able to evaluate the NBB's report. If no further appeal is made, the procedure is concluded.

Grounds for refusal or revocation

The Bibob Act contains several grounds for refusal or revocation.

Serious risk of criminal abuse

Foremostly a permit can be refused or revoked if there's a serious risk of criminal abuse. That risk can consist of somebody:

- A. utilizing the proceeds of previous offences.**
- B. committing new offences.**

The main question whilst assessing these risks is whether relevant offences have been committed. These offences can consist of crimes and other criminal offences but also of offences for which (only) an administrative or fiscal fine can be issued. Convictions are furthermore not needed. Reasonable suspicions can also result in a serious risk, but only if they are substantiated by concrete evidence.

A further distinctive feature of the Bibob Act is that permits can also be refused or revoked when other parties than the involved subject have committed offences. This only applies to persons or corporations who are linked to the subject in ways described in the act itself. As such the offences committed by directors, shareholders and moneylenders can for instance also be taken into account.

The risk that proceeds of crime will be utilized, is furthermore dependent of the value of these proceeds: the more money has been made, the bigger the risk. The risk that new crimes will be committed on the other hand, depends on the amount and duration of previously committed offences: the more offences, the bigger the risk. Not all offences are however taken into account. It is also necessary to assess their kind and context in relation to the specific permit involved.

Crimes committed to obtain or retain a decision

A separate ground for refusal or revocation exists, when a reasonable suspicion exists that a crime has been committed in order to obtain or retain the permit involved. This usually involves forgery during the (preliminary) investigation to a requested or given permit.

Refusal to share information

A further ground for revocation exists when the subject has refused to supply the involved public authority or NBB with requested information.

Questions?

More information on the Bibob Act and the NBB can be found on www.justis.nl/bibob (Dutch language only). It is also possible to reach the NBB at +31 (0)88 - 998 22 50 or bibob@justis.nl.