



Report on cross-border exchange of social security data

For the purpose of the administrative approach
to organised crime



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General description

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

For the purposes of this memorandum, social security data is understood to mean the following data: the personal data processed by the national competent authorities for their tasks as social service providers. The term social security data does not automatically include health data within the meaning of Article 9 I GDPR. In practice, the term social security data includes personal data such as name, date of birth and place of residence.

Legislation that deals with the exchange of this information in more depth is generally regulated at the national level. However, the legal systems of the three countries examined have been partially harmonised by way of a series of EU regulations and bilateral agreements. Despite this harmonisation, the options for intra-country transfer and the provision of the relevant information to foreign actors are often different. A total of three possible ways are available to provide national social security data to foreign authorities:

1. Sending of social security data by domestic municipalities to foreign municipalities
2. Direct provision of social security data by domestic social authorities to foreign municipalities
3. The passing on of social security data by the social authorities of one country to the social authorities of another country with permission for further disclosure for the purpose of the administrative approach to combating organised crime (the so-called U-Turn).

The first point to be discussed is the international, particularly Union-law, framework for the exchange of social security data. Subsequently, the domestic options for information exchange in the framework of the administrative approach to combating organised crime will be explained for each country, as well as the options for cross-border exchange for this purpose for Belgium, the Netherlands and Germany. The practical consequences of these findings are also discussed in more detail. Finally, the main results are highlighted in the conclusion.



1 Legal framework

This section starts by explaining the main European and international legal texts that have created a supranational and international framework for the exchange of social security data. This is followed by an analysis of the transposition of this framework into the individual national legal systems. Next, a description follows of the national and international exchange options in Belgium, the Netherlands and Germany for the purpose of the administrative approach to combating organised crime.

1.1 European regulations and bilateral treaties

The coordination of social security systems between the Member States of the European Union is regulated by a large number of European laws and regulations. The following is a brief summary of the most important and relevant legal texts:

- Regulation (EU) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems
- Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems
- Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC – General Data Protection Regulation
- Convention between the Kingdom of the Netherlands and the Kingdom of Belgium on the application of reciprocal legislation regarding social security of 29 August 1947
- Convention between the Kingdom of the Netherlands and the Kingdom of Belgium for the development of cooperation and mutual administrative assistance regarding social security of 6 December 2010
- Administrative agreement concerning the application of the Convention between the Kingdom of the Netherlands and the Kingdom of Belgium for the development of cooperation and mutual administrative assistance regarding social security of 28 March 2013
- Convention between the Kingdom of the Netherlands and the Federal Republic of Germany regarding [...] combating cross-border undeclared work.

1.1.1 Exchange between social services on aspects of undeclared work

The provisions of Union law and international law relating to the exchange of social security information can broadly be divided into two groups. On the one hand, Regulations No 883/2004 and No 987/2009 harmonise the exchange of information between social security institutions within the European Union. These regulations aim to improve the coordination of social security systems in response to the free movement of workers and the growing importance of this freedom. As regards data protection, national provisions continue to apply¹, although they are similar in certain cases thanks to the General Data Protection Regulation.

On the other hand, bilateral agreements contain legal rules to combat the abuse of social benefits and aspects of so-called undeclared work. This term generally refers to activities of certain persons that do not comply with government regulations and obligations that would regulate the activity in question, e.g., evading their obligation to pay social security contributions. Since the fight against undeclared work is closely linked to the general exchange of social security data when it comes to the problem of abuse of social benefits, the options for exchange in this area must also be taken into account.

Belgium and the Netherlands coordinate legislation on social benefits as well as administrative cooperation under bilateral agreements. The relevant convention provisions allow for the option to exchange information, including personal data, as well as for mutual participation in monitoring.² The Federal Republic of Germany has concluded several bilateral conventions with various partner countries, including to combat abuse of social security benefits. A similar convention applies between the Kingdom of the Netherlands and

¹ Art. 77, §1 Regulation no. 883/2004.

² Art. 7 paragraph 1; art. 8 paragraph 1, 13 Convention between the Kingdom of the Netherlands and the Kingdom of Belgium for the development of cooperation and mutual administrative assistance regarding social security. 06 December 2010.

the Federal Republic of Germany³, but not regarding the Kingdom of Belgium.⁴ According to the German-Dutch convention, personal data may also be transferred in the context of the cooperation.⁵

1.1.2 Use of social security data for purposes other than social procedures

The use of social security data for the administrative approach to organised crime is not explicitly regulated in these legal frameworks. A provision explicitly regulating this use is currently not available. To pass on data under the social security data regulations, the national data protection law determines the data protection and thus also the possibility of further passing it on to other public authorities in the same Member State.⁶ It follows that if the respective legislation also provides for the possibility of use for the purpose of the administrative approach, the data provided may also be used for this purpose.

1.1.3 The General Data Protection Regulation and its transposition

The processing of social security data also takes place within the scope of Regulation (EU) 2016/679, the so-called General Data Protection Regulation. In particular, the purpose limitation principle creates a legal restriction on the exchange of such information. On this ground, any further processing of data must, in principle, be compatible with the original purpose of the data collection.⁷ Under another provision in the GDPR, the Member States are responsible for the further structuring and elaboration of the respective legality requirements.⁸

1.1.4 Enforcement of claims for the recovery of social benefits

In addition to the options for information exchange on social security, the harmonisation of parts of social legislation in the EU has also created cross-border options for the enforcement of recovery claims.⁹ Therefore, contributions

and enforceable decisions of the authorities and courts of one country can in principle be recovered and enforced in another Member State. Such enforcement is possible in cases where the social security institutions in the country of enforcement could, in a purely domestic situation, carry out this type of enforcement. As a result, claims on the majority of social benefits within the EU can be recovered and enforced. After all, in many cases, EU law has been harmonised when it comes to important social benefits such as pensions, illness and unemployment.¹⁰ Assistance with recovery and enforcement can be provided in the form of information, services and also actual recovery. Enforceable titles from one country are partly automatically recognised in the other country; partial recognition for enforcement may be sought.¹¹ This administrative assistance in recovery and enforcement is, in principle, provided free of charge.¹² According to the relevant provisions, however, the authorities of the country requesting assistance are in some cases no longer obliged to assist with claims that are more than five years old.¹³

For information on options for recovering other government claims, such as administrative fines and recovery claims, please consult the EURIEC memorandum “Cross-border Recovery of Administrative Fines and Recovery Claims”.

³ *Convention between the Kingdom of the Netherlands and the Federal Republic of Germany on combating cross-border undeclared work dated 12 January 2012.*

⁴ https://www.zoll.de/DE/Fachthemen/Arbeit/Bekaempfung-der-Schwarzarbeit-und-illegalen-Beschaeftigung/Zusammenarbeit/Internationale-Zusammenarbeit/internationale-zusammenarbeit_node.html.

⁵ *Art. 5 II No. 4, Art. 8 Convention between the Kingdom of the Netherlands and the Federal Republic of Germany on combating cross-border undeclared work dated 12 January 2012.*

⁶ *Art. 77 § 2 Regulation no. 883/2004.*

⁷ *Art. 5, b), art. 6 IV GDPR.*

⁸ *Art. 6 I 1 e), II, III 1 b), 3 GDPR.*

⁹ *Art. 84 I, II VO No. 883/2004.*

¹⁰ *Art. 3 I VO No 883/2004.*

¹¹ *Art. 79 I, II VO No. 987/2009.*

¹² *Art. 85 II VO No. 987/2009.*

¹³ *Art. 82 I b) VO No. 987/2009.*

1.2 Belgium

1.2.1 Domestic use of social security data in the context of the administrative approach

In Belgium, social security is understood to mean: the benefits (allowances) to which socially insured persons are entitled and which are intended to replace or supplement the employee's income from work.¹⁴ Various government services and authorities in Belgium are responsible for the benefits covered by this definition of social security. This definition includes, among others, services for granting pensions¹⁵, incapacity for work¹⁶ and unemployment benefits¹⁷.

For this reason, the exchange between these different services is important and the decision was made to set up a Crossroads Bank for Social Security (KSZ).¹⁸ The Crossroads Bank collects data from important bodies that are involved in social security in Belgium. This concerns public social security institutions, but possibly also other actors such as certain private bodies and other public institutions.

The law establishing and organising a social security crossroads bank states that public authorities may gain access to the crossroads bank if they need the identification data to perform the tasks assigned to them through or pursuant to a legal rule.¹⁹ Furthermore, natural persons or public institutions may also access the crossroads bank if they need the identification data for the fulfilment of the tasks of general interest assigned to them by a legal rule.²⁰ But data other than identification data may also be shared with other authorities in certain cases. By Royal Decree, the Belgian legislator may, after obtaining advice, decide to extend (a part of) the rights and obligations contained in the Crossroads Bank legislation to persons other than social security institutions.²¹

It is important to note that organisations wishing to join the KSZ must do so on the grounds of social policy. The administrative approach does not, however, appear to be part of

the tasks of social policy making, which means, in principle, that Belgian municipalities are unable to access this data.²² The Public Centres for Social Welfare (OCMWs), which may consult certain information via the KSZ, are an exception to this rule.²³ The OCMWs are part of the municipalities. The employees are also bound by professional secrecy, which makes it difficult to argue that they could pass on the information they receive in the context of their job to other services of the municipality, such as the service that is responsible for public order. In addition, the principle of purpose limitation also presents a potential problem when it comes to passing on personal data from the OCMWs to other services within the municipality. After all, the OCMWs primary task and purpose is to provide help for people who struggle to meet their basic needs and to integrate them into social life.

Nevertheless, certain data may (indirectly) be shared with Belgian cities and municipalities for the purpose of the administrative approach to organised crime. Social inspectors, for example, have the authority to monitor compliance with legislation on employment relations, social security and social assistance.²⁴ The Labour Inspection Act states that these social inspectors may, if they consider it necessary or following a request from other officials, communicate information obtained during their investigations to all officials who are responsible for the supervision of other legislation. An additional condition is that these officials who are responsible for the supervision of other legislation must have an interest in the information in the exercise of the supervision for which they are responsible.²⁵ Lastly, in cases where social inspectors act on behalf of the judicial authorities, the information may only be provided after permission from the judicial authorities.²⁶ This allows social inspectors to pass on information obtained during their investigation, outside the mandates of the judicial authorities, to all officials who are responsible for supervising other legislation, insofar as such information may be relevant to those officials.²⁷ The parliamentary preparations state that

¹⁴ Art. 3 Law containing the general principles of social security for employees.

¹⁵ Art. 9 Law containing the general principles of social security for employees.

¹⁶ Art. 8 Law containing the general principles of social security for employees.

¹⁷ Art. 7 Law containing the general principles of social security for employees.

¹⁸ Law of 15 January 1990 establishing and organising a social security crossroads bank.

¹⁹ Art. 4, §4, 3° law on the establishment and organisation of a social security crossroads bank.

²⁰ Art. 4, §4, 4° law on the establishment and organisation of a social security crossroads bank.

²¹ Art. 18 law on the establishment and organisation of a social security crossroads bank.

²² *The municipalities did obtain a general authorisation to communicate personal data to the municipalities and provinces via the KSZ. This communication happens exclusively in the context of the automatic granting of additional benefits, e.g. increased compensation.*

²³ <https://www.vvsg.be/kennisitem/vvsg/kruispuntbank-van-de-sociale-zekerheid>.

²⁴ Art. 1 Labour Inspection Act.

²⁵ Art. 5 Labour Inspection Act.

²⁶ Art. 5, §3 Labour Inspection Act.

²⁷ Cass. 2 May 2011: "It follows from the consistency of [Articles 1, 5, 7 and 9 of the Labour Inspection Act] that the social inspectors can communicate the information they obtained during an autonomous action, unlike the information obtained while executing investigative activities prescribed by the judicial authorities, to the public and cooperating institutions of social security, to the social inspectors of the other inspection services, as well as to all officials charged with the supervision of other legislation, insofar as such information may be of interest to the latter in the exercise of the supervision for which they are responsible. Determining that the social inspectors have drawn up an official report based on this information does not detract from this."

these provisions must be interpreted restrictively, so that only certain competent services such as the OCMWs and the police services can receive this data from social inspectors.²⁸ The Belgian police may, in turn, provide this information to a Belgian municipality in certain cases, as part of the administrative approach.

It can be concluded that Belgian local authorities may only access data relating to social security in a very limited number of cases in the context of the fight against organised crime. The following sections examine whether and when foreign local authorities and other partners may obtain information in the field of social security.

1.2.2 Direct provision by the Belgian social security services to a (mayor of a) German/Dutch municipality

1.2.2.1 Access to the Crossroads Bank for Social Security

Foreign governments are currently not able to access the Crossroads Bank for Social Security. In principle, however, foreign governments and municipalities may be able in the future to request data from the Crossroads Bank for Social Security regarding social policy. This may happen via a request submitted to the chairman of the management committee of the Crossroads Bank for Social Security. However, in order to grant such a request, several conditions must be met.²⁹ One of these conditions is that the application must state that the requesting government service or public institution is authorised to consult the National Register of Natural Persons and to use National Register numbers. However, as described in the EURIEC memorandum that examines in-depth the options to provide information about the population register across borders, foreign municipalities are not authorised to consult the National Register of Natural Persons.

In addition, the Crossroads Bank for Social Security's primary objective is to provide information to actors in the social sector and the field of social policy.³⁰ It is doubtful whether (foreign) local authorities that act in the context of the fight against organised crime will be considered actors in the social sector in every case. Needless to say, an attempt can be made (once it has been made possible for foreign municipalities to consult the National Register) to argue that municipalities that act in the fight against organised crime may also be considered actors in the social sector, in which case they would be able to obtain access to the Crossroads

Bank for Social Security. To this end, an application must be submitted to the Sectoral Committee of Social Security and Health; more specifically to the Commission for the Protection of Privacy. In addition, the legislator may also determine by decree that certain communications of social data to another social security institution do not require deliberation.³¹

For these reasons, it currently appears impossible for foreign municipalities to access the data that is contained in the Crossroads Bank for Social Security. Foreign actors in the social sector and in the social policy field, who have the national register numbers of Belgian citizen at their disposal, may be able to gain access to the Crossroads Bank for Social Security. The options for providing the data that foreign actors in the social sector may receive from Belgian social actors and then pass it on, are discussed in section 1.2.4.

1.2.2.2 Information data social inspectors

As described above, the Labour Inspection Act offers social inspectors the option to share information obtained during their investigations with certain other authorities. In Belgium, data can for example be shared with the CPAS (*Centre Public d'Action Sociale*) and the Belgian police services.³²

Although the law does not distinguish between officials of domestic or foreign governments, parliamentary preparations expressly show that foreign governments may also gain access to such data. However, this requires a convention that explicitly states that the information may be shared not only with foreign inspection services, but also with foreign municipalities, including in the framework of the administrative approach. A convention with this type of provision is currently not available, which makes the sharing of information from social inspectors directly to foreign municipalities not possible.

1.2.3 Provision of social security data by (the mayor of) the Belgian municipality to (the mayor of) the German/Dutch municipality

As discussed in section 1.2.1, which lists the options for Belgian municipalities to gain access to social security data, the possibilities to obtain information about social security as mayor are severely limited or non-existent. As a result, it is also impossible for Belgian mayors and Belgian municipalities to provide such data across borders with a view to the administrative approach to organised crime. Furthermore, a

²⁸ *Bill to introduce a Social Penal Code. Explanatory Memorandum, Parl. St. Parliament 2006-07, no. 51-3059/001, 154.*

²⁹ *Art. 4 and 8 Crossroads Bank Act.*

³⁰ *Art. 8 Royal Decree of 16 January 2002.*

³¹ *Art. 15 Crossroads Bank Act.*

³² *Art. 5 and 7 Labour Inspection Act, Bill to introduce a Social Penal Code. Explanatory Memorandum, Parl. St. Parliament 2006-07, no. 51-3059/001, 154.*

legal ground for providing data to a foreign municipality with a view to the administrative approach is also usually lacking.

1.2.4 Provision by the Belgian social security services to the German/Dutch tax administration, whereby permission is given for data to be passed on to and used by the administration for the purpose of the administrative approach to organised crime (U-turn)

In principle, any exchange of social data of a personal nature involving a Belgian social security institution (whether as a reporting agency or as a receiving agency) must happen via the Crossroads Bank.³³ However, in order to avoid compromising the efficient functioning of social security, several exceptions to this rule are foreseen. The mandatory intervention of the Crossroads Bank does not apply to the communication of social data of a personal nature by or to:³⁴

- ...
- The persons, other than social security institutions, who need the data concerned for the fulfilment of their social security obligations, their appointees or agents, or those who have been expressly authorised by them to obtain the data; this refers, for example, to employers who, in order to be able to declare the wages and working hours of the workers they employ, must obtain certain information about the workers from the relevant social security institutions;
- The foreign social security institutions, insofar as this communication is made within the framework of international social security agreements; to the extent that foreign social security institutions must be treated in the same way as their own national institutions pursuant to community law or international law provisions, the exchange of information must, however, happen through the Crossroads Bank.
- ...

Despite the fact that it should, in principle, be possible for a foreign actor in the social sector who has access to the national register, to gain access to the Crossroads Bank for Social Security, it will, therefore, also be possible to provide information to foreign social security institutions without going through the Crossroads Bank. This may happen in the context of an international agreement, for example.

Even if there is an option to provide social security data to foreign institutions in the social sector³⁵, the passing on of this data will not be possible. After all, the person who, by virtue of their position, is involved in the processing of social data of a personal nature is obliged to respect its confidential nature.³⁶ As a result, passing on such data to other actors, e.g. foreign municipal services, will in principle be impossible, unless a legal or convention basis has been agreed about this. This legal or convention basis will always need to take the principle of purpose limitation into account.

³³ Art. 14, §1 Crossroads Bank Act

³⁴ Art. 14 Crossroads Bank Act

³⁵ For example, Article 7 of the Law consenting to the Convention between the Kingdom of Belgium and the Kingdom of the Netherlands for the development of cooperation and mutual administrative assistance in the field of social security, made in Brussels on 6 December 2010: Operation of mutual administrative assistance 1. Any competent body of one of the Contracting Parties may apply to a competent body of the other Contracting Party, either directly or through a liaison agency, for the purpose of requesting information that is required for the proper performance of its task.

³⁶ Art. 28 Crossroads Bank Act.

1.3 Germany

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

Data that is processed by governments in the framework of social services falls under the so-called ‘social confidentiality’ (*Sozialgeheimnis*). This results, in principle, in a prohibition for social service providers to process personal data without permission. Passing on social security data as a form of processing can, therefore, only be considered if a legal provision allows for it. According to the provisions of the Tenth Book of the German Social Code, passing on such data is possible in the following cases, inter alia:

- To a limited extent by police forces, public prosecutors’ offices and courts, security services and correctional facilities, for the performance of their tasks³⁷
- Insofar as the provision is necessary to conduct criminal proceedings for a crime or for any other criminal offence of significant importance³⁸
- For the enforcement of public-law claims³⁹
- Insofar as the transfer is required by the health and safety authorities at work in the performance of their tasks⁴⁰
- For the mutual performance of tasks by the social assistance authorities.⁴¹

Regarding security data, it goes without saying that the purpose limitation principle also applies to the use of social security institutions themselves as well as to the provision of services to third parties.⁴² German municipalities may, in certain cases, rely on the provisions of the Social Code mentioned above, with a view to the enforcement of public-law claims and contributions, for example. However, due to the principle of purpose limitation, this will only be possible if there is a clear link with organised crime so that the public order department can be informed.

As explained in the first section, there are, in theory, three conceivable ways of exchanging this domestic social security data for the administrative approach to combating organised crime. These possibilities are discussed in the following sections.

1.3.2 Direct provision of social security data by the German social security services to a (mayor of a) Belgian/Dutch municipality

1.3.2.1 Social benefits fraud

The provision of social security data to persons or bodies abroad by the German authorities is possible in principle. In particular, data provision to similar public services in other EU countries has been significantly promoted by the legislator.⁴³ Accordingly, provision is possible in the following cases, inter alia:

- In the context of the fulfilment of the tasks of a domestic government that is performing social security tasks. In this case, the German authorities may contact the foreign authorities to check whether a person also receives benefits abroad, and whether the person would be entitled to benefits in both Germany and another country⁴⁴
- In the framework of the performance of the tasks of a foreign authority, if they are comparable to German authorities that grant benefits. In addition, the provision should be required for the performance of the task of the relevant foreign public body.⁴⁵ It is not necessary for the foreign social authority to have exactly the same mandate as the respective German social authority. It is required, but also sufficient, that the foreign authority holds at least partly the same function as the German authority⁴⁶
- For the performance of tasks of the public authorities that are responsible for health and safety at work⁴⁷
- To conduct judicial or enforcement proceedings relating to any legal or contractual maintenance claims⁴⁸
- To conduct criminal proceedings. A national court shall decide on the admissibility of the data provision in every case.⁴⁹ Extensive information should only be exchanged in the event of a crime or a criminal offence of substantial importance.⁵⁰ Fraud involving social benefits generally does not fall under the heading of a crime or a criminal offence of substantial importance.⁵¹

Thus, according to the provisions described above, personal data may be exchanged between foreign authorities in the event of suspicion of social benefit fraud. It goes without saying that whether the foreign authorities have at least partly the same function as the German authorities and if

37 § 68 I 1 Social Security Code X.

38 § 73 I Social Security Code X.

39 § 74a I Social Security Code X.

40 § 70 Social Security Code X.

41 § 69 I Nr. 1 Social Security Code X.

42 §§ 67c, 78 Social Security Code X.

43 § 77 I Social Security Code X.

44 § 77 I 1 Nr. 1 Alt. 1 Social Security Code X.

45 § 77 I 1 Nr. 1 Alt. 2 Social Security Code X.

46 KassKomm/Herbst, 111. EL September 2020, § 77 SGB X, Rn. 53.

47 § 77 I 1 Nr. 2 SGB X iVm § 70 Social Security Code X.

48 § 77 I 1 Nr. 3 SGB X iVm § 74 Social Security Code X.

49 § 77 I 1 Nr. 4 SGB X iVm § 73 Social Security Code X.

50 § 73 I SGB X. According to § 12 I StGB, a crime is an unlawful act punishable by a minimum term of imprisonment of one year or more.

51 § 73 II Social Security Code X.

the provision is necessary for the authorities will need to be examined on a case-by-case basis. In addition, in order to make a provision possible, the foreign authority must specify what the purpose of the provision would be. Furthermore, no transfer may take place if it were contrary to the principles of Article 6 TEU (the rights and freedoms enshrined in the European Charter).⁵²

Moreover, the fact that fraud with social benefits is punishable in Germany must always be taken into account. If this is also the case in concrete cases in Belgium or the Netherlands, the information may only be provided after a court order.⁵³

1.3.2.2 Undeclared work and illegal employment

In Germany, customs are the responsible authority for inspections in the context of combating undeclared work and illegal employment.⁵⁴ The law that combats undeclared work regulates the provision of information, including to agencies of another European Member State, in three ways. The Federal Republic of Germany has concluded several bilateral conventions with various other countries, including to combat abuse of social security benefits. Such a convention has been concluded between the Kingdom of the Netherlands and the Federal Republic of Germany⁵⁵, although there is currently no such convention with the Kingdom of Belgium.⁵⁶ According to the German-Dutch convention, personal data may also be transferred in the context of cooperation between the various services.⁵⁷

Under the law that combats undeclared work, personal data that is the subject of an investigation may only be passed on for the purpose of prosecution by the customs authorities in the other Member States of the European Union.⁵⁸

As regards information options for the application of the Posting of Workers Act, the Minimum Wage Act and the Temporary Employment Act, the law also refers to the applicability of the provisions on European administrative assistance in administrative procedural law.⁵⁹ This allows for the exchange of information with authorities of the Member

States of the European Economic Area that perform similar tasks, in accordance with the provisions of data protection legislation.⁶⁰ However, these provisions on European administrative assistance do not in themselves constitute a lawful ground for the processing and disclosure of personal data. As a result, personal data cannot be exchanged in this way.

Lastly, regarding the processing of social security data, the Undeclared Work Act also refers to the provisions mentioned above of part ten of the Social Code.⁶¹ These also allow for the exchange of personal data with certain authorities in other EU countries.

1.3.3 Passing on social security data from a German municipality to a Belgian/Dutch municipality

Passing on social security data by a German municipality as a non-social authority to a Belgian or Dutch municipality may be in violation of the purpose limitation principle of the General Data Protection Regulation⁶² and social legislation if the foreign municipality performs a different task. Therefore, passing on data may only be considered if the domestic and foreign municipality perform comparable tasks in a specific case. In this case, it would be conceivable that the domestic municipality, in their responsibility for the prevention of danger, forwards data to a foreign municipality that has a similar task, such as safeguarding public order. This would not constitute a violation of the purpose limitation principle of the personal data that was originally collected as social security data. After all, German law permits the further use of social security data provided to courts, public prosecutors, the police and danger prevention authorities for purposes of danger prevention, prosecution and law enforcement, regardless of the specific purpose of the original data provision.⁶³

There is no explicit legal provision, however, that regulates passing on social security data to foreign municipalities. As a result, passing on data may only be considered for comparable processing purposes and based on a legal ground that allows such passing on. As a rule, there is no explicit legal ground for passing on data to foreign municipalities. Nevertheless, in our opinion it can be argued that the legal ground mentioned in the previous paragraph (data provision to prevent danger/protect public order) could be used as a legal ground for cross-border provision between municipal services that are competent in the area of public order.

⁵² § 77 I 2 Social Security Code X.

⁵³ § 77 I 1 Nr. 4 SGB X iVm § 73 SGB X.

⁵⁴ § 2 I Act to Combat Clandestine Employment, according to § 2 IV Act to Combat Clandestine Employment, however, in possible support by a large number of other authorities.

⁵⁵ Act to Combat Clandestine Employment NLD, Deutsch-Niederländischer Vertrag zur Bekämpfung grenzüberschreitender Schwarzarbeit vom 12. Januar 2012, BGBl. 2013 II S. 380.

⁵⁶ https://www.zoll.de/DE/Fachthemen/Arbeit/Bekaempfung-der-Schwarzarbeit-und-illegalen-Beschaeftigung/Zusammenarbeit/Internationale-Zusammenarbeit/internationale-zusammenarbeit_node.html.

⁵⁷ Art. 5 II Nr. 4, Art. 8 Act to Combat Clandestine Employment NLD.

⁵⁸ § 6a I Act to Combat Clandestine Employment.

⁵⁹ § 6 VI Act to Combat Clandestine Employment.

⁶⁰ § 18 VI 1 AÜG, § 18 II 1 MiLoG, § 20 II 1 AEntG.

⁶¹ § 15 Act to Combat Clandestine Employment.

⁶² Art. 5 I No. b), 6 IV GDPR.

⁶³ Art. 78 I 6 Social Security Code X.

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

Passing on information by the receiving foreign body to another foreign body must also comply with the purpose limitation principle of the General Data Protection Regulation.⁶⁴ This means that if the relevant information is transferred for a purpose that is incompatible with the original purpose of the provision, this primarily constitutes an infringement of the General Data Protection Regulation. In addition, German social security services must also provide consent for passing on data for a purpose other than the original provision.⁶⁵ In most cases, this consent is not possible.

There is an exception for passing on social security data to courts, public prosecutors, police authorities and security services. In such cases, after a transfer has taken place, this data may also be used for danger prevention, prosecution and enforcement of judgments, regardless of the purpose of the transmission. Since the wording of the provision does not distinguish between similar domestic and foreign authorities, this provision can also be applied in this regard in case of transfer to foreign courts, public prosecutors, police authorities and security services.

⁶⁴ Art. 5 I No. b), 6 IV GDPR.

⁶⁵ § 67d I Social Security Code X.

1.4 The Netherlands

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

In the Netherlands, the implementation of social security laws is entrusted to three implementing bodies: the Employee Insurance Agency (UWV), the Social Insurance Bank (SVB) and the municipalities.⁶⁶ Both the General Administrative Law Act and the more specific social security laws (including the Participation Act (Pw), the Work and Income (Implementation Structure) Act (SUWI), the Income Provision for Older and Partially Disabled Unemployed Employees Act (IOAW)) contain a confidentiality obligation regarding data, about which people are made aware during the performance of the task of an administrative body, or more specifically, during the implementation of the social security laws.⁶⁷ Further provision of social security data is only permitted under these laws if this is required for the execution of the relevant Social Security Act or when this is prescribed or permitted under the Social Security Act.⁶⁸ Provision is also possible if another statutory provision requires disclosure.⁶⁹

Any provision of social security data should always be necessary. The provider must check whether the person to whom the data is provided actually needs it.⁷⁰ In addition, providing more information than is strictly necessary is never permitted.⁷¹ The official who provides social security data under the SUWI Act or the Participation Act must check whether the person to whom the data is provided is reasonably authorised to obtain that data.⁷² This is intended to prevent information requests by unauthorised persons, e.g. by telephone.⁷³

The Model Privacy Protocol for intra-municipal data sharing, which explains to what extent data that is known within the municipality, e.g. in the context of the implementation of social security laws, can be provided to the department within the municipality that is responsible for the administrative approach to organised crime, shows that such provi-

sions are virtually impossible.⁷⁴ Provision to the department of a municipality that is responsible for the administrative approach to organised crime turns out to be impossible. However, there are a few situations in which social security data may be provided to other authorities in relation to organised crime:

- Provision to an executive or government agency in the event of a suspicion of a crime related to social insurance laws, benefits, premiums and contributions⁷⁵
- Provision to the Bureau for the Promotion of Integrity Assessments by the Public Administration (Bibob), insofar as this is necessary for the Bureau Bibob's task⁷⁶
- The SUWI Act includes several provisions that enable the exchange of information in the framework of preventing and combating social security fraud. However, these provisions cannot be stretched to the exchange of information for the purpose of the approach to organised crime⁷⁷
- Regarding Participation Act data, further rules may be laid down by Order in Council for the provision of social security data, e.g. in the framework of organised crime. The necessity criterion must also be complied with in this case. Currently, such an Order in Council is not available.⁷⁸

In short, the options for intra-municipal provision of social security data in the Netherlands are mainly limited to cases related to the implementation of social security laws in the event of, for example, fraud or another crime. Intra-municipal social security data may, however, be used for an administrative approach to organised crime in the context of a Bibob investigation by Bureau Bibob.

Another important body in the implementation of social security laws is the Social Affairs and Employment Inspectorate (ISZW). The ISZW monitors compliance with legislation and regulations regarding, inter alia, working conditions and the social security system.⁷⁹ The ISZW is one of the covenant partners in the RIEC partnership.⁸⁰ Unlike most other covenant partners, the ISZW is unable to provide data directly to the RIEC partnership.⁸¹ Under certain conditions, however, the ISZW is allowed to share data with other covenant partners through the Tax Authorities.^{82 83}

66 *Wet Structuur Uitvoeringsorganisatie Werk en Inkomen [Work and Income (Implementation Structure) Act]* SUWI, Flexnieuws.nl.

67 Art. 2:5 General Administrative Law Act (Awb) in conjunction with art. 74 Work and Income (Implementation Structure) Act SUWI in conjunction with art. 65 Participation Act (Pw) in conjunction with art. 46 Income Provision for Older and Partially Disabled Unemployed Employees Act (IOAW).

68 *Inter alia* art. 74 paragraph 1 SUWI Act in conjunction with art. 65 paragraph 1 Pw.

69 *Inter alia* art. 74 paragraph 2 SUWI Act in conjunction with art. 65 paragraph 2 Pw.

70 *Social Security and Administrative Law Module, Article 74 SUWI Act, note 1.4.*

71 *Social Security and Administrative Law Module, Article 74 SUWI Act, note 1.4.*

72 *Inter alia* art. 74 paragraph 4 SUWI Act in conjunction with 65 paragraph 4 Participation Act.

73 *Parliamentary Papers II 1991-92, 22 545, no. 3, p. 188.*

74 *Model Privacy Protocol – Manual for intra-municipal data exchange for combating organised crime 2020, p. 75, 89.*

75 *Inter alia* art. 61 SUWI Act in conjunction with art. 66 Pw.

76 Art. 27 paragraph 1 under g, *Promotion of Integrity Assessments by Public Administration Act (Bibob)*.

77 *Model Privacy Protocol – Manual for intra-municipal data exchange for combating organised crime 2020, p. 89.*

78 *Inter alia* art. 74 paragraph 2 SUWI Act in conjunction with art. 67 paragraph 4-5 Pw.

79 'Inspectie SZW' [SZW Inspection], *inspectieszw.nl*.

80 *Privacy Protocol RIECs-LIEC, p. 3*

81 *Privacy Protocol RIECs-LIEC, p. 22.*

82 *Privacy Protocol RIECs-LIEC, p. 22.*

83 *Art. 43c paragraph 1 letter m Awr. Implementation Regulation.*

1.4.2 Direct provision by the Dutch Social Security Services to a (mayor of a) Belgian/German municipality in the framework of the administrative approach to organised crime

As indicated in section 1.4.1, the Dutch social security laws are subject to a strict duty of confidentiality. The social security laws contain various exceptions to this duty of confidentiality. Two of these exceptions relate specifically to data provision to foreign bodies:

- The obligation to report a well-founded suspicion of a crime to the detriment of a foreign executive body of social insurance laws or to the detriment of a foreign government agency charged with paying benefits or providing benefits in kind, or levying contributions⁸⁴
- Data provision to foreign bodies for the performance of a task of substantial public interest.⁸⁵

1.4.2.1 Obligation to report a well-founded suspicion of a crime

The obligation to report a well-founded suspicion of a crime will be discussed in more detail below in section 1.4.4. This data provision option specifically relates to provision to a foreign administrator of social security laws and not to a department of the municipality charged with the administrative approach to organised crime.

1.4.2.2 Data provision for the fulfilment of a task of substantial public interest

The Dutch executive bodies UWV, SVB and municipalities are authorised to provide data to foreign bodies on their own initiative and sometimes obliged to do so in response to a request for the performance of a task of substantial public interest.⁸⁶ The data to be provided must come from the administration in the framework of the implementation of the relevant social security law and may be provided free of charge.⁸⁷ This option to provide information to foreign bodies has been included due to the increasing importance of data traffic with foreign bodies with a view to properly implementing social security laws.⁸⁸ In the case of provision of social security data on their own initiative, the providing executive body determines to a large extent itself (within the limits of the article) in which cases and how data is

provided.⁸⁹ It must be assessed whether the provision is proportional, *inter alia*.⁹⁰

Weighing up interests

When providing data on its own initiative as well as in response to a request, the executive body must weigh up the importance of the provision against the privacy of the data subject.⁹¹ Data provision must not take place if the privacy of the data subject is disproportionately harmed.⁹²

Substantial public interest

The criterion that data provision can take place for the performance of *a task of substantial public interest* is not specified in more detail in the explanatory notes to the law or in the various comments. Nor is there any case law regarding cross-border provision of social security data for the performance of a task of substantial public interest.

In the Model Privacy Protocol for intra-municipal data exchange that section 1.4.1 refers to, it is concluded that data collected during the implementation of the Participation Act may not be used within the municipality to combat organised crime.⁹³ This document states that provision of Participation Act data to foreign bodies is indeed possible.⁹⁴ Since this document concerns data provision for the purpose of combating organised crime, the contradiction between the option to provide data to foreign bodies as opposed to intra-municipal options for data provision appears to indicate that provision for the purpose of combating organised crime can be seen as provision for the fulfilment of a task of substantial public interest. The authors of this document see clear opportunities for foreign bodies that are not available within the Netherlands.

Furthermore, the criterion of *substantial public interest* is also used in other acts, including: the Police Data Act (Wpg), Judicial and Criminal Data Act (Wjsg) and the SUWI Decree. Parliamentary documents relating to the processing of police data explain the distinction between the “public interest” and “substantial public interest”.⁹⁵ Data processing on the grounds of the *public interest* is justified if the processing is of significance for society; data processing is justified on the grounds of substantial public interest if the processing is of **more than general importance for society**.⁹⁶ The Wjsg lists the purposes for which necessity may apply with a view to a substantial public interest,

84 Art. 66 Pw.

85 Art. 67 paragraph 1 under f in conjunction with art. 48 paragraph 1 under f IOAW in conjunction with art. 5.6. SUWI Decree.

86 Art. 67 paragraph 1 under f in conjunction with art. 48 paragraph 1 under f IOAW in conjunction with art. 5.6. SUWI Decree.

87 Art. 67 paragraph 1 Pw in conjunction with art. 48 paragraph 1 IOAW in conjunction with art. 5.6. SUWI Decree.

88 Parliamentary Papers II 2002/03, 28 870, no. 3, p. 81.

89 Parliamentary Papers II 1992/93, 22 545, no. 8, p. 130.

90 Parliamentary Papers II 1992/93, 22 545, no. 8, p. 130.

91 Parliamentary Papers II 1991/92, 22 545, no. 3, p. 189.

92 Art. 67 paragraph 3 Participation Act in conjunction with art. 48 paragraph 3 IOAW.

93 Model Privacy Protocol – Manual for intra-municipal data exchange for combating organised crime 2020, p. 72.

94 Model Privacy Protocol – Manual for intra-municipal data exchange for combating organised crime 2020, p. 72.

95 Parliamentary Papers II 2005/06, 30 327, no. 3, p. 74.

96 Parliamentary Papers II 2005/06, 30 327, no. 3, p. 74.

including: maintaining order and safety, supervising compliance with regulations and taking administrative decisions.⁹⁷

The SUWI Decree mentions “providing and determining benefits and levying and collecting premiums and contributions to this end” as an example of a task that is in the public interest.⁹⁸ Data provision to a foreign administrative body in the framework of social security is discussed in more detail in the commentary.⁹⁹ For this purpose, social security is considered a substantial public interest. This is understood to mean providing benefits or the determination of rights, contributions and obligations in the event of cross-border activities.¹⁰⁰ The commentary to the SUWI Decree does not appear to offer room for reasons of substantial public interest other than reasons related to tasks in the context of social security. It can be concluded from the legal text, however, that the SUWI Decree does not refer exclusively to tasks in the context of social security. ‘Providing and determining benefits and levying and collecting premiums and contributions to this end’ is, *in any case*, considered a task of *substantial public interest*. This leaves room for other types of tasks of substantial public interest, in the framework of which provision to foreign bodies may be possible.

In short, given that the interpretation of the criterion of a substantial public interest is not apparent from the legal text, legislative history or case law, it is necessary to look further in order to substantiate the application of this criterion. Although the Wpg and Wjsg cannot be applied analogously, they do offer points of departure for how the Dutch legislator can apply the concept of *substantial public interest*. The SUWI Decree does not contain any further reference points for the use of Participation Act data for the purpose of the administrative approach to organised crime. However, such an application is not excluded either. The Wpg shows that the provision must be of more than general importance for society. Although this will need to be assessed on a case-by-case basis, the approach to organised crime can, in principle, be regarded as being of more than general importance for society. Furthermore, the administrative approach to organised crime can also be classified under the tasks to which the Wjsg refers, such as maintaining order and security, supervising compliance with regulations and taking administrative decisions. The above-mentioned model information protocol also implicitly recognises that data provision by the municipality to foreign bodies under the Participation Act for the purpose of combating organised crime may be considered a provision within the framework of *substantial public interest*. Consequently, it appears justifiable that in EURIEC cases, there may be a provision of substantial public interest to foreign bodies as referred to in the social security laws.

97 Art. 39f paragraph 1 Wjsg.

98 Art. 5.6 SUWI Decree.

99 Lexplication, comment on article 5.6 SUWI Decree.

100 Lexplication, comment on article 5.6 SUWI Decree.

Purpose limitation

The purpose limitation criterion in the GDPR may constitute a further obstacle to such data provision. When data collected for the execution of social security laws is provided to a foreign administrative body for the purpose of the administrative approach to organised crime, this is considered provision for a purpose other than the purpose for which the data was collected. Passing on data for another purpose is only permitted if it is based on the consent of the data subject or on a Union or Member State law provision.¹⁰¹ When passing on data is based on one of the articles that stipulate a provision for the performance of a task of substantial public interest, this is considered a provision under Member State law.¹⁰² Nevertheless, any further requirements arising from the GDPR must be met, e.g. the obligation to inform the data subject.¹⁰³

1.4.3 Provision of social security data by (the mayor of) the Dutch municipality (not being the executive body for social laws) to (the mayor of) a Belgian/German municipality

According to section 1.4.1, departments of Dutch municipalities that are not responsible for the implementation of social security laws do not have access to social security data. Since there is no ground for these departments to receive social security data, they cannot be passed on either.

If, for example, an Order in Council will be made in the future that makes it possible to provide Participation Act data to other departments within the municipality for the administrative approach to organised crime, the strict duty of confidentiality provision that applies to this data would still constitute an obstacle.¹⁰⁴ Even if there were a compatible purpose, social security data may only be provided if it is necessary for the execution of the relevant social security law, where this is required or permitted under the social security law, or if another statutory provision requires disclosure.^{105 106} In order to enable cross-border data provision by a Dutch municipality to a foreign municipality in the framework of the administrative approach, a legal obligation to do so should be introduced.

101 Art. 6 paragraph 4 GDPR.

102 Art. 6 par. 4 GDPR in conjunction with art. 67 paragraph 1 under f Pw in conjunction with art. 48 paragraph 1 under f IOAW in conjunction with art. 5.6. SUWI Decree.

103 T&C GDPR 2018, art. 6 GDPR, aant. 2.

104 Art. 67 paragraph 4-5 in conjunction with art. 65 Pw.

105 Inter alia art. 74 paragraph 1 SUWI Act in conjunction with art. 65 paragraph 1 Pw.

106 Inter alia art. 74 paragraph 2 SUWI Act in conjunction with art. 65 paragraph 2 Pw.

1.4.4 Data provision by the Dutch Social Security Services to the Belgian/German Social Security Services, whereby permission is given for data to be passed on to and used by the administration for the purpose of the administrative approach to organised crime (U-turn)

Several of the European and bilateral conventions and legal instruments to which section 1.1 refers, provide for the possibility of cross-border exchange of social security data between the Social Security Services. However, the purpose of such data provision is always grounded in the execution of social security laws. The objective is usually to protect citizens' social security rights, as well as to prevent abuse of the social security system. An example of a provision between Social Security services, the obligation to report a well-founded suspicion of a crime, was discussed in section 1.4.3. It is striking that only the Participation Act explicitly states that this obligation to report also applies to foreign executive or government bodies.¹⁰⁷ In similar articles in other laws, the obligation to report appears to be limited to domestic executive or government bodies.¹⁰⁸

The European and bilateral conventions that provide for cross-border provision of social security data all contain purpose limitation clauses. As a result, the data provided may only be used for the purpose for which it was provided. Furthermore, reference is made to European and national legislation on the protection of (social security) data. In fact, the Regulation on the coordination of social security systems states that the data protection law of the providing Member State continues to apply to the data that has been provided.¹⁰⁹ This means that the strict duty of confidentiality that applies in the Netherlands regarding this data continues to apply.

These purpose limitation provisions are also in line with the GDPR that applies in all three countries. Passing on data for another purpose is only permitted if it is based on the consent of the data subject or on a Union or Member State law provision.¹¹⁰ In the case of the U-turn, there are currently no Union or Member State law provisions that allow for passing on data for the purpose of the administrative approach to organised crime. Furthermore, in cases of organised crime, asking the person concerned for permission is not a workable option. In such cases, passing on data for another purpose is only possible under the GDPR if there is a compatible purpose.¹¹¹ It does not appear justifiable that passing on data for the purpose of the administrative approach to organised crime is compatible with the purpose for which the relevant Social Security Service has received the data, i.e. the implementation of social security laws.

¹⁰⁷ Art. 66 Pw.

¹⁰⁸ Art. 47 IOAW in conjunction with art. 61 SUWI Act.

¹⁰⁹ Art. 77 paragraph 1 Regulation 883/2004.

¹¹⁰ Art. 6 paragraph 4 GDPR.

¹¹¹ Art. 6 paragraph 4 AVG.

2 Practical consequences

The EURIEC has managed to identify the implications of these options and the challenges regarding cross-border information exchange for the administrative approach in practice.

The current legal context allows for the exchange of social data in some cases. In one case, a German municipality, in its capacity as a licensing authority for restaurants, was able to legally use information from the Dutch social authorities for the licensing procedure. The fact that the applicant had bought a house in the Netherlands and received social benefits at the same time could be shared. These facts could potentially indicate social fraud. While this information did not necessarily lead to the refusal of the license in this case, it did improve the information position of the government in Germany.

It also became clear that the cooperation between the Belgian and Dutch social authorities, which is laid down in convention law, can also be used with a view to the administrative approach to combating organised crime. In one case, for example, a representative of the Dutch social institution ISZW took part in an inspection campaign by the Belgian authorities with the objective of checking possible abuse of social benefits.

In the end, providing information about the living and working conditions of labour migrants from the Netherlands to Belgium also proved possible. In this case, migrant workers were forced to vacate a building in the Netherlands because of the appalling living conditions. They subsequently moved to a building in Belgium. This information was shared with the competent Belgian authorities with a view to checking the living conditions in the new building.

This case shows that the bilateral agreements between the Netherlands and Belgium and between the Netherlands and Germany, including those aimed at combating social benefits abuse, have resulted in improved cooperation between the various services. However, the lack of such a convention-law arrangement between Belgium and Germany may complicate exchanges between the two countries.

3 Conclusion

The legal systems of all three countries surveyed allow for special protection for social data and limit the possibilities for the exchange of such data. At the national level, the options for exchanging social data for the administrative approach to combating organised crime are therefore limited.

This special protection also applies when it comes to international cooperation. Union law has resulted in a high degree of harmonisation in the exchange of social data between social authorities and in options to exchange certain information between them. Exchanging social data with foreign authorities outside the social domain is only possible to a limited extent, however. Mainly due to the purpose limitation principle, further passing on of information that was initially provided for purposes of social law between social authorities of different partner countries, to other foreign authorities and for purposes other than those of social law, is not possible.

Exchanging Belgian social data with foreign governments currently appears impossible in the framework of the cross-border administrative approach. In the context of the administrative approach, Belgian municipalities are not allowed to receive direct information from the authorities that have powers in the social domain. As a result of this and a lack of (inter)national law frameworks, providing such data to foreign governments is impossible.

In certain cases, German law puts foreign authorities on an equal footing with domestic authorities regarding the exchange of social data outside of the social sphere. However, the limited domestic information possibilities also result in limited possibilities for the exchange between social authorities and authorities outside of the social sphere in other EU countries.

Dutch law also significantly restricts the exchange of social data both within the country and in relation to foreign authorities. In the EURIEC's opinion, it can be argued that passing on data is possible if there is a substantial public interest, and that this may be the case in the cross-border fight against organised crime and the administrative approach. The EURIEC therefore holds the opinion that, in individual cases, data may also be exchanged with a view to the administrative approach. The provision of data should, however, always be weighed up against the data subject's interests.

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