



MYTHBUSTER

MISCONCEPTIONS ABOUT THE ADMINISTRATIVE APPROACH

SEPARATING FACT FROM FICTION

Tackling crime is generally considered to be the responsibility of police and judicial authorities. However, organised crime networks frequently depend on local infrastructure to carry out their criminal activities. Therefore, administrative measures implemented by (local) public administrations can play an important role in preventing and disrupting various forms of organised crime, such as fraud, human trafficking or money laundering.¹ Yet many local authorities are not yet making use of the administrative approach as their national governments are not supporting its implementation.²



The European Network on the Administrative Approach (ENAA) provides a clear definition of what constitutes the administrative approach:

“An administrative approach to serious and organised crime is a complementary way to prevent and tackle the misuse of the legal infrastructure through multi-agency cooperation by sharing information and taking actions in order to set up barriers.”

The definition centres around the goal to limit the unwanted facilitation of organised crime by governments and public administrations.³ For example, some crime groups make use of the local hospitality sector by using a legitimate restaurant as a front for their illegal drug business. Such activities can be disrupted by public authorities from a different angle, such as a tax inspection that withdraws permits or even closes premises. The definition also highlights the multi-faceted component of this approach. As it requires efforts from various agencies, such as municipal authorities, national ministries (e.g. of finance or employment), safety and housing inspectorates as well as judicial partners (e.g. law enforcement or the public prosecutor).⁴ Finally, it mentions information-sharing between those partners in addition to creating barriers against organised crime as two key strategies.

This paper focuses on two much-discussed challenges within the administrative approach: the alleged discrepancy between criminal and administrative measures as well as the complex exchange of information between all relevant partners. These exist partly due to a general lack of understanding of the administrative approach, yet also because of the current absence of legislative frameworks to support its implementation.

AN INTEGRATED APPROACH AGAINST ORGANISED CRIME

Generally, the primary focus of public authorities is to maintain and protect the public order within their area of jurisdiction. However, the administrative approach enables these administrations to, in addition, disrupt organised crime through alternative measures (i.e. regulatory (fire) safety checks or an administrative audit), rather than the traditional criminal justice tools.⁵ At times, the administrative approach might even comprise a wider range of (both preventive and reactive) measures than an approach based solely on criminal law.

Administrative authorities in almost all EU Member States can screen people and/or businesses before granting a permit, licence or subsidy. Their purpose is to regulate a particular sector, including hospitality, construction, real estate or transport; and subsequently also prevent its misuse. The screening tools at their disposal vary in scope, application, information source and targeted crime or sector. One example is the certificate of good conduct that is required when applying to become a licensed taxi driver.⁶ However, it is important that screening is conducted in accordance with strict and transparent criteria that are identified in the European Convention on Human Rights (ECHR) (i.e. a legality, necessity, transparency and proportionality test) as well as being based on information that is gathered in a legitimate manner.⁷

Secondly, these authorities correspondingly have the power to check whether a specific licensee is adhering to its given conditions. They can, for instance, enter a casino and request information and documentation to inspect whether the sale of alcohol is happening legitimately.⁸ Finally, they can interfere when the public order is being disturbed. Such interventions include intervening in and around a premises (e.g. closing a holiday park for public safety reasons because it is used as a front for human trafficking) and issuing a warning or a fine for breaching administrative rules.⁹

The competences and permitted actions of these agencies depend greatly on the legislation of the Member State or region in which they operate.¹⁰ At the moment, protecting the public order is often regarded as separate from the criminal justice approach, meaning that the authority of a city council or mayor and the particular actions they have at their disposal are not considered during judicial measures. Yet as examples from various countries prove, the administrative approach entails a further set of measures that are complementary to the criminal law approach.¹¹

Opening doors for further actions

While both criminal and administrative measures can be bundled into an integrated approach, in reality this is not yet happening in many EU Member States. This is partly because it is challenging to align certain principles with one another, and largely because the full extent of the administrative approach is still not known to many. That is why political action is vital in order to achieve a truly integrated model.

A number of fundamental criminal law principles are also applicable in administrative proceedings. One such example is the right to be heard, which ensures fair proceedings by providing individuals with the opportunity to defend their case.¹² Before administrative authorities deliver a verdict, the person must be informed and be given the opportunity to bring counterarguments. A caveat is that this right is not absolute: in France for instance, the right to be heard can be overruled in a case of emergency or when the public order would be threatened.¹³ Another example is the presumption of innocence, which is a fundamental principle in criminal law proceedings. Yet, as the primary aim of the administrative approach is not to impose sanctions, this principle is not applicable during administrative proceedings.¹⁴

A noteworthy example of an integrated approach is the Dutch Public Administration (Probity in Decision-Making) Act, also known as BIBOB. This is a large-scale administrative tool that is fully embedded in the Dutch legislative system. It enables administrative authorities to carry out a wide range of measures, which sometimes go beyond or precede judicial action.¹⁵ To illustrate, law enforcement might pick up signals that a hotel is used for human trafficking purposes. If they lacked evidence to conduct an inspection or arrest, another partner, such as the fire brigade, could conduct a safety check and subsequently access all areas of the hotel. If they were to encounter any illegal items or activities, they can alert law enforcement who then take over the case. Likewise, a mayor

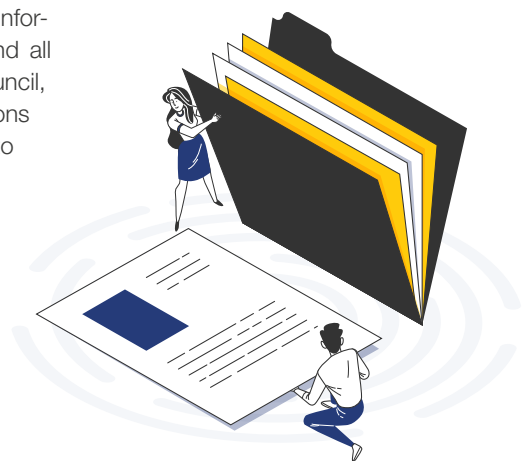
can in various cases temporarily close premises, for example due to disturbances that have taken place. Even though this closure often is temporary, it might provide necessary time for judicial actors to gather information and build a case against the person or business in question.

This shows that using administrative measures can facilitate further actions, be they administrative or legal in scope. This is why the administrative approach enables the creation of an environment in which it becomes more difficult to exploit legal structures for illegal activities. Still, while the BIBOB Act serves as a good example, most Member States will require (extensive) legislative adaptations in order to achieve a similar initiative. However, implementing the administrative approach is not the only area in which legislation is absent.

THE COMPLEXITY OF INFORMATION EXCHANGE

A key element of a successful integrated approach is (cross-border) information exchange between law enforcement, the public prosecutor and all relevant administrative bodies. Many local authorities, such as a city council, require both administrative and judicial data to make well-founded decisions on whether or not a particular person and/or business poses a threat to the local community.¹⁶

At present, numerous Member States lack the framework to support such information exchange. The exchange of judicial data between law enforcement units and the public prosecutor, for example, is commonly embedded in national legislation. Likewise, law enforcement officers can usually simply obtain numerous types of administrative information. As an illustration, to prevent fencing, the Netherlands operates a Digital Buyers Register as well as a Digital Buyers Desk, which collect data on the goods sold by second-hand stores. This data can be used by law enforcement to track stolen goods and catch fraudulent sellers.¹⁷ Conversely, it often remains difficult for both judicial and police data to be shared easily with local authorities.¹⁸



It is understandable that different sources of information require different exchange channels. Open sources include reporting services (e.g. citizens who contact the housing inspection agency due to suspicious activity in a neighbouring apartment), which in general contains reasonably public information. Therefore, sharing this information likely will not require specific structures. Closed sources entail sensitive information, which is usually collected by law enforcement bodies on, among others, organised crime groups or illegal money flows. This type of information requires secure exchange channels if it can be shared at all. Finally, there is a large body of semi-open information sources exists somewhere in between the previous categories. The possibilities to share such information are both country- and context-specific.¹⁹

While the transfer of information from administrative authorities to judicial agencies typically does not pose an issue, the reverse process is more complicated. Though this does happen through informal professional contacts, administrative bodies cannot base actions on this information as it is not acquired through legitimate channels.²⁰

Privacy and data-protection issues

The same challenge exists on an international level, because even though offenders eagerly make use of the right of free movement in the open-border Schengen area, a cross-border administrative focus is often absent within (national) legislation. This means that organised crime groups are likewise not obstructed in their efforts to misuse international structures for their illegal activities.²¹ This challenge, however, is again related to administrative information, as several tools (e.g. the secure information exchange network application (SIENA)) exist for the exchange of restricted police data between international partners.

Displacement as an unwanted side-effect

A potential and unwanted effect of tackling organised crime is the creation of a displacement effect.²² Displacement refers to the relocation of crime from a certain place, time, target, method or offender to another, as a result of a crime prevention initiative.²³ For instance, many years ago, the Netherlands and Germany gradually began to target Outlaw Motorcycle Gangs in their countries, by withdrawing permits and closing their clubhouses. These gangs would subsequently relocate to Belgium to restart and/or continue their activities.²⁴

Displacement is appealing for organised crime groups as they have many more resources to bypass targeted prevention efforts. It is therefore vital for judicial and administrative agencies to be aware of this effect and use international cooperation as an additional barrier against organised crime groups.

For more information, go to the mythbuster: [Mythbuster - Does crime prevented mean crime displaced? | EUCPN](#).



It is essential for information exchange to take place legitimately, meaning it is in accordance with the EU General Data Protection Regulation (GDPR). GDPR imposes obligations and restrictions on all organisations and entities that collect personal data on EU citizens (e.g. phone numbers or residential and IP addresses). A significant finding, however, is that GDPR is not the main obstacle for cross-border information sharing; rather, it is usually the absence of national legislation.²⁵ This is because GDPR requires Member States to create a legal basis for (cross-border) information exchange, yet reality shows that the majority of countries have insufficient laws to allow and monitor such practices.²⁶

Another relevant document, formed in line with the GDPR, is the Law Enforcement Directive (Directive (EU) 2016/680 on the protection of natural persons with regard to the processing of personal data by competent authorities). It provides a comprehensive framework that ensures that data is processed lawfully (in relation to the purpose for which it is collected) and gathered for a legitimate purpose. This offers additional footing for administrative and police cooperation.

Working apart together

Information exchange often remains a sore point. However, there are interesting examples of initiatives that aim to pool the resources of various partners both on a national and international level.

In 2008, the Netherlands created the Administrative Agreement on an Integrated Approach to Organised Crime that includes ten RIEC's (Regional Information and Expertise Centres) and the overarching LIEC (National Information and Expertise Centre). The RIECs share expertise with regard to administrative approaches, as well as supporting cooperation between public and private partners. The LIEC supports the regional centres in their operations and coordinates a unified national approach.²⁷ Later in 2019, the Euro-regional Information and Expertise Centre (EURIEC) was created by Belgium, the Netherlands and Germany. EURIEC supports authorities in implementing the administrative approach, as well as mediating with policy-makers to change legislative bottlenecks.²⁸

Another national example are the Swedish regional bodies that are designed to inspect local businesses. These bodies consist of, among others, law enforcement officers and alcohol-licensing authorities who set up coordinated actions in which each unit conducts their own inspections.²⁹

These platforms are essential to facilitate the *working apart together*-method. Even though various partners join forces to work towards shared goals, each entity maintains its autonomy and focuses on its respective actions. For instance, within one action law enforcement bodies search for illegal objects or suspicious activity, economic authorities conduct an administrative audit, and the health and safety inspectorate reviews the storage and sale of food.

It is particularly useful for such platforms to aid countries where the legal administrative basis is missing, as the involved partners might try to set up specific partnerships and shared actions.³⁰ Nevertheless, it remains clear that relevant legislation is a vital component throughout every aspect of the administrative approach. In this case, policy-makers should ensure that both existing and future legislation regulates the (cross-border) information exchange of administrative data for the purpose of preventing organised crime.³¹

THE WAY FORWARD

This mythbuster discusses two common challenges related to the (implementation of the) administrative approach. Firstly, it discusses the myth that there is a discrepancy between the criminal-law and administrative approaches. While tackling organised crime remains a priority of the criminal justice system, the valuable role of administrative authorities remains largely unknown or undervalued in many EU countries. For this reason, more Member States should work towards an integrated approach in which both criminal and administrative measures are combined to strengthen the barriers against organised crime.

Secondly, an integrated approach requires both police- and administrative information to be shared among all relevant partners. This entails that both judicial actors and administrative entities need efficient information-sharing structures so authorities can make well-founded decisions. This challenge requires Member States to change current legislation to allow better and more elaborate information exchange. However, another method to facilitate this is the creation of (international) platforms such as (EU)RIEC.

To conclude, the way forward should be a slow and calculated one to ensure an adequate administrative approach is created from the start. This means that all newly created or updated administrative frameworks should be designed according to the fundamental values that shape the European Union (e.g. the right to privacy). For those Member States for which an extensive administrative framework involves too much at once, they can start small. This means that the current administrative opportunities (e.g. the level of authority of the mayor or existing permits and subsidies that are already in use) should be highlighted and incorporated in existing operational structures both on a local and national level.

How to get started with the administrative approach

The manner in which national governments and local authorities operate differs significantly across the European Union. This is why ENAA has created a roadmap consisting of a step-by-step plan applicable for Member States that wish to set up the administrative approach in their countries.

The plan consists of six steps that can be tailored to any particular context:

1. Take stock of available instruments;
2. Put into practice what you can;
3. Spread the word on the local level;
4. Set up organisational partnerships;
5. Ensure a strong information position;
6. Set up joint actions on the ground.

In addition, the Roadmap includes an overview of the creation and a current state of play of existing administrative approach policies in multiple countries. To find out more, go to ENAA's Roadmap 'How to get started with the administrative approach': [How to get started with the administrative approach | ENAA](#)



Endnotes

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Citation

EUCPN (2024). Misconceptions about the administrative approach - Separating fact from fiction. Brussels: EUCPN.

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Part of the project 'EUCPN Secretariat', August 2024, Brussels

With the financial support of the European Union's Internal Security Fund – Police

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