



Report on cross-border exchange of criminal records data and other judicial information

For the purpose of the administrative approach
to organised crime



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General description

For the purpose of an effective administrative approach to organised crime, a good information position is essential. Cases submitted to EURIEC regularly contain criminal records and other court rulings that may be useful to foreign authorities in the administrative approach to organised crime. In order to strengthen the information position of the foreign administration, providing criminal records data and other court rulings from one country to the administration in the other country is therefore desirable. After all, it is undesirable that the local authorities have more options/a better information position when a resident is engaged in criminal activities than when a foreign person who lives a few kilometres across the border engages in similar activities.

The term **criminal records data** is in line with European terminology. In the context of this paper, this is understood to mean: all data that the judiciary in Belgium, Germany (NRW) and the Netherlands has at its disposal in the context of the criminal prosecution process and information about criminal proceedings and criminal court rulings and convictions.

This paper also includes the exchange of **other (non-criminal) court rulings**. After all, in the context of the administrative approach to organised crime, there may also be a need for information from rulings by the civil or administrative court.

The national possibilities for using criminal records data and other court rulings for the administrative approach are not (always) the same as the cross-border options. This is why the national options for information exchange are discussed first. Subsequently, these possibilities are compared with the options for international information exchange. Regarding the international exchange of information, there are generally three different routes for providing criminal records data and/or other court rulings from one country to the administration in another country:

1. Provision of criminal records data and other court rulings by (the mayor of) one municipality to (the mayor of) another foreign municipality
2. Direct provision by the authorities of one country to a (mayor of a) municipality in another country
3. Provision by the (central) authority of one country to the (central) authority of another country for the purpose of the administration for the administrative approach to organised crime.

Paragraph 1 starts by discussing the international and/or European legal frameworks. These legal rules provide the framework for centralised cross-border information exchange by central authorities of the Member States. Because of this centralisation, route 2, direct provision by the authorities of one country to a (mayor of a) municipality of another country, is no longer possible. Paragraph 1 also explains the domestic options for exchanging criminal records data and other court rulings for the benefit of the administration in Belgium, Germany and the Netherlands. Next, the other two routes 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

1.1.1 Criminal records data

Since 2009, European laws and regulations regarding the exchange of information from the criminal records between Member States have been vastly improved.¹ Member States can mutually exchange criminal convictions via the European Criminal Records Information System (ECRIS). Since existing European laws and regulations no longer met current needs, and analysis showed that national courts only took into account information from their country's criminal records when imposing penalties,² Member States were not aware of any convictions in other Member States. This situation risked leading to certain sense of impunity as long as one moved to another Member State. The ECRIS and the accompanying Framework Decision were subsequently drawn up with a view to solving this problem and facilitating the mutual cross-border exchange of criminal records. When exchanging criminal records data via ECRIS, the police and the justice department should respect the Data Protection Directive as well. Separate rules apply to the exchange of criminal records data on non-EU nationals. Since the EURIEC only operates in the area of Belgium, Germany and the Netherlands, these separate rules will only be discussed briefly.

1.1.1.1 Directive on police and judicial data protection

As of 2018, the General Data Protection Regulation (GDPR) and the Data Protection Directive by the police and judicial authorities apply to the processing of personal data within the European Union.^{3 4} Processing of personal data is always subject to either the Regulation or the Directive (subject to some specific exceptions).

The Directive generally applies to the processing of criminal records data. After all, the Directive lays down rules for the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including protection against and prevention of threats to the public safety.⁵ Although the term 'competent authority' is defined in the Directive, it appears that not

all countries interpret this term in the same way. It is clear from the Directive that 'competent authority' does not refer to law enforcement authorities exclusively. This term also includes any other body that is authorised under Member State law to exercise public authority and public powers for the purposes of the Directive.⁶ In our view, this definition could therefore also be understood to mean a municipality that acts in the context of implementing the administrative approach to organised crime. However, not all countries interpret this so broadly in their national legislation. These differences in the implementation of the Directive indicate the effect of the differences in the allocation of competences between the different countries and affect the rights of the data subject (for example, the obligation to provide information).

In Belgium, for example, the Directive has been implemented together with the Data Protection Regulation in the Act on the Protection of Natural Persons with regard to the Processing of Personal Data. Competent authorities in Belgium include, inter alia, police services (the federal police and the local police forces) and the judicial authorities (the courts and tribunals and the public prosecutor's office).⁷ As a result, processing of personal data by municipalities in the context of the administrative approach will fall under the Data Protection Regulation in Belgium and not under the Directive.

In Germany, the legislators of the federal states have individually transposed the Directive through the provisions of the Police Act. For example, the legislator in North Rhine-Westphalia has also transposed the Directive and designated the services of the municipalities with a public order task as competent authorities.⁸ As a result, municipal services that are responsible for public order will fall within the scope of the Directive when dealing with the prosecution and punishment of administrative infringements and the enforcement of sanctions.⁹ Finally, the provisions of the Data Protection Act adopted for the implementation of the JHA Directive also apply to criminal courts and public prosecutors' offices regarding their tasks in investigating and fighting criminal offences, as well as the enforcement of judgments.

In implementing the directive, the Dutch legislator has, where possible, aimed to prevent authorities from being confronted with different processing regimes.¹⁰ The directive applies to data processing by bodies such as the police and the Public Prosecution Service. The processing of personal data for purposes such as the exercise of administrative powers is not covered by the Directive but by the Regula-

1 With the introduction of the Framework Decision 2009/315/JHA and the Decision on the establishment of the European Criminal Records Information System.

2 COM(2005)690.

3 Regulation (EU) 2016/679.

4 Directive (EU) 2016/680.

5 Art. 1 Directive (EU) 2016/680.

6 Recital 11 Directive (EU) 2016/680.

7 Art. 26, 7° Act on the Protection of Natural Persons with regard to the Processing of Personal Data.

8 § 24 I OBG NRW.

9 § 24 II OBG NRW.

10 Parliamentary Papers II 2017/18, 34889, no. 3, p. 4. (MvT).

tion.¹¹ According to the Dutch legislator, the directive only applies in the context of criminal justice. The regulation therefore applies to the processing of personal data for the purpose of other forms of enforcement, e.g. by means of administrative law.¹²

1.1.1.2 European Criminal Records Information System (ECRIS)

ECRIS is a decentralised information technology system, based on the criminal records databases in the Member States.¹³ An electronic query of ECRIS shows whether data about a particular EU citizen is present in the (foreign) criminal record.¹⁴ In other words, 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 and exchange data from the national criminal records through a standard form.¹⁵ The Framework Decision described below contains further rules for the exchange of data through ECRIS.

1.1.1.3 Framework Decision

ECRIS came into force in April 2012. Since then, the mutual exchange of data between EU Member States based on the Framework Decision has only taken place via computerised systems. This means that the central authorities do not provide criminal records data directly to local authorities, but always via ECRIS to the central authority of the other country.

The Framework Decision aims to establish the arrangements under which the Member State in which a national of another Member State has been sentenced automatically communicates information about this conviction to the Member State of which the convicted person holds nationality.¹⁶ This Framework Decision also sets conditions regarding the provision of information about convictions by the Member State of nationality to another Member State in response to a request by this other Member State.¹⁷ Where such a request is made for purposes other than criminal proceedings, whether this information is provided will be decided in accordance with national law.¹⁸ In addition, each Member State must designate a central authority based on this

Framework Decision.¹⁹ This central authority is responsible for the exchange of data extracted from the criminal records with other Member States on behalf of the Member State.

Notification on Member State of nationality

The convicting Member State is obliged to notify the central authority of the Member State of which the convicted person is a national as soon as possible of all relevant and irrevocable convictions handed down against the person concerned in its territory.²⁰ Such provision is made via ECRIS by default.²¹ If, for example, a Dutch national is convicted in Belgium, the Belgian central authority must inform the Dutch central authority about this. In this way, Member States have a full criminal justice picture of their nationals. The receiving central authority may then request a copy of the conviction and subsequent measures, as well as other information it requires to assess whether measures can be applied in the State of residence.²²

Data provision on request

ECRIS ensures that information about convictions can be exchanged between EU Member States uniformly and quickly. Member States can request criminal records data from other Member States through ECRIS. Such requests are not only made in the context of criminal proceedings against a person, but may also be made for other purposes, such as ensuring an effective administrative approach.²³ The information can be used for license applications, migration applications, public tenders, etc. Where such a request is made for purposes other than criminal proceedings, whether or not this data is provided will be decided in accordance with national law.²⁴

1.1.1.4 Convictions of non-EU nationals

The Framework Decision does not by definition lead to changes regarding the exchange of criminal records data about third-country nationals and stateless persons.²⁵ Requesting criminal records data via ECRIS in another Member State if these data relate to a non-EU national is currently not possible. Exchange of such data happens via a request for legal assistance.^{26, 27}

11 *Parliamentary Papers II 2017/18, 34889, no. 3, p. 8-9 (MvT).*

12 *Parliamentary Papers II 2017/18, 34889, no. 3, p. 4 (MvT).*

13 *Art. 3, paragraph 1 Decree 2009/316/JHA.*

14 *Gazette 2012, 130, p. 16.*

15 *Art. 1 in conjunction with 3 Decree 2009/316/JHA.*

16 *Art. 1 sub a Framework Decision 2009/315/JHA.*

17 *Art. 1 sub b Framework Decision 2009/315/JHA.*

18 *Art. 7 paragraph 2 Framework Decision 2009/315/JHA; With the exception of screening for working with children. In that case, the requested EU Member State (the Member State of nationality) is obliged to answer the request.*

19 *Art. 3, paragraph 1 Framework Decision 2009/315/JHA.*

20 *Art. 4 paragraph 2 Framework Decision 2009/315/JHA.*

21 *Art. 4 Decree 2009/316/JHA.*

22 *Art. 4 paragraph 4 Framework Decision 2009/315/JHA.*

23 *Art. 6, paragraph 1 Framework Decision 2009/315/JHA.*

24 *Art. 7, paragraph 2 Framework Decision 2009/315/JHA.*

25 *Art. 7, paragraph 4 Framework Decision 2009/315/JHA.*

26 *Art. 7, paragraph 4 Framework Decision 2009/315/JHA.*

27 *Art. 13 European Convention on Mutual Assistance in Criminal Matters.*

An extension of ECRIS is currently underway: ECRIS-TCN²⁸. According to the planned schedule, this database should be operational in 2023.²⁹ With this extension, Member States will be better able to identify in which other Member State a third-country national has been irrevocably convicted of a crime.³⁰ Subsequently, information about this irrevocable conviction can be requested, after which the requested Member State will assess this request in accordance with national law.³¹ In this way, European Member States will also have access to information on third-country nationals in the European Union.

1.1.2 Other judicial data

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)³² and the European Convention on Human Rights (ECHR)³³. 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.³⁴ Some exceptions apply to this disclosure requirement, e.g. when minor children are involved. These instruments relate to a public decision of the court rulings and not specifically to the provision of judgments to parties that are not involved in the proceedings. Furthermore, 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.³⁵ How the provision of court judgments to parties not involved in the proceedings is handled and to what extent the judgments are anonymised depends largely on national legislation and is therefore discussed separately for each country in the paragraphs below.

28 Regulation 2019/816 establishing a centralised system for determining which Member States hold information on convictions of third-country nationals and stateless persons (ECRIS-TCN) to supplement the European Criminal Records Information System and amending Regulation 2018/1726.

29 Evidenced by email contact dated 22-6-2020 with eu-LISA.

30 Parliamentary Papers II 2017/18, 22 112, no. 2603, p. 6-7.

31 Parliamentary Papers II 2017/18, 22 112, no. 2603, p. 6-7.

32 Art. 14 ICCPR.

33 Art. 6 ECHR.

34 THOMAS, E., *Lexplicatie, commentary on art. 6 ECHR [Lexplication, commentary on art. 6 ECHR], 1998.*

35 THOMAS, E., *Lexplicatie, commentary on art. 6 ECHR [Lexplication, commentary on art. 6 ECHR], 1998.*

1.2 Belgium

In Belgium, information about final convictions and sentences is included in the Central Criminal Register. Before 2009, every municipality in Belgium kept a municipal criminal record of its residents. However, since the law of 31 July 2009 took effect, these municipal criminal records have been gradually included in the Central Criminal Register, and since 2018, the Central Criminal Register has entirely replaced the municipal criminal records.

This Central Criminal Register aims, *inter alia*, to communicate the registered data to the administrative authorities who need this information for the application of legal provisions.³⁶ The Central Criminal Register also serves to communicate the data to foreign governments in the cases described in international agreements or a rule of secondary EU law to which Belgium is bound.³⁷ First, the national use of criminal records data is discussed, after which the options for international exchange of criminal records data with Dutch and German governments is also discussed. Finally, the possibilities for cross-border information exchange regarding other judicial data are examined as well.

1.2.1 Criminal records data

1.2.1.1 National use of criminal records in the context of the administrative approach

In Belgium, certain public authorities used to obtain direct access to the Central Criminal Register, while other public authorities only have indirect access. The services that do not have direct access must, in most cases, request data via the data subject.³⁸

Examples of public authorities that have obtained direct access to the Central Criminal Register include magistrates from the Public Prosecution Service, the investigating judge and the police. In addition, certain other authorities have direct access to the Central Criminal Register, e.g. the responsible nationalisation service and the senior officer of the Federal Administration Recruitment Bureau.³⁹

It follows that Belgian local authorities are not included in the list of public authorities that have direct access to the criminal records. As a result, municipalities in Belgium do not have direct access to data from the Central Criminal Register, but only indirect access. They can obtain information in two ways. The first way is via the data subject. For

example, if the person concerned wishes to run a restaurant in Belgium, they must submit an extract from the criminal records to the municipality. If it appears from this extract that the person concerned has been convicted of certain offences, the license may be refused.⁴⁰

Nevertheless, the municipalities do play a role in the provision of data from the criminal records. After all, the person concerned must request a copy from the municipality where they are registered. As a result, it is possible in this context that certain employees of the municipality who are responsible for issuing such extracts come into contact with criminal records data. Due to computerisation, residents of several Belgian municipalities are currently able to request an extract from the criminal records online.

The second way for municipalities to obtain information is through the police. The police services have access to the Central Criminal Register, with a view to, *inter alia*, enabling them to provide well-considered and substantiated advice to the administrative authorities (e.g. the mayor). In this respect, data from the criminal records can be used, *inter alia*, in advice on operating licenses, events organisation and the provisional closure of an establishment.⁴¹ As a result, Belgian municipalities will have access to advice that is partly based on information from the criminal records via the police services when granting, *inter alia*, operating licenses and events organisation. This advice is an advice on whether or not to grant a license and will therefore not by definition contain explicit information from the criminal records.

1.2.1.2 Provision of criminal records data by (the mayor of) the Belgian municipality to (the mayor of) the German/Dutch municipality

As discussed above, Belgian municipalities only have indirect access to data from the criminal records. As a result, the options for Belgian municipalities to transfer data from the criminal records to foreign municipalities are limited as well.

In the context of the administrative approach, there is no (inter)national legal ground for the provision of an extract from the Central Criminal Register to other (foreign) municipalities by a Belgian municipality. In addition, persons who, in the performance of their duties, cooperate to collect or process data that is included in the Central Criminal Register, e.g. municipal officials, are bound by professional secrecy.⁴² As a result, these persons will not pass on the information in their possession, unless they are called upon to testify in court or before a parliamentary committee of inquiry, or if

³⁶ Art. 598, 2° Code of Criminal Procedure.

³⁷ Art. 598, 4° Code of Criminal Procedure, art. 8 Act on the Central Criminal Register of 8 August 1997.

³⁸ Art. 593 and 594 Code of Criminal Procedure.

³⁹ Governmental Decree of 19 July 2001 on the access of certain public authorities to the Central Criminal Register.

⁴⁰ Council of State, 20 July 2012, no. 220-35.

⁴¹ Art. 589, second paragraph, 1°/1 Code of Criminal Procedure; Bill containing various provisions on the computerisation of Justice and modernisation of the statute of judges in corporate cases, Parl. Papers Parliament 2019-2020, no. 3549.

⁴² Art. 458 Criminal code.

they are required to do so by law. These persons must also prevent the data from being communicated to persons who are not authorised to take cognisance of that data.

For these reasons, municipal officials are not allowed to disclose the criminal records data in their possession to third parties or to foreign governments. However, foreign authorities and municipalities could request the license applicant to submit an extract from the Belgian criminal register. After all, any Belgian citizen can request an extract from the criminal records from the municipality where they are registered.⁴³ Should the person have lived in Belgium in the past but currently no longer have a permanent address in Belgium, then the person must request the extract from the Criminal Records Department of the Federal Public Service Justice.⁴⁴ The other option is to submit an inquiry through ECRIS via an application to the central authority in the Netherlands or Germany.

1.2.1.3 Provision by the Belgian (central authority to the German/Dutch central authority for the purpose of the administrative approach to organised crime (by means of ECRIS)

Extracts from the criminal records are issued to foreign authorities in the cases described in international agreements.⁴⁵ European Union law allows Member States to mutually exchange criminal convictions of EU nationals via the European Criminal Records Information System (ECRIS). Information about criminal convictions can also be exchanged via this system if the information served purposes other than criminal law,⁴⁶ on the condition that the request must be in accordance with the national law of the providing Member State (in this case Belgium). Generally, it is safe to say that if there is no ground in Belgian law for the provision of judicial data to national authorities for a specific purpose, it is not possible to reply to the requesting EU Member State for this purpose either.

However, Belgian law does not have a provision that allows municipalities to consult criminal records data in a direct manner. As a result, foreign municipalities will, in principle, not have access to data from the Belgian criminal records via ECRIS. In order to make such exchange possible in the future, a provision should be included in Belgian legislation that allows Belgian municipalities to have direct access to criminal records data.

⁴³ For a more detailed explanation, please refer to the EURIEC leaflet 'documents to be requested by license applicants'.

⁴⁴ Circular no. 264: connection of the municipalities to the Central Criminal Register.

⁴⁵ Art. 597 Code of Criminal Procedure; Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of criminal records data between Member States.

⁴⁶ Art. 9, Framework Decision 2009/315/JHA.

1.2.2 Other judicial data

1.2.2.1 Requesting judgments

From a strictly legal point of view, hearings and announcements before the judgment courts in Belgium are public,⁴⁷ with a view to giving citizens better access to the content of decisions and the interpretation that judges give to the regulations in force. The purpose of publication is to inform everyone about Belgian case law. As a result, most higher court decisions are made public in the Juportal database.⁴⁸ However, lower case law is rarely published.

Nevertheless, this principle of public access to judgments may conflict with the right to respect for private life.⁴⁹ Therefore, third parties (parties who are not directly involved in a legal dispute) cannot obtain a copy of a judgment from certain courts. In criminal courts, for example, the approval of the Public Prosecution Service is required to obtain a copy of the judgment. In addition, due to the strict anonymisation rules, it is not possible to request a court to obtain an overview of all convictions of a specific individual. In other words, one must already have concrete information about a case, such as the number of the case, before one is able to receive information about that case.

In addition, with a view to the protection of personal data, it is recommended to apply the rule that the identity of the parties must be omitted where possible.⁵⁰ Therefore, all data in judgments that appear online in, for example, official databases, should ideally be anonymised.⁵¹

1.2.2.2 Ongoing/past investigations

In principle, both the criminal investigation⁵² and the judicial investigation⁵³ are secret, subject to statutory exceptions. Insofar as administrative authorities are not parties to the criminal proceedings, they will, in principle, not be granted access to the criminal file. In certain cases, however, Belgian municipalities may still obtain an authorisation to inspect/copy the criminal file.⁵⁴ After all, a circular from the Board of Procurators General showed that the municipalities, even if they are not a directly interested party regarding a file, may

⁴⁷ Art. 148 and 149 Constitution.

⁴⁸ <https://juportal.be/home/welkom>.

⁴⁹ Commission for the Protection of Privacy, Opinion No. 07/96 dated 22 April 1996.

⁵⁰ Commission for the Protection of Privacy, Opinion No. 42/97 dated 23 December 1997.

⁵¹ Art. 2, first paragraph of the Act of 10 August 2005 establishing the Phenix information system.

⁵² Article 28quinquies §1, paragraph 1 Code of Criminal Procedure.

⁵³ Article 57 §1, paragraph 1 Code of Criminal Procedure.

⁵⁴ Circular no. 6/2018 from the Board of General Prosecutors at the Courts of Appeal: 'the authorisation to inspect the criminal file or to obtain a copy thereof'.

submit requests to the Public Prosecution Service to inspect the file or obtain a copy of it.⁵⁵ This provision is also used in the framework of the administrative approach for Belgian municipalities. It is important to note that municipalities do not have the right to obtain a copy. The decision as to whether such a copy can be provided is at the discretion of the public prosecutor. However, this begs the question of whether such information could also be shared with foreign municipalities.

In our view, these provisions also offer certain options for obtaining a copy of the criminal file as a foreign municipality. Such information has been successfully shared in the past as well.⁵⁶ EURIEC submitted this question to the Public Prosecutor's Office of Antwerp and is still awaiting an official response. KU Leuven supports the EURIEC's position in this regard.

⁵⁵ Based on art. 21 Code of Criminal Procedure.

⁵⁶ Cover letter from the General Prosecutor dated 28 November 2011.

1.3 Germany

In Germany, the term criminal records data refers to the entry of specific convictions against a particular person in the federal central register. The following paragraphs provide more information about this register and the options to share information from the criminal records across borders. Subsequently, an overview is given of other information options regarding criminal and civil law data in courts.

1.3.1 Criminal records data

1.3.1.1 National use of criminal records in the context of the administrative approach

Only certain authorities have unrestricted access to the Federal Central Register, which is responsible for issuing extracts from the criminal records. In addition to courts and prosecutors' offices, this also concerns services that can grant certain licenses, e.g. licenses in the security sector, hunting licenses, licenses for explosives and weapons or a license to keep a dog rated as dangerous.⁵⁷ Services that have unrestricted access may also have access to information that is not, or no longer, included in a certificate of good conduct.⁵⁸ Information provided in accordance with these principles may only be used for the purpose for which it was requested.⁵⁹

In principle, other authorities have the option to request a certificate of conduct only insofar as they need the certificate for the exercise of their sovereign duties, and insofar as a request to the person themselves to submit a certificate of conduct is unsuccessful or not desirable.⁶⁰ For example, German municipalities can request a certificate of good conduct, e.g. as supervisory authorities for assessing the good repute of a trader, provided that the request to the trader to apply for such a certificate of good conduct is unsuccessful or undesirable.

Regarding passing on this data, some important principles must be taken into account, e.g. the purpose limitation principle of the General Data Protection Regulation.⁶¹ In addition, 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.⁶² The more the purpose of the requested 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. In the absence of a legal ground for the disclosure, the passing on of data should therefore be stopped.

1.3.1.2 Provision of criminal records data by (the mayor of) the German municipality to (the mayor of) the Belgian/Dutch municipality

The principles mentioned above for domestic data processing and, in particular, data transfer, also offer standards for the transfer of German judicial data held by a German municipality to Belgian or Dutch municipalities. German law does not provide for an authorisation ground that expressly permits the transfer of data to foreign municipalities. All in all, there is a lack of authorisation grounds to enable transfer. In addition, the purpose limitation principle of the General Data Protection Regulation also stands in the way of disclosure. Changes of purpose are only possible to a limited extent here.⁶³

Finally, when providing information, national rules should not be circumvented. These national regulations stipulate that data can only be passed on with the permission of the Federal Office of Justice, the courts or the public prosecutor's offices.

As a result of these legal obstacles, this type of transfer is generally not possible.

1.3.1.3 Provision by the German central authority to the Belgian/Dutch central authority for the purpose of the administration for administrative approach to organised crime (also through ECRIS)

European Union law allows Member States to mutually exchange criminal convictions of EU nationals via the European Criminal Records Information System (ECRIS) (see above about the ground of Union law).⁶⁴

In addition to regular information from the respective registries in the European Union about convictions of nationals of other Member States, a formal request can also be made to the *Bundesamt für Justiz* for other purposes. This body is the competent authority for providing and receiving information through ECRIS. If the information is requested for a purpose other than criminal proceedings, e.g. in the context of

⁵⁷ § 41 I No. 1,9 Federal Central Register Act.

⁵⁸ § 41 I Federal Central Register Act.

⁵⁹ § 41 III 3 Federal Central Register Act.

⁶⁰ § 31 I 1 Federal Central Register Act.

⁶¹ Art. 5 I No. b), 6 IV GDPR.

⁶² BVerfG, Judgment of the First Senate of 19. Mai 2020, - 1 BvR 2835/17 -, Rn. 212 f.

⁶³ Art. 6 IV GDPR.

⁶⁴ Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from criminal records between Member States.

administrative approaches, the requested national authority shall reply to the request within 20 days and make a decision in accordance with national legislation.⁶⁵ In other words, a foreign authority may also try to obtain an extract from the criminal records via ECRIS if it turns out that requesting such an extract from a subject themselves is not desirable.

1.3.2 Other judicial data

In addition, a foreign municipality may find it useful to be able to view the text of a certain judgment or court ruling. According to the settled case-law of the *Bundesverfassungsgericht*⁶⁶, the *Bundesverwaltungsgericht*⁶⁷ and the *Bundesgerichtshof* for Civil Matters⁶⁸, a third party that is not involved in the proceedings may, in principle, have the right to inspect a decision which can be published and which has been discussed in an open procedure. However, in order to protect the right to the personal data protection of the persons concerned, the judgments that can be viewed are, in principle, anonymised. Nevertheless, non-anonymised judgments can also be viewed if the applicant can demonstrate a legitimate interest in access.⁶⁹

However, the legal situation is different when it comes to criminal sentences. In this regard, the *Bundesgerichtshof* is of the opinion that the disclosure of even anonymised judgments is only possible under the strict requirements of the Criminal Procedure Code in the context of demonstrating a special legal interest.⁷⁰ While this does not preclude a request for an anonymised copy of a criminal judgment, it nevertheless reduces its chances of success.

1.3.2.1 Ongoing criminal investigations

Persons who are able to demonstrate a legitimate interest may obtain access to a criminal file.⁷¹ This means that a foreign administration may also obtain access in certain cases, e.g. when the municipality concerned is itself the victim of the same or a similar criminal offence committed by the convicted person, and the information is necessary to support its own claims, e.g. civil claims. On the other hand, conducting a licensing procedure with the data subject as an applicant or an otherwise involved person is not in itself sufficient to demonstrate a legitimate interest.

In addition, the legitimate interest may only be invoked based on a prognosis, which means that the applicant must be able to expect, based on certain indications, that they will find information in the file that may serve their interests.⁷² On the other hand, it is not necessary to mention specific information in the file, since the applicant can only guess, according to their knowledge, at what information the file contains. In the case of a legitimate interest, the right to privacy of the convicted person is weighed up against this. Depending on the weight of the interests of the person concerned and the confidentiality, certain parts of the criminal file may also be omitted.

1.3.2.2 Access to files in civil proceedings

Access to records in civil proceedings by parties that are not involved in the civil proceedings requires either the consent of the disputing parties or demonstration of a legal interest.⁷³ There is a legal interest if the applicant's rights could be affected by the contents of the file, for example, if the applicant may have a civil claim against one of the parties.⁷⁴

Here too, the respective interest is weighed up against the confidentiality interests of the parties, which may lead to partial anonymisation of the files. In principle, the inspection concerns only a physical inspection. However, copies and extracts may also be permitted on request in exceptional cases.⁷⁵

65 https://www.bundesjustizamt.de/behorden/Home/Registernetzwerk/Registernetzwerk_node.html.

66 *BVerfG, Decision of the 3rd Chamber of the First Senate – 1 BvR 857/15, NJW 2015, 3708, Rn. 16.*

67 *BVerwG, Decision of 26.02.1997 - 6 C 3/96, NJW 1997, 2694, 1. Ls.*

68 *BGH, Decision of 5.4.2017 – IV AR(VZ) 2/16, NJW 2017, 1819, 1819 f.*

69 § 475 StPO: „berechtigtes Interesse“, § 299 II ZPO: „rechtliches Interesse“.

70 *BGH, decision of the 5th Criminal Senate of 20.6.2018 – 5 AR (Vs) 112/17, ZD 2019, 31, 32.*

71 *MüKoStPO/Singelstein, 1. Aufl. 2019, § 475 StPO, Rn. 16.*

72 *MüKoStPO/Singelstein, 1. Aufl. 2019, § 475 StPO, Rn. 18.*

73 § 299 II ZPO.

74 *MüKoZPO/Prütting, 6. Aufl. 2020, § 299 ZPO, Rn. 21.*

75 *MüKoZPO/Prütting, 6. Aufl. 2020, § 299 ZPO, Rn. 26.*

1.4 The Netherlands

What the general description refers to as criminal records data, is referred to in the Netherlands as judicial and criminal records data. For the sake of clarity, the term criminal records data will be used from here on out in this document. Judicial data is registered in the Judicial Documentation (JD).⁷⁶ Unlike in the case of criminal records data, there is no central body and general legislation for **other judicial data** that provides for the provision of this data. Regarding other judicial data, the Netherlands does not distinguish between Dutch or foreign administrative bodies. As a result, the subdivision into options for disclosure is more extensive regarding criminal records data than regarding other judicial data.

1.4.1 Criminal records data

The law determines who has access to which criminal records data and for what explicit purpose.⁷⁷⁷⁸ Whether the provision of criminal records data is possible in a specific situation may depend on the level of penalties. This document only elaborates as regards in *which* cases provision is possible. More information about which specific information may be provided, in the case of which level of penalties, and which additional conditions are imposed, can be found in the law. It is beyond the scope of this document to go into too much detail here.

In national and cross-border cases alike, the Dutch judiciary is under no obligation to provide criminal data to third parties.⁷⁹ Therefore, applicants are not *entitled* to receive the requested data. The Public Prosecution Service (OM) may provide information for purposes other than criminal law, on its own initiative or on request.⁸⁰ Doing so will always involve an assessment that considers factors such as subsidiarity, proportionality and necessity.⁸¹ It is also important that the recipient has grounds for receiving the information.⁸²

1.4.1.1 National use of criminal records in the context of the administrative approach

The provision of data can take place in several ways, including issuing a **Certificate of Good Conduct (VOG)** or an Extract from the Judicial Documentation Service. A VOG should always be requested for a specific purpose, for example, in the context of a license application.⁸³ The data that determines whether or not a VOG is issued depends on the reason for which the VOG is requested.⁸⁴ The Justis screening authority (part of the Ministry of Justice and Security) always weighs up interests, whereby it examines what is more important in a specific case, the applicant's interest in obtaining the VOG, or the risk to society if the VOG is issued.⁸⁵ An **Extract from the Judicial Documentation Service**, also known as a criminal record, is a concrete summary of the information known about a particular person in the Judicial Documentation System.⁸⁶ Which data is included in this and for how long is regulated by law. There is a difference between the registration of an offence or a crime, for example.⁸⁷ The maximum level of penalties associated with a particular offence may also influence the retention period.⁸⁸ In the Netherlands, private persons cannot request a copy or transcript of their criminal records.⁸⁹ One can view one's own criminal record at the court, however,⁹⁰ but making copies is not allowed.⁹¹

A VOG is the least burdensome form of screening, since the VOG does not contain a factual summary of criminal data.⁹² An Extract from the Judicial Documentation Service is seen as a more drastic invasion of privacy since such an extract contains concrete judicial data.⁹³ On the other hand, the assessment frame for a VOG application is broader since, inter alia, it also involves police data.⁹⁴

Criminal records data may be provided to Dutch municipalities (Mayor and/or College of Mayor and Aldermen) in the context of, inter alia, the following situations:⁹⁵

At the initiative of the Minister:

- Return of the person concerned to society⁹⁶
- Youth assistance and youth rehabilitation.⁹⁷

⁷⁶ 'Judicial Documentation System',

⁷⁷ *Judicial Information and Criminal Records Act (Wjsg)*.

⁷⁸ *Judicial Information and Criminal Records Decree (Bjsg)*.

⁷⁹ 'Principles', *Instructions for the Judicial Information and Criminal Records Act*, no. III.1.

⁸⁰ 'Principles', *Instructions for the Judicial Information and Criminal Records Act*, no. III.1.

⁸¹ 'Principles', *Instructions for the Judicial Information and Criminal Records Act*, no. III.1.

⁸² 'Principles', *Instructions for the Judicial Information and Criminal Records Act*, no. III.1.

⁸³ 'Application form VOG NP', *justis.nl*.

⁸⁴ 'Assessment, decision and objection', *justis.nl*.

⁸⁵ 'Assessment, decision and objection', *justis.nl*.

⁸⁶ 'Extract from Judicial Documentation', *justis.nl*.

⁸⁷ 'Extract from Judicial Documentation', *justis.nl*.

⁸⁸ 'Extract from Judicial Documentation', *justis.nl*.

⁸⁹ Art. 18 *Judicial and Criminal Records Act*.

⁹⁰ 'Viewing criminal records', *justid.nl*.

⁹¹ 'How can I request my criminal record?', *juridischloket.nl*.

⁹² *Gazette 2004*, 130, p. 23.

⁹³ *Gazette 2004*, 130, p. 23.

⁹⁴ *Gazette 2004*, 130, p. 23.

⁹⁵ Art. 9 *Judicial and Criminal Records Act*.

⁹⁶ Art. 11a *Judicial and Criminal Records Decree*.

⁹⁷ Art. 11c *Judicial and Criminal Records Decree*.

Following a request from the Mayor/College of Mayor and Aldermen:

- Obligation to give advice to another administrative body⁹⁸
- Substantial public interest⁹⁹
- Administrative decisions (e.g. based on Alcohol Licensing and Catering Act; Gambling Act)¹⁰⁰
- Imposition of administrative fines¹⁰¹
- Bibob investigation¹⁰²
- Counterterrorism.¹⁰³

Furthermore, the Board of General Prosecutors is authorised to provide criminal records data in the following cases:¹⁰⁴

- the prevention and detection of criminal offences (including to mayors)¹⁰⁵
- maintaining order and safety (including for mayors)¹⁰⁶
- supervising compliance with regulations (including municipal supervisors)¹⁰⁷
- taking an administrative decision (all (local) government bodies).¹⁰⁸

The law does not offer an exhaustive list of situations in which criminal records data can be provided. As a result, provision may also take place in situations other than those described above. However, the conditions that the law attaches to such provisions must be met.¹⁰⁹

1.4.1.2 Provision of criminal records data by (the mayor of) the Dutch municipality to (the mayor of) the Belgian/German municipality

The criminal records data obtained by the mayor or another recipient is subject to a duty of confidentiality.¹¹⁰ In other words, the mayor may not independently pass on this information to other (foreign) authorities. Furthermore, the (U) GDPR applies to data provision by a mayor. When a Dutch mayor wishes to provide criminal records data that is known to them to a Belgian or German administrative body, the confidentiality obligation under the Judicial Information and Criminal Records Act (Wjsg) and the (U) GDPR must be taken into account.

⁹⁸ Art. 12 sub c Judicial and Criminal Records Decree.

⁹⁹ Art. 12 sub d Judicial and Criminal Records Decree.

¹⁰⁰ Art. 13 Judicial and Criminal Records Decree.

¹⁰¹ Art. 13a Judicial and Criminal Records Decree.

¹⁰² Art. 15 Judicial and Criminal Records Decree.

¹⁰³ Art. 15a Judicial and Criminal Records Decree.

¹⁰⁴ Art. 8a in conjunction with 39f Judicial and Criminal Records Act.

¹⁰⁵ "The recipients", Instruction on the Judicial Information and Criminal Records Act, no. III.3 under a.

¹⁰⁶ "The recipients", Instruction on the Judicial Information and Criminal Records Act, no. III.3 under b.

¹⁰⁷ "The recipients", Instruction on the Judicial Information and Criminal Records Act, no. III.3 under c.

¹⁰⁸ "The recipients", Instruction on the Judicial Information and Criminal Records Act, no III.3 under d.

¹⁰⁹ 'Provision to other recipients', Instruction on Judicial and Criminal Records Act, no. III.4.

¹¹⁰ Art. 52 paragraph 1 Judicial Information and Criminal Records Act.

The mayor is only authorised to pass on received data if this is permitted by law or if their task necessitates this, insofar as this falls within the scope of the purpose of the provision.¹¹¹ There is no legal ground for the mayor to pass on criminal records data to another (foreign) municipality. It is also difficult to argue that provision to another (foreign) municipality is necessary for the performance of the mayor's duties within the scope of the purpose of the provision. The purpose of the provision is to enable the mayor to make use of their own powers, e.g. maintaining public order (within their municipality) or, for example, to proceed to withdraw a license. It is not necessary to pass on the data to another (foreign) municipality in order to exercise these powers.

After consultation with KU Leuven, the EURIEC concludes that there is insufficient legal ground for direct provision by a Dutch mayor of a municipality to a mayor of a foreign municipality. This consideration does not only apply to the provision of criminal records data to a foreign municipality. Mayors are not allowed to provide criminal records data received to another Dutch municipality either.

Just as in the case of an administrative decision based on police data, the duty of confidentiality regarding criminal records data will not be violated if it is stated that an administrative decision is based on criminal records data,¹¹² as long as one does not go into the details of the criminal records data. More information about the sharing of administrative information is included in the EURIEC memorandum on the cross-border exchange of administrative data. This memorandum also addresses the informal exchange of information and the exchange of information based on public sources (e.g. media).

1.4.1.3 Provision by the Dutch central authority to the Belgian/German central authority for the purpose of the Board for Administrative Approach to Organised Crime (through ECRIS)

In the Netherlands, Justid has been designated as the central authority based on the Framework Decision.^{113, 114, 115} The automatic transmission of information extracted from criminal records concerning final convictions handed down against residents of other Member States has already been described above, under paragraph 1.1.3. In addition, ECRIS is used for other disclosures of criminal records data in response to a request. How a Member State responds to such a request will depend on the national law of the requested Member State.

¹¹¹ Art. 52 paragraph 1 Judicial Information and Criminal Records Act.

¹¹² Model privacy protocol for intra-municipal data sharing, p. 38.

¹¹³ Art. 1, sub c Judicial Information and Criminal Records Decree (Bjsg).

¹¹⁴ Art. 3, paragraph 1 Framework Decision 2009/315/JHA.

¹¹⁵ Gazette 2012, 130, p. 16.

Dutch criminal records data will be forwarded on request to the central authority of another Member State for the purpose of criminal proceedings or for other purposes.^{116, 117} Other data than data relating to irrevocable convictions are provided only when the purpose of the request is found to justify this.¹¹⁸ Dutch criminal records data may be provided to the central authority of another Member State in cases where it may also be provided within the Netherlands.¹¹⁹ It is important, in this case, whether the substantive purpose of the regulations in the other Member States is the same; the formal terminology may differ.¹²⁰ Examples include purposes in the framework of:¹²¹

- the assessment of a certificate of good conduct
- taking administrative decisions
- giving advice to another administrative body (e.g. by the mayor).

Justid examines whether the request made by a Member State is complete. If the request is complete, the criminal records data will be forwarded immediately, but in any case within ten working days of the day on which the request was received.¹²² ECRIS will be used to answer the request.¹²³ For up to one year after the data transfer, Justid will immediately inform the receiving central authority in the event of a change or deletion of the data transferred.¹²⁴

Criminal records data may be forwarded upon request by the central authority of the providing Member State to a competent authority of another Member State.¹²⁵ The competent authority is the foreign (government) body with public authority or public powers for the prevention, investigation, detection or prosecution of criminal offences or for the execution of penalties or measures.¹²⁶ However, as already explained under paragraph 1.1.1, according to the Dutch implementation of the Data Protection Directive by the police and judicial authorities, municipalities do not fall under the category of 'competent authorities'.¹²⁷

One condition for the provision of criminal records data is that this information may only be processed for the purpose for which it was provided.¹²⁸ Further processing of the data provided for another purpose is possible with prior consent, insofar as this further processing is necessary

for the execution of criminal justice.¹²⁹ When granting permission for the use of Dutch criminal records data for the administrative approach in Belgium or Germany, it is tested against the criterion of the substantial public interest, which is the ground for the original provision of the data in question.^{130, 131} This criterion weighs so heavily that, in practice, this will almost never apply in cases of administrative approach, for example, in the context of licensing. Further case histories will have to demonstrate whether cases are found in which such a transfer is permitted. This must, in any case, involve a provision for the following purposes:^{132, 133}

- preventing and detecting criminal offences
- maintaining order and security
- monitoring compliance with regulations
- taking administrative decisions
- assessing the need to take a legal position or disciplinary measure
- providing assistance to victims and others who are involved in a criminal offence, or
- performing a legal act under private law by a person or body charged with a public task.

In general, it is safe to assume that if there is no ground for the provision of judicial data to national authorities for a particular purpose in national law, then there should be no answer to the requesting EU Member State for this purpose. The criminal records data is transferred on the condition that it is destroyed by the receiving authority once the purpose for which the data was transferred has been fulfilled.¹³⁴ Member States are authorised to set limits on the use of the data provided, for example, by setting a period within which the data provided must be deleted.^{135, 136}

116 Art. 35 paragraph 1 Judicial and Criminal Records Decree.

117 Art. 35 paragraph 3 Judicial and Criminal Records Decree.

118 Gazette 2012, 130, p. 38-39.

119 Gazette 2012, 130, p. 39.

120 Gazette 2012, 130, p. 39.

121 Gazette 2012, 130, p. 39.

122 Art. 35 paragraph 4 Judicial and Criminal Records Decree.

123 Art. 35 paragraph 5 Judicial and Criminal Records Decree.

124 Art. 35 paragraph 6 Judicial and Criminal Records Decree.

125 Art. 36 paragraph 1 Judicial and Criminal Records Decree.

126 Art. 1 sub v Judicial Information and Criminal Records Act.

127 Parliamentary Papers II 2017/18 34889, no. 3, p. 4 (MvT).

128 Art. 36 paragraph 1 Judicial and Criminal Records Decree.

129 Gazette 2012, 130, p. 36.

130 Gazette 2012, 130, p. 36.

131 Art. 8a paragraph 1 in conjunction with Art. 39f Judicial Information and Criminal Records Act.

132 Art. 39f Judicial Information and Criminal Records Act.

133 Until 1-1-2019, art. 36 paragraph 3 Judicial and Criminal Records Decree included a list of purposes for which further processing of Dutch criminal records data in another Member State was possible. This included, *inter alia*: 'another purpose, with the controller's or the data subject's consent'. This list was deleted as of 1-1-2019. However, this list is erroneously referred to in the current art. 36 paragraph 3 and art. 38 paragraph 2 Bjsjg.

134 Art. 36 paragraph 4 Judicial and Criminal Records Decree.

135 Art. 36 paragraph 5 Judicial and Criminal Records Decree.

136 Gazette 2012, 130, p. 41.

1.4.2 Other judicial data

In accordance with the international and European law instruments referred to in paragraph 1.1.2, the Dutch Constitution (Gw) stipulates that the publication of court decisions must take place in public.¹³⁷ Many judgments are anonymised and published online at www.rechtspraak.nl.¹³⁸ In addition, there is the option to request (a copy of) judgments based on the various sector laws. For example, persons other than the parties (possibly against payment) can obtain a copy or extract of a **decision of the administrative court** from the registry of the court that delivered the decision.^{139/140} The same applies to **judgments, decisions and orders in civil cases**, as well as procedural documents that are attached to the civil judgment.¹⁴¹ Stricter conditions apply when it comes to tax matters. Provision of a copy or extract of **judgments in tax matters** is only possible with the administrative court's authorisation.¹⁴² In criminal cases, too, there is the option to request a copy of the **criminal judgment or judgment** from the President of the Court or the District Court.¹⁴³ These sector laws refer to provision to 'persons other than parties'. It is not further specified who these other persons are. As a result, this can also be understood to mean a foreign administrative body.

In order to request judgments, one must know which court has ruled in a particular case. Other information is also required (e.g. case number) to indicate which specific case one wishes to receive a copy of. Due to the strict anonymisation regulations, it is not possible to ask a court for judgments that relate to a specific person. In principle, the personal data will be anonymised in a judgment in accordance with the anonymisation guideline of the Dutch Judiciary.¹⁴⁴ Inquiries at Rechtspraak.nl show that this guideline is fully applied to requests for a copy of a judgment. It is possible to ask the court for a non-anonymised copy of the judgment. The court will then weigh up the interests of the applicant and the protection of the privacy of the parties to the proceedings.^{145/146} It follows from the law that anonymisation in civil cases only involves an infringement of

a substantial interest of others.^{147/148} In practice, however, it appears that case law proceeds to provide a non-anonymised copy of a judgment only in exceptional cases (e.g. for scientific purposes).^{149/150}

137 Art. 121 Constitution.

138 See EURIEC leaflet for consultation of Dutch laws and regulations.

139 Art. 8:79 paragraph 2 Awb.

140 Jurisprudence, Administrative Law, <https://www.rechtspraak.nl/Organisatie-en-contact/Rechtsgebieden/Bestuursrecht> (consultation January 21, 2021).

141 Art. 29 paragraph 2-3 Code of Civil Procedure (Rv).

142 Art. 27g paragraph 1 General State Taxes Act (AWR).

143 Art. 365 paragraph 4 Code of Criminal Procedure (Sv).

144 Jurisprudence, Anonimiseringsrichtlijnen [Anonymisation Guidelines], <https://www.rechtspraak.nl/Uitreken/paginas/anonimiserings-Guidelines.aspx> (consultation 21 January 2021).

145 Council for the Judiciary, *Dataverzoek Ongepubliceerde rechtspraak [Data request Unpublished case law]*, <https://data.overheid.nl/community/datarequest/1810> (consultation 21 January 2021).

146 GIESEN, I., *Beginnelsen van burgerlijk procesrecht [Principles of civil procedural law]*, Deventer, Kluwer, 2015, 365 p.

147 A. VAN MIERLO, "Commentaar op art. 29 Rv" [Commentary on art. 29 RV], in A. VAN MIERLO, C. VAN NISPEN, T&C Burgerlijke rechtsvordering [T&C Civil Procedure], Deventer, Kluwer, 2017, note 3.

148 G. SCHOEP, "Commentaar op art. 365 Sv" [Commentary on art. 365 Sv], in C. CLEIREN, J. CRIJNS and M. VERPALEN, Deventer, Kluwer, 2013, note 5.

149 X, *Verspreiden niet-geanonimiseerd vonnis is schending AVG [Dissemination of a non-anonymised judgment is a violation of the GDPR]*, Editorial Mr. 2020, <https://www.mr-online.nl/verspreiden-niet-geanonimiseerd-vonnis-is-schending-avg/>.

150 This is also apparent from an inquiry with Rechtspraak.nl dated 21 January 2021.

2 Practical consequences

The analysis of European and national legislation mentioned above shows that in certain cases there are options for the exchange of criminal records data between EU Member States. Both for criminal law and for other purposes, e.g. for the administrative approach. However, the EURIEC has experienced, in various cases, that the exchange of such data for the purpose of the administrative approach does not always run smoothly. Discussions the EURIEC has had with the central authorities also show that there is still room for improvement.

2.1 Case examples

One example is a case in which (initially) the information about a conviction in country A from a resident of country B was not received by the municipality from country B after a request for criminal records data in country B. Subsequently, country A either had not fulfilled its obligation to inform country B about the conviction of a national of country B, or country B did not process the received data correctly, so that the municipality did not obtain this data when making an request. Furthermore, various discussions with partners have also revealed that Dutch municipalities often do not receive any data when requesting criminal records data from Belgium and Germany in the context of a Bibob procedure. To this end, the EURIEC is in close contact with the Bureau Bibob to support such applications and to further identify any problems that arise. Finally, cases show that there is sometimes a lack of clarity about the effect of convictions abroad. Bans imposed by a judge in another country will not be enforceable in other Member States because of the principle of sovereignty. A practical example may provide clarity here: a conviction in Germany to ban the keeping of animals will not, in principle, lead to a ban on keeping animals in the Netherlands or Belgium.

In various cases regarding licensing, the EURIEC advised the municipalities to ask the license applicant to submit an extract from the criminal records themselves. In this way, these municipalities were still able to obtain information about the criminal history of a foreign subject.

2.2 Experiences of central authorities

Interviews with the central authorities regarding the cross-border exchange of criminal records data show that the requested central authority regularly responds unfavourably to a request for criminal records data from the other central authority. This is due to the considerable differences in national legislation of the three countries regarding the use of criminal records data. A request is regularly made by the central authority of one country to the central authority of another country for purposes for which the national legislation of the requested country does not provide. The central authority of the requested country will subsequently respond unfavourably to the request because the intended use of criminal records data is not allowed under national legislation.

The ECRIS system has a special code that is used for a request for criminal records data for administrative authorities. Discussions with the central authorities suggest that this code is rarely used for requests between Belgium, Germany and the Netherlands.

The above is mainly due to the fact that the use of criminal records data in Belgium and Germany for administrative purposes is more limited than in the Netherlands. As a result, Belgium and Germany are less likely to submit a request abroad for administrative purposes. A request to Belgium and Germany for criminal records data for administrative purposes is often not allowed according to national Belgian and German legislation. Conversely, however, it also happens that the Netherlands responds unfavourably to requests from Belgium and Germany due to national legislation. However, this will mainly happen if the purpose of the request relates to a topic other than the administrative approach to organised crime.

Despite the option for Dutch municipalities to contact the central authority directly for a request for foreign criminal records data, case histories and discussions of the EURIEC suggest that this is not/hardly used. In the Netherlands, for example, these requests are always made through the Bibob Bureau.

3 Conclusion

Municipalities and their employees need information from criminal records in a variety of cases, for example, in the context of licensing. The ECRIS system has improved the exchange of information between different European Member States. This system was primarily developed for criminal law purposes. However, ECRIS may also be used for other purposes, e.g. with a view to the administrative approach. The condition for this is that a municipality in a purely national situation is also able to obtain such data. While this will not be a problem, in principle, in Germany and the Netherlands, in Belgium such provision to municipalities appears impossible.

This type of exchange via ECRIS is not always self-evident in Germany and the Netherlands either, however. Since there is no obligation (with certain exceptions) to provide criminal records data to another Member State for the purpose of the administrative approach to organised crime, this remains dependent on the national legislation of Member States and their willingness to provide it. As a result, if a person has been convicted in one country and then applies for a license in another country, a license will be granted more easily than if the person has been convicted in the country where the license is also applied for. This creates an unequal and undesirable situation.

Another option in the context of licensing is to ask the foreign applicant to provide proof of their criminal past themselves before they can obtain the license. In other cases, where the person concerned may not be aware that the municipality is seeking information about a possible criminal history, this will, of course, not be possible and an attempt can be made to obtain this data via ECRIS. Supplying further case histories will allow the EURIEC to create a better picture of cases in which such data is provided, or not.

In addition to data from criminal records, information about a subject's past may also be apparent from court rulings and information about ongoing investigations. In Belgium, Germany and the Netherlands alike, the law appears to offer options for the public prosecution service to exchange information with foreign public authorities, even if these authorities do not have a direct interest. Regarding data from court rulings, it appears that the anonymisation of such rulings leads to this information not always being useful.

In order to gain more insight into when municipalities can obtain criminal records data about foreign subjects, the EURIEC is still looking for new cases within this theme. Such new cases can be submitted via the following email address: euriec.rik.limburg@politie.nl.

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