



Report on the cross-border exchange of administrative data

For the purpose of the administrative approach
to organised crime



Contents

General description	3
1 Legal framework	5
1.1 international and European regulations	5
1.1.1 Informal exchange	5
1.1.2 Council of Europe and EU initiatives	5
1.2 Belgium	7
1.2.1 National use of administrative data in the framework of the administrative approach	7
1.2.2 Direct provision of administrative data by (the mayor of) the Belgian municipality to (the mayor of) the German/Dutch municipality	7
1.2.2.1 Passing on by the Belgian municipality of information obtained from another government service to a German/Dutch municipality	8
1.2.3 Provision by the Belgian administrative authority to the German/Dutch police whereby authorisation is granted for data to be passed on to and used by the administration for the purpose of the administrative approach to organised crime (U-turn)	8
1.3.1 National use of administrative data in the framework of the administrative approach	9
1.3.2 Passing on administrative data from other government services by (the mayor of) the German municipality to (the mayor of) the Belgian/Dutch municipality	9
1.3.3 Direct provision by a German municipality to a (mayor of a) Belgian/Dutch municipality	9
1.3.4 Provision by a German municipality to the Belgian/Dutch police whereby permission is given for data to be passed on to and used by the administration for the purpose of an administrative approach to organised crime (U-turn)	11
1.4 The Netherlands	12
1.4.1 National use of administrative data in the framework of the administrative approach	12
1.4.2 Cross-border consultation of Dutch administrative data	13
1.4.2.1 Public data	13
1.4.2.2 Freedom of information laws	13
1.4.2.3 Data exchange between the public order and safety department of a Dutch municipality with a similar department of a Belgian/German municipality	14
1.4.2.4 Provision of data by other municipal departments of the Dutch municipality to the public order and safety department of a Belgian/German municipality	15
1.4.2.5 Provision of data by other municipal departments via the public order and safety department of the Dutch municipality to the public order and safety department of a Belgian/German municipality	15
1.4.2.6 Cross-border provision through RIEC partnership	16
2 Practical consequences	16
3 Conclusion	17

General description

For the purpose of an effective administrative approach to organised crime, a good information position is essential. Previous investigations (*Administrative Measures, Criminaliteit en rechtshandhaving in de Euregio, Confine* [*Administrative Measures, Crime and law enforcement in the Euregio, Confine*]) mainly focus on the cross-border provision of tax and police/judicial data for the purpose of the administrative approach abroad. The EURIEC has also written various reports on this topic that describe options for providing such data (possibly via the domestic municipalities) to foreign administrative bodies. However, the exchange of administrative data is an important missing factor. There are no European laws and regulations that specifically deal with the exchange of administrative information for the purpose of the administrative approach to organised crime. In addition, this information category is often overlooked in the literature on cross-border cooperation for the approach to organised crime.

The term 'administrative data' is very broad and often covers many different types of data that are also discussed in other EURIEC reports (social security data, data from the population register). In a broad sense, this can be understood to mean any data that is available to administrative bodies in the performance of their duties. This may also include information that is available in various (semi)public sources such as the land registry, insolvency data, data from the business register, etc. The EURIEC has drawn up various practical brochures about cross-border consultation of these (semi) public sources, based on which one can determine which information can be obtained and how. This report focuses specifically on administrative data that municipalities have at their disposal in the performance of their tasks in the context of administrative approach, as well as information that they wish to obtain from other departments within the municipality, e.g. the building inspection department or the licensing department.

Three cross-border possible variants for providing administrative data are discussed in this report:

1. Exchange of data between the department in charge of administrative approach in one country and a similar department of a foreign municipality;
2. Data provision by other municipal departments to the department of a foreign municipality that is in charge of administrative approach;
3. Provision of data by other municipal departments via the department that is in charge of administrative approach to a similar department of a foreign municipality.

Section 1 starts by discussing the international and/or European legal frameworks. The domestic options for exchanging administrative data for the benefit of the administration in Belgium, Germany and the Netherlands are also explained in section 1. Next, the two routes mentioned above for cross-border information exchange for the administrative approach to organised crime are discussed in more detail per country. Subsequently, the practical consequences of these legal findings are discussed in more detail. Finally, the main results are highlighted in the conclusion.



1 Legal framework

1.1 International and European regulations

Regarding international and European regulations, only a limited number of laws and other regulations relate to administrative cooperation in general. Nevertheless, several texts provide a legal framework in this area as well. Examples include:

- Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC – **General Data Protection Regulation**
- European Convention on the Service Abroad of Documents in Administrative Matters, 24 November 1977
- European Convention on the Obtaining Abroad of Information and Evidence in Administrative Matters, 15 March 1978
- Regulation (EU) 2016/1191 of the European Parliament and of the Council of 6 July 2016 on promoting the free movement of citizens by simplifying the requirements for presenting certain public documents in the European Union and amending Regulation (EU) No 1024/2012
- Regulation No. 1024/2012 of the European Parliament and of the Council 25 October 2012 on administrative cooperation through the Internal Market Information System and Commission Decision 2008/49/EC (**‘the IMI Regulation’**).

Firstly, in most cases, the processing of data by the authorities also takes place within the scope of Regulation (EU) 2016/679, the so-called General Data Protection Regulation. The purpose limitation principle, inter alia, creates a legal restriction on the exchange of such information.¹ On this ground, any further processing of data must, in principle, be compatible with the original purpose of the data collection.² Based on an opening provision in the General Data Protection Regulation, Member States are, however, also responsible for the further design and legislation of the basic principles. As a result, there may be certain differences between Member States regarding the transposition of the Regulation. In principle, the GDPR only applies to data about natural persons and therefore not to data about legal entities, unless such data is closely related to the data of a natural person.³ The latter may be the case, inter alia, if a name of a natural person appears in the name of a company or also in the case of partnerships (sole proprietorships, general partnerships), which are not considered to be legal entities.⁴

¹ Art. 5 I Nr. b), 6 GDPR.

² Art. 6 I 1 e), II, III 1 b), 3 GDPR.

³ Art. 1 I, II GDPR.

⁴ ‘Privacy: kan het publiceren van een bedrijfsnaam in strijd zijn met de AVG?’ [Privacy: can publishing a company name constitute a violation of the GDPR?], europadecentraal.nl.

1.1.1 Informal exchange

The informal exchange of information through close contacts between individual employees of different authorities, as occurs regularly in practice, is also fully subject to the legal requirements of the General Data Protection Regulation. In the report *Administrative measures to prevent and tackle crime* the possibility of informal (cross-border) data exchange based on personal contacts is discussed.⁵ For example, while a municipality may be informed about any particulars regarding a specific person or organisation, they may not be allowed to act on them. Furthermore, the informal provision and subsequent processing of personal data therefore also constitutes processing as referred to in the GDPR. This means that even in the event of informal data exchange, the GDPR requirements must be met, e.g. a lawful ground for processing. However, such a processing ground often does not apply in cases relating to the administrative approach and enforcement.

1.1.2 Council of Europe and EU initiatives

In addition, Council of Europe initiatives resulted in the 1977 European Convention on the Service Abroad of Documents in Administrative Matters and the 1978 European Convention on the Obtaining Abroad of Information and Evidence in Administrative Matters. The 1977 Convention provides for mutual assistance between the Contracting Parties in the service abroad of documents in administrative matters, by setting up a system of central offices.⁶ In addition, the Confine study report by Prof Dr D. van Daele and S. Bollens BA noted that the ‘European Convention on the Obtaining Abroad of Information and Evidence in Administrative Matters 1978’ regarding mutual administrative assistance was regarded as an undervalued instrument (Chapter XIV.1). Although this convention was adopted by Belgium and Germany, it does not apply in the relationship with the Netherlands since the Netherlands have not ratified this convention. Had the Netherlands ratified this convention, the applicability of this instrument would nevertheless remain a significant uncertainty. After all, current privacy legislation as well as the national legislation of all three countries opposes exchanging administrative data for the administrative approach to organised crime. As a result, it remains questionable whether the respective conventions can provide a sufficient legal ground for targeted data processing in conjunction with the national implementation. Discussions between the EURIEC and various experts have also shown that these possibilities for data exchange are hardly used in practice because it is assumed that the

⁵ *Administrative measures to prevent and tackle crime*, p. 572-573, 607-608.

⁶ Art. 1 I, 2 I, 3 European Convention on the Service Abroad of Documents relating to Administrative Matters.

conventions are outdated and that people are not properly aware of them.

Finally, European legislation also provides some additional possibilities for information exchange in certain domains. Examples of this include provisions in the Services Directive⁷ and the Professional Qualifications Directive⁸. In certain cases, the domestic transposition of these directives offers additional possibilities for the cross-border exchange of information.

In addition, Regulation EU 2016/1191 also provides a potentially useful basis for administrative cooperation since this Regulation allows for cross-border verification of certificates that are issued as proof of birth, death and marriage, if the verification is to be performed with a view to the functioning of the internal market.⁹The IMI network, the information system for the internal market, may be used for this exchange.

⁷ Art. 28 ff. Directive 2006/123/EU.

⁸ Art. 28 ff. Directive 2006/123/EU.

⁹ Art. 14,22 Regulation 2016/1191.

1.2 Belgium

1.2.1 National use of administrative data in the framework of the administrative approach

In many cases, Belgian municipalities and their services have extensive information or signals at their disposal that may be useful for the administrative approach to organised crime. In and of themselves, the signals that emerge from one particular service are often insufficient to create a suspicion that a particular subject is involved in organised crime. As a result, the various services of the municipality often find it useful to compare their information in order to obtain a more complete picture of the people who live or have a business in the municipality.

In order to ensure that the information about possible signals of organised crime in the municipality remains limited to the individual services, several municipalities have set up Municipal Information and Expertise Centres (the so-called GIECs). During these meetings, municipal services can share suspicious signals that have come to their attention with other services. In this way, the various puzzle pieces can be put together in order to obtain a more complete picture.

In addition, municipalities may request information from other authorities in different situations. Examples of such information include:

- Requesting extracts from the National Register.¹⁰ (For a description of the options for providing data from the National Register and population registers across borders, see the report – data from the population registers)
- Requesting police information by the municipal services for public order (see also the report – police data)
- Receiving information about ongoing investigations based on art. 21bis St., if the Public Prosecutor gives permission
- Retrieving tax data in certain cases, since local authorities also have powers regarding taxes and may also levy taxes themselves (see also the report – tax data)
- Requesting a copy of the Central Criminal Register with a view to notifying the person concerned. This copy may be used to assess whether the relevant person can legally operate certain establishments that require a license (see also report – Judicial data).

In addition to intra-municipal information exchange, inter-municipal information exchange could also be useful for Belgian (and foreign) municipalities. For example, if a particular municipality refuses to grant a license or withdraws a license for justified reasons, this information may be useful to another municipality to which the relevant person wishes to transfer their activities. The transfer of personal

data which the municipality itself possesses or which it receives from other organisations must comply with the conditions and principles of the General Data Protection Regulation. This means that, inter alia, the principle of purpose limitation must be complied with, but also that there must be an explicit legal ground for providing or passing on personal data. However, Belgium has no such explicit legal ground.

For the time being, therefore, Belgium knows no legal ground for providing administrative data to other municipalities in the context of maintaining public order. Some public and semi-public databases (such as the register with company information and certain land registry data) may be consulted/requested by foreign governments, however. Which databases, the type of information, and whether foreign governments may consult these databases is discussed in the relevant EURIEC brochures.

1.2.2 Direct provision of administrative data by (the mayor of) the Belgian municipality to (the mayor of) the German/Dutch municipality

As described above, a Belgian municipality has information at its disposal from its own services on the one hand and information that a municipality receives from other government services, such as the judicial services or the national register, on the other. This part will focus on the provision of information obtained from the services of Belgian municipalities, i.e. not on information that a municipality receives from other government services.

As discussed above, there is no legal ground for the provision of administrative data from one Belgian municipality to another Belgian municipality. As a result, a clear and unambiguous legal basis for transferring administrative data to foreign municipalities will generally be lacking as well.

In addition, the principle of purpose limitation stands in the way of providing or passing on data in various cases. If a German or Dutch municipality wishes to receive administrative data from a Belgian municipality in order to prevent and combat organised crime, it must be verified whether this purpose differs from the purpose for which the Belgian municipality originally collected the data. This will need to be considered individually for each case.

Due to the lack of a legal ground and questions about the purpose limitation in the provision of administrative data, this data currently cannot be provided (cross-border). If the Belgian legislator were to provide an explicit ground for the provision of administrative data in the future, it might be useful to draw up protocols to this end that clarify whether and when cross-municipal and cross-border provision of administrative data is possible.

¹⁰ Royal Decree of 16 July 1992.

Nevertheless, transferring data about companies, which do not relate to personal data, to other municipalities, appears possible. Since in principle, the GDPR does not apply to these data, the provision of such data is legally more certain than the provision of personal data. We therefore recommend that governments provide company data instead of personal data where possible.

In addition, an attempt can be made to appeal to the public access of administrative data. After all, public authorities are obliged to disclose the desired administrative documents to anyone who requests them.¹¹ This presents the issue, however, that in many cases the law must refuse a request for disclosure of certain documents if this disclosure violates the right to privacy. An exception is made if the person concerned gives permission for the information to be made public.¹² In many cases, however, asking the data subject's consent will not be appropriate, as doing so will warn the data subject that a government agency may have certain suspicions about them.

1.2.2.1 Passing on by the Belgian municipality of information obtained from another government service to a German/Dutch municipality

Belgian municipalities also receive information from other government services. If the conditions imposed by the GDPR are met, it would be possible to pass on this data cross-border. However, current Belgian legislation does not appear to meet the conditions imposed by the GDPR.

Firstly, just as with the provision of information obtained from a municipality's own services, there is no legal ground for the passing on of data from other government services.

In addition, the GDPR's purpose limitation principle is certainly an important additional factor that must be considered when passing on administrative data. It follows from this principle that the more the purpose of the desired processing of the data by the municipality differs from the original purpose of the processing of the requested data, the more problematic the processing and provision becomes. Belgian municipalities do not necessarily collect certain data for the purpose of safeguarding public order. If this data is provided for the purpose of safeguarding public order in another municipality, this therefore constitutes a different purpose.

As such, it will be necessary to provide a legal ground for the passing on of these data in order to make such passing on of data possible in the future. In addition, this legal ground would ideally also elaborate more on the principle of

purpose limitation and describe situations in which passing on data may be possible.

Finally, the types of data available to a municipality and the secret or confidential nature of this information must always be considered. For example, a Belgian municipality may, in certain limited cases, receive police or judicial information. Due to the nature of this information, the passing on of this data by a municipality will often not be in line with the intention of the original provider. This issue is discussed further in the relevant reports.

1.2.3 Provision by the Belgian administrative authority to the German/Dutch police whereby authorisation is granted for data to be passed on to and used by the administration for the purpose of the administrative approach to organised crime (U-turn)

This provision of administrative information also faces certain legal as well as practical barriers. For example, the purpose limitation principle also plays a significant role in relation to this type of provision. There is generally no ground for consent that would allow the transfer of data for purposes other than the transfer's original purpose.

The new Benelux Police Convention may be a way out. This convention, which has yet to come into force, provides for the exchange of police information upon request with a view to taking administrative measures.¹³ It could be argued that the nature of administrative information changes as soon as it is given to the police. I.e., this would be considered police information provided with a view to taking administrative measures in other countries. This is far from uncertain, however.

In addition, this route also requires considering the desirability of and a few practical obstacles to using the police channels for cross-border exchanges to transfer administrative information. After all, the police channels risk becoming saturated in this way, leading to necessary police information being passed on less easily and efficiently.

¹¹ Art. II. 31 *Flemish Decree Administrative Decree*.

¹² Art. II. 34, §2 *Flemish Decree Administrative Decree*.

¹³ Art. 4 *paragraph 3 Benelux Police Treaty*.

1.3 Germany

1.3.1 National use of administrative data in the framework of the administrative approach

Administration is a very broad concept. Although the German municipalities are part of the administration of the German federal state NRW, they also have links with the administration of other federal states and the federal administration.¹⁴ Consequently, a German municipality may request data in many situations; these data can be described as administrative data. Examples of this type of data transfers include:

- Retrieval in the central *Gewerberegister* with a view to checking the applicant's *Zuverlässigkeit* (reliability)¹⁵
- The exchange of data between authorities that are competent for the population registers (see also the report – data from the population registers)
- The exchange of data between the municipalities as service providers within the meaning of the Social Code with other service providers¹⁶ (see also the report – Social data)
- Requesting police information by the municipal services for public order (see also the report – police data)
- Requesting tax data from the tax offices by the economic service of the municipalities in order to assess reliability according to trade legislation (see also the report – tax data)
- Requesting a certificate of good conduct from the Federal Bureau of Justice to assess a trader's good faith under commercial law, if the trader's previous request for a certificate of good conduct was unsuccessful or proved inappropriate (see already report – Judicial Records).

The purpose limitation principle of the General Data Protection Regulation provides important legal standards for the permissibility of passing on such data.¹⁷ Moreover, according to the settled case law of the German Constitutional Court, any transfer of personal data constitutes an independent infringement of fundamental rights and, as a result, requires its own legal ground for the passing on.¹⁸

This principle means that the more the purpose of the desired processing of the data by the municipality differs from the original purpose of the processing of the requested data, the more problematic the processing by the municipality becomes. If there is no legal ground for passing on data, the passing on must therefore be halted.

As described above, various routes are conceivable for the cross-border exchange of administrative data in the context of the administrative approach to organised crime.

1.3.2 Passing on administrative data from other government services by (the mayor of) the German municipality to (the mayor of) the Belgian/Dutch municipality

The principles mentioned above for domestic data processing and data provision also apply to the provision of German administrative information held by a German municipality to Belgian or Dutch municipalities.

German law does not provide for an authorisation ground that expressly permits passing on data to foreign municipalities. In rare cases, it is possible to pass on information held by a German municipality as its own information to foreign authorities on a legal ground (e.g. data from the population register).¹⁹ In general, however, legal grounds that clearly and unambiguously allow the passing on of information from other government services to foreign municipalities are lacking.

In addition, the purpose limitation principle of the General Data Protection Regulation also precludes passing on data if the desired use of the data by the foreign municipality is not for the same purpose as that for which the data is already being used by the German municipality. Changes of purpose are only possible to a limited extent. Since the data subject's consent to the passing on of their data is often lacking, as well as a legal provision that allows a change of purpose under the General Data Protection Regulation, the controller must assess and balance the interests.²⁰

Finally, national regulations may not be circumvented when providing or passing on information, which impose strict conditions on the provision of certain types of data, e.g. information from the police and the tax authorities (see the relevant reports).

As a result of these legal obstacles, transfer of administrative information is generally not possible, particularly in the absence of a clear legal ground for the provision or passing on of information.

¹⁴ § 2 GO NRW, Art. 78 II LV NRW

¹⁵ § 150a I Nr. 2 a),b) *Gewerbeordnung (GewO)* (Trade Regulation Act).

¹⁶ § 69 I Nr. 1 SGB X, the „*Kreise und kreisfreien Städte*“ are, among other things, the providers of benefits for unemployment benefit II and social assistance, §§ 6 I Nr. 2 SGB II, 3 II 1 SGB XII.

¹⁷ Art. 5 I No. b), 6 IV GDPR.

¹⁸ *BVerfG, Judgment of the First Senate of 19 May 2020, - 1 BvR 2835/17 -, Rn. 212 f.*

¹⁹ For example § 35 BMG and § 34 BMG.

²⁰ Art. 6 IV GDPR.

1.3.3 Direct provision by a German municipality to a (mayor of a) Belgian/ Dutch municipality

As described earlier, German administrative law generally provides only a limited number of legal grounds for the transfer of administrative information to Belgian or Dutch municipalities. In addition, there is no explicit regulation in administrative procedural law regarding the participation of government bodies from other EU countries. As a result, options for foreign municipalities to participate in administrative legal proceedings remain far from certain. The literature does assume, however, that intergovernmental institutions and foreign legal entities under public law may, in certain cases, qualify for participation in administrative proceedings (pursuant to §11 VwVfG).²¹ This does, however, require a provision in international law that also has direct effect in Germany. Such an international provision is not available for the time being regarding foreign municipalities. As a result, foreign municipalities will not be able to fall under this VwVfG provision.

Nevertheless, several options for exchange are available. Foreign government bodies in the territory of the European Union have access to the German central *Gewerberegister* under certain conditions, for example.²² The central *Gewerberegister* collects various data on German traders, such as

- Informed decisions by a government agency to deny a trading license to a particular person²³
- Final decisions to impose fines in the exercise of or in connection with the exercise of a professional activity by the trader or a representative. An additional condition in this case is that the fine must be higher than €200²⁴
- A few irrevocable criminal convictions for certain violations of the Undeclared Work Act, the Temporary Employment Act and withholding and misappropriation of wages. These offences must have been committed in the exercise of or in connection with the exercise of a profession (*Gewerbe*). In addition, a custodial sentence of more than three months or a fine amounting to more than 90 days' pay must have been imposed.²⁵

Access to the central *Gewerberegister* may be granted to foreign administrations if the requesting foreign office is comparable to a German applicant who would also be granted access under German law.²⁶ In consideration of this possibility, the EURIEC has prepared a flyer in consultation with the Federal Office of Justice, which has been published

on the EURIEC website.²⁷ According to this flyer, access to this type of information is mainly possible for foreign municipalities and, in particular, the services responsible for trade, which, for example, prepare a decision regarding the reliability of a particular person.

Moreover, foreign government authorities may also access information from the German government if the respective foreign authority wishes to consult public registers to which private individuals also have access. Various registers are eligible for this, e.g. public sources. As regards the conditions for access to public sources by foreign municipalities, the EURIEC has prepared several brochures, which are also available from the EURIEC website.

The laws of both the federal government and the authorities in the state of North Rhine-Westphalia offer another possibility. Citizens must have access to official information, i.e. all documents that serve official purposes²⁸ or information that has been obtained in an official context.²⁹ Foreign municipalities as legal entities under public law are not mentioned as possible beneficiaries of this legislation, however.³⁰ The regulations do not distinguish between nationals and foreign nationals regarding the entitlement of natural persons. Accordingly, employees of foreign municipalities could at the very least also apply for access to the respective German authorities as natural persons. However, such requests may be rejected in a variety of cases. Access may be refused if the protection of intellectual property, trade and business secrets or the official decision-making process would be affected by the inspection, for example.³¹

As regards freedom of information laws, access to personal data can only be granted after weighing up the interests. If the applicant's interest in obtaining information outweighs the third party's interest in the protection of their data. In addition, data may also be made public if the third party has consented to this.³² In fact, under the Freedom of Information Act of the federal state of North Rhine-Westphalia, a request for information must, in principle, be rejected with a view to protecting personal data. Information can only be released if there is a special reason to do so. Examples include the data subject's consent or the need for disclosure for reasons of public interest or to avert dangers to life, health, personal freedom or other serious violations of the rights of individuals.³³

21 NK-VwVfG/Sennekamp, 2. Aufl. 2019, § 11 VwVfG, Rn. 12, Stelkens/Bonk/Sachs/Schmitz, 9. Aufl. 2018, § 11 VwVfG, Rn. 15.

22 § 150c II GewO.

23 § 149 II 1 Nr. 1 a) GewO.

24 § 149 II Nr. 3 GewO.

25 § 149 II Nr. 4 GewO.

26 § 150c II 2 GewO.

27 <https://euriec.eu/de/>.

28 §§ 1 I, II, 2 Nr. 1 Informationsfreiheitsgesetz Nordrhein-Westfalen (IFG) (Freedom of Information Act North Rhine-Westphalia)

29 §§ 3, 4 I IFG NRW.

30 BT Drs. 15/4493, S. 7, the explanatory memorandum to the Freedom of Information Act (Informationsfreiheitsgesetz) of the State of North Rhine-Westphalia speaks in this respect of a "civil right character" of the claim: LT NRW Drs. 13/1311, S. 11.

31 §§ 4,6 IFG, §§ 7,8 IFG NRW

32 § 5 I 1 IFG.

33 § 9 I a), c), IFG NRW.

1.3.4 Provision by a German municipality to the Belgian/Dutch police whereby permission is given for data to be passed on to and used by the administration for the purpose of an administrative approach to organised crime (U-turn)

The provision or passing on of German administrative information by a Belgian or Dutch authority to Belgian or Dutch municipalities faces legal objections.

The principle of purpose limitation already sets limits to the transfer of data in the sense that a further transfer for purposes other than the initial purpose of the transfer is only possible in special cases. In contrast to tax law (see report on Taxation), the field of administrative law does not generally provide grounds for consent that would allow the transfer of data for purposes other than the original purpose of the transfer. Moreover, the respective German rules in this area may not be circumvented, insofar as they do not allow for direct transmission to Belgian or Dutch municipalities.

As a rule, these standards result in the inadmissibility of further transmission to Belgian or Dutch municipalities, insofar as direct requests of the data by the foreign municipalities from the relevant office of the German administration itself would not be possible.

1.4 The Netherlands

1.4.1 National use of administrative data in the framework of the administrative approach

In the exchange of municipal administrative data for the purpose of the administrative approach by municipalities, we can distinguish between exchange of information within a municipality, exchange of information between municipalities and obtaining information from external administrative partners.

This includes the following information sources, inter alia:

- Information from the basic register of persons (see the EURIEC report Cross-border Exchange of Data from the Population Register)
- Social security data (see the EURIEC report Cross-border Exchange of Social Security Data)
- Information available based on General Municipal Bye-Law/Public Order powers
- Alcohol Licensing and Catering Act data
- Housing Act data
- Data processing under the Bibob Act
- Use of police data for administrative purposes (see the EURIEC report Cross-border Exchange of Police Data)
- Use of tax data for administrative purposes (see the EURIEC report Cross-border Exchange of Tax Data)
- Exchange of data within the RIEC partnership (see the EURIEC flyer on data exchange within the RIEC partnership).

As is also apparent from other reports, some of this data is subject to a strict confidentiality provision, i.e. provision of the data is only possible if the law explicitly provides for this. In addition, the general duty of confidentiality under the General Administrative Law Act (Awb) applies to all this data.³⁴ This duty of confidentiality applies to information that is available during the performance of the tasks of an administrative body.³⁵ This is not an absolute duty of confidentiality; it only applies to information of which 'the confidential nature is known or should reasonably be suspected'.³⁶ The duty of confidentiality does not apply if the need for disclosure arises from the task of the relevant official.³⁷ Notification is necessary if this is necessary for the proper fulfilment of the administrative task.³⁸

There will usually be a lawful ground for processing for the receiving party since the officials of the Public Order and Security Department need the data for the performance of a task in the public interest or a task in the exercise of public authority. If the necessity requirement from the Awb and

the GDPR has arguably been met, the other requirements from the GDPR will also need to be assessed. The purpose limitation requirement is of significant importance here. Further processing of data for a purpose other than that for which the data was originally collected is, in principle, only permitted if the provision is based on the consent of the data subject or on a provision under Union or Member State law. In the absence of an explicit provision for the use of the data for the specific purpose for which it is used, this further processing is also permitted if there is a compatible purpose. When assessing compatibility, whether the citizen can expect that their data collected for one purpose will also be used within the municipality for the other purpose (in another municipality) is a factor, for example. Another factor here is whether the original purpose of the processing is related to the same objective, for example, in the case of the Alcohol Licensing and Catering Act, the maintenance of public order and safety and the fight against crime is an important objective in the implementation of this Act.³⁹

If there is no provision of personal data, but only data relating to a legal entity, the general duty of confidentiality in the Awb applies, but the provision does not need to meet the GDPR requirements in principle.⁴⁰ This does not apply to all company data, but only to data relating to a legal entity (See above: European regulations).^{41, 42}

There is still a great deal of uncertainty in the Netherlands about the options for sharing (administrative) data within municipalities and between municipalities for the administrative approach to organised crime. Along with the coalition agreement in 2017, the government announced a special '*Ondermijningswet*' that addresses various legal bottlenecks by amending current legislation and introducing new legislation.⁴³ In line with this, the Dutch government has published a Model Privacy Protocol for intra-municipal data sharing.⁴⁴ This document deals specifically with the various sources of information and the options for intra-municipal use of this information for (other) public order and security purposes. In the context of the '*Ondermijningswetgeving*', options for exchanging information between municipalities for the administrative approach to organised crime would

34 Art. 2:5 General Administrative Law Act (Awb).

35 Art. 2:5 paragraph 1 Awb.

36 Art. 2:5 paragraph 1 Awb.

37 Art. 2:5 paragraph 1 Awb.

38 Professional Study General Part, art. 2:5 Awb, aant. 2.4.2.

39 Model privacy protocol – Manual for intra-municipal data exchange for combating organised crime 2020, p. 41.

40 Consideration 14 GDPR.

41 J. Hutter e.a., *Grip op de AVG [GDPR under control]*, Deventer: Wolters Kluwer 2017, par. 1.1.

42 Data Protection Authority. Een brief van de AP aan de Kamer van Koophandel over de verwerking van persoonsgegevens [A letter from the AP to the Chamber of Commerce about the processing of personal data]. The Hague: 2016, p. 3.

43 '*Ondermijningswet en –fonds: een van de plannen van Rutte III*', 20 October 2017, vng.nl. Adaptation of the Dutch legislation for the integrated approach to organised crime.

44 Model privacy protocol – Handleiding binnengemeentelijke gegevensuitwisseling ten behoeve van de bestrijding van ondermijning 2020 [Manual for intra-municipal data exchange for combating organised crime 2020].

also be examined in more detail.⁴⁵ To date, there has been no publication on this topic. One of the goals of the *'Ondermijningswet'* is to facilitate and clarify information sharing between municipalities. This is meant to be realised through the Data Processing by Associations Act, *inter alia*.⁴⁶

Other ways in which administrative data (can) be obtained include:

- Public data (Government Gazette, municipal publications, (local) news, etc.
- Request based on freedom of information laws (Wob request)
- Informal data exchange (See section 1).

1.4.2 Cross-border consultation of Dutch administrative data

As described in section 1.4.1, Dutch administrative data can be requested and/or consulted in various ways. Foreign administrative bodies can obtain Dutch administrative data in several general ways:

- Public data
- Request based on freedom of information laws (Wob request)
- Informal data exchange (See section 1).

In addition, a public order and safety department has the option to ask a Dutch municipality for information that is required for the performance of its task. A Dutch municipality may also decide on its own initiative that the information at its disposal is required for a public order and safety department of a foreign municipality. In this section, the general methods of obtaining information mentioned above are discussed first. Subsequently, data exchange by either a public order and safety department of a Dutch municipality or another department of a Dutch municipality with the public order and safety department of a foreign municipality will be discussed. Lastly, the potential future option to provide cross-border information from the RIEC partnership is explained.

1.4.2.1 Public data

Public data can be used for cross-border consultation of administrative data, e.g. data in the Government Gazette, municipal publications, (local) news, etc. Officials of a (foreign) municipality may search for public data about a specific person/organisation on their own initiative. However, municipalities' policies regarding the publication of information about the refusal/withdrawal of licenses or, for example, the closure of a building, are rather varied, making it challenging to consult this type of data. For

example, while some municipalities place a notice on their website when a drugs building is closed down, others may publish a notice in the municipal gazette. In addition, the type of information municipalities publish varies as well. The Data Protection Authority (AP) has repeatedly drawn municipalities' attention to the fact that they make (too much) personal data public. According to the AP, it is unlikely that municipalities are legally obliged to disclose personal data.⁴⁷ Such processing of personal data must be necessary. The AP states that municipalities will need to assess whether the disclosure of personal data is necessary on a case-by-case basis.

If the conditions set by the AP are met, the information that is published will be so brief that other (foreign) municipalities will not be able to derive sufficient information from it. The public information will at best serve as a trigger for the (foreign) municipality to further investigate a person, but will in itself be insufficient to draw any conclusions.

In addition, the processing of public personal data is also considered processing as referred to in the GDPR. This means that even in the event of processing of public personal data, the GDPR requirements must also be met.

1.4.2.2 Freedom of information laws

Anyone (including a foreign municipality) may ask a Dutch administrative body to disclose administrative information.⁴⁸ The administrative body receiving the request must then weigh the importance of the disclosure of the administrative information against, *inter alia*, the importance of respecting the privacy of the person concerned.⁴⁹ If the governing body decides to provide the information, the decision is made public and the information is provided. Where an interested party is expected to object to the disclosure of the information, the information will only be provided after the interested party has been given the opportunity to object to the disclosure (2 weeks).⁵⁰

When making a Wob request, the applicant must indicate as specifically as possible about what they wish to receive information.⁵¹ A general request for information about a specific person (without knowing whether there is, for example, a licensing procedure or similar) is insufficient. For example, if the (foreign) municipality knows, based on public data, that a license has been refused in relation to

⁴⁵ P. 6.

⁴⁶ VNG, *Jaarverslag 2019 [Annual Report 2019]*, p. 55.

⁴⁷ *'Brief aan VNG : Actieve publicatie van persoonsgegevens door gemeenten'*, Data Protection Authority [Letter to the Association of Dutch Municipalities: 'Active publication of personal data by municipalities', dated 13 October 2017.

⁴⁸ Art. 3 paragraph 1 Freedom of Information Laws.

⁴⁹ Art. 10 paragraph 2 Freedom of Information Laws.

⁵⁰ Art. 6 paragraph 5 Freedom of Information Laws.

⁵¹ *'Hoe dien ik een Wob-verzoek in?' [How do I submit a Wob request?]* Rijksoverheid.nl.

a specific person, the request may be sufficiently specific. Subsequently, the municipality receiving the request must weigh up the interests, whereby the question is whether disclosure in such a case can be considered ‘publication to promote good and democratic governance’ and whether the weighing of interests results in disclosure of a subject’s personal data. Jurisprudence on the weighing of interests regarding ‘personal privacy’ mainly concerns the publication of the names of, e.g., civil servants or cases in which a person submits a Wob request regarding decision-making concerning that specific person. If the municipality decides to grant the request, the data will be made public, and the subject will be made aware that this information is being provided and given the opportunity to object to this.

A good suggestion for a try-out could be for a Belgian or German municipality to submit a Wob request to the relevant Dutch municipality in a concrete case, in which it can be concluded based on public data that a license has been refused/revoked and/or premises have been closed down.

1.4.2.3 Data exchange between the public order and safety department of a Dutch municipality with a similar department of a Belgian/German municipality

As already mentioned, administrative data within the Netherlands are subject to a general duty of confidentiality. As a result, the confidential nature of the data and the necessity of the provision for the fulfilment of the administrative task must be weighed up for each disclosure.⁵² Furthermore, it must be assessed whether the information contains personal data. Processing of personal data by a municipality falls under the scope of the AVG/GDPR. In order for the provision to be lawful, there must be a valid ground for processing:⁵³

The most common ground for processing in the context of a EURIEC case is processing (provision to a foreign municipality) for the performance of a task of public interest or of a task given to the controller in the exercise of official authority. Such processing must have a ground in Union or Member State law:⁵⁴

The first issue to be considered in this case is the task of the mayor, and the officials of the department concerned, to maintain public order and to ensure proper cooperation with other municipalities and authorities.⁵⁵ According to the Council of State, however, the public order task cannot serve as a ground for data exchange: ‘this is not sufficiently

or explicitly defined’.⁵⁶ As already described above, there is still a great deal of uncertainty about Dutch municipalities’ options to exchange information for the administrative approach to organised crime.⁵⁷ As a result, justification for this type of exchange with foreign municipalities appears to be a bridge too far.

To date, there appears to be no ground in Union and Member State law for the provision of administrative data to foreign administrative bodies. However, if this were the case, the purpose limitation principle must also be complied with. The Dutch municipality has collected the personal data for a purpose other than provision to the foreign municipality for administrative approach there. As a result, this constitutes processing ‘for a purpose other than that for which the personal data was collected’.⁵⁸ Consequently, the following steps must be tested to assess whether provision to the foreign municipality is allowed:

→ **Step 1:** In the context of which task or authority has the Dutch municipality obtained the requested information (legal ground for primary use)?

The answer to this question may vary from case to case. The most common laws under which information is collected in EURIEC cases are:

- Bibob Act
- Licensing (e.g. withdrawal of Alcohol and catering license)⁵⁹
- Opium Act (in the case of closure of a building on the grounds of Damocles policy).⁶⁰

→ **Step 2:** Does the relevant sector legislation provide for rules regarding the provision of data (related to organised crime)?

- General duty of confidentiality under the General Administrative Law Act (Awb)⁶¹: the prevention of organised crime and the facilitation of certain activities by the government can be considered a task that is required for the proper fulfilment of the administrative task
- Bibob Act: the Bibob Act contains a strict duty of confidentiality. Provision of data that is available under the Bibob Act is only possible in legally defined cases. For example, within the Netherlands, provision to another municipality is only allowed in order to support this municipality in a Bibob procedure. It may be possible to draw a parallel when Belgium also has a Bibob Act.

⁵² Professional Study General Part, art. 2:5 Awb, aant. 2.4.2.

⁵³ Art. 6 paragraph 1 AVG.

⁵⁴ Art. 6 paragraph 3 GDPR

⁵⁵ Art. 172 paragraph 1 in conjunction with 170 paragraph 1 sub b Municipalities Act.

⁵⁶ Council of State, ‘De rol van gemeenten in de bestuurlijke en integrale aanpak van ondermijning’ [The role of municipalities in the administrative and integrated approach to organised crime], raadvanstate.nl, dated 20 April 2019.

⁵⁷ Association of Dutch Municipalities, ‘Protocol uitwisseling persoonsgegevens bij ondermijning’ [Protocol on the exchange of personal data in cases regarding organised crime], vng.nl, dated <https://vng.nl/artikelen/protocol-uitwisseling-persoonsgegevens-bij-ondermijning> 20 March 2020.

⁵⁸ Art. 6 paragraph 4 AVG.

⁵⁹ Art. 31 Alcohol Licensing and Catering Act.

⁶⁰ Art. 13b Opium Act.

⁶¹ Art. 2:5 General Administrative Law Act (Awb).

Cross-border provision of Bibob data does not appear possible at the moment, however

- Opium Act: the Police Data Act determines the rules on confidentiality and the provision of police data. For the legal assessment of the provision of this data, reference is therefore made to the EURIEC report on Cross-border Exchange of Police Data
- Alcohol Licensing and Catering Act: this act does not provide specific rules regarding confidentiality, purpose limitation or data provision to third parties.

Please note: if the sector legislation explicitly stipulates that disclosure is not permitted, step 3 and following do not apply. In that case, provision is **not** permitted.

→ **Step 3:** Is the purpose of the provision compatible with the original purpose for which the data was collected?

- Provision to a foreign municipality of data that is available under the Bibob Act as well as in the implementation of the Opium Act is excluded based on step 2
- Alcohol Licensing and Catering:
 - *Objective*
To prevent health damage caused by alcohol and reduce disturbance of the public order caused by alcohol abuse
 - *Compatible objective*
Whether the goal is compatible depends on the case. If the foreign case also concerns the granting of a catering license, the goal is considered compatible. The data is provided to the foreign municipality with the aim of taking measures that are similar to those in the Netherlands
 - *Framework within which the data has been collected?*
The data has been collected in the context of administrative government tasks. The relationship between the data subject and the controller, citizen – government, is of particular importance
 - *Nature of the personal data that is processed?*
Non-specific personal data (name, address) + the fact that a license has been revoked.
 - *Possible consequences for the data subject?*
Potentially stricter checks/supervision by the foreign municipality, which in the long term may lead to the license being revoked if sufficient grounds are given.
 - *Appropriate safeguards?*
Encrypted transmission, where applicable.

→ **Step 4:** testing necessity, proportionality and subsidiarity
This is case-dependent. The following play a role, in any case:

- The severity of the invasion of privacy
- To what extent does the information that is provided offer a complete picture of the data subject?
- To what extent will the data subject experience negative consequences of the disclosure?
- Nature of the data?
- Can the data subject effectively defend themselves against the infringement committed?

If public information is available that is sufficient for the foreign municipality's purposes, providing further data is not permitted. The Dutch municipality is only allowed to provide information if there is no other, less intrusive, way in which the same objective can be achieved (subsidiarity test).

→ If the foreign municipality can use the information from the Netherlands to refuse/revoke the permit, this may constitute an argument in favour of the necessity of the provision. In all likelihood, a refusal or revoking of a license will not be possible (soon) based on strictly Dutch information. The necessity must be sought in the fact that the information enables the Belgian/German municipality to exercise further monitoring powers in order to identify potential criminal activities at an earlier stage
→ The possible consequences in Belgium or Germany (possible revoking/refusal of the license) must be proportionate to the infringement committed in the Netherlands. If, for example, a license is refused as a result of an administrative error, it would not be proportional if this resulted in adverse consequences in Belgium or Germany.

1.4.2.4 Provision of data by other municipal departments of the Dutch municipality to the public order and safety department of a Belgian/German municipality

In general, the same step-by-step plan applies to the provision of data by other municipal departments of a Dutch municipality to the public order and safety department of a Belgian/German municipality. Here, too, it is important to consider the legal task based on which the data has been collected and whether this sector legislation stipulates rules relating to the provision of data or a possible confidentiality clause. In addition, the general duty of confidentiality under the Awb also applies to data from other municipal departments. Furthermore, there must also be a ground for the data provision. Generally, there will be no Union or Member State provision that can serve as a ground for cross-border provision for the purpose of the administrative approach to organised crime.

The compatibility of the objective is an additional complication. Other municipal departments collect data for purposes that are consistent with their tasks and powers. This will probably not involve tasks and powers in the context of public order and security. In general, therefore, there will not be a compatible purpose any time soon and provision will not be possible for that reason alone.

1.4.2.5 Provision of data by other municipal departments via the public order and safety department of the Dutch municipality to the public order and safety department of a Belgian/German municipality

When providing data from other municipal departments via the public order and safety department of the Dutch municipality to the public order and safety department of a Belgian/German municipality, first and foremost it is important to legally review intra-municipal provision. The previously discussed Model Information Protocol for Intra-municipal Data Sharing can be consulted to this end. The same conditions and bottlenecks that have been described above apply to passing on this data across borders. This shows that, under current laws and regulations, there will be no Union or Member State provision that can serve as a ground for cross-border provision for the purpose of the administrative approach to organised crime. In addition, here, too, the purpose of collecting the data will usually be incompatible with the administrative approach to organised crime abroad.

1.4.2.6 Cross-border provision through RIEC partnership

A bill for the Data Processing by Associations Act (WGS) is currently before the Dutch Senate. This bill provides a general legal ground for data processing by associations such as the Dutch RIEC.⁶² It includes a stipulation that allows for the provision of results of the joint processing of data to third parties.⁶³ Once the Act enters into force, an Order in Council (amvb) will be drawn up for each partnership (including the RIEC partnership), in which further rules for joint data processing will be laid down.

The EURIEC urges that explicit attention be paid to cross-border provision in this Order in Council for the RIEC partnership. The stipulations regarding provision to third parties are so vague that they may result in uncertainty and reluctance to provide data cross-border. This lack of clarity stems mainly from the wording of the articles in the current bill. Art. 1.7, second paragraph, under a, uses the term ‘fulfilment of a task imposed by public law’. This may lead to discussion about the application of this paragraph. Where Dutch law mentions a public law task, this usually refers to a ‘task under Dutch public law’. In part b, reference is made to ‘legal obligations of a private third party’; a foreign administrative body cannot be considered a ‘private third party’ either. In other words, it may not be clear whether disclosure to foreign bodies that hold a public-law function is permitted. A more in-depth examination in the amvb on the

provision (spontaneously or on request) of the results of the processing within the RIEC partnership to bodies in another country that fulfil a public law function that is compatible with the purpose of the partnership, may prevent discussions in the future.

The Act on the Control of Legal Entities could be examined, for example. It includes an article about provision to bodies in another country that fulfil a public-law function there.⁶⁴ The EURIEC has already presented this problem and the proposed solution to persons who are involved in the national working group that is tasked with the drafting of the Order in Council.

62 ‘Wet gegevensverwerking door samenwerkingsverbanden’ [Data Processing by Associations Act], vng.nl.

63 Art. 1.7 paragraph 2 in conjunction with 2.23 paragraph 8 Data Processing by Associations Act (WGS).

64 Art. 8 paragraph 1 Act on the Control of Legal Entities.

2 Practical consequences

EURIEC cases show that there is a need to be able to share administrative data across borders, for example, if a drugs lab is found in a person's house and administrative measures are taken as a result. The same person may be operating a hospitality business just across the national border. It would appear obvious for the mayor of the municipality where the drugs lab was found, to inform their counterpart right across the border of this discovery. After all, it is possible that the information about the closure of the premises of this entrepreneur may be relevant to the foreign municipality. There is surely a risk that the drugs may be sold/used in their sex club or that the foreign company will be used to launder the proceeds of the drugs lab. The foreign municipality in which the company is located could, based on such information, perform additional checks with a view to preventing the facilitation of criminal activities by the foreign government. In this way, in cooperation with the police, it would be possible to carry out (administrative) checks on the hospitality establishment of the relevant subject. In such cases, the EURIEC aims to bring the two municipalities and other competent partners together for so-called expert platforms. The specific cases are discussed at these expert platforms and they examine what information is available and how the different types of information can be shared. In practice, it appears that sharing administrative information is often not possible under current laws and regulations. This leads to frustration among mayors of (border) municipalities because they have no access to all the information that is important to them.

Another example of the importance and necessity of cross-border information exchange is when administrative and police action is taken against certain motorcycle clubs in one country. This entails the risk that these motorcycle clubs move to a location just across the border.⁶⁵ Here too, information exchange about certain risks and issues is crucial. Since similar cases are more likely to be about sharing experiences and best practices, the EURIEC tries to bring (border) municipalities in contact with each other. In this way, the municipalities will also be able to contact one another at an earlier stage if a specific case is presented with cross-border components.

65 <https://eenvandaag.avrotros.nl/item/hoes-en-terwingen-willen-europese-aanpak-motorclubs/>.

3 Conclusion

This report describes the possibilities and impossibilities regarding the information exchange of administrative data that municipalities have at their disposal in the performance of their task in the context of administrative approach.

→ **First**, it appears that compared with other types of data, only a limited number of international conventions allow for exchanging administrative data. Nor is there such an international convention for the exchange of administrative data in the context of the administrative approach to organised crime. Nevertheless, the administrative approach to organised crime and the role administrations play in combating organised crime is increasingly being recognised.

→ **Secondly**, it appears that the three countries that are discussed struggle to provide administrative data containing personal data (cross-border) for the purpose of the administrative approach. After all, in most cases there is often no explicit legal ground to do so. Sharing information in purely domestic situations often proves difficult as well because in some cases there is no legal ground to do so either. In addition, municipalities also receive information in the context of assignments other than with a view to safeguarding public order. It is possible that this information, such as tax or land registry information, was initially shared with municipalities in the context of a different assignment. In certain cases, however, this information may also be useful with a view to the administrative approach to organised crime. In such cases, the purpose limitation principle would also present a problem for information exchange with other (foreign) municipalities.

→ **Thirdly**, in certain cases it appears possible to share administrative information about companies, which cannot be linked to certain personal data, across borders, since this does not require compliance with the conditions imposed by the GDPR. However, this partly depends on the types of data as well. After all, certain data/municipal employees are subject to a duty of confidentiality, i.e. the sharing of such information is often subject to certain conditions.

→ **Fourthly**, the competent foreign services may consult certain types of administrative information directly. This could include public databases such as information about companies and land registry data. Information on whether and when this type of data is available to foreign governments can be found on the EURIEC website.

In order to facilitate cross-border information exchange of administrative data in the future with a view to the administrative approach to organised crime, national and international regulations will need to be adapted. Without such laws and regulations, the exchange of administrative data is still difficult and uncertain for the time being.

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