

Summary

Introduction

Since 1 June 2003 various administrative bodies can use the Public Administration Probity Screening Act (Wet Bibob) to assess the probity of applicants and license holders. This act provides the competence to withdraw or refuse a decision if there is a fear that the decision will be or is used for money-laundering, or for carrying out new criminal activities. This fear is not related to the applicant or permit holder only, but also to people that are in a professional partnership ('zakelijk samenwerkingsverband') with the applicant or permit holder. On the facts that might conclude that there is indeed a fear of abuse, the administrative bodies can seek advice from a government agency (Landelijk Bureau Bibob; LBB) that can consult specific databases.

Since the Public Administration Probity Screening Act came into force, this act has expanded. Both regarding the kinds of decisions that may be subject to such a screening and the competences of the administrative bodies to assess the probity (the 'own research'). Nowadays administrative bodies may consult more sources and databases, including for example justice records, records referring to the criminal procedure and police data on the person that is applying for the decision. Moreover the Regional Centres for Information and Expertise (Regionale Inlichtingen en Expertisecentra; RIEC's) provide a supportive structure to assist municipalities to use the instruments based on the Act.

Purpose and significance of the study

In the parliamentary discussions on the last expansion of the act the question was raised whether or not the administrative bodies would have sufficient competences to see through so-called 'straw man' where the applicant is acting for someone behind the curtains. In this debate the Minister for Security and Justice made the promise to conduct a research on scenario's to enhance the access to information for the administrative bodies.

Research question and strategy

The following research question is addressed:

How to arrange the Bibob-procedure in such a way that administrative bodies have the relevant information as quick as possible to enable them to make sound and lawful decisions?

To answer this question two separated studies have been conducted. The first study entailed an inventory of the current cooperation and distribution of information. The second study was an exploration of two scenarios.

The following research activities took place:

- desk research
- analysis of the legal framework
- interviews with civil servants and administrators of provinces, municipalities, institutions that provide information, the LBB and the RIEC's
- an assessment of the scenario's using a survey-table method

Current application of the Wet Bibob

Administrative bodies work together with various other actors. The most important institutions that can provide information are the police, the public prosecutor and the tax office. Administrative bodies are supported by RIEC's and the LBB. The inventory of the current cooperation reveals a number of bottlenecks. On the one hand these are juridical by nature. On the other hand these problems are not directly related to the Public Administration Probity Screening Act or other acts, but are mainly experienced when applying these acts.

The first conclusion is that administrative bodies do not use all competences added in the new act. The study further confirms that especially smaller administrative bodies, struggle with an adequate application of this act and have difficulties to maintain their knowledge. For these bodies the RIEC's and the LBB play an important role. Furthermore the RIEC's appear to vary in the way they operate and support governing bodies. This makes it difficult for other parties, like those with information on the probity of persons, to share this information with RIEC's. The larger governing bodies that apply the Act more often do recognize the fact that often the fear of abuse of the decision is based on the professional network of the applicant. These bodies however found solutions to solve the need for information. Using the good relations with for example the Public Prosecutor or the tax office, they ask for indications that there is something wrong in the network of the applicant. Governing bodies that receive such an indication tend to expand the research and ask the LBB for advice.

All in all the first study suggests that there is room for improvement, even without changing the legal framework. An improvement of the institutional framework might just as well improve the effectiveness of the act.

Assessment of scenario's

The second study aimed at assessing two possible changes to the system of the Public Administration Probity Screening Act. These two scenarios have some variations, but are aimed at strengthening the information position of the governing bodies:

- I. Strengthening the administrative bodies
 - a. providing more options to consult protected records
 - b. relieving confidentiality on information gathered under the Public Administration Probity Screening Act
- II. Strengthening the RIEC's
 - a. the RIEC as an advisor with legal status
 - b. authorizing the RIEC to gather information on behalf of the administrative bodies and drafting decisions
 - c. providing a mandate to the RIEC's to make decisions on behalf of the administrative body.

These scenarios are scored on three criteria: effectiveness, efficiency and lawfulness. All scenarios require an amendment of legislation.

The scenario's that strengthen the role of the administrative bodies or the RIEC's are just as effective as the current system and in a number of cases even more effective. Against these advantages the score on efficiency is ambiguous. And seen from the perspective of lawfulness the strengthening of

the informationposition of governing bodies leads to conducting research at more citizens, which means a larger risk of non-compliance of (privacy)regulations, compared to the present system.

The scenario that strengthens the role of the administrative bodies is attractive for the larger administrative bodies and a number of provincial bodies that consider themselves capable, knowledgeable and experienced enough to use the Public Administration Probity Screening Act properly. These administrative bodies do not feel the need for a support by the RIEC's. For other administrative bodies nevertheless strengthening the role of the RIEC's seems a good option. The development of a multi-stage system is possible, in which simpler questions regarding the probity of persons who are related to a decision – like questions regarding a limited group of persons (the applicant and other persons that are mentioned in the application or the documents supporting the application) – will be dealt with by the RIEC, whereas the LBB will do the research in other, more complex, cases.