



Report on cross-border exchange of data from the population register

For the purpose of the administrative approach
on organised crime



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General description

Information such as information about a residents' name and places of residence is a necessary basis that any public administration must have in order to perform its tasks effectively. As a result, the data collected by the civil registry constitutes an important basis for measures to combat organised crime in the framework of the administrative approach.

The term 'data from the population register' therefore includes personal data which the national authorities process in order to perform their tasks effectively. Essentially, this concerns a person's name and address. Other data are also collected such as a person's date of birth, place of residence, nationality or marital status. The collection and processing of these data is handled and regulated separately in the three countries. However, the legal systems of the three countries surveyed converge partly as a result of the EU legal requirements of the General Data Protection Regulation (GDPR).

Nevertheless, the possibilities for passing on information in one's own country and the possibilities for passing on information to foreign actors often differ. The bodies tasked with keeping the registers also differ. In Germany, for example, the *Meldebehörden* are responsible for this. Belgium has both a central national register (the National Register) and municipal population registers. In the Netherlands, the municipalities are responsible for the maintenance of such a register. In general, there are two possible ways to pass on national registration data to foreign authorities:

1. Provision by the Civil Affairs department to a foreign municipality
2. Provision by other departments of a municipality to a foreign municipality

The first point to be discussed is the legal framework for the exchange of data from the population register under EU legislation. Subsequently, the national possibilities for exchanging such data in the context of the administrative approach to combating organised crime are explained for each country, as well as the possibilities for international exchange for this purpose in Belgium, Germany and the Netherlands. The practical consequences of these findings are also discussed in more detail. Finally, the main results of the report will be presented.



1 Legal framework

This section starts by explaining the impact and influence of the General Data Protection Regulation as a uniform act that has created a supranational framework for the exchange of personal data. This is followed by a description of the national and international exchange possibilities in Belgium, the Netherlands and Germany in view of the administrative approach to combating organised crime.

1.1 International and European regulations

Unlike many other areas of law that are important in the exchange of information in the fight against organised crime, legislation on population registers has not yet been harmonised under EU legislation. But since the reporting of data inevitably involves personal data, the processing of that data is subject to the European General Data Protection Regulation.

As a result, the processing of data from the population register takes place, in principle, within the scope of the General Data Protection Regulation. In particular, the purpose limitation principle creates a legal restriction on the exchange of such information. Consequently, any further processing of data must, in principle, be compatible with the original purpose of the data collection.¹ However, the further design and specification of, e.g., the legality grounds is also a task of the Member States.² It follows that the legal framework of the General Data Protection Regulation must in turn be considered in conjunction with the national regulations, which are described in more detail below.

Consequently, the transfer and passing on of the data from the population register may, in some cases, give rise to legal objections. For example, the purpose limitation principle of the General Data Protection Regulation already sets limits on transfers. As a result, further transfer for purposes other than the original transfer purpose is only possible in specific cases. In contrast to tax law (see Report on Taxation), none of the three countries have legal grounds for authorisation in the area of registration law under which the data can be transferred for purposes other than the original purpose of the transfer. In addition, the respective national legal grounds may not be circumvented in this area either, insofar as they do not allow for direct transmission to foreign municipalities.

These standards ensure that passing on information by a foreign authority to another foreign government agency would be inadmissible if direct retrieval of the information were not possible. Only if the foreign authority to which the data from the population register could be sent, could gain access to the registers of civil status itself, would it be possible to pass it on to other foreign authorities. Finally, the new Benelux Police Treaty may create new options for Belgium and the Netherlands to exchange data from the population registers. The Treaty provides, for example, for the option for direct reciprocal access by the security and law enforcement authorities to each other's population registers, provided that the contracting parties conclude an implementing agreement to this end.³

¹ Art. 5 (1) b), 6 (4) GDPR.

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

³ Art. 17 paragraph 1, 2 Benelux Police Treaty.

1.2 Belgium

1.2.1 National use of data from the population registers and the National Register in the context of the administrative approach

Belgium has two types of population register: a National Register and the Population Registers. Both of these registers contain the personal data of Belgian citizens and foreigners who are registered in Belgian municipalities. The National Register is a service of the federal government which is fed by the population registers, which each municipality keeps separately. The two types of population register, have different rules with regard to the possibilities to transfer information to administrations.

a. The National Register

The National Register is the central database that is fed by the population registers and a few other registers. The register contains personal data of Belgian citizens and foreigners who reside in Belgian municipalities and have permission to settle or reside in Belgium. The National Register of Natural Persons is an information-processing system that is responsible for recording, storing and communicating information relating to the identification of natural persons.⁴ One example of the objectives of the National Register is to make a national database available to public authorities by facilitating the exchange of information between administrations.

Access to the information in the National Register and the communication of this data are strictly regulated by legal and regulatory standards.⁵ Needless to say, the intention is to ensure that the information about these natural persons remains confidential.

Only authorities, bodies and persons specifically authorised by law can consult third-party data stored in the National Register. Furthermore, consultation must also take place in the context of the specific purposes for which the authorisation for access or communication was given. For example, Belgian public authorities can gain access to data that they are authorised to know by virtue of a legal rule.⁶ Belgian municipalities have received such authorisation with a view to performing the tasks entrusted to them. The municipalities have received authorisation for the following data:

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- Surname and first names
- Date and place of birth
- Gender
- Nationality
- Primary residence
- Marital status
- Family composition
- Legal cohabitation

This data is also available to municipalities for municipal tasks with a view to the administrative police powers of a municipality, such as preventing and combating disorder. As a result, not only officials who are authorised for the civil registry have access to data from the national register. Civil servants who are tasked with administrative enforcement and the administrative approach are also able to use the data from the national register in the context of their duties.

Employees who have access to the National Register are bound by professional secrecy and can be held personally liable as a result.⁷ Consequently, personnel of public authorities who have access to data from the National Register are made aware of their responsibilities as data controllers via internal reports, circulars and other means of communication.

b. Population registers

All Belgian municipalities must keep a population register of Belgians and foreigners who have permission or authorisation to reside or settle in Belgium for more than three months. The municipalities and civil servants of the registry office are tasked with keeping the population registers.⁸ As a result, the data in the population register is slightly broader than the data in the National Register, since the population registers also include foreigners who have permission or authorisation to stay on the territory of Belgium for more than three months.

Employees of the municipality and the civil servants of the registry office communicate the information they receive to the National Register. As a result, the information in a population register is largely similar to the information in the National Register. The main difference lies in the fact that a population register only relates to the population of one municipality, while the National Register contains information about residents of all municipalities.

Any person and, consequently, any Belgian municipality, may submit a written and signed request to obtain an extract on a third party from the population register. However, this issuance must be prescribed or permitted by or under the

⁴ Art. 1 National Register Act.

⁵ Act of 8 August 1983 regulating a National Register of natural persons.

⁶ Art. 5 National Register Act.

⁷ Art. 13 National Register Act

⁸ Art. 4 National Register Act

law.⁹ In principle, private persons are not allowed to consult the registers and obtain information from the population register. Consultation is only allowed for municipal departments, for internal management purposes. Therefore, third parties can only obtain an extract if this is prescribed or permitted by or pursuant to the law. This includes, inter alia, applications that are necessary for the enforcement or for the continuation of proceedings under the Civil Code, the Judicial Code and the Code of Criminal Procedure.

In addition, the rights granted in the Governmental Decree on the Population Register must be interpreted together with the applicable privacy legislation and, in particular, with the requirements of the General Data Protection Regulation. The Population Register Governmental Decree can therefore only be applied insofar as it does not violate privacy legislation.

Belgian municipalities seeking to make a request from another municipality will be regarded as a third party. They can, therefore, only obtain an extract from the population register of another municipality if this is necessary for the continuation of proceedings under, inter alia, the Civil Code, the Judicial Code and the Code of Criminal Procedure. The provision 'inter alia' appears to offer scope for submitting such an extract in the context of the administrative approach. Upon enquiry with the services of the Data Protection Authority, this reading appears relatively unlikely, however. As a result, applications under the administrative approach will not fall under this provision and, in principle, Belgian municipalities will not be able to obtain an extract of the population register of another municipality.

1.2.2 Provision of data from the population registers and the National Register to (the mayor of) a German/Dutch municipality

a. Data from the National Register

Foreign governments are not included in the list of entities that can access the National Register after authorisation by the Minister of the Interior. As a result, they currently do not have access to National Register data. If a multilateral treaty were signed and ratified that stipulates that foreign governments can gain access to national register data in the context of certain activities, such as the administrative approach, foreign governments could be granted access.

Such access would be useful in several applications and databases of the Belgian government. For example, foreign governments may be given the opportunity to obtain an overview of all companies and enterprises in which a subject is involved. However, in order to make use of this appli-

cation, the foreign government must know the subject's national register. As this is often not the case, it becomes impossible for foreign municipalities to obtain an overview of all companies in which a subject is involved.

Another possible route is for a Belgian municipality to request data from the National Register and then disclose it to foreign municipalities. However, the Commission for the Protection of Privacy (the predecessor of the Data Protection Authority) has ruled that, in principle, a government that has obtained authorisation to access the National Register cannot disclose the data to third parties who have not themselves obtained authorisation to access it.¹⁰ According to the Commission, disclosure of data to third parties could only be envisaged "in very exceptional circumstances" insofar as it takes place "in the context of the performance of tasks falling within the legal powers of the authorised government" and, above all, "provided that the Governmental Decrees granting access to the National Register define the modalities of that course of action."

b. Data from the population registers

Foreign municipalities may also try to obtain information about for example a citizen's place of residence and civil status, through an extract of the population register. Such inquiries are only possible if the necessary information cannot be obtained from the National Register.¹¹

For privacy protection reasons, the communication of information data from the population registers is subject to very strict conditions. Pursuant to the Governmental Decree of 16 July 1992 on obtaining information from the population registers and the register of foreign nationals, an address may only be communicated to a third party if a legal or regulatory provision is invoked to support the application.

A foreign government that requests information from a Belgian municipality about a resident of that municipality must be considered a third party. Third parties may obtain an extract from the registers if the issuance of that document is prescribed by or pursuant to the law. As a result, an extract can only be issued if it is necessary for the procedure determined by a legal rule. In the absence of a legal or regulatory provision for justification, Belgian municipalities are not allowed to provide information from their population registers to foreign authorities.

⁹ Art. 3 RD regarding obtaining information from the population register and the register of foreign nationals.

¹⁰ Advisory Commission for the Protection of Privacy, Opinion No. 86/045 dated 23 April 1986.

¹¹ Federal Public Service for Internal Affairs: General instructions regarding keeping the population registers, https://www.ibz.rn.fgov.be/file-admin/user_upload/nl/bev/onderrichten/onderrichten-volk-31032019.pdf.

1.2.3 Provision of data by other departments of Belgian municipalities to (the mayor of) a German/Dutch municipality

Regarding the passing on from the population registers, the principles of data processing and provision must be adhered to. In particular, the principles of purpose limitation and the need for a legal ground for the passing on of data will pose a problem for the passing on of data from the population registers. There is no ground for authorisation in Belgian law, which means that it is impossible for other departments of Belgian municipalities to pass on data from the population register.

As a result, it appears that the only option currently available to foreign municipalities to obtain information from the population register and the national register is to ask the person concerned if, for example, they apply for a license or register with the municipality. After all, those involved can request an extract from the population register from their Belgian municipality, which includes the following information:

- Surname and first names
- Date and place of birth
- National registry number
- Place of residence
- Marital status
- Profession
- Nationality

1.3 Germany

1.3.1 National use of data from the population register in the context of the administrative approach

Germany does not have a central population register. Each municipality in Germany keeps a separate population register.¹² Due to their importance for public administration, public authorities, and in some cases also private actors, may have access to registration data. In the case of the *Meldebehörde* (the responsible department within the municipality) itself, employees protect the data against unauthorised processing by means of registration confidentiality.¹³ Registration data may be transferred in the following cases in particular:

- Exchange between *Meldebehörden* themselves¹⁴
- Passing on information to German authorities, insofar as the passing on is necessary for the performance of the tasks of the receiving authority¹⁵
- Exchange of limited data with private individuals following an application to obtain¹⁶
- Exchange of more comprehensive data to individuals following an application to obtain more comprehensive data. A legitimate interest must be demonstrated to this end. A legitimate interest exists, for example, if there is an outstanding claim against the subject.¹⁷

Important legal principles for the admissibility of the passing on of this data are, in particular, the purpose limitation principle of the General Data Protection Regulation and the registration legislation.¹⁸ Moreover, according to the settled case-law of the German Constitutional Court, any passing on of personal data constitutes an infringement of fundamental rights and, as a result, the passing on of data requires its own legal ground to allow passing on data.¹⁹

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.

1.3.2 Provision of data from the population register by *Meldebehörde* of the German municipality to (the mayor of) a Belgian/Dutch municipality

Foreign municipalities may request information under the same conditions as private individuals in Germany. Regarding the information that is available after a request for access to a German population register, a distinction must be made between simple and comprehensive information from the population register. In addition, it is the EURIEC's opinion that foreign public actors should also be treated largely on an equal footing with domestic actors in activities that fall wholly or partly within the scope of Union law.

Simple query (*Einfache Melderegisterauskunft*)

A request for information about a person's marital status is only possible if the identity of the person about whom the information is requested can be clearly established. To this end, the request must contain information that clearly identifies the person, such as their surname, previous surname or first name, date of birth, gender or address.²⁰

Provided that these conditions are met, providing simple information from the population register is initially permitted. The simple information from the population register includes:²¹

- Surname
- First names
- Current addresses
- In the event of the person's death, the fact that the person has died

More extensive query (*Erweiterte Melderegisterauskunft*)

If a legitimate interest is demonstrated, information can also be provided about:²²

- Previous names
- Date and place of birth and, in case of birth abroad, also the country of birth
- Marital status, limited to being married or not, or having a registered partnership
- Current nationalities
- Previous addresses
- Surname and first names, as well as the address of the legal representative
- Surname and first names and address of spouse or life partner

¹² § 1 MG NRW, § 3 I OBG NRW iVm § 1 BMG.

¹³ § 7 I BMG.

¹⁴ § 33 BMG.

¹⁵ § 34 BMG.

¹⁶ § 44 BMG.

¹⁷ § 45 BMG.

¹⁸ §§ 5,41,47 BMG.

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

²⁰ § 44 III No. 1 BMG.

²¹ § 44 I BMG.

²² § 45 I BMG.

The purpose of bringing claims against the data subject is an example of a legitimate interest, while a general investigation of an applicant in the context of authorisation procedures, for example, is not.

In the case of both the extensive and the simple query from the population register, the obligation to inform the data subject in accordance with Article 14 I,II,IV GDPR may be limited. For example, the obligation may be limited if informing the data subject would prejudice a legal interest, for example, in the context of the exercise of legal rules, unless the legitimate interest of the data subject in fulfilling the information obligation prevails.²³

Costs and example of a query

The law does not specify the form of the information from the population register. As a rule, the information must be requested in writing. In large municipalities (e.g. Aachen, Bonn, Cologne) information can be requested electronically. A fee is charged for information from the population register, which usually must be paid in advance. The fee varies from one municipality to the next. The EURIEC has prepared a model application form for individual requests from foreign municipalities, which can be downloaded from the [EURIEC website](#).

It is also possible to ask the municipality to check locally whether the requested person actually lives at the address, i.e. to perform a residence check. Municipalities can only comply with such a request within the framework of their staffing capabilities, however. Depending on the effort this requires, a separate fee will be charged.

Equalisation of domestic and foreign authorities for activities falling within the scope of Union law

According to the EURIEC, in terms of the right to population data, foreign public authorities from the Member States of the European Union can be considered as being on an equal footing with German authorities. This is subject to the condition, however, that the foreign body requesting information must perform an activity that falls wholly or partly within the scope of EU law.²⁴ According to the EURIEC, the scope of Union law already applies if the authority aims to improve the functioning of the internal market. As a result, it can be argued that the powers of many foreign public authorities fall within the scope of Union law.

Insofar as it is necessary for the fulfilment of the tasks of the foreign government agency, the German *Meldebehörde* may therefore pass on the following data:²⁵

- Surname
- Current and previous address, primary and secondary residence
- Date of registration, date of deregistration, date of last departure from a home within the country and date of last move from abroad,
- Date and place of birth and, in the case of birth abroad, also the state,
- Gender
- For the legal representative: surname, first names, address, date of birth, date of death
- Current nationalities
- Marital status, in the case of married persons or partners additionally date, place and state of the marriage or the establishment of the registered partnership,
- Date and place of death and, in the case of death abroad, also the country.

1.3.3 Provision of data by other departments of German municipalities to (the mayor of) a Belgian/Dutch municipality

The principles for data processing and data provision mentioned above, such as the principle of purpose limitation and the need for a legal ground, also apply to the transfer of data from the German population registers by other departments of German municipalities 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, information held by a German municipality in their capacity of Meldingsbehörde may be passed on to foreign authorities based on an authorisation (see below).²⁶ In general, however, authorisation grounds that clearly and unambiguously allow the transfer of information to foreign municipalities are lacking.

In addition, the purpose limitation principle of the General Data Protection Regulation also precludes a transfer 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 here.

As a result of these legal obstacles, data transfer from the population registers by other departments of German municipalities is generally not possible, mainly because there are no clear grounds for a transfer of information.

²³ § 45 II BMG, § 44 V BMG.

²⁴ § 35 Nr. 1 iVm § 34 I 1 BMG.

²⁵ § 34 I 1 BMG.

²⁶ Bspw. über § 35 BMG iVm § 34 BMG.

1.4 The Netherlands

1.4.1 National use of data from the population register in the context of the administrative approach

The basic registration of personal data in the Netherlands is regulated in a specific sector law, the Basic Registration of Personal Data Act (BRP). This Act lays down rules for the use and provision of data from the population register. The Municipal Board of Mayor and Aldermen is responsible for keeping residents' personal data in the basic register.²⁷

The primary purpose of maintaining a basic register of personal data is to provide government bodies with such data to the extent that this data is necessary for the performance of their task.²⁸ The Dutch Association for Civil Affairs (NVVB) has drawn up documentation based on which Civil Affairs or Public Affairs civil servants can determine whether a request for data from the basic registration may be granted.²⁹ This shows that a domestic request for BRP data must meet three conditions:

1. Is the applicant a government body?
2. Is the request made in the context of performing a task assigned to the applicant?
3. Is the data necessary for the performance of the task?

The NVVB's guide also refers to the General Data Provision Regulation (GDPR).³⁰ As discussed previously, this European regulation applies to the exchange of data from the basic registration. The main condition for provision of data to a Dutch government body is that the provision is necessary for the performance of a task assigned to the applicant. When this condition has been met, there is also a legitimate processing basis under the GDPR.³¹ The NVVB explicitly refers to the GDPR principle of minimal data processing.³² The providing party must always check which data is necessary in a specific case. No more data must be provided than is necessary for the purpose for which the data is requested. For example, when requesting the date of birth, the name of the partner may not be provided as well.

In the framework of the administrative approach to organised crime, this means that other departments within the municipality, or other municipalities, may request data from the population register if this data is required for the proper performance of their task. All requests must be assessed

individually against the set criteria. In the case of large-scale inquiries from the basic register (more than 5,000 per year), the Board will refuse the request.³³ However, the Minister may approve such a request by means of an authorisation decree.³⁴

1.4.2 Provision of data from the population register by the Civil Affairs/Public Affairs Division of the Dutch municipality to (the mayor of) a Belgian/German municipality

The purpose of the Dutch Basic Registration of Persons is not only to provide Dutch government bodies with such data, but also to provide this data to third parties in cases designated by or pursuant to the BRP Act.³⁵ Firstly, the BRP Decree has designated several categories of third parties.³⁶ These do not include foreign government agencies such as Belgian or German municipalities. However, Dutch municipalities may designate categories of third parties and activities performed by third parties in their municipal BRP Data Provision Regulation, for the purpose of which data from the basic registration may be provided.³⁷

Several conditions must be met if the provision of information to a foreign EU government body (such as a Belgian or German municipality) for the purpose of the administrative approach to organised crime is to be included in the municipal regulation. Provision is only possible insofar as the:³⁸

1. activities performed by the third party serve an **important social interest** for the Dutch municipality, and;
2. provision is **required** for the representation of the **legitimate interest of the third party** and the interest or fundamental rights and freedoms of the registered person do not preclude the provision.

Case histories from the EURIEC show that, despite the option being available, Dutch municipalities have not included such a provision in their municipal regulations. Therefore, the EURIEC has drafted a manual based on which Dutch municipalities can go through the criteria mentioned above in order to enshrine the provision of BRP data to a foreign EU government body (including Belgian or German municipalities) in their municipal regulations.³⁹ Some Dutch municipalities are already planning to adjust their municipal regulations based on this EURIEC manual. As a result, Belgian and German municipalities will be able to approach these Dutch municipalities with a request for BRP data once these new municipal regulations come into force.

²⁷ Art. 1.4 BRP.

²⁸ Art. 1.3 paragraph 1 BRP.

²⁹ 'Diagram on requests for written provision of data from the basic register of persons' 2019, p. 1.

³⁰ 'Diagram on requests for written provision of data from the basic register of persons' 2019, p. 5.

³¹ Art. 6 paragraph 1 under e GDPR.

³² 'Diagram on requests for written provision of data from the basic register of persons' 2019, p. 5.

³³ Art. 3.5 par. 4 BRP in conjunction with art. 40 BRP Decree.

³⁴ Art. 37 paragraph 1 BRP Decree.

³⁵ Art. 1.3 paragraph 2 BRP.

³⁶ Art. 3.6 paragraph 1 under a in conjunction with paragraph 2 BRP.

³⁷ Art. 3.9, paragraph 2 BRP Act.

³⁸ Art. 3.9, paragraph 2 BRP Act.

³⁹ Reference to the manual.

Which data?

This concerns data of registered persons regarding whom the Municipal Executive is responsible for maintaining the list of persons. In the framework of provision to a foreign EU government body charged with the administrative approach to organised crime, only the following data may be provided:⁴⁰

- name and gender;
- spouse's surname/registered partner/previous spouse/previous registered partner;
- the use by the registered person of the surname of the spouse / registered partner / previous spouse / previous registered partner;
- address;
- retaining municipality;
- date of birth and date of death.

How is the data provided?

The Dutch municipality provides the data from the BRP to the requesting foreign EU government body, in writing.

Duty to Record

The Dutch municipality that is responsible for the provision of data must keep a record of the provision for twenty years following the provision to a foreign EU government body (duty to record).⁴¹ The citizen has the right to inspect the record of the provision to the foreign EU government body for twenty years.⁴²

Receipt by a foreign public body

The data provided ends up in an environment (a processing of personal data) of the relevant foreign EU government body. This government body is the controller within the meaning of the GDPR.

The processing by the receiving administrative body is then subject to the GDPR and, in addition, the GDPR Implementation Act of the relevant country. This means that the recipient must comply with the requirements laid down in the GDPR and the relevant GDPR Implementation Act regarding the processing of personal data. This concerns requirements such as a lawful ground for processing, testing the principles of proportionality and subsidiarity, as well as other requirements that apply to the processing of personal data.

Receiving government bodies must ensure that, as controllers, they meet the requirements laid down in the GDPR regarding the processing of personal data, and be able to demonstrate this. The EURIEC advises the providing Dutch municipality to enclose a letter of assurance with the provision. In this letter of assurance, the municipality sets conditions for the provision of BRP data and provides an

explanation of the Dutch registration of the provision (the duty to record).

The receiving administrative body is bound by the purpose limitation principle in the GDPR.⁴³ This means that the data received cannot simply be passed on to other authorities.

1.4.3 Provision of data from the population register by other departments of the Dutch municipality to (the mayor of) a Belgian/German municipality

As described in paragraph 1.4.1, (departments of) Dutch government bodies may request data from the population register if they need it for the performance of their tasks. The Act governing the exchange of data from the population register does not contain an explicit confidentiality provision regarding this information. However, a general duty of confidentiality applies regarding administrative data.⁴⁴ This duty of confidentiality applies to all who are involved in the performance of the tasks of an administrative body.⁴⁵ 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'.⁴⁶ The duty of confidentiality does not apply if the need for disclosure arises from the task of the relevant institution/official.⁴⁷ Notification is necessary if this is necessary for the proper fulfilment of the administrative task.⁴⁸

This is in line with the legality grounds in the GDPR. Provision of personal data is only permitted if it falls under one of the legality grounds in the GDPR. This includes, for example, a mandatory provision by virtue of the law or a provision that is required for the performance of a task of general interest or of a task in the framework of the exercise of public authority.⁴⁹ There is no legal obligation for municipal departments to provide personal data to another (foreign) municipality for administrative purposes. This leaves the option to provide data if this is necessary for the performance of a task of general interest or of a task in the exercise of public authority. It is unlikely that there will be a task on the grounds of European or Dutch law that requires the provision of personal data to a foreign municipality in the framework of the administrative approach to organised crime. In addition, the purpose limitation principle in the GDPR must be observed.⁵⁰ In principle, the purpose limitation principle does not allow any use other than that for which the Dutch providing department has collected the

⁴⁰ Art. 3.9, paragraph 4 BRP Act.

⁴¹ Art. 3.11, paragraph 1 BRP Act.

⁴² Art. 3.22, paragraph 1 BRP Act.

⁴³ Art. 6 GDPR.

⁴⁴ Art. 2:5 General Administrative Law Act (Awb).

⁴⁵ Art. 2:5 paragraph 1 Awb.

⁴⁶ Art. 2:5 paragraph 1 Awb.

⁴⁷ Art. 2:5 paragraph 1 Awb.

⁴⁸ Professional Study General Part, art. 2:5 Awb, aant. 2.4.2.

⁴⁹ Art. 6 paragraph 1 under c and e GDPR.

⁵⁰ Art. 6 paragraph 4 GDPR.

data. In order to proceed with provision for another purpose nonetheless, the compatibility between the purpose of the receiving body and the purpose of the transmitting body should be critically examined.⁵¹

Therefore, if a Dutch municipality has not included a provision in the municipal regulation (as described in paragraph 1.4.2) that provides for the provision to foreign EU government bodies, the data cannot be obtained by simply requesting the data from another branch of the municipality. In practice, other departments of the municipality will usually not be allowed to pass on the data from the population register to a foreign municipality.

⁵¹ Art. 6 paragraph 4 under a-e GDPR.

2 Practical consequences

The EURIEC has also been able to determine in practice the consequences of this legal situation for the practice of cross-border cooperation.

In Belgium, access to data from the National Register and the municipal population registers is strictly regulated through legal and regulatory standards.⁵² Authorities may only gain access to data from the National Register and the population registers if this is prescribed or permitted by or pursuant to the law. There is currently no legal framework that allows foreign municipalities and other governments access to these databases. In practice, this has proved very unfavourable for the cross-border administrative approach. After all, administrative fines from the Netherlands or Germany sometimes have to be served to the person concerned, and if the person concerned has recently moved to Belgium, the foreign municipality is unable to find out at which address the administrative fine must be served. In addition, the lack of access to this data also means that foreign municipalities cannot, or insufficiently, make use of semi-public databases. To gain access to certain applications of the company register (*Kruispuntbank Ondernemingen*), for example, the national register number of the person concerned is required. Since foreign municipalities do not have access to the national register number, they cannot use the search function that makes it possible to obtain a list of all companies in which a subject is involved. Therefore, if a Belgian national applies for a license in their municipality, the EURIEC advises that foreign municipalities ask the applicant for an extract from the population register. Doing so enables the foreign municipality to obtain certain information, such as the national register number.

As far as the population data requested in Germany is concerned, the exchange seems possible in general. In this way, the German registration authorities could assist Belgian and Dutch municipalities in the verification of the reported residence of individuals. This exchange may help combat the widespread practice among criminals of frequently changing residence, including across borders, in order to conceal their activities.

In the Netherlands, foreign administrative bodies are also able to obtain information from the basic register. However, a clear distinction has been made between the exchange between domestic municipalities and the exchange across the border. Whereas the exchange between domestic municipalities is regulated by law, the exchange with foreign municipalities falls under the residual category 'provision to third parties'. This means that municipalities must take action of their own accord to enable the cross-border provision of data from the basic register. EURIEC case histories show that municipalities have generally not included such a provision in the municipal regulations, making provision impossible in practice. In order to make use of the legal possibilities in practice, municipalities will therefore first have to adjust their municipal regulations. This ensures that a distinction can be made between the different municipalities. If one municipality has included this option in the municipal regulations and the other municipality has not, a foreign municipality can submit its request for information to one municipality but not the other.

52 Act of 8 August 1983 regul

3 Conclusion

The right to provide data from population registers is a legal matter that has been harmonised to a limited extent through the common data protection legislation of the General Data Protection Regulation. As a result, the nation states have room to manoeuvre for their own partnerships. To date, however, this has not led to an explicit regulation in any country for cross-border distribution for the administrative approach of the fight against organised crime.

Whereas in a national context it is quite self-evident that administrative authorities exchange information from the basic register, this is not the case in a cross-border context. When it comes to police cooperation, cross-border possibilities for exchanging information from the basic register are already in place. This is limited to exchange for police purposes, however. A European regulation that allows for this type of exchange for other government bodies is certainly recommended. In addition, steps can also be taken at the national level to facilitate the cross-border exchange of data from the basic register. In the Netherlands and Belgium, for example, allowing provision to foreign government bodies by law/authorisation could be considered. In Germany, on the other hand, a broad interpretation of the data protection law allows the exchange of data from the population register with foreign municipalities. Since the German authorities are not always aware of this possibility, the EURIEC is trying to spread this view further to other German municipalities so that the provision can be applied uniformly throughout Germany.

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