

# The Role of Local Authorities in the Prevention of and Fight against Money Laundering

The Need for More Possibilities for International Information Exchange in the Administrative AML Approach

Gennard Stulens

## ABSTRACT

Criminal organisations use and misuse legal structures in order to launder the money they earn through crimes. Local authorities can unwittingly and unwillingly facilitate crime and money laundering. After all, criminals or people who can be linked to crime and money laundering have to make use of certain legal structures in order to launder their money. They have to apply for permits, they need housing, etc. In order to prevent this misuse of legal structures, the information exchange between law enforcement authorities is necessary, and an administrative, integrated approach to preventing and fighting organised crime is needed.

Such information exchange often poses problems in border regions, however, as most of the laws with regard to information exchange between different authorities are written with purely national situations in mind. In border regions, citizens from neighbouring countries often also apply for certain permits if they wish to do business in a municipality. In such cases, obtaining information about these persons is often more difficult because of the lack of (inter)national legislation. Hence, border regions have a greater chance of being misused for money laundering purposes. This article presents and explains the results of a project by the Euro-regional Information and Expertise Centre (EURIEC). The project aims, inter alia, to analyse the possibilities and “bottlenecks” with regard to the (cross-border) exchange of data, with a view to enhancing the administrative approach to organised crime.

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# I. Introduction: The Administrative and Integrated Approach to Combating Organised Crime

Traditionally, the prevention of and fight against organised crime and money laundering is considered a task solely for law enforcement authorities, e.g. the police and prosecutors' offices. This view ignores the fact that local authorities can and should also play a role in the fight against and the prevention of organised crime/money laundering. Additionally, local authorities may also have a lot of information that could provide early signs of organised crime and help prevent and detect it. Public authorities have several instruments at their disposal for preventive and/or reactive action against (organised) crime. The administrative approach involves the use of such instruments.<sup>1</sup>

For, in order to commit certain crimes and launder money, criminals and criminal organisations have to avail themselves of legal structures. Criminal organisations need properties for drug labs or hemp plantations; they need certain businesses to launder the money they earn with the trafficking of drugs, weapons, and even human beings. For some of these business enterprises, like the opening of bars or restaurants, a permit is needed that has to be granted by the local authorities. Before granting this permit, the local authorities collect information from other partners in order to make an informed decision and rule out that this business will be used for criminal activities. In border regions, like the Rhine-Maas region, the necessary information can be provided, for example, by the police and other services within the municipality in Belgium, North Rhine-Westphalia, and the Netherlands. If it is not possible to obtain such information, criminals or criminal organisations can go about their business undisturbed and launder their money. In such cases, those businesses acting in good faith will have a competitive disadvantage compared to license holders with a criminal background and/or criminal purpose like laundering drug money.

Authorities in Belgium, North Rhine-Westphalia, and the Netherlands are becoming increasingly aware of the fact that a more organised governmental structure is needed to prevent organised crime and money laundering at the local level. Different branches of local government must be able to work together, share information, and have the possibility to form a united front against organised crime. This is why there has been a development from an administrative approach to a more integrated approach for example with the creation of regional information and expertise centres in Belgium and the Netherlands (the ARIECs/PAALCO in Belgium and RIEC-LIEC structure in the Netherlands). These centres advice and support municipalities in the administrative and integrated approach. Within such an integrated approach, different partners like the police, local authorities, the public prosecutors' offices, and tax authorities are brought together to map out which signs of criminal organisations exist and which measures can be taken to stop them.

However, when criminals become aware that the local government in one country is becoming more and more organised, they will try their luck elsewhere, for example in neighbouring countries, where the authorities may have less information about the criminal organisations. This is why an administrative and integrated approach at the international level is urgently needed. This holds especially true for the European Union, due to the freedom of movement and the right of persons to free choice of residence (Art. 3(2) TEU).

## II. Towards an International Administrative and Integrated Approach

Honest people make use of the freedom of movement and residence, but so do criminals. When criminal organisations become the focus of the authorities in one of the EU Member States, their members know they

can cross the border and try to start over in another Member State. It is possible that criminals cross the border but that information about their organisation or criminal activities does not.

A Dutch mayor, for instance, has the possibility to close down a house pursuant to Art. 13 of the Dutch drug law<sup>2</sup> after a drug lab had been found there. But the owner of the house may also own a bar just across the border in Belgium, where he can launder the money he made through the drug lab. It seems logical that the Dutch mayor would contact the Belgian mayor of the municipality in which the bar is located in order to reveal the activities of the person holding a permit in the Belgian municipality (in this case a permit to serve alcoholic beverages). In reality, this cross-border information exchange is difficult, as national and international legislation in this regard is often lacking. Therefore, a person suspected of operating a drug lab in the Netherlands could still launder drug money in a Belgian bar.

## 1. The Euregional Information and Expertise Centre (EURIEC)

In order to prevent such situations from occurring, the Belgian Minister of Security and Home Affairs, the Minister of Home Affairs of North Rhine-Westphalia, and the Dutch Minister of Justice and Security signed a declaration of intent in May 2018. They declared their wish to reinforce their collaboration towards improving the information exchange for the purpose of facilitating the administrative approach between Belgium, North Rhine-Westphalia, and the Netherlands. In 2019, the EURIEC (Euregional Information and Expertise Centre) was created as a result of this declaration, funded partly by funds of the European Union's Internal Security Fund.

The EURIEC is an international organisation of Belgium, North Rhine-Westphalia, and the Netherlands, which has a twofold objective:

- Advising municipalities and other partners in cases where there are indications that a person has links with organised crime and where there is a cross-border element. In some of these cases, the EURIEC brings together partners in international expert platforms. In these expert platforms, the possibilities and "bottlenecks" with regard to international information exchange become more and more apparent. When the EURIEC notices that cross-border information exchange is hampered, it contacts the competent authorities and tries to find a mutual solution;
- Raising awareness about the administrative approach and the need for greater international cooperation. National laws are often designed for purely domestic situations, but, in an increasingly global world, international aspects should be also taken into account when drafting/changing legislation.

The EURIEC has assisted Belgian, German, and Dutch municipalities and other partners asking for advice in more than 100 cases with a cross-border element in the past two years. The organisation noticed that some subject matter was recurring in the cases and started writing reports on certain recurring themes, for example: Can a cross-border exchange of police data be carried out for the purpose of the administrative approach on organised crime? What about financial and judicial data? The following section outlines the possibilities and bottlenecks with regard to the cross-border information exchange of different types of data for the purpose of the administrative approach – as experienced in the EURIEC project.<sup>3</sup>

## 2. Current possibilities and bottlenecks with regard to international information exchange

### a) Overall lack of a national legal basis

A recurring, overarching problem is the lack of national legal bases for the transfer of cross-border information with regards to personal data. A national legal basis is one of the conditions set out by the General Data Protection Regulation for the provision of information. Without such a legal basis, the exchange of information is often impossible, as the protection of personal data and the right to privacy could be affected.

Furthermore, it appears that legislation in Belgium, the Netherlands, and Germany is still based on the view that ensuring public order and security is solely a task of law enforcement bodies (the police and the public prosecutor). The above-mentioned administrative approach is a (relatively) new concept in many countries, which means that legal bases explicitly addressing the exchange of data in this area are often lacking. This problem plays a role not only for data exchange at the international level but often also for the national level, where it is sometimes unclear which information can be shared with other partners for the administrative purposes described above. This lack of a legal basis for both the international and national exchange of information creates legal uncertainty and can lead to a certain amount of caution when it comes to information sharing. In turn, this dilemma plays into the hands of criminals and criminal organisations.

### b) Cross-border exchange of administrative data

In contrast to other types of data, e.g. police data, judicial data, and tax data, there is no international regulation on the cross-border exchange of administrative data between local administrations. Additionally, there is often no national legal basis for the exchange of personal data with other (foreign) local authorities. Therefore, and due to the principle of confidentiality, it is generally impossible to exchange personal data between local authorities in Belgium, North Rhine-Westphalia, and the Netherlands.<sup>4</sup> This situation leads to a lack of information exchange about persons and businesses who/which misuse the legal structures. It is, for example, possible that a permit is not granted in one country because of the criminal background of a permit applicant/holder. If the municipality sees that the same person moves his/her activities to another country, the municipality cannot in general, inform the foreign municipality about where he/she restarts his/her business. This creates more opportunities for criminals to launder their money, because all they have to do is cross the border.

### c) Cross-border recovery of administrative sanctions and recovery claims

Public (municipal) authorities in Belgium, the Netherlands, and Germany may have claims against persons who are linked to organised crime and possible money laundering, including administrative fines and recovery claims. The possibilities for cross-border collection of restitution claims and administrative fines are often still uncharted territory for most local governments. In practice, it appears that such claims (which are usually and frequently applied in the context of organised crime) are not or only partially recovered when a cross-border component is involved. For instance, recovery often proves difficult when it turns out that the person on whom the sanction was imposed subsequently has moved abroad. In such cases, municipalities will more readily choose to simply write off the fine in their accounts and not collect it. Criminals know this and take advantage of it.

With regard to the cross-border recovery of administrative sanctions and recovery claims, Framework Decision 2005/214/JHA on the application of the principle of mutual recognition to financial penalties,<sup>5</sup> offers cross-border possibilities. This Framework Decision deals only with (administrative) sanctions that are

punitive in nature. As a result, administrative fines in Belgium, Germany, and the Netherlands generally fall within the scope of the Framework Decision, but recovery claims, such as the incremental penalty payments which are aimed at restoration do not fall within the scope of the Framework Decision. The reason for this is that the purpose of an incremental penalty payment is, for example, to induce the citizen to undo a violation in whole or in part or to prevent a repetition of a violation. Therefore, recovery claims do not have a punitive nature, cannot be called a sanction and do not fall within the scope of the Framework Decision. In sum, administrative sanctions can in principle be recovered cross-border as the administrative sanctions have a punitive nature and therefore fall within the scope of the Framework Decision. Such an international framework is lacking with regards to recovery claims and therefore the cross-border recovery of such claims is impossible at the moment.

#### d) Cross-border exchange of police data

In the context of the administrative approach, local authorities often base their decisions on certain police information. If the person is a foreign citizen, the question arises as to whether it is possible to obtain information from foreign police forces.

None of the treaties or regulations in force that provide possibilities for the exchange of police information contain a provision explicitly providing for the exchange of police data for administrative purposes. The principle of these treaties is the exchange of information between police services for criminal purposes. However, almost all treaties provide for the possibility to transfer police data for purposes other than the (criminal) purposes referred to in the treaties. In order to be able to exchange information for administrative purposes, two conditions have to be met:

- The transmitting authority needs to give its consent;
- This consent must be in accordance with the national law of the transmitting and receiving Member States.

These conditions are rarely met in the national legislations of Belgium, North Rhine-Westphalia, and the Netherlands. This makes the exchange of police information as part of the administrative approach difficult, as the foreign police information cannot be transferred to other partners, such as local authorities. Therefore, the chance always exists that municipalities issue permits to persons who are known to be connected to a criminal organisation in another country. This permit can in turn be used to launder criminal money.

#### e) Cross-border exchange of financial data

Tax authorities typically have information about the financial situation of individuals and businesses. This information can also be very useful for administrative bodies in the context of tackling organised crime. Financial data can be important because it can reveal, for example, the source of the funding for a certain big real estate project. Such projects can be used to launder criminal money. However, financial data are often subject to a specific confidentiality obligation, which makes the (cross-border) exchange of such data as part of the administrative approach difficult. Such an exchange is not regulated in the most important international legal statutes dealing with exchange of tax information. However, some conventions and agreements allow data provided for the purpose of tax procedures to be used for other purposes as well. For such an exchange of data, similar conditions as those for the exchange of police data apply.<sup>6</sup>

Most national laws in Belgium, Germany and the Netherlands do not provide for a procedure that could serve as a legal basis for consenting to the cross-border exchange of tax data for the administrative approach, meaning that the exchange of such data is rendered impossible. But in some countries like the Netherlands,

it is possible to get an overview of the real estate owned by a certain person by consulting (semi-)public sources. This could already give an indication of the financial situation of certain persons.

### III. Conclusion

Preventing and fighting organised crime and money laundering is not just the task of law enforcement authorities such as the police and the public prosecutors' offices. Local authorities and other partners can and should also play a role in fighting organised crime and money laundering in the most efficient way. When these partners are not or only insufficiently involved, it is easier for criminals and criminal organisations to launder the money they have earned with their criminal activities. Indeed, in order to launder money, criminal organisations often make use of legal structures, i.e. they have to apply for certain permits, they need housing, etc. To prevent this from happening, local authorities and other partners should make use of the administrative approach against organised crime and act with the instruments that confer corresponding powers (e.g. granting/withdrawal of permits). In order to make use of these powers, information from other partners is necessary. In some purely domestic situations, it is possible for different branches of the (local) government to come together and decide which actions can be undertaken against certain criminal organisations. The criminals are organised, so why shouldn't the government also act in a more organised and integrated manner?

Local authorities and other partners are becoming increasingly aware of their role in the fight against organised crime, and national laws make the information exchange about a country's own citizens possible in certain cases. But when a person applying for a permit is a citizen of a neighbouring country, for example, the information exchange is less self-evident.

This is the reason why the Euregional Information and Expertise Centre (EURIEC) was founded in 2019. On the one hand, the centre aims to raise awareness about the international aspects of the administrative approach and, on the other, it aims to make clear which cross-border sharing of information is permissible, as experienced in practical cases. During the initial years of the project, it became clear that national laws often only take into account the exchange of information in purely national cases. National laws often ignore the international context in which we are living and make an international information exchange impossible. Therefore, local authorities and other partners in border regions are often less informed about the citizens of neighbouring countries, for example when they apply permits. As a result, border regions risk being exploited by criminal organisations that try to launder their money in these regions.

During the next several years, the EURIEC will meet with legislators in Belgium, Germany, and the Netherlands to make a more efficient administrative and even integrated approach possible. They strive to create a European Union in which authorities are able to work together beyond borders in the fight against organised crime and money laundering.

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1. D. Van Daele et al., *Criminaliteit en rechtshandhaving in de Euregio Maas-Rijn, Deel 3: De bestuurlijke aanpak van georganiseerde criminaliteit in Nederland en België*, 2010.↩

2. Cf. also M. Vols and L.M. Bruijn, "De strijd van de burgemeester tegen drugscriminaliteit", *Netherlands Administrative Law Library* (2015), 1–23.↩

3. More information about the EURIEC project, including the possibilities and "bottlenecks" with regard to an international administrative approach, can be found on the EURIEC website: [www.euriec.eu](http://www.euriec.eu).↩

4. Yet, data on companies in general does not fall under the conditions of the GDPR and therefore does not necessarily need a legal basis in order for this information to be exchanged across borders. In most cases, however, personal data will be more useful for local authorities, but such an exchange seems highly difficult with the existing regulations and legislation in Belgium, North Rhine-Westphalia, and the Netherlands.↩

5. O.J. L 76, 22.3.2005, 16.↩

6. I.e. the transmitting authority needs to give its consent and the consent must be in accordance with the national law of the transmitting and receiving Member States.↩

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