



Towards a European administrative approach

Introduction

Criminals operate across borders and try to use the lack of information of administrative bodies in another country to set up companies, acquire permits, contest in tenders and infiltrate the legal economy. To prevent this modus operandi it is necessary to share information across borders for the purpose of administrative bodies preventing those criminals of abusing public services and funds. However sharing information internationally for that purpose is more difficult since national laws are often not written for international purposes and cross-border mutual recognition of administrative decisions in this area has not been arranged thus far. This could and should be the next step in tackling organized crime on an administrative level.

Tackling organized crime is often seen as an area for law enforcement and public prosecution. In order to tackle organized crime effectively it is crucial to utilize all other possible approaches. Together as EU Member States we must implement an integrated approach, including administrative measures and work together on information sharing in order to set up barriers to prevent or stop criminals from abusing public services, funds or infiltrate in legal economies. When approaching this topic, the protection of personal data in accordance with EU law concerning all exchanges of information remains particularly important.

Proposals

1. We encourage the development and the use of the administrative approach in every member state and the role of the European Network on the Administrative Approach (ENAA) network herein.
2. In order to work towards a more congruent policy in international information sharing in that respect, we first need to examine with a smaller group of interested Member States to what extent the Directive (EU) 2023/977 on the exchange of information between the law enforcement authorities can be the way ahead. Italy and the Netherlands would be ready to form such a coalition with other member states.
3. Italy, the Netherlands, invite the Commission to examine the feasibility and added value of a legal base for described purposes. If the beforementioned directive is not the solution, we must investigate the possible added value and possibilities of realising a European legal base which provides Member States the possibility to share criminal information for administrative purposes. Tangible proposals are necessary in order to overcome the existing barriers.

Rationale

Different EU member states are working on the administrative approach, though often within their own national borders and always based on their specific legal and governing system and the distribution of competences among public bodies. In the Netherlands, the administrative approach is of great importance to tackle organized crime. It often consists of competences for the mayor or sometimes other legal entities.

For instance, a mayor is able to close premises (article 174a *Gemeentewet en article 13b Opiumwet*) or revoke or refuse to issue permits (*Wet Bibob*). In case of closing premises, a mayor is often informed by an administrative report prepared by the police. In case of decision making on granting or revoking permits and other matters such as subsidies, real estate transactions and public contracts (tenders), municipalities are enabled to request extensive and thorough background checks to assess the criminal risks regarding such (requests for) permits or other governmental decisions. These checks can help to protect their own integrity and prevent them from facilitating criminal activities. Therefore, under certain conditions administrative bodies are able to get access to criminal information. Additionally, through partnerships of governmental entities such as municipalities, law enforcement, public prosecution and tax authorities, the government combines the strengths of various parties and tackles crime in an integrated way (RIEC's).

In Italy the administrative approach is also of great importance to tackle organized crime, in particular the mafia style organized crime group. The legislation is summarized in the so called Antimafia code (Legislative decree 159 of 2011). The code is divided in 4 books, the first one on the preventive measures (related to persons and to assets, and the management of confiscated assets), the second one on the Antimafia documentation needed, in a nutshell, by companies to apply to public tenders (and the related Antimafia ban), the third one on the national agency for management of confiscated assets and the last one on modification to the criminal code. The Antimafia administrative approach complements the criminal approach to form an holistic approach to tackle all the different types of OCG and to prevent criminals and criminal related companies to infiltrate the legal economy.