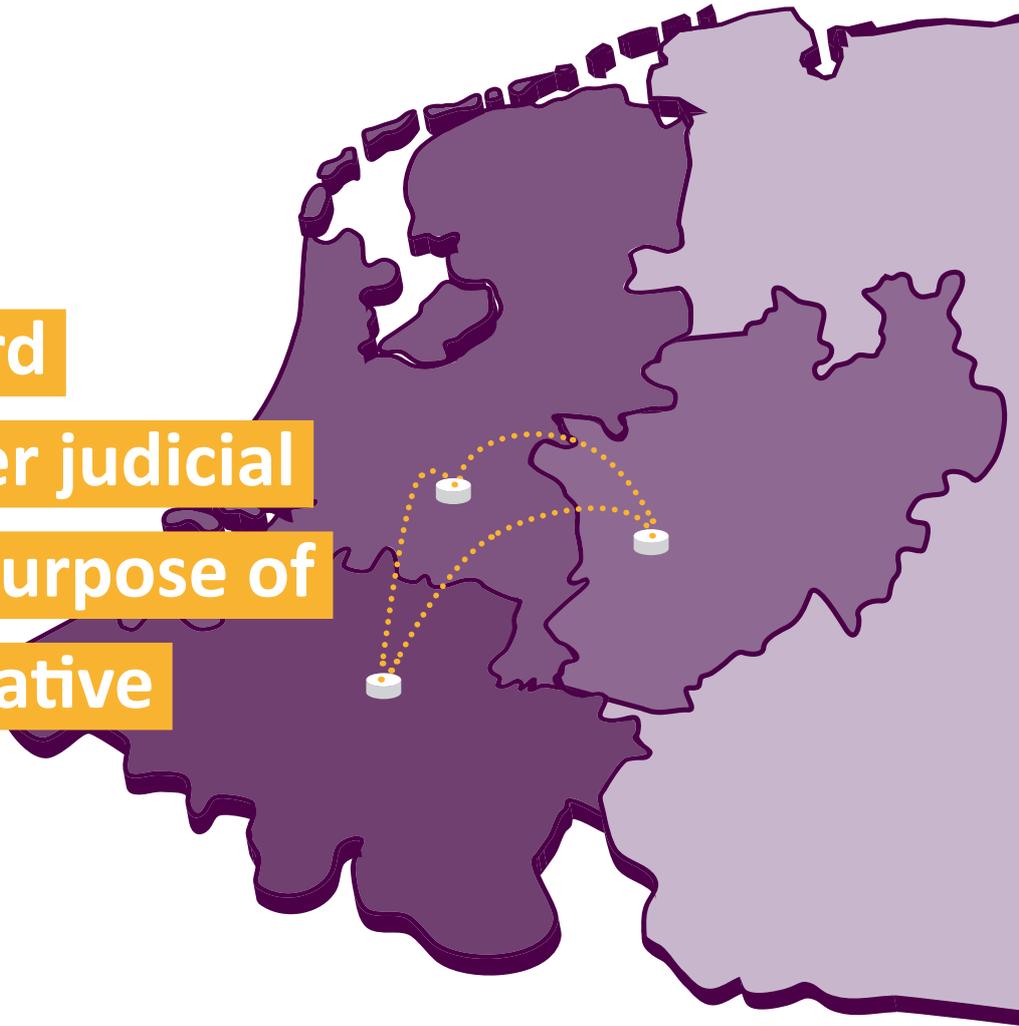


**Cross-border
exchange of
criminal record
data and other judicial
data for the purpose of
the administrative
approach**



**Cross-border crime and the role
of local government**

- Within the European Union, **living and working across borders has become a significant advantage and a matter of course.**
- However, **crime doesn't stop at the border!** Criminals consciously use borders to stay under the administrations' radars.
- For the administrative approach, a **proper information position** is essential.
- **Criminal record data and other judicial data are crucial in certain cases when using municipal administrative enforcement tools.**

CASE: In order to grant a license, municipalities want to know whether the license applicant has ever been convicted of criminal offences. If it appears that the license applicant has a criminal history, the license may be refused in certain cases.

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How can a local government obtain foreign judicial data?

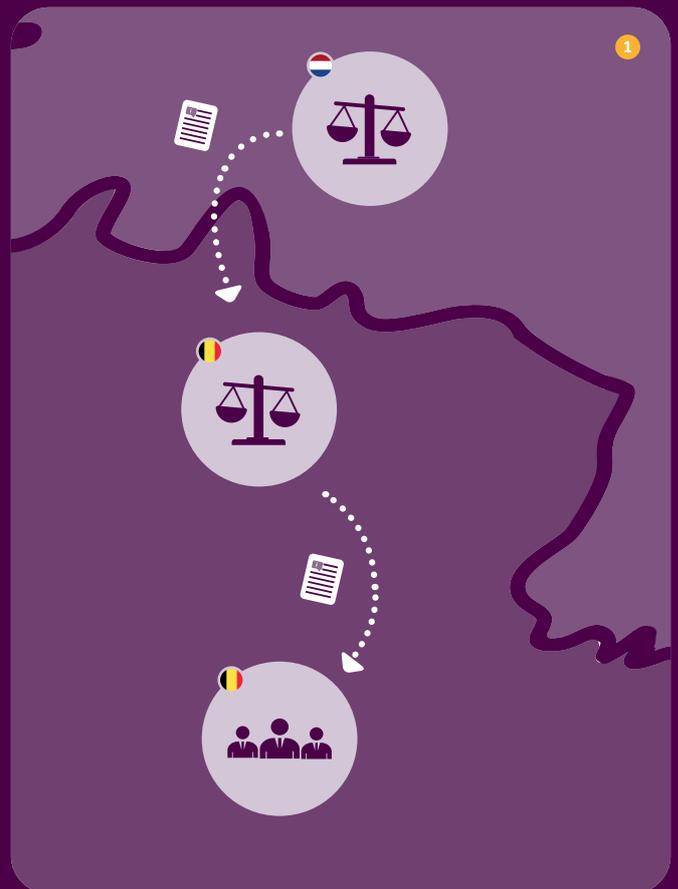
1 Cross-border provision of criminal record data via the European Criminal Records Information System (ECRIS)

Central authorities of European Member States use ECRIS to inform each other about criminal convictions of nationals of another Member State. Central authorities of European Member States may also request information from the criminal records of another Member State, e.g. criminal convictions. This is also possible in response to a request from a municipality. Consequently, municipalities may request convictions of their own citizens from their own central authorities. Examples of this include if their citizen is currently residing abroad or if the offences were committed abroad.

In addition, the municipality also has the option, in some cases, to submit a request and request criminal record information about a foreign citizen from a foreign central authority. Where such a request is made for administrative purposes, whether this data is provided will be decided in accordance with national law. Applications should always be made through the central authorities as there is no international agreement to exchange information directly with foreign municipalities.

Central authorities:

- Belgium: Central Criminal Record Office: provision for purposes other than criminal law is not possible in principle. After all, in the context of administrative enforcement, Belgian municipalities do not directly receive information about the criminal background of the data subject.
- Germany: Bundesamt für Justiz: provision for purposes other than criminal law is possible if German law would also grant a comparable German authority access to the criminal record. This is generally the case if the data subject does not request a copy themselves and if requesting the copy from the data subject appears inappropriate. In the first instance, the data subject will be asked to provide a certificate of good conduct. Only in very exceptional cases is it considered inappropriate to ask the data subject for such a copy. For example when a license of the person concerned is revoked.
- The Netherlands: Judicial Information Service (Justid): Data provision for purposes other than criminal law is possible in cases where this data may also be provided within the Netherlands, e.g. taking administrative decisions or applying for a certificate of good conduct.



2 Data provision by the data subject

If a person wants to operate a company/enterprise, the person concerned must, in certain cases, apply for a license. In most cases, the licensing procedure stipulates that the person concerned must submit an extract from the criminal record/Certificate of Good Conduct (VOG). This can also be used if the license applicant resides abroad. The person concerned may then be asked to request an extract from the criminal record/VOG from their foreign place of residence.

3 Data provision by police forces

In Belgium, Germany and the Netherlands, police services have judicial information, e.g. information about a subject's criminal history. In certain cases, they will also be able to inform municipalities, e.g. in the context of granting licenses or admission to events, about the license applicant's criminal history.



Cross-border exchange of other judicial data

1 Judicial decisions

Various international and European law instruments stipulate that court decisions are made public or that decisions must be made public in a publicly accessible register. As a result, accessing court decisions is possible in the three countries. Differences exist between the three countries, however, regarding the anonymisation of the (personal) data of the parties to the proceedings.

- Belgium: although the judgments of the higher courts are published, they are anonymised.
- Germany: in criminal cases, obtaining a copy of a judgment is often not possible, even if the personal data is anonymised. In civil lawsuits, a foreign municipality can access non-anonymised texts if the municipality can demonstrate a legitimate interest in doing so.
- The Netherlands: In theory, requesting a non-anonymised copy of the ruling from the court is not possible. In assessing this request, the court will weigh up the interests of the applicant and the protection of the privacy of the parties to the proceedings. This means that, in practice, non-anonymised copies of a judgment are provided only rarely.

2 Current investigations

In principle, ongoing investigations are confidential. As a result, administrative authorities that are not parties to the criminal proceedings will, in principle, not have access to the criminal file. However, in Belgium, Germany and the Netherlands, the law appears to offer the Public Prosecutor's Office possibilities to give (foreign) public authorities access to, or allow them to obtain a copy of, a particular file, even if they do not have a direct interest. Whether a foreign administration can obtain such data will depend largely on the assessment and interpretation of the competent public prosecutor, on a case-by-case basis.





Possibilities

- 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 certain cases, options for cross-border exchange of criminal record data and other judicial data are certainly available. This often requires complying with strict conditions, however, which limits the possibilities in practice.

For a detailed legal explanation, please download the EURIEC memorandum 'Cross-border Provision of Criminal Records and Other Judicial Information' at www.euriec.eu.

If you have other questions or need support as a municipality with cross-border exchange of information, please contact the EURIEC via: euriec.rik.limburg@politie.nl.