

Comparison of the draft law Belgian Directie Integriteitsbeoordelingen Openbaar Bestuur (DIOB) and Dutch legislation Bevordering integriteitsbeoordelingen door het openbaar bestuur (Bibob)



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Introduction

At the time of writing, April 2023, the Belgian Chamber of Representatives is discussing a draft law on, among other things, the establishment of the 'Directie Integriteitsbeoordelingen Openbaar Bestuur', Directorate for Integrity Assessments of Public Administrations (DIOB). The draft law also provides for the establishment in every Belgian judicial district of an ARIEC that can provide support in the context of the administrative approach to organized crime.

Response of the Euregional Information and Expertise Centre (EURIEC) to the draft law

According to the EURIEC, it is a good evolution that the DIOB bill provides for the exchange with equivalent foreign institutions (such as the Dutch Landelijk Bureau, National Bibob Agency (LBB)). This will, in principle, make it possible to exchange information across borders between the DIOB and the LBB, for example, after concluding an agreement. The EURIEC already has the ambition to enter into a dialogue with legislators in the Netherlands to see whether it would be possible to include a similar article in Dutch legislation as well (a third tranche Bibob Act). Work could then be done to conclude an agreement between the LBB and the DIOB.

In addition, the EURIEC points out that until an agreement is concluded with other foreign equivalent institutions, it will be very difficult with the current and proposed regulations to receive information on foreign licence applicants. This will require further amendments to national legislation. To this end, the EURIEC is in contact with policymakers in the Netherlands and Belgium to see how this issue can be addressed.

DIOB-Bibob bill

The draft bill bears certain similarities to the Bibob legislation in the Netherlands. Yet there are also some interesting differences. The EURIEC, in cooperation with the ARIEC Limburg (BE) and RIEC Limburg (NL), therefore made a general comparison between the Belgian bill and Dutch Bibob legislation.

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	Bibob (Netherlands)	DIOB (Belgium)
Taks of the Landelijk Bureau Bibob / Directie Integriteitsbeoordelingen Openbaar Bestuur	<p>Advise on the degree of danger ("risk") of a permit being misused as regards:</p> <ul style="list-style-type: none"> • Specific permits and exemptions • Public contracts • Subsidies • Real estate transactions <p>Informing authorities on the application of the Bibob Act</p>	<ul style="list-style-type: none"> • Support municipalities in their decision regarding the refusal, suspension or cancellation of an establishment or operating licence or regarding the closure of an establishment • Develop and manage the Central Register of Integrity Investigations. • Annual risk analysis on the economic sectors and activities within which undermining crime may manifest itself
Under the authority of	Minister of Justice and Security	Joint authority of the Minister of the Interior and the Minister of Justice
For which authorities	<p>Administrative bodies and legal entities with a government task determine themselves when they apply Bibob within the limits of the statutory scope of application (permits, government contracts, subsidies and real estate transactions). The term "establishment" is not decisive here: the law refers to "person concerned". This can be an establishment (or company) but does not have to be.</p> <p>Applying the law is discretionary.</p>	<p>The King decides on the basis of the DIOB's risk analysis a list of economic sectors and activities to which the law can be applied. Subsequently, municipalities, based on their own risk analysis, from this list designate sectors and activities to which locally the law will be applied. On these sectors, they will carry out an integrity investigation.</p> <p>The municipalities can choose whether, for these sectors and activities additionally via a police regulation to impose a permit requirement. Sectors and activities not requiring a licence sectors and activities can be subject to an integrity investigation be subjected to an integrity investigation.</p> <p>If a municipality issued a police ordinance for an economic sector issued, it is obliged to conduct an integrity investigation in relation to the establishment or operation of all publicly accessible establishments belonging to those economic sectors.</p>

Own investigation

An administrative body or legal entity with a governmental task should always conduct its own investigation before requesting advice from the National Bibob Agency.

Seeking an opinion is not compulsory: administrative bodies or legal entities with a governmental task may decide independently, after their own investigation, not to grant a licence or subsidy, or to exclude a person involved from a tender or not to enter into a property transaction.

The advice from the National Bibob Bureau only indicates the risk of a licence, transaction, etc. being misused. The administrative body or legal entity with a government task must make its own assessment between the LBB's advice indicating the degree of danger and the local situation.

The own investigation of the administrative body or legal person with a public task is done via a standardised questionnaire resulting from a national regulation. It is not compulsory to submit all these questions to the applicant, but no more may be asked than is included in the national regulation.

Before municipalities can seek advice from the DIOB, they must conduct their own investigation. Municipalities must justify why they request an opinion from the DIOB. There are two possible reasons for this:

1. Based on the own investigation, it is suspected that further investigation is necessary to make a reasoned decision, OR
2. Based on its own investigation, it is suspected that a refusal, suspension, or cancellation of the establishment or operating licence or a closure of the establishment would be necessary.

An establishment or operating licence can only be refused, suspended or lifted after obtaining an opinion from the DIOB. This also applies to the closure of an establishment.

For the time being, there is no standardised questionnaire.

Grounds for refusal

- Permits and subsidies may be refused or revoked if there is a 'serious risk' that the permit will be used in part to:
 - Exploit monetary benefits obtained or to be obtained from criminal acts committed (A-ground) and/or
 - Committing criminal offences (B-ground).
- The aforementioned power also exists if facts and circumstances indicate or suggest that a criminal offence has been committed to obtain or maintain the licence (e.g. fraud, bribery, forgery, threat).
- Refusal to provide information (to the administrative body or National Bibob Agency) is also regarded as 'serious danger' and can be used as grounds for refusal.
- There is no limitative list of offences that may be taken into consideration, but in the case of the B-ground, the offences must be related to the activities for which the decision is requested (the coherence criterion). How long ago the offences were committed and the number of offences are also taken into account.

Refusing, suspending or cancelling an establishment or operating licence or closing an establishment on the basis of an integrity investigation is only possible if it appears that:

- There is an identifiable serious risk that the establishment will be exploited in order to reap benefits, financial or otherwise, from previously committed offences, and/or;
- There is an identifiable serious risk that the establishment will be exploited to commit criminal offences, and/or;
- There are serious indications that offences have been committed to exploit the establishment.

There is an exhaustive list of offences that may be included in the integrity investigation

<p>Relationship of person concerned</p>	<p>The person is in relation to criminal offences if</p> <ul style="list-style-type: none"> • He himself has committed offences (possibly even if the case was dismissed or he was not prosecuted for the offences) • Directly or indirectly directed or provided assets to a legal person who committed offences • Another person has committed these offences and this person is a manager of the person concerned, or a person who controls the person concerned, a provider of assets to the person concerned or a person who is or has been in a business partnership with the person concerned 	<p>The integrity investigation only concerns those persons who are or will be legally or de facto entrusted with the operation of publicly accessible establishments belonging to the economic sectors and/or activities defined in the municipal police regulation.</p> <p>Subject to justification, the integrity investigation may be extended to the following persons:</p> <ul style="list-style-type: none"> • Natural persons or legal entities to which the person charged or to be charged in law or in fact with the operation directs or has directed • Natural or legal persons who hold in law or in fact a dominant position in relation to the person who is or will be in charge of the operation • Natural or legal persons who directly or indirectly provide or have provided assets to the person who is or will be legally or de facto in charge of the operation • Any other natural or legal person legally involved in the establishment or operation <p>At the time of writing, it is still unclear exactly how and on what grounds this extension will take place. In any case, it is certain that these persons must have committed one or more offences, or there must be well-founded suspicions with regard to these persons that they have committed or will commit one or more offences.</p>
<p>Grant under regulations</p>	<p>If there is a serious or lesser degree of danger, a permit may be subject to regulations. These are form-free and should aim to eliminate the hazard.</p>	<p>If a municipality wishes to suspend an establishment or operating licence that has already been issued on the basis of the integrity investigation, the Municipal Executive or Municipal College shall determine the conditions for reversing the suspension.</p>

Distribution of powers	<p>Broadly speaking, in the case of public order-related permits, the competence lies with the mayor based on his legal role. For other permits, the college has jurisdiction.</p>	<p>If the establishment or operation is subject to an establishment or operation licence by the municipal council, the Municipal Executive or Municipal College may, on the proposal of the mayor and following an integrity investigation, refuse, suspend or cancel the licence.</p> <p>For unlicensed establishments open to the public, the Municipal Executive or the Municipal College may, on the proposal of the mayor and following an integrity investigation, close the establishment.</p>
	<p>Permit obligation follows either from a national law (law in the formal sense) or a local ordinance (law in the substantive sense).</p>	<p>The King decrees the economic sectors and activities on pursuant to which a municipal police ordinance may stipulate to impose an integrity investigation be imposed.</p> <p>It can also be determined through police ordinance that a establishment or operation licence to be imposed, separate from the above sectors or activities and separate from any possible integrity investigation. The sectors from the two ordinances may also overlap.</p>
	<p>An in-house investigation prior to an LBB advice request is mandatory. Requesting an LBB advice is not mandatory. Independent refusal (i.e. without LBB advice) of permits is permitted. However, the LBB advice is not binding. A balancing of all interests (including a proportionality and balance test) should be made by the administrative body or legal person with a public task in the decision itself.</p>	<p>A permit can only be refused if advice has been sought from DIOB</p>

<p>Tip authority</p>	<p>The LBB can tip off administrative bodies or legal persons with a government task to the possibility of conducting their own investigation if the LBB has data indicating that the person concerned is related to criminal offences.</p> <p>The public prosecutor and the administrative body or legal person with a government task that can apply the Bibob Act, who has information indicating that a person involved is related to criminal offences, may tip off an administrative body or legal person with a government task with powers under the Bibob Act to the possibility of applying the Bibob Act.</p>	<p>Tip authority is not included in the bill</p>
<p>Cooperation with foreign bodies</p>	<p>The LBB may request competent foreign authorities to check whether information is known about (legal) persons who appear in the investigation. The request may concern:</p> <ul style="list-style-type: none"> • Criminal data • Data on an offence for which a punitive administrative sanction may be imposed as referred to in Article 5:2(1)(c) of the General Administrative Law Act 	<p>The DIOB may join international networks consisting of foreign equivalent institutions and may conclude cooperation agreements with foreign equivalent institutions related to the performance of the DIOB's missions.</p> <p>The DIOB may cooperate in accordance with treaty, supranational and legal rules, including for the purpose of:</p> <ul style="list-style-type: none"> • The exchange of good practices • Thematic trainings
<p>Term investigation of LBB/DIOB</p>	<p>The LBB must provide the requested advice within eight weeks. This deadline may be postponed once by a maximum of four weeks.</p>	<p>Within five working days of receiving the request for advice, the DIOB will assess whether it is admissible in accordance with the first paragraph.</p> <p>If the request for advice is not admissible in accordance with the first paragraph, the DIOB will notify the requesting municipality. In that case, the requesting municipality will be given the opportunity during a period of five working days to amend the request.</p> <p>Following this, the DIOB will issue a reasoned opinion within thirty working days of the confirmation that the request is admissible.</p>

Bodies that may or should cooperate

Bodies required to cooperate include:

Financial information:

- Fiscal Intelligence and Investigation Service
- National Revenue Agency
- Financial Intelligence Unit

Police and criminal information:

- Police Services
- Judicial Information Service

Employment and benefits information:

- Dutch Labour Inspectorate
- Municipal Executive if it concerns data for the implementation of the Participation Act, the Income Support for Older and Partially Disabled Unemployed Workers Act and the Income Support for Older and Partially Disabled Former Self-Employed Workers Act
- The Employee Insurance Agency and the Social Insurance Bank

Information relating to (right of) residence:

- Immigration and Naturalisation Service

Information relating to food and health:

- Dutch Food and Consumer Product Safety Authority

Other:

- Environmental and Transport Inspectorate
- - Provincial Executive

As part of advisory services, the DIOB may request information from the following departments:

Financial information:

- The General Administrations of Taxation, the Special Tax Inspectorate and Customs and Excise of the Federal Public Service Finance
- The Financial Information Processing Unit

Police and criminal information:

- The Integrated Police
- The central criminal registry
- Judicial authorities

Employment and benefits information:

- The social administrations and their social inspection services (TSW, NSSO, RVA, Riziv and NSSO).

Information regarding (right of) residence:

- The Immigration Department

Information related to food and health:

- The Federal Agency for the Safety of the Food Chain
- The Federal Agency for Medicines and Health Products

Other:

- The Economic Inspection

<p>Refusals to cooperate</p>	<p>The above bodies do not provide data if:</p> <ul style="list-style-type: none"> • The data is contained in a file designated by order in council • A weighty public interest of the providing agency • Serious criminal-law interest 	<p>The above bodies do not provide data if, inter alia:</p> <ul style="list-style-type: none"> • If a substantial public interest prevents the provision • The privacy of the natural or legal person who is the subject of the request would be disproportionately harmed • - If the communication, use and processing of judicial authorities could prejudice the exercise of criminal proceedings
<p>Central Register</p>	<p>The LBB registers advice involving a lesser degree or serious degree of danger in a national register.</p> <p>In the same register, administrative bodies or legal persons with a government task must register independent refusals. This must also be done if the person concerned withdraws due to application of the Bibob Act. The register contains data up to five years back, and registrations are updated as necessary in the event of court decisions.</p>	<p>There will be a Central Register for Integrity Investigations on Administrative Enforcement of Undermining Crime.</p> <p>To keep this register as up to date as possible, each municipality will provide as soon as possible the decisions to refuse, suspend or lift the licence or close the establishment.</p> <p>Municipalities can consult the Central Register to obtain a hit/no hit result regarding the presence or absence of a decision taken by another municipality to refuse, suspend or lift a licence or close an establishment.</p>

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