



Final report EURIEC

An overview of findings and activities of the Euregional
Information and Expertise Center in the project period
from 2019 to 2021



List of abbreviations:

ARIEC	District Regional Information and Expertise Centre
AVG	Algemene Verordening Gegevensbescherming (General Data Protection Regulation)
BIBOB	Public Administration (Probity Screening) Act
BRP	Personal Records Database
DIOB	Directorate for Integrity Assessment for Public Administrations
ECRIS	European Criminal Records Information System
EU	European Union
EURIEC	Euregional Information and Expertise Centre
ECHR	European Convention on Human Rights
GDPR	General Data Protection Regulation
HSPV	Hochschule für Polizei und öffentliche Verwaltung NRW
ISZW	Inspectorate of Social Affairs and Employment
ICCPR	International Covenant on Civil and Political Rights
CoC	Chamber of Commerce
LIEC	National Information and Expertise Centre
NRW	North Rhine-Westphalia
PAALCO	Pour une Approche Administrative de Lutte contre la Criminalité Organisée
RIEC	Regional Information and Expertise Centre

Table of contents

Introduction	1
How was EURIEC established?	2
Brief overview of the project results	3
Comments on the project:	4
Part I: Current opportunities for and obstacles to cross-border information exchange	5
1. Overview	6
2. General Data Protection Regulation and lack of national legal grounds for information exchange	11
3. Cross-border exchange of administrative data for administrative purposes	12
4. Cross-border recovery of administrative fines and recovery claims	14
5. Cross-border exchange of data from the population register for administrative purposes	16
6. Cross-border exchange of police data for administrative purposes	17
7. Cross-border exchange of other criminal record data and other judicial information for administrative purposes.	19
8. Cross-border exchange of financial data for administrative purposes.	21
9. Cross-border exchange of social security data for administrative purposes	23
10. Cross-border consultation of public sources	25
11. Overview of 'good practices' in practice	27
Part II: Awareness development for an (international) administrative approach	31
1. Belgium	31
2. North Rhine-Westphalia	32
3. The Netherlands	34
Part III: Recommendations	36

1 Introduction

This is the final report on the activities of the Euregional Information and Expertise Center (EURIEC) in the period from 1 September 2019 until 31 August 2021. The EURIEC project was made possible thanks to grants from the European Union and the Dutch Ministry of Justice and Security. The countries/regions that participated in the project are North Rhine-Westphalia, Belgium and the Netherlands. The working area was established as the border areas between these three countries/regions. However, some cases that did not directly relate to the border area were also taken on.

We gained insight during this period, based on case studies, into the options and challenges regarding cross-border exchange of information for the purpose of the administrative approach to organised crime. This constitutes a first step towards enabling international information exchange for administrative purposes. Nevertheless, the need for international cooperation and information exchange for administrative purposes in practice remains.

To this end, the European Union has granted the EURIEC funding to continue the project from September 2021 until September 2023. The findings from the first two project years will form the foundation for the implementation of years three and four. The bottlenecks that have come to light will be shared with the responsible government partners and, where possible, efforts will be made to adapt legislation and regulations at the national and European level to enable cross-border information exchange for administrative purposes.

This final report describes the EURIEC's findings in brief.

The report is divided into three parts:

- **Part I** contains both a table and descriptions of the current opportunities for and obstacles to cross-border information exchange, divided into themes.
- **Part II** shows the developments in awareness in the three countries (Germany, Belgium and the Netherlands).
- **Part III** contains recommendations and Part IV offers a short description of the contribution of science.

Before giving a description of the findings, here is a brief description of how the EURIEC came into being.

How was EURIEC established?

In the context of the intergovernmental objectives of the Senningen 2013-2016 (Benelux) action plan, a working group on the administrative approach to organised crime was established on 28 November 2014 in Brussels and formalised by a letter of intent signed by Belgium, Luxembourg and the Netherlands. One of the outcomes of this working group was the Tackling Crime Together report (2016), which describes the approach to OMGs in Belgium, the Netherlands, Germany and Luxembourg, and calls for closer cooperation. One of the recommendations in this report was to set up a pilot with a multidisciplinary information and expertise centre in the Meuse-Rhine Euregion, modelled after the Dutch Regional Information and Expertise Centers (RIECs).

This recommendation was reiterated in the Council Conclusions on the administrative approach to organised crime, which the JHA Council adopted under the Dutch presidency of the EU in June 2016. Here again, there was a call to gain experience through a pilot with a cross-border multidisciplinary information and expertise centre based on concrete cases with the possibilities and impossibilities of the cross-border administrative approach and the information exchange that is required to this end.

Assignment

During a symposium on 17 May 2018 in the Gouvernement of the Province of Limburg in Maastricht, Minister Jan Jambon (Security and Home Affairs Belgium), Innenminister NRW Herbert Reul and Ferdinand Grapperhaus (Justice and Security Netherlands) signed a letter of intent that emphasised their wish to strengthen the cooperation with a view to improving the exchange of information in the context of the administrative approach between Belgium, North Rhine-Westphalia and the Netherlands.

In this context, they aimed to set up a Euregional Development and Expertise Centre (EURIEC for short) for the administrative approach to organised crime. They instructed the RIEC Limburg to give substance to the Euregional Development and Expertise Centre in consultation with the Belgian ARIECs and an agency (to be determined) in North Rhine-Westphalia*

This action plan aimed to give substance to the establishment of this centre.

* the Ministry of the Interior of North Rhine Westphalia asked the Bezirksregierung Köln to represent them in the EURIEC project.

(Source: EURIEC action plan, February 2019)

Brief overview of the project results

The general aim of the EURIEC is to handle concrete cases in order to gain experience with the possibilities and challenges that arise in the cross-border administrative approach and the information exchange it requires. In order to collect cases, the first step was to raise awareness about the administrative approach and the need for more cross-border cooperation. These goals were achieved through various activities, which are described in brief in the following paragraphs.

1. Raising awareness

During the first period of the EURIEC project, the EURIEC has built and maintained relationships with an extensive network of Belgian, Dutch and German professionals (administrative, financial, judicial and police) with whom it stays in close contact. In total, 221 meetings were held with a variety of government partners from the participating countries (e.g. workshops/webinars, meetings and presentations).

2. Handling concrete cases

Between September 2019 and September 2021, 122 cases with a cross-border element were submitted to the EURIEC. These cases were brought in by several EURIEC network partners: directly by the municipalities (sometimes as a result of awareness-raising activities), by the RIECs/ARIECs, and, in some cases, by other partners including the police or the public prosecutor. The support for the case studies consisted, on the one hand, of offering legal expertise and, on the other hand, of clarifying options/structures/processes in the participating countries.

The EURIEC set up expert platforms to solve these cases. These platforms brought together experts from several authorities (justice/investigation/administration) in order to explore practical solutions for cross-border information exchange. For some of these cases, legal support from the EURIEC proved sufficient to reach a conclusion. The findings resulting from these cases led to 26 (legal) guidelines (see www.euriec.eu).

3. Guide to the jargon in Belgium, Germany (NRW) and the Netherlands

Linguistic differences sometimes form an obstacle to cross-border cooperation. Certain terms have such a specific meaning in one country that partners in another country may not understand the word to mean the same after translation. In order to tackle these problems, the EURIEC has created an overview of jargon in Dutch, English, French and German. This overview contains the correct translations and, where necessary, an explanation of the national interpretation of a term.

4. Other results

- In certain cases, incidental expert platforms lead to more structural, cross-border expert platforms between administrative bodies in Belgium, NRW and the Netherlands. After all, it is useful for municipalities that have problems in common to keep in touch with each other.
- Publication of scientific contributions in professional journals
- Sounding board group/webinar with representatives from 63 organisations
- Case studies that result in knowledge and expertise about the opportunities and challenges in national and European legislation



Comments on the project

- COVID-19

Due to the measures imposed in the three countries as a result of the response to the COVID-19 pandemic, the majority of meetings/consultations in 2020, and some in 2021, happened online. The restrictive measures in the three countries were not synchronised: they varied in form and duration. Consequently, the convening of international consultations needed to comply with the measures in force in all participating countries.

This had consequences for the organisation of meetings as well as for personnel deployment from the different countries. This is why meetings were organised online during certain periods. In some cases, this form of consultation resulted in questions and a reluctance to share information, with no significant impact on the project, however. Nevertheless, in some cases, a reluctance to share information online was noted.

- Germany

North Rhine-Westphalia is one of the participants in the EURIEC project. The findings in the various cases have been tested against legislation and regulations that apply in NRW. These findings are not necessarily valid for other federal states in the Federal Republic, but can nevertheless serve as a guideline for other federal states.

- Personnel

Certain posts were temporarily vacant due to maternity leave and contract terminations. Please find an overview below:

- The position of lawyer in NRW was vacant between March and April 2020.
- The positions of lawyer (part-time) and account manager (part-time) in the Netherlands were vacant between 1 April 2021 and 1 September 2021.

- Languages

The different languages formed no obstacle while building the network and organising expert platforms and other meetings. For most meetings, it was agreed that everyone would speak their language and that the participants were to indicate where translation was needed.

At larger meetings, such as the sounding board group, interpreters were deployed to enable the general public to participate in their language.

- Conferral of powers

Three countries, three forms of government. Three different types of conferral of powers. As a result, the tasks and powers of the various governments in the three countries are not always aligned. Legislation and regulations are now focused on the exchange of information between comparable organisations such as: Police NL - Police DE - Police BE.

Part I: Current opportunities for and obstacles to cross-border information exchange

In the following paragraphs, the possibilities and bottlenecks for the cross-border exchange for the administrative approach to organised crime with regard to different types of data are described. Due to the diversity of the issues submitted to the EURIEC, the cases and issues were categorised according to themes.

During the initial phase of the project, the EURIEC studied the possibilities and bottlenecks regarding the cross-border exchange of the following types of data:

- a) Cross-border exchange of administrative data
- b) Cross-border exchange of administrative fines and recovery claims
- c) Cross-border exchange of the population register
- d) Cross-border exchange of police data
- e) Cross-border exchange of judicial data (e.g. criminal record data)
- f) Cross-border exchange of financial data
- g) Cross-border exchange of social security data
- h) Consultation of information through the use of (semi) public sources

Below is a schematic overview per country of the possibilities and bottlenecks per type of data. This is followed by a more detailed overview of the possibilities and challenges of international information exchange per type of data for the administrative approach to organised crime. The legal background of these findings can also be consulted on the EURIEC website (www.euriec.eu).

1. Overview

	International	Belgium	NRW	The Netherlands
Administrative data	<p>No convention to regulate the exchange of administrative data</p>	<p>Not possible</p> <p>No legal ground for the exchange of personal data with (foreign) municipalities</p> <p>Exchange of company data possible in principle</p>	<p>Not possible</p> <p>No legal ground for the exchange of personal data with (foreign) municipalities</p> <p>Exchange of company data possible in principle</p>	<p>Not possible</p> <p>No legal ground for the exchange of personal data with (foreign) municipalities</p> <p>Exchange of company data uncertain as a result of a duty of confidentiality</p>
Administrative claims	<p>Regarding administrative fines, Framework Decision 2005/214/JHA on the application of the principle of mutual recognition to financial penalties provides a useful international framework</p>	<p>Possible</p> <p>Collecting administrative fines is possible. For some fines, the principle of double incrimination will need to be met</p>	<p>Not possible</p> <p>Collecting administrative fines is possible. For some fines, the principle of double incrimination will need to be met</p>	<p>Possible</p> <p>Collecting administrative fines is possible. For some fines, the principle of double incrimination will need to be met</p>
	<p>An international framework for recovery claims is lacking</p>	<p>Recovery of claims is not possible due to the absence of an international framework</p>	<p>Recovery of claims is not possible due to the absence of an international framework</p>	<p>Recovery of claims is not possible due to the absence of an international framework</p>

	International	Belgium	NRW	The Netherlands
Data from the population register	<p>There is no convention to regulate the exchange of data from the population register</p>	<p>Not possible</p> <p>In order to facilitate cross-border information exchange, legislation and regulations concerning the national register and population registers need to be adapted</p>	<p>Possible</p> <p>Requests from foreign municipalities for access to information from the population register will, in most cases, be approved</p>	<p>Possible after adjustment of municipal regulations</p> <p>In most cases, such an adjustment has not yet taken place, meaning that the exchange will not (yet) be possible in practice</p>
Police data	<p>Various international treaties that make it possible to pass on information via police services for other purposes. Two conditions for passing on information:</p> <ol style="list-style-type: none"> 1. Consent from the issuing police service 2. Passing on information must be regulated by national law 	<p>Not possible</p> <p>There is no national legislation that allows cross-border passing on of information for administrative purposes</p>	<p>Possible</p> <p>There is national legislation that allows passing on information cross-border for administrative purposes, in certain cases</p>	<p>Not possible</p> <p>There is no national legislation that allows cross-border passing on of information for administrative purposes</p>

	International	Belgium	NRW	The Netherlands
Criminal records data and other judicial information	<p>Member States can mutually exchange criminal convictions via the European Criminal Records Information System (ECRIS). National law determines whether this data may also be provided for purposes other than criminal law</p>	<p>Foreign local authorities cannot obtain direct access to criminal records data.</p> <p>If necessary, they can try to obtain information in the context of the administrative approach using the U-turn past the Public Prosecution Service</p>	<p>In highly exceptional cases, criminal records data may be communicated to foreign municipalities. In principle, however, such data will need to be requested from the data subject themselves</p>	<p>The provision of criminal record data is possible in cases where this information could also be provided within the Netherlands in the context of the administrative approach</p>
Financial data	<p>Various international treaties that make it possible to pass on information via the tax administrations for other purposes.</p> <p>Two conditions for passing on information:</p> <ol style="list-style-type: none"> 1. Consent from the issuing police service 2. Passing on information must be regulated by national law 	<p>Not possible</p> <p>There is no national legislation that allows cross-border passing on of information for administrative purposes</p>	<p>Possible in certain cases</p> <p>In the framework of an overriding public interest, data may be provided, for example, if there are concrete data to indicate the untrustworthiness of a trader</p>	<p>Only possible in highly exceptional cases</p> <p>National legislation that allows cross-border passing on of data for administrative purposes is usually lacking</p> <p>May be allowed in the context of environmental protection or safety at work</p>

	International	Belgium	NRW	The Netherlands
Social data	<p>The exchange of social data is regulated by several bilateral and European treaties. Passing on these data for the purposes of the administrative approach should, however, be determined by national legislation</p>	<p>In principle, foreign authorities are able to join the Crossroads Bank for Social Security</p> <p>To do so, however, the authorities need access to the national register, which is currently not yet possible</p>	<p>Social data may be provided in a limited set of cases, for example, if social benefits fraud is suspected.</p> <p>An additional condition is that the foreign authority must have a function that is similar to German authorities to whom such data is provided</p>	<p>In the Netherlands, social security data may be provided to other services if there is a compelling public interest</p>
Public sources Insolvency data		<p>No central insolvency register, but bankruptcies are published in the Belgian State Gazette and on commercial websites.</p>	<p>Bankruptcies are announced at the competent local court. These announcements can be found on a central website.</p>	<p>Insolvency data may be requested via the Central Insolvency Register up to six months after the successful termination of the insolvency</p>

	International	Belgium	NRW	The Netherlands
Public sources Land registry data		After an application to a central service, data may be obtained about a person's immovable property, such as the purchase price and mortgage sum	No central service that retains land registry data. The data is kept decentralised at the Amtsgerichte of the federal states. As a result, it is not possible to obtain an overview of all immovable property owned by a person	Dutch land registry data can be consulted straight away via a website. There is no need to submit an application
Public sources Company details		Company data can be consulted via the Crossroads Bank for Enterprises. For an overview of all companies in which a data subject is involved, an application must be submitted and access must be obtained to the National Register	Company data can be consulted via the Unternehmensregister. It is not possible to obtain an overview of all companies in which a subject is involved	Company data can be consulted via the Chamber of Commerce. Foreign municipalities cannot obtain an overview of all companies in which a subject is involved

2. General Data Protection Regulation and lack of national legal grounds for information exchange

Before examining the possibilities and bottlenecks for different types of data more closely, a recurring topic that often forms a bottleneck is discussed: data protection and the lack of national legal grounds. After all, the General Data Protection Regulation (GDPR) states that the exchange of information must always comply with certain principles.

Two of these principles often prove problematic for the cross-border exchange of data with a view to the administrative approach, due to a lack of national legislation: the principle that a disclosure must be based on an explicit legal ground, and the purpose limitation principle.

As regards the explicit legal ground, it appears that, in many cases, legislation in Belgium, the Netherlands and North Rhine-Westphalia is still based on the principle that safeguarding public order is the task of bodies such as the police and the Public Prosecution Service. The administrative approach is a (relatively) new approach in many countries, which means that legal grounds that explicitly deal with the exchange of data are often lacking. This is a problem that not only affects international data exchange, but often also occurs at the national level, where it is sometimes unclear which information can be shared with other partners with a view to the administrative approach. This lack of legal ground for the (inter)national information exchange results in legal uncertainty and may lead to a certain level of caution regarding the sharing of information.

In addition, it appears that the purpose limitation principle can also form a bottleneck to the cross-border exchange of data. This principle states that the purpose for which information is (re)used must be compatible with the purpose for which the information was collected originally. In certain cases (e.g. data from the population register) information will initially not always have been collected with a view to the administrative approach. As a result, it will always need to be considered whether the two goals (that of the original collection and the goal of the administrative approach) are close enough to each other. The concrete implementation of this consideration will often depend on the data protection officers and can also lead to certain officials being of the opinion that information can be exchanged, while this would not be possible according to others.

3. Cross-border exchange of administrative data for administrative purposes

General description and problem

Processing and provision of administrative (personal) data falls under the General Data Protection Regulation (GDPR). As a result, data processing needs to comply with certain principles, such as the purpose limitation principle and the need for a legal ground. These principles often pose a problem when it comes to the provision of administrative data, due to a lack of legal ground or the fact that the data was initially collected for a different purpose.

*Number of cases in which this problem occurred: 24
A foreign subject applies for a license in a municipality. The municipality wants to know whether the subject has applied for a license abroad in the past and whether this license application was granted or not.*

In a municipality, a building is administratively closed down after the discovery of a drugs lab. The subject runs an establishment that requires a license just across the border. The municipality where the drugs lab was discovered now wants to transfer this information to the foreign municipality where the subject has a license.

European and international regulations

There is currently no overarching international treaty that explicitly addresses the exchange of administrative data for the administrative approach to organised crime. This is remarkable, since such conventions do, in fact, exist for the cross-border exchange of data between police services, judicial services or tax administrations. One possible explanation is the fact that not all local authorities are yet aware of the role they can and should play in the fight against organised crime.

The literature cites the European Convention on the Obtaining Abroad of Information and Evidence in Administrative Matters as a possible international convention that could serve as a ground for the cross-border exchange of administrative data. The EURIEC has examined to what extent the convention may apply to a possible cross-border exchange of administrative data, in theory and in practice. This examination showed that the convention and its transposition into national legislation do not meet the conditions set by the GDPR. In addition, in practice it turned out that the governments were reluctant to apply this convention since it is relatively old and had not been used.

Cross-border provision of administrative data

The transfer of administrative data from a domestic municipality to a foreign municipality is generally not possible in any of the three countries due to the lack of explicit legal grounds and potential violations of the purpose limitation principle or specific duties of confidentiality, as contained in data protection legislation. The 'informal' exchange of information through close contacts between individual employees of different public authorities, as occurs regularly in practice, is also fully subject to the legal requirements of the GDPR. This means that even in the event of an informal data exchange, the GDPR requirements must be met, e.g. a lawful ground for processing. However, such a legal ground often does not exist in cases relating to the administrative approach and enforcement.

In principle, data of legal entities do not fall under the conditions cited in the context of the GDPR. Nevertheless, they may exceptionally fall under this if the data of the legal person is closely related to the data of a natural person, e.g. where the name of a natural person appears in the name of a company, and also in the case of partnerships (sole traders, general partnerships).

Freedom of information laws

Regulations in Belgium, North Rhine-Westphalia and the Netherlands make it possible for citizens to request the government to disclose certain information and thus to invoke the freedom of information laws. While various grounds exist for refusal of such requests, foreign municipalities can also submit such a request in the three countries, in principle. There is a risk, however, that personal data would be anonymised. In addition, the foreign municipality should already know in that case in which foreign municipality the relevant person has/had activities.

Furthermore, thanks to a recent legal authorisation, foreign municipalities in North Rhine-Westphalia can request access to the German Central Commercial Register (Gewerbezentralregister) at the Bundesamt für Justiz for tasks that relate to commercial law. This register contains information about all business activities and German entrepreneurs, including, for example, information about government decisions to prohibit a company from continuing its activities due to the untrustworthiness or unsuitability of an entrepreneur. In a case that was supervised by the EURIEC, such information had already been communicated to a foreign municipality.

Options

- Administrative data that contains information about company names that cannot be directly traced back to individuals may in certain cases be shared cross-border.
- In North Rhine-Westphalia, foreign municipalities may access the Gewerbezentralregister in similar cases to German municipalities. This may be the case if a foreign municipality needs to assess a person's reliability, e.g. when granting a license. The Gewerbezentralregister contains, inter alia, information about decisions to refuse a trading license regarding a specific person. For more information on the Gewerbezentralregister and access for foreign municipalities, please refer to the EURIEC website.
- The fact that in both the Netherlands and Belgium, inter-municipal information sharing is increasingly receiving attention, can also be translated into legislative changes.

Barriers

- There is no national legal framework for the cross-border exchange of administrative information in Belgium, North Rhine-Westphalia and the Netherlands. As a result, exchange of personal data contained in administrative documents is impossible.
- A clear and overarching international framework for the exchange of administrative information is also lacking.

Conclusion

Due to a lack of national as well as international legislation, in most cases it is currently not possible to share administrative information and personal data with foreign local authorities. While sharing company data can offer a solution in some cases, adapting national and international legislation will be necessary to make the exchange of managerial data possible in the future. For a more detailed description of the legal possibilities and obstacles, please download the EURIEC Memorandum 'Cross-border exchange of administrative data'.

4. Cross-border recovery of administrative fines and recovery claims

General description and problem

Governments in Belgium, North Rhine-Westphalia and the Netherlands sometimes have claims against subjects based on different laws and regulations. Clear and relatively well-known rules are in place for the recovery of a variety of claims, including when it comes to cross-border recovery (e.g. private law claims and the recovery of taxes).

In addition, municipalities may also have claims such as administrative fines and recovery claims, however. Nevertheless, the possibilities regarding the cross-border collection of penalty payments, recovery claims and administrative fines are still unknown territory for most local authorities. These claims will nonetheless occur most often in the context of the fight against organised crime and, in practice, it appears that such claims are not collected or only partially collected when there is a cross-border element. For example, recovery often proves difficult when the subject on whom the sanction has been imposed turns out to have moved abroad subsequently. As a result, municipalities are more likely, in such cases, to choose to simply write off the fine in their accounts and therefore not collect it. Criminals are aware of this and use it to their advantage. The EURIEC has mapped out the possibilities and obstacles for collecting cross-border penalty payments, recovery claims and administrative fines.

Number of cases in which this problem occurred: 10

Case: A subject who was already in the picture for organised crime has outstanding claims because he acted in violation of the zoning plan. The subject refuses to pay these fines. Meanwhile, the subject has moved abroad but the municipality still wants to be able to collect the fines.

European and international regulations

The enforcement of penalties/claims is regulated by several European treaties. Most of these treaties deal with the exchange of decisions on criminal, civil and commercial matters, however, and not claims regarding administrative matters. Nevertheless, some of the treaties and decrees dealing with criminal matters are open to broad interpretation, to allow certain administrative sanctions to fall within the scope as well.

The international instrument that appears to offer the most possibilities for the cross-border recovery of administrative sanctions is Framework Decision 2005/214/JHA on the application of the principle of mutual recognition to financial sanctions. This Framework Decision only deals with administrative sanctions of a punitive nature. Administrative fines in Belgium, North Rhine-Westphalia and the Netherlands therefore generally fall within the scope of the Framework Decision, while remedial measures, such as the payment of a penalty, will not fall under this. After all, since remedial measures lack the punitive nature, they cannot therefore be referred to as a sanction.

The cross-border recovery of administrative sanctions and administrative fines

Under the Framework Decision 2005/214/JHA, administrative sanctions can, in principle, be claimed on a cross-border basis since they meet the conditions set out in the Framework Decision. In order to ensure that this recovery process runs smoothly, each EU Member State was asked to designate an authority or authorities. These authorities are responsible for the implementation of the Framework Decision and can therefore be approached to enable the collection of administrative fines. The competent authorities for Belgium, North Rhine-Westphalia and the Netherlands are:

- Belgium: the public prosecutor who is competent in the district where the relevant person resides
- North Rhine-Westphalia: Bundesamt für Justiz in Bonn
- The Netherlands: The Public Prosecutor of the district of the Northern Netherlands, affiliated with the Central Judicial Debt Collection Agency

Under Belgian and North Rhine-Westphalia legislation, in foreign cases where administrative fines are outstanding, the administrative fines can, in many cases, be collected in Belgium and North Rhine-Westphalia. For several criminal offences and administrative violations, however, the double incrimination principle should be assessed. In the Netherlands, the list of fines based on violations that can be collected cross-border is very limited as a result of a restrictive list of punishable violations. Most administrative sanctions are not listed, which makes cross-border recovery more difficult. As a result, Dutch municipalities will in principle be unable to collect any claims as a result of administrative sanctions by Belgian or German governments.

Unlike recovery claims such as an incremental penalty payment, there is no international framework which could be used for the cross-border recovery of recovery claims. As a result, collecting cross-border recovery claims will be impossible in such cases.

Options

- Because a European Framework Decision monitors the cross-border collection of financial sanctions, administrative fines can also be collected across borders in many cases. Authorities have been designated for this collection and its implementation in Belgium, North Rhine-Westphalia and the Netherlands as the central responsible points for such requests.

Barriers

- In principle, however, the sums of administrative fines recovered cross-border accrue to the state that performs the recovery. As a result, foreign governments may be less inclined to make use of this option. The Framework Decision also offers the option to deviate from this principle, however, by concluding agreements between the Member States. There are currently no agreements between Belgium, North Rhine-Westphalia or the Netherlands that stipulate such a different distribution.
- Recognition and collection are possible for a number of offences without having to check whether the acts are punishable in both countries (e.g. fraud and money laundering). In other cases, such as administrative fines, there must be acts that are punishable in both countries or may give rise to an administrative fine. Municipal employees often have insufficient knowledge of administrative fines abroad to know whether these violations are also punishable abroad, however.
- Dutch administrative fines in the framework of administrative enforcement cannot be collected cross-border as they are not included in the list of financial sanctions that qualify for the Framework Decision and, therefore, cross-border collection..
- An international framework for the cross-border collection of recovery claims is lacking. As a result, incremental penalty payments, for example, cannot be collected abroad.

Conclusion

The Framework Decision 2005/214/JHA offers possibilities for the cross-border collection of administrative fines. In practice, however, some modalities still need to be elaborated in national legislation to ensure that collection runs smoothly in practice. For a more detailed description of the legal possibilities and potential obstacles, we refer you to the EURIEC Memorandum 'Cross-border collection of administrative fines and recovery claims'.

5. Cross-border exchange of data from the population register for administrative purposes

General description and problem

Information about residents' names and places of residence is often considered essential basic information that an authority must have in order to perform its tasks effectively. As a result, the data collected by the civil registry constitutes an important basis for measures to combat organised crime in the framework of the administrative approach.

The population registers generally collect the following information: name and address of a person, date of birth, place of residence, nationality and marital status. Municipalities usually hold this data about their citizens, but information about foreign citizens is generally not included in population registers. This is why it is useful for local authorities to obtain information from foreign population registers as well in certain cases.

*Number of cases in which this problem occurred: 16
The building of a subject who lives abroad is administratively closed down after a drugs discovery. Following the drugs discovery, the subject moved abroad. The municipality now wants to notify the subject about the decision on the closure, but does not know the subject's new address.*

European and international regulations

Unlike many other legal matters that are relevant to the exchange of information in the fight against organised crime, legislation on population registers has not yet been explicitly harmonised under European regulations. This means that particular attention will need to be paid to national legislation. Naturally, when providing data from the population register, the principles described in the GDPR must be taken into account.

Cross-border provision of administrative data

The legal options for transferring registration data by the registration authorities to foreign municipalities vary greatly from country to country.

In North Rhine-Westphalia, for example, foreign municipalities may request access to information from the population register. In most cases, such an application will be approved, allowing foreign municipalities to access information from the German population register.

This is in contrast to Belgium and the Netherlands, where certain obstacles exist to the provision of information from the population register.

In Belgium, foreign authorities are currently unable to access the National Register or the municipal population registers since there are no legal provisions governing access by foreign authorities. As a result, the exchange of data from the population registers is not possible. In the Netherlands, data from the municipal civil status registers may only be provided to foreign authorities if the municipalities designate foreign authorities as permitted addressees in their own regulations. Since many Dutch municipalities have not (yet) done this in practice, data transmission is not yet possible in such cases.

Options

- In Belgium, any person can request their personal copy from the population register. By requesting such copies from e.g. permit applicants, foreign municipalities are nevertheless able to obtain information.
- In North Rhine-Westphalia, data provision from the population register is possible under the same conditions as for private third parties, and in many cases also under the same conditions as for domestic authorities.
- In the Netherlands, the provision is possible if foreign authorities are included in the municipal ordinances as permitted addressees. This can differ from municipality to municipality, in other words.

Barriers

- In Belgium, direct exchange between municipalities is not possible due to a lack of provisions that allow access to foreign authorities as well.
- Many Dutch municipalities have not included foreign administrative bodies in their regulations as actors to whom access may be granted.
- In the three countries concerned, the information may only be provided by the competent Civil Affairs/ Population services, and not the services that are responsible for public order.
- In all the legal systems examined, passing on information from the population register is only possible if the addressee would also be able to gain access to the information in the population register of the providing country.

Conclusion

There are significant differences in the ability to provide cross-border information from the population registers. In North Rhine-Westphalia, information from the population registers can be shared cross-border. In Belgium and the Netherlands, cross-border exchange is currently still impossible.

For a more detailed description of the legal possibilities and potential bottlenecks, we refer you to the EURIEC Memorandum 'Cross-border exchange of data from the population register'.

6. Cross-border exchange of police data for administrative purposes

General description and problem

In the context of the administrative approach, local authorities will often base their decisions on specific police information. However, if the person against whom the administrative body wants to enforce is a foreign citizen, the question is whether it is possible to obtain information from foreign police services in the context of the administrative approach against organised crime.

Number of cases in which this problem occurred: 28
During a house search, a cannabis plantation is discovered. At the time of that police raid, the subject had moved their goods abroad. The police now wishes to inform the foreign municipality.

European and international regulations

With the exception of the renewed, but not yet entered into force, Benelux Police Convention, none of these conventions or regulations of the EU or other international institutions contain a provision that explicitly provides for the exchange of police data for administrative purposes. Nevertheless, almost all of these conventions provide for the possibility of providing police data for purposes other than those (criminal law) purposes specified in the convention, provided that there is permission from the providing authority and this is in accordance with the national legislation of the providing and receiving Member States. In other words, the cross-border exchange of police data for administrative purposes is possible if the national authorities give permission and the exchange is regulated in national legislation.

Cross-border provision of police data

Directly passing on police data that a municipality receives in the context of the administrative approach to another foreign municipality is not possible due to a lack of legal regulations in this regard.

The provision by the police to a foreign municipality in the context of the administrative approach will not be possible either in most cases. In addition, there is the question of whether such provision is desirable. After all, in this way it could happen that the foreign municipality has more information than the foreign police service. Therefore, the provision by the police service to the foreign police service, which in turn provides the information to the foreign municipality, appears the most appropriate solution. As described above, various conventions state that for this type of passing on of data it must be stipulated, among other things, that the national authorities can give permission for it. However, such national regulations are lacking in the three countries studied. In North Rhine-Westphalia, the German police could give permission to pass on information to a foreign municipality, but only in the context of maintaining public safety. It is doubtful whether the German police believe that this definition could cover the administrative approach.

Options

- Although national legislation often prevents provision of police data for administrative purposes, international police conventions do offer opportunities. This option can be used by amending the relevant national legislation.
- German national legislation offers a certain – albeit limited – scope to provide German police data to or for the benefit of Belgian and Dutch administrative authorities.

Barriers

- In order to enable cross-border exchange of police data for administrative purposes, amendments to national legislation in Belgium, North Rhine-Westphalia and the Netherlands will be required.

Conclusion

Providing or passing on police data for purposes other than criminal law purposes is possible under certain conventions. However, there must be a national legal ground to be able to give permission for such provision or passing on of data. Such a legal ground is, however, lacking in most cases. As a result, the provision of police data in the context of the administrative approach will often be impossible.

For a more detailed description of the legal possibilities and potential obstacles, we refer you to the EURIEC Memorandum 'Cross-border exchange of police data'.

7. Cross-border exchange of other criminal record data and other judicial information for administrative purposes.

General description and problem

Data such as information on criminal records or data about ongoing investigations can be very useful for the administrative approach to organised crime by the municipalities. In domestic situations, such data is exchanged with municipalities in certain cases. It is often unclear, however, whether this information can also be exchanged with foreign municipalities in cross-border cases.

*Number of cases in which this problem occurred: 15
A subject who resides abroad wants to open a shisha bar and requests a license to this end. Since it concerns a foreign subject, the local authorities do not know whether they will be able to obtain information about the criminal history of a subject.*

As part of an ongoing investigation abroad, investigations are underway in a municipality. The municipality would now like to find out the results of that investigation in order to be able to take administrative action if necessary.

European and international regulations

Since 2009, European laws and regulations regarding the exchange of information from the criminal records between Member States have been vastly improved. Member States can mutually exchange criminal convictions via the European Criminal Records Information System (ECRIS). Each Member State had to designate a central authority to this end. These central authorities do not have direct access to each other's criminal records, but can, through ECRIS, send information requests to the central authority of the other Member State. This system can also be used in the context of the administrative approach to organised crime. After all, an attempt can be made to request the cross-border provision of criminal records data for a purpose other than criminal proceedings. For such requests, national law determines whether the data can be provided.

The central authorities are:

- Belgium: Central Criminal Register Service
- North Rhine-Westphalia: Bundesamt für Justiz
- The Netherlands: Judicial Information Service (Justid)

In addition, the General Data Protection Regulation and the Data Protection Directive by the police and judicial authorities also apply to the exchange of personal data such as criminal records data.

Cross-border exchange of criminal records information

In Belgium, local authorities generally do not have direct access to criminal records data. As a result, foreign municipalities cannot access Belgian criminal records data. However, foreign municipalities may, in the context of a license, ask the relevant person to provide an extract from the criminal records. Another possibility is exchange via the police services, who can ask the foreign police service, in turn, to transfer the information to the foreign municipality. However, the “Cross-border exchange of police data” memorandum shows that this is currently often impossible.

In North Rhine-Westphalia, criminal records data can be communicated to foreign municipalities via ECRIS, in very exceptional cases. In principle, such data should always be requested from the data subject themselves. If the data subject does not request a copy themselves or if it seems inappropriate to request the copy from the data subject, criminal records information can be provided cross-border.

In the Netherlands, the provision for purposes other than criminal law is possible in cases in which the data may also be provided within the Netherlands, e.g. taking administrative decisions or applying for a Certificate of Good Conduct.

Cross-border exchange of other judicial data

Judicial decisions

Several international and European law instruments exist that set conditions regarding the transparency of court rulings, including the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR). It follows from these conventions that a decision must be made in public, or that the decision must be made public in a publicly accessible register. Most of these instruments do not set rules regarding the manner in which disclosure should take place. There is no clear line, for example, regarding the anonymisation of the (personal) data of parties to the proceedings. How the provision of judicial decisions to parties not involved in the proceedings is handled and to what extent the decisions are anonymised therefore depends largely on national legislation.

The principle of public access to judgments may conflict with the principle of the right to respect for private life. As a result, in most cases in Belgium, North Rhine-Westphalia and the Netherlands it is not possible for a third party who is not directly involved in the legal dispute to obtain a copy of the judgment that has not been anonymised.

Information about ongoing investigations

According to the EURIEC, information about ongoing investigations could, in certain situations, be shared by Belgian, German and Dutch public ministries with the foreign municipalities. In addition, one could argue that a U-turn could also be used via the foreign prosecutor’s office.

Options

- In certain cases, international and national laws and regulations offer scope for the provision of criminal record information for administrative purposes.
- Other judicial data, e.g. information about ongoing investigations and judgments, may also be shared with foreign governments in certain cases.

Barriers

- Discussions with central authorities show that requests to use criminal record data for administrative purposes often receive a negative response. This is due to the considerable differences in the options for administrative approach in the national legislation of the three countries. As a result of these obstacles, foreign municipalities are not always able to obtain information about a subject's criminal history.
- Since municipalities currently make little use of the available options, a clear picture of the options and possible response from foreign central authorities is not available. Given that provision of judgments is mainly anonymised, the usefulness/added value for a municipality is limited.

Conclusion

In theory, certain international instruments such as the ECRIS offer possibilities to provide criminal records information cross-border. In practice, however, it often appears that national regulations make it difficult or impossible to exchange such data for the purpose of the administrative approach to crime. In addition, data about ongoing investigations can also be shared with a foreign municipality in certain cases.

For a more detailed description of the legal possibilities and potential bottlenecks, we refer you to the EURIEC Memorandum 'Cross-border exchange of criminal records data another other judicial data'.

8. Cross-border exchange of financial data for administrative purposes.

General description and problem

Tax administrations have a wealth of information about the financial situation of individuals and companies at their disposal. This information can also be very useful for administrative bodies in the framework of the approach to organised crime. However, since financial data is often subject to a certain duty of confidentiality, the (cross-border) provision of financial data is not self-evident.

Number of cases in which this problem occurred: 19
A company owned by suspicious subjects may potentially be laundering money by transferring money to and from foreign accounts. There is little activity on the business premises proper, so it appears possible that the foreign accounts are also used to launder money. Therefore, information from abroad about the money flows to and from the company and those involved in it would be useful in order to create a clearer picture and to prevent the company from being used to launder money.

European and international regulations

The use of tax data for the administrative approach to organised crime is not regulated in the most important international legal texts related to the exchange of tax information. However, based on some conventions and agreements, information provided for tax proceedings can be used for other purposes as well, provided that the original providing authority gives permission for further provision and that the national legislation of the transmitting as well as the receiving State permits such further use.

Cross-border provision of financial data

In some countries, municipalities can access financial data. However, the provision of this financial data to foreign municipalities is not possible in Belgium, North Rhine-Westphalia and the Netherlands. There is either no legal ground for provision, or provision would conflict with the purpose limitation principle of the GDPR.

Provision of tax information by a tax authority to a foreign tax authority, which subsequently provides the information to a foreign municipality, is possible in certain cases. International regulations stipulate that passing on tax data that was provided to foreign tax administrations, is also permitted for purposes other than those of the tax procedure. In this regard, the principles have been harmonised between the three countries. As a minimum, the law of the country that originally provided the information should allow its use for non-tax purposes and the authority that provided the information originally should agree to its further use.

The latter conditions often present a problem for passing on information in the context of the administrative approach, since the regulations in Belgium, North Rhine-Westphalia and the Netherlands only allow such use for their own administrative authorities in rare cases. An example of this is in the Netherlands, where the forwarding of financial data may be permitted in the context of environmental protection or safety at work. In the context of an overriding public interest, tax data may be passed on, for example, if there are concrete facts to indicate the untrustworthiness of a trader.

Lastly, in most cases, it is possible to obtain information about the immovable property of specific persons via (semi) public databases in the three countries. This possibility is discussed in the chapter on consultation of public sources.

Options

- Under EU and international law, tax data provided to other tax authorities may, in principle, also be used for purposes other than tax procedures.
- In the Netherlands, administrative decisions may stipulate that an administrative decision is based on, or has been taken in connection with, tax data. This means that, in highly exceptional cases, it is possible to transfer such decisions across borders, although the principles of GDPR must always be considered in doing so.

Barriers

- In the Netherlands, Belgium and North Rhine-Westphalia, there is no explicit legal ground for domestic municipalities to provide tax data to foreign municipalities or for tax authorities to provide tax data directly to foreign municipalities.
- In Belgium, a lack of regulations prevents the provision or passing on of tax information.
- In the Netherlands and North Rhine-Westphalia, tax data may only be exchanged in a handful of narrowly defined cases. Consequently, virtually no options are available to use tax data for administrative purposes after a transfer from the domestic to the foreign tax authorities.

Conclusion

With the exception of a few very rare cases, cross-border provision of financial data for the administrative approach is not yet possible because the legal ground for such provision or passing on of data is lacking in the national legal systems. For a more detailed description of the legal possibilities and potential bottlenecks, we refer you to the EURIEC Memorandum 'Cross-border exchange of financial data'.

9. Cross-border exchange of social security data for administrative purposes

General description and problem

The citizens of Belgium, North Rhine-Westphalia and the Netherlands can make use of social security. One of the objectives of social security is to provide benefits for certain risks such as illness, unemployment and pensions. However, criminals also make use of these social security systems and sometimes abuse the current systems. In some cases, this is not a purely domestic situation. In many cases, criminals who are involved in organised crime use the dismantling of national borders to commit benefit fraud. For example, unemployment benefits are wrongfully obtained, or social contributions owed are evaded through undeclared work. Therefore, the administrative approach to combating organised crime should also consider the possibilities for cross-border exchanges with a view to combating organised crime.

*Number of cases in which this problem occurred: 11
The social inspection service checks the living and working conditions of migrant workers in collaboration with a municipality. This shows that the migrant workers live in appalling conditions and will need to relocate. There are indications that the persons have been transported to a building just across the border where they may also be living in poor conditions. This information would be passed on to the municipality to which the migrant workers were relocated.*

European and international regulations

Various European or bilateral agreements improve the coordination of social security systems between the Member States of the European Union. The provisions of Union law and international law relating to the exchange of social security information can broadly be divided into two groups. On the one hand, certain regulations harmonise the exchange of data between social security institutions within the European Union. These regulations aim to improve the coordination of social security systems in response to the free movement of workers and the growing importance of this freedom. On the other hand, there are also bilateral treaties that address specific issues such as undeclared work, fraud or the misuse of social security benefits.

The exchange of social security data for the administrative approach to organised crime is not explicitly regulated in these legal frameworks. A provision explicitly regulating this use is currently not available. To pass on data under the social security data regulations, the national data protection law determines the data protection and thus also the possibility of further passing it on to other public authorities in the same Member State. It follows that if the respective legislation also provides for the possibility of use for the purpose of the administrative approach, the data provided may also be used for this purpose.

Cross-border exchange of social security data

In Belgium, much data related to social security is collected in the Crossroads Bank for Social Security. Public authorities can access the Crossroads Bank if they need the data for the performance of tasks of public interest assigned to them by law or if they need the data for the performance of their tasks assigned to them by law. Social security data can be provided or passed on after concluding an agreement. In addition, in the first instance it must also be ensured that foreign municipalities have access to data from the National Register, since the data from the Crossroads Bank for Social Data can be requested by means of the national register number.

In principle, German social security data fall under the Sozialgeheimnis, which means that social services are, in principle, not allowed to process personal data without permission. Passing on social security data as a form of processing can, therefore, only be considered if a legal provision allows for it. Such a legal ground exists, for instance, in cases where social benefits fraud is suspected. An additional condition is that the foreign authorities must have a function that is similar to German authorities to whom such data is provided.

In the Netherlands, social security data may be provided to other services if there is a compelling public interest. However, the law does not provide an explicit definition of the term 'compelling public interest'. According to the EURIEC, it can be argued that a provision to foreign government services and the fight against organised crime may fall under this concept. The EURIEC therefore holds the opinion that, in individual cases, data may also be exchanged with a view to the administrative approach. The provision of data should, however, always be weighed up against the data subject's interests.

Options

- For cases where social security data is provided to German courts, public prosecutors, police and security services, it can be argued that this information may also be provided to Belgian and Dutch municipalities. One condition here is that their task in a particular case must be similar to that of the German courts, public prosecutors, police or security services.
- In limited cases, social security institutions in the Netherlands and North Rhine-Westphalia may provide information to foreign municipalities in the framework of the administrative approach. This could also be possible in Belgium if the law is amended.
- Joint control operations between Belgium and the Netherlands are possible and have already been deployed.

Barriers

- There is no explicit legal ground for providing or passing on data for the administrative approach in the three countries.
- Social data is often specifically protected by, inter alia, professional secrecy.

Conclusion

Cross-border provision of social security data is possible in limited cases in North Rhine-Westphalia and the Netherlands, according to the EURIEC. The EURIEC is still on the lookout for additional cases to test the findings in more detail in practice.

For a more detailed description of the legal possibilities and potential bottlenecks, we refer you to the EURIEC Memorandum 'Cross-border exchange of social security data'.

10. Cross-border consultation of public sources

General description and problem

The previous chapters show that cross-border information exchange of data is not self-evident. That is why the EURIEC also studies which information can be obtained by foreign governments by consulting (semi) public sources. This information may also be useful for foreign governments, for example, to obtain an overview of the companies or properties a subject has abroad. The information that can be consulted in such (semi) public sources and the conditions for access often differ from country to country. Below is a brief overview of the various (semi) public sources and the possibilities for foreign governments to consult these databases. The EURIEC website has leaflets that go into more detail for specific databases and the information that can be requested via these databases.

Number of cases in which this problem occurred: 32
In the context of creating an overview, a municipality wants to find out more information about a foreign subject who seeks to open an establishment in the municipality. It concerns a project with a significant price tag. The municipality wants to have more background information on the subject to check that this project is not used to launder criminal money. This may involve information about real estate, company data and insolvency data.

Insolvency data

Data about a foreign citizen's bankruptcies can be useful for municipalities in order to prevent possible subversion. Belgium currently has no official national central insolvency register. An attempt can be made, however, to collect information about the financial situation of companies and private individuals through several public and private databases. For example, bankruptcies of legal entities are published in the Belgian State Gazette, with the disadvantage, however, that it is not possible to search for natural persons in order to obtain an overview of all bankruptcies of a particular subject.

Bankruptcies in North Rhine-Westphalia are pronounced by the competent local court. These pronouncements can be consulted on a central website. In North Rhine-Westphalia and Belgium alike, it is not possible to obtain an overview of all the bankruptcies of a specific person.

In the Netherlands, insolvency data can be requested via a Central Insolvency Register. Insolvency data can be consulted in this Register for up to six months after the successful conclusion of an insolvency. Afterwards, an extract from the Central Insolvency Register can be requested for a fee. In the Netherlands, it is not possible either to obtain an overview of all declared bankruptcies of a specific person via the Central Insolvency Register.

Land registry data

In general, land registry data is understood to mean: data relating to the immovable property of persons.

Foreign municipalities can request Belgian land registry data after submitting an application to a federal public service. Based on a person's name, a list of all immovable properties of that person in Belgium can be obtained, or more information about the owner of a particular address. In addition, data about the purchase price and mortgage data can also be requested (for a fee).

North Rhine-Westphalia has no central service that keeps land registry data. This data is kept decentrally at the Amtsgerichte (court for a specific judicial district) of the federal states. In addition, access can only be requested for a specific immovable property and it is therefore impossible to apply for an overview of all immovable property of a person.

Dutch land registry data can be consulted straight away via a website. In other words, this does not require an application. To consult more underlying information, however, it will be necessary to create a (paying) account on the website. In addition, an account must also be created in order to obtain an overview of all immovable property that a specific person owns.

Company details

Criminals will attempt to launder the money they earn from criminal activities. Companies are used for money laundering, inter alia. Therefore, municipalities may find it useful to obtain a more complete background on, for example, a license applicant.

In Belgium, the Crossroads Bank for Enterprises collects all basic data about companies and their establishments. Foreign governments may be given access to a public search function that has the option to enter the company name and provide information about it. The private search function can be used to obtain an overview of all companies for which the person is the manager. However, the foreign municipalities must submit an application to this end and must have the subject's national register number.

In North Rhine-Westphalia, the Unternehmensregister has a similar function. In principle, searching and consulting the business register does not require a registration. Registration is only required to access the annual accounts of small businesses. However, unlike the Belgian register, it is not possible to search for a specific person by name.

The Netherlands also has a central trade register: the Chamber of Commerce. This contains data on all companies, legal entities and other organisations in the Netherlands. Foreign government authorities can request certain basic data about a company for free via the Chamber of Commerce, but a paying account is required for more detailed information. Nevertheless, it is not possible to search for a specific person by name with a paying account.

Conclusion

It is difficult to make general statements regarding the consultation of foreign public sources by governments since the rules differ between the three countries. Nevertheless, it can be concluded that a foreign government authority can obtain a reasonable overview of the background after consulting public sources. More information about consulting public sources can be obtained at the EURIEC website: www.euriec.eu.

11. Overview of ‘good practices’ in practice

Below, please find an overview of findings from practical situations that may contribute to successful cross-border exchange of information for the administrative approach to organised crime. These possibilities can be applied by various competent authorities in North Rhine-Westphalia, Belgium and the Netherlands in order to create barriers against the abuse of legal structures for illegal activities. Various options are explained for each country.

- Further development of Incidental expert platforms into a structural consultation platform

The border municipalities of Belgium, North Rhine-Westphalia and the Netherlands know all too well that crime does not stop at the border. In their daily practice, the municipalities are faced with residents who work across the border, move to a neighbouring country, residents who start a business just across the border or residents of a neighbouring country who apply for a license from the municipality. In principle, the examples listed above do not necessarily pose a problem. After all, we live in the European Union, where living and working across borders is a significant advantage and has become a matter of course. The challenge arises when the border is used by criminals to stay out of sight of the administration: registering at a German address to avoid an outstanding debt with a Dutch municipality, setting up a business across the border because one’s license has been revoked in the other municipality, applying for a license in a foreign municipality to escape insight into one’s finances in the country of origin or accommodating labour migrants across the border under appalling conditions in order to circumvent regulations.

This issue has been discussed by various international expert platforms with Belgian, German and Dutch municipalities. As a result, the neighbouring municipalities have gained more insight into the mutual competences and underlying challenges. Where possible, they exchange information and put each other in the right information position with a view to using administrative powers to prevent or end abuse of legal structures.

These incidental expert platforms based on case studies are continuing to develop into structural international administrative consultation platforms between different border municipalities. To this end, the EURIEC has drawn up a memorandum as a guideline for the consultations. This memorandum is available on the EURIEC website: www.euriec.eu.

- Access to the Belgian Crossroads Bank for Social Security

The law establishing and organising a social security crossroads bank stipulates that authorities and other bodies may be granted access to the social security crossroads bank. In principle, foreign governments may also be granted access to this crossroads bank in which various social security data are collected. It is important to note here that organisations wishing to join the crossroads bank must do so on the grounds of social policy.

As a result, foreign governments, when acting in the context of social policy (after submitting a request), are allowed to obtain data from the Belgian Crossroads Bank. Another important additional condition, however, is that the authorities that gain access to the crossroads bank are also allowed access to the National Register. This is not yet the case, however, which means that the existing option cannot be (sufficiently) used.

- **Owning real estate in a German municipality**

Under certain conditions, Belgian or Dutch municipalities may submit a request for information from the German 'Grundbuchamt'. The 'Grundbuchamt' is responsible for keeping the land registry data up to date.

For an application to be successful, the relevant requesting municipality must have a legitimate interest. In the context of the administrative approach, a legitimate interest may exist if the applicant, in this case a Belgian or Dutch municipality, has an outstanding claim against a person. The application is only intended for requesting information about a specific immovable property, to verify whether a relevant person is the owner. It is not possible to request an overview of a person's real estate in a German municipality, nor in all of NRW. The application must be addressed to the Amtsgericht in which the property is located.

- **Participation of the Dutch ISZW in flex campaigns in Belgium**

Dutch social services were asked to help with a number of inspections in caravan parks in Belgium, where they expected to find many Dutch nationals. After all, it was possible that, since they permanently resided in Belgium, these people were no longer entitled to certain social benefits.

In order to check this in practice, ISZW employees assisted with the inspection campaigns. Subsequently, they shared the results of their investigations with their Belgian counterpart, the RVA (the Belgian National Employment Office), to help them get an overview of the issue as well.

- **Cross-border exchange of company data**

Since, based on the findings, there appears to be no legal ground for exchanging personal data with (foreign) municipalities, exchanging company data may offer an alternative in certain cases. Exchanging company data may be possible under certain conditions.

In a practical situation in which a hospitality business opened its doors on the other side of the national border following an administrative closure, thanks to company data exchange the mayor was able to inform his foreign counterpart of this by providing the company data and not personal data. This option needs to be assessed on a case-by-case basis since of conditions must be tested.

- **Administrative fines can be collected in Belgium.**

Thanks to the Framework Decision 2005/214/JHA, administrative fines can, in principle, be collected. A possible additional condition here is that, in certain cases, there must be double incrimination: the act for which the fine was issued must be punishable in Belgium as well as in the country where the fine was issued.

- **Information from the German municipal population register**

Dutch and Belgian (administrative) bodies can request data from the municipal population register of a German municipality through a digital or written request – known as a 'Melderegisterauszug'.

An example: A Dutch municipality has an outstanding claim against a person who resides in North Rhine-Westphalia. The person fails to respond to written requests for payment. The Dutch municipality wishes to check whether the person is, in fact, registered at the provided address.

In North Rhine-Westphalia, every municipality has its own population register. There is currently no overarching central register. As a result, every municipality can only consult information from the population register about its own registered inhabitants.

An application from the Melderegister can serve two purposes:

- Address verification: The foreign (administrative) body wants to verify a provided address. If a Belgian or Dutch (administrative) body has a German residential or postal address for which they wish to check whether the person is, in fact, registered, requesting an address verification may be a solution.
- Requesting the current registration address: The foreign administrative body has an outdated registration address and wants to find out the current registration address.

For more information in the form of a flyer and a standard application format, please visit the EURIEC website: www.euriec.eu.

- **Modification of the Dutch BRP Regulation**

EURIEC case histories show that foreign administrative bodies regularly deal with Dutch residents in the performance of their duties (e.g. granting licenses). These administrative bodies often need information about these persons, e.g. information from the Personal Records Database (BRP). The EURIEC has investigated whether a foreign EU government body (e.g. a Belgian or German municipality) is able to request BRP data from the Dutch municipality where a subject resides.

In order to enable the provision of BRP data from the Netherlands, Dutch municipalities must implement an amendment to their municipal BRP Data Provision Regulation.

The EURIEC has made a manual available to Dutch municipalities for this amendment of their municipal Data Provision Regulation BRP. This manual is available on the EURIEC website: www.euriec.eu.

- **Extract from the Gewerbezentralregister**

Assessing a license (application) can be difficult for municipalities if the license applicant hails from abroad. If the license is applied for in Belgium or the Netherlands by a person from North Rhine-Westphalia, an extract from the 'Gewerbezentralregister' can provide useful information.

The 'Gewerbezentralregister' is maintained by the German Bundesamt für Justiz and collects information about German entrepreneurs. The register contains data on decisions by authorities to prohibit a company from continuing its activities due to the untrustworthiness or unsuitability of an entrepreneur. Foreign municipalities can request this information if the requesting foreign authority is similar to a German authority that would also be granted access for the same purpose under German law.

A practical case, in which such an extract was requested and received, showed that a German municipality has recently withdrawn a license of the relevant applicant due to a criminal conviction.

This information may be important for the Dutch municipality's assessment of the license application. For more information in the form of a flyer and a standard application format, please refer to the EURIEC website: www.euriec.eu

- **Obtaining an authorisation to inspect the file or to receive a copy of the file in Belgium**

According to the EURIEC, Article 21 bis of the Criminal Procedure Act may offer opportunities for foreign authorities to inspect or receive a copy of a criminal file. After all, this article stipulates that the Public Prosecution Service may, even during the course of a judicial investigation, give permission to provide third parties with a copy of the file.

It is important to note here that this does not constitute a right to a copy. Whether a foreign government can obtain a copy depends on the Public Prosecution Service's assessment.

- **Information from the German municipal population register**

Dutch and Belgian (administrative) bodies can request data from the municipal population register of a German municipality through a digital or written request – known as a 'Melderegisterauszug'.

An example: A Dutch municipality has an outstanding claim against a person who resides in North Rhine-Westphalia. The person fails to respond to written requests for payment. The Dutch municipality wishes to check whether the person is, in fact, registered at the provided address.

In North Rhine-Westphalia, every municipality has its own population register. There is currently no overarching central register. As a result, every municipality can only consult information from the population register about its own registered inhabitants.

An application from the Melderegister can serve two purposes:

- Address verification: The foreign (administrative) body wants to verify a provided address. If a Belgian or Dutch (administrative) body has a German residential or postal address for which they wish to check whether the person is, in fact, registered, requesting an address verification may be a solution.
- Requesting the current registration address: The foreign administrative body has an outdated registration address and wants to find out the current registration address.

For more information in the form of a flyer and a standard application format, please visit the EURIEC website: www.euriec.eu.

- Location/address check in a German municipality

A Dutch or Belgian (administrative) body can also ask a German municipality to conduct a local investigation to find out whether the person does, in fact, live at the registered address. Municipalities will only do this if they have sufficient personnel resources available, however. A separate fee is charged for this.

In one practical case, a Belgian municipality had reason to believe that a company, established in North Rhine-Westphalia, did not actually exist. At the request of the Belgian municipality, the German municipality visited the company location, which revealed that the company was not located there in practice.

- Deregistering from German municipal company register

As a result of the practical case described above, the German municipality deregistered the company from the municipal company register based on its own observations on site. With this act, the municipality not only creates a barrier, but also sends a clear signal that the municipality does not tolerate abuse of legal structures.

In practice this barrier is unfortunately not watertight, however, since experience has shown that after deregistration of a company it cannot be ruled out that family members, friends or acquaintances will register the same company again.

Part II: Awareness development for an (international) administrative approach

The three countries/regions involved in the EURIEC project are in different phases when it comes to developing the administrative approach and awareness about the (international) administrative approach. This is why the actions and developments in awareness, in the three countries/regions, varied

1. Belgium

Overview of EURIEC activities and awareness development in Belgium

Regarding activities aimed at raising awareness, a distinction must be made between the different judicial districts. In three judicial districts (Antwerp, Limburg and Namur), municipalities can use the expertise and assistance of the District Information and Expertise Centres (ARIEC Antwerp, ARIEC Limburg and PAALCO Namur). No ARIEC has as yet been established in other districts.

In the districts where an ARIEC has been established, the EURIEC can use the network of partners already built up by the ARIECs. Furthermore, the ARIECs are always involved in cases that have a link with Belgium, and the possibilities for cross-border cases are examined in consultation. In general, awareness of what the administrative approach entails and what the administrative approach can mean for municipalities and other partners is greater in these districts than in other districts that have no ARIEC as yet.

This is why, with regard to activities that the EURIEC undertakes to raise awareness about the administrative approach and the need for international information exchange, a distinction is made between districts where an ARIEC is already in place and districts where this is not yet the case. In districts with an ARIEC, the cross-border components of the administrative approach can be emphasised straight away. After all, thanks to the ARIECs, there is already a degree of awareness among the municipalities regarding the administrative approach. In addition, most municipalities in districts with an ARIEC have also designated an employee who is responsible for the administrative approach, and can be addressed as a Single Point Of Contact. For these reasons, the activities aimed at raising awareness can already delve deeper into the cross-border aspects. Incidentally, most of the cases were submitted to the EURIEC by municipalities of districts where an ARIEC is established. This subsequently leads to expert platforms in which representatives of the relevant Belgian municipality and representatives of the competent ARIEC participate together with partners from across the country's borders, in order to arrive at a solution for cross-border cases.

In other judicial districts as well, activities aimed at raising awareness of the need for cross-border information exchange should also address what administrative enforcement is and how Belgian municipalities can use it. This awareness is still limited in several municipalities, which means that they first have to check internally within the municipality how they can shape the administrative approach in their own municipality. This may, in the long run, lead to cases being submitted to the EURIEC. In addition, there are also developments in other districts that further shape the administrative approach, for example, by appointing people at the province or the police who can serve as points of contact to support municipalities in the administrative approach or in the further elaboration of the administrative approach in their district.

Lastly, the EURIEC also raises awareness about the administrative approach and cross-border information exchange among future policymakers by regularly giving lectures at Belgian universities.

Influencing legislation

It also appears that, due to the lack of overarching legislation, exchange of information with a view to the administrative approach is often challenging or uncertain, even in entirely domestic situations in Belgium. Initiatives are underway at the Flemish as well as the federal level to remedy this situation. For example, plans are in place to set up a Directorate for Integrity Assessment for Public Administrations (DIOB) at the Flemish and federal levels, comparable to the Dutch BIBOB.

The EURIEC is in contact with the federal and Flemish authorities that are working on this type of policy proposals and always endeavours to include the international aspect. For example, the EURIEC emphasises international information exchange and the necessity of this information exchange for the most effective administrative approach. An exchange between DIOB and BIBOB, for example, would be very useful and necessary in the EURIEC's opinion.

The EURIEC also tries to influence certain initiatives at the municipal level and, together with the municipalities, to find ways to ensure that information can be shared across borders. For example, the EURIEC recommended that several municipalities in the province of Limburg include in their regulations for the introduction of a license for hand car wash businesses that if the persons hail from abroad, license applicants may be asked to submit certain documents.

2. North Rhine-Westphalia

In North Rhine-Westphalia, the fight against organised crime is first and foremost the task of the police and the Public Prosecution Service. They are only responsible for criminal prosecution, however. Furthermore, the Ordnungsbehörden within the municipalities are also responsible for preventively averting danger. This also includes the preventive fight against criminal offences – in this case, organised crime. Municipalities often do not recognise the signs of organised crime, however, or are insufficiently aware of its consequences. This is why the emphasis is deliberately placed on informing municipalities about the powers they have and the role they can play in preventing (and unintentionally facilitating) organised crime.

The administrative approach to the fight against organised crime was presented to administrative authorities from all over North Rhine-Westphalia (NRW) during a meeting of the 'Hochschule für Polizei und Verwaltung NRW'. It was very well received, and the EURIEC was asked to write an article about it in the 'Kommunalpraxis Spezial' magazine.

An information meeting on the theme of "Optimising cross-border cooperation between authorities in the fight against organised crime" was held at the Cologne District Administration, for the authorities from the neighbouring areas of the districts of Düsseldorf, Cologne and Münster. To date, the project work has mainly been focused on the border area of the Cologne district.

The objective of this meeting was to raise awareness of the project throughout the border area of NRW in order to increase the effectiveness and success of the EURIEC's work. The municipalities were informed about the importance of the administrative approach. A representative of the 'Landeskriminalamt' [criminal investigation service for the individual Länder] provided information about the possibilities municipalities have to recognise structures related to organised crime. Professor Dr Röckinghausen of the 'Hochschule für Polizei und öffentliche Verwaltung NRW' held a talk about "Fighting organised crime – a task for the administrative authorities as well?"

The discussion that followed once more supported the impression that the signs of organised crime go virtually unnoticed by municipalities.

Furthermore, information meetings were organised for the municipalities in the Aachen city region and for employees of the Münster district immigration services.

Other physical meetings needed to be postponed due to the COVID-19 pandemic or were changed to virtual meetings.

Some municipalities that, as a result of concrete cases, have understood the need for cross-border exchange were very much open to discussion. Although the exchange can be challenging in practice for a variety of reasons, there is always a willingness to communicate with one another and explore possibilities.

It was against this background that in the spring of 2021, the students of the HSPV NRW were asked to focus on the following topics as part of their project work.

1. To describe the reasons for the limited awareness of the municipalities in NRW
2. To develop a concept that is suitable for practical application, in order to develop or increase awareness.

In order to investigate this, experts from local and other authorities were interviewed. In addition, an online survey was sent to 427 local and other government services. This study showed that the main reasons for the lack of awareness among authorities in NRW result from a lack of awareness of the existence of organised crime and a lack of awareness of a potential contribution to the fight against organised crime.

Given that there are many different causes of this limited awareness, there is no instant miracle solution. Instead, the solution can be found in a varied approach with different possible measures, including: Focusing on changes to legislation with a view to creating legal clarity, raising awareness among municipalities, training municipal staff and politicising the subject/raising awareness among the population.

Consequently, according to the research, it must be concluded that the causes for the limited awareness are manifold and that there is no single solution to this problem. In order to solve this problem, more human and financial resources must be made available. This study fits in well with the findings that the EURIEC had based on the expertise gained during the first two years. Therefore, this study can be used as a basis for the activities of the EURIEC in NRW during the second phase of the EURIEC.

3. The Netherlands

The importance of an administrative approach and the awareness that not only the police and the judiciary have a role in tackling organised crime has become apparent in the Netherlands since the early 2000s. The 'Project office administrative approach' in South Limburg was one of the first experiments with the administrative approach in the Netherlands. It continued to develop into the creation of the current RIEC structure, the Regional Information and Expertise Centres. Together, the RIECs form a national network to support the administrative and integrated approach to organised crime. These so-called RIECs work based on a covenant and are supported by the National Information and Expertise Centre (LIEC). Thanks to this structure, all municipalities in the Netherlands are involved in the fight against organised crime. The covenant regulates exchange of information between the covenant partners/participating organisations (including the police, the judiciary, the tax administration, the Royal Netherlands Marechaussee and municipalities). Where possible, the EURIEC has joined the RIEC/LIEC structure while carrying out its activities.

It naturally follows that the EURIEC's role as regards raising awareness in the Netherlands has been given a different interpretation compared with Belgium and NRW. The focus was mainly on creating awareness for the importance of cross-border information exchange for administrative purposes and on informing about the cross-border possibilities for this purpose (sharing good practices). To this end, the EURIEC has drawn up guidelines and letter formats with a view to guiding municipalities regarding the possibilities of obtaining information from NRW and/or Belgium. An international perspective at the policy and executive level should be increased within municipalities. An international perspective is crucial, certainly for border municipalities, to promote effective and efficient working methods. Practice and case histories show that domestic municipalities also find themselves confronted with the need for international cooperation. This includes domestic municipalities with, for example, attractive international logistics options, such as air and sea ports. The EURIEC's work over the past two years has therefore not only been focused on border municipalities.

The Pilot among several Dutch municipalities for amendment of the BRP regulation is a concrete example of creating attention and opportunities at the municipal policy level for cross-border information exchange. The pilot aimed to enable the international exchange of BRP data under certain conditions. The EURIEC has produced a guideline for municipalities that can be rolled out nationally. Discussions with national organisations, including the Association of Dutch Municipalities (VNG), will follow in the third and fourth years.

The EURIEC has built up a network of ten international contact officers within the Netherlands. Every RIEC and the LIEC (Regional and National Information and Expertise Centre) have made available one international contact officer who is affiliated with the EURIEC. The contact officer acts as the first point of contact for the EURIEC and is the link between the EURIEC and the relevant RIEC/LIEC. As a result, the EURIEC now has a nationwide network of contacts in every region of the Netherlands, creating a broad range of applications. In order to facilitate the exchange opportunities, challenges and good practices, the EURIEC organises meetings between these liaison officers.

Many of the cases submitted to the EURIEC come from Dutch municipalities, which can be explained by the existing RIEC/LIEC structure and the high degree of awareness of the administrative approach among Dutch municipalities.

The EURIEC's activities have focused on national and euregional organisations in addition to municipal and local organisations. The aim is to raise awareness within organisations, such as the police, the Public Prosecution Service and the tax administration, for the importance of international information exchange for administrative purposes. The EURIEC supports the National Bibob Bureau in case of requests for legal assistance that are addressed to Belgium and NRW via the National Public Prosecutor's Office. The EURIEC takes on a mediating role in this process, with the aim of receiving an answer to the request for mutual assistance through existing contacts on the one hand, and to clarify the reason for a possible rejection or not responding to the request on the other hand.

In collaboration with the relevant Euregional organisations, including the Euregio Maas-Rhine Foundation, the Rhine-Maas-North Rhine-Waal Euregio, the EURIEC offers awareness presentations for Euregio members, mayors of border regions and government partners, among others.

In view of the differences in the development of the administrative approach between the Netherlands, NRW and Belgium, the EURIEC's awareness activities have also been focused on informing the Belgian and German partners about the Dutch administrative approach. The Dutch account managers have worked closely with their German and Belgian counterparts with a view to informing Belgian and German local and national government organisations. This has resulted in many presentations to German and Belgian partners, as well as an article in the German magazine 'KommunalPraxis Spezial' that explains the Dutch administrative approach. Additionally the EURIEC, in collaboration with the RIEC Limburg, the National Bureau BIBOB and the LIEC, informs the Belgian government partners about the RIEC/LIEC structure and the BIBOB legislation, with a view to developing the (similar) Belgian DIOB legislation (Directorate for Integrity Assessments for Public Administrations). The aim is for partners to learn from each other in the development of new policy and seek connections where possible (for example, creating the possibility of international cooperation between the Dutch national BIBOB bureau and a future Belgian DIOB bureau).

These EURIEC awareness activities will be continued in the third and fourth years, whereby attention will be given to, inter alia, the further development of cross-border structural consultation platforms between boards, and encouraging the amendment of current and new legislation and regulations based on the case findings and raising awareness of the need for international information exchange for administrative purposes.

Part III: Recommendations

General recommendation 1: international information exchange starts with national legislation

Legislation in the three countries needs to be critically reconsidered in order to reflect the reality of the free movement of persons, goods and services. If municipalities are expected to play a role in tackling organised crime, they must have a solid information position in order to enable administrative enforcement. Legal options are insufficient in all participating countries. This position is compromised even more in the event that a municipality needs information from abroad. National legislation in the three participating countries is inadequate for this purpose. As a result, foreign municipalities become attractive ground for the development of criminal activities.

In various cases, international law and regulations offer the possibility of providing information cross-border. In order to be able to use this option, national legislation in the participating countries needs to be amended. This concerns all types of data that can affect the administrative enforcement of organised crime.

General recommendation 2: international information exchange starts with tackling pigeon-holing

All too often, international cooperation is subject to pigeon-holing. Police forces on either side of the border are allowed to work together. The same applies to the judiciary, tax administrations and other government services. An approach in which several services cooperate integrally and share information could be a more efficient option. There are currently several examples of structural cross-border consultations that examine cases together in an 'integrated' manner. It is recommended that such structural consultations be further expanded. Legal possibilities should be created as well, with a view to working together and sharing information in this way.

Recommendation 3: Foreign information for the purpose of integrity assessments

Existing and new legislation to be developed must pay attention to an international factor regarding data exchange. To this end, attention should be paid to this in the new DIOB legislation to be developed in Belgium and in future amendments to the existing BIBOB legislation in the Netherlands. It is also recommended to create a pilot project to examine a far-reaching collaboration between the national BIBOB office and the DIOB office that has yet to be set up.

Recommendation 4: Extension of the powers of access to the population register

In contrast to Germany (NRW), in Belgium and the Netherlands it is currently not possible to provide data from the population register to foreign governments. It is recommended that access to the national register in Belgium is also made possible for foreign municipalities. In Belgium, this would require authorisation from the Minister of the Interior. It is recommended that the Netherlands amend the municipal BRP regulation by including the option to provide BRP data to foreign (administrative) authorities.

Recommendation 5: Benelux Police Treaty

In principle, the Benelux Police Treaty creates the option to provide cross-border police information for administrative purposes. It is recommended that national legislation be amended so that this passage can, in fact, be used in practice..

Recommendation 6: Security cooperation

The project work results of the students at the HSPV NRW shows that a multifaceted approach with different measures contributes to raising awareness among the administrative authorities of organised crime and the fight against it. The 'Siko Ruhr' (Ruhr Security Cooperation), which was established in 2020 to intensify the cross-municipal fight against clan crime in the Ruhr region in NRW, is already successfully following this approach. The 'Siko Ruhr' is a close cooperation between representatives of the police, municipalities, customs and NCIS to make the fight against organised crime even more efficient and effective, in cooperation with the financial authorities. This is a first, important step towards close cooperation between different authorities, which can serve as a blueprint for further security cooperation.

Recommendation 7: Cross-border recovery of administrative claims

The NRW region, but also Belgium and the Netherlands, should open their respective legal systems to the enforcement of penalty payments from the other relevant partners.

Imposing a penalty payment plays a very significant role in all three legal systems that were examined. In the event of violations, compliance with the law is best enforced by threatening and imposing fines. However, this behavioural influencing functionality cannot deploy penalty payments if the addressees are able to avoid the penalty payment by moving to a neighbouring EU country. In fact, as a result, the penalty payment loses its meaning entirely as an instrument for behavioural management in the border area, or at least its effect is considerably limited if, as has often been the case in practice, those involved are also willing to change their place of residence. By opening up the legislation of the federal state for enforcement under certain conditions in order to enforce claims for penalty payments from partner countries, the federal state of NRW contributes to promoting the effectiveness of one of the most important administrative instruments of law in the border area.

Recommendation 8: Expanding the ARIEC structure in Belgium

To arrive at sound national and international cooperation, it is crucial that the participating countries have a national network of collaborating government partners. For Belgium, this would imply making efforts to create an ARIEC in every province.

© 2021, EURIEC

All rights reserved. No part of this publication may be reproduced without acknowledgment of the source, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, printouts way, whether electronic, mechanical, by print-outs, copies, or in any other way without prior permission of the publisher.

E: euriec.rik.limburg@politie.nl

T: 088 – 1687380

W: euriec.eu

P: Postbus 1992, 6201 BZ Maastricht