



Bundesverwaltungsgericht

**ACA-Europe Colloquium**  
**ReNEUAL II – Administrative Law in the European Union**  
**Administrative Information Management in the Digital Age**

Leipzig, Germany

**Answers to questionnaire: Norway**



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**ACA-Colloquium**  
**ReNEUAL II – Administrative Law in the European Union**  
**Administrative Information Management in the Digital Age**

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Bundesverwaltungsgericht (Federal Administrative Court), Leipzig

**Questionnaire**

**Introduction:**

National legal orders and European Union law are in many fields closely linked. Both underlie mutual influences. The jurisdiction of the European Court of Justice is not only relevant and binding as the interpretation and application of European Union law is concerned. Also, its jurisdiction partly affects the interpretation and application of national law. This phenomenon can be observed e.g. in the law of administrative procedure or of administrative court procedure.

On the other hand, European Union law is founded on the national jurisdictions of the member states. From an optimistic point of view it ought to be an essence of the best the national legal orders have to offer. In this line of thinking the European Court of Justice considers the national legal orders as source of inspiration in determining the general principles of European Union law which traditionally, i.e. before the Charter of Fundamental Rights came into force, were the sole source of fundamental rights within the jurisdiction of the European Court of Justice (cf. ECJ Case 4/73 (Nold), ECLI:EU:C:1974:51, p.507-508). Accordingly, the European Court of Justice has deducted many procedural rights in administrative procedure from the national legal orders. It is in the interest of the member states that the relationship between European Union law and the national legal orders remains one of mutual interchange, better: a dialectic process.

This is especially the case in evolving new legal fields like the law of composite and inter-linked information management between various national authorities as well as between national and European Union administrative bodies. Such inter-administrative information management is a major component of administrative procedures implementing European Union law. It reflects the need of public authorities for reliable and up-to-date information from various sources in cases concerning cross-border public or private activities within the internal market. In order to provide such information the European Union has established sets of mechanisms for cross-border and/or multi-level exchange of information. Prominent examples are rapid alert systems providing information about risks for consumers caused by dangerous food or feed or other products, the Internal Market Information System (IMI), information systems in the field of customs and taxation, and the growing number of information systems concerning migrants or

travellers (Schengen Information System, Visa Information System, Eurodac). More recently, discussions arise that these systems may evolve into semi- or even fully automated decision-making systems.

This integration of various databases and other sources of information raises a number of legal questions: Can a decision-making body rely on information from partners of the information network or are they obliged to scrutinize them themselves? Who is liable for any damage caused by malfunctioning of those systems or by false information entered into the system by a partner institution? Is there a need for new legal safeguards of effective legal protection?

The ReNEUAL Model Rules on European Union Administrative Procedure contain in Book VI draft rules on inter-administrative information management which concern types of information exchange beyond the basic rules of mutual assistance covered by Book V of the Model Rules. The rules of Book VI shall inform the discussions at the 2020 colloquium in Leipzig in a similar way as the draft model rules of Book III concerning single case decision-making stimulated the seminar in Cologne at the end of 2018. In addition, the colloquium is supposed to recall the discussion within ACA concerning digital technology and the law with a stronger view on the decision making at the colloquium in The Hague on 14 May 2018.

The ReNEUAL draft is a project which has mostly been promoted by European scholars with expertise in European Union law, in various national legal orders as well as in comparative legal studies (<http://www.reneual.eu/index.php/projects-and-publications/reneual-1-0>). Yet, several legal practitioners, i.a. judges from several member states, have also contributed. The ReNEUAL draft is available in English, French, German, Italian, Polish, Romanian and Spanish. For the purpose of this questionnaire, Book VI (Administrative Information Management) is attached as a file in English. You will find links to other language versions on the ReNEUAL-website: <http://www.reneual.eu/index.php/projects-and-publications/>.

In contrast to the 2018 Cologne seminar, we will not discuss a resolution adopted by the European Parliament in 2016 on a proposal for a regulation for an open, efficient and independent European Union administration (EP-No. B8-0685/2016 / P8\_TA-PROV(2016)0279). This draft focusses for good political reasons on single case decision-making and does not cover the topic of the Leipzig colloquium.

The colloquium 2020 to be held in Leipzig aims at further investigating into the national legal orders in order to assess their principles more profoundly and on a wider scale. ReNEUAL is very much aware of the fact that Book VI contains the most innovative part of the Model Rules. In addition, Book VI covers a highly dynamic field of law. Thus, Book VI itself will certainly evolve during the next years and ReNEUAL has already set up a new working group in order to update the existing rules and to investigate the need and the options for additional rules, especially concerning automated decision-making and the use of artificial intelligence in administrative procedures.

In line with this, the purpose of the Leipzig colloquium is to achieve a better understanding of the existing (additional) approaches of the national legal orders, to discover similarities and/or differences in order to promote the dialectic process mentioned above and thus both contribute to a better understanding of the principles of the European Union legal order derived from the essence of the member states' legal orders and enable a mutual learning process as well between national legal orders among themselves as between the national legal orders and the European Union's legal order.

Wherever you consider it appropriate, it would be helpful if you not only described your national legal order, but also compared your national legal order with the relevant provisions of Book VI of the ReNEUAL Model Rules. For this purpose the questionnaire makes reference to single provisions of Book VI in order to facilitate the links.

#### **I. Shared databases, structured information mechanisms or duties to inform of national authorities and the case law of your court or other courts of your country**

*Background: Book VI establishes in Art. VI-2 (1)-(3) three categories of (advanced) inter-administrative information management not covered by the (more basic) rules for information exchange under the obligations of mutual assistance regulated in Book V (in order of their level of integration): structured information mechanism; duties to inform, and (shared) databases. They are defined in Art. VI-2 (see also Introduction to Book VI paras 17-23 and paras 5-8 of the explanations of Book VI).*

1. Does your national legal order establish mechanisms of information exchange among authorities within your country which are similar to those categories as defined in Book VI? If so, please provide the most important examples from a range of legal domains, describe how they work and classify them into the categories as defined in Book VI as far as feasible.

***The Public Administration Act (the PPA) Section 17 imposes a general duty on every administrative agency to “ensure that the case is clarified as thoroughly as possible before any administrative decision is made”. This duty may, dependent on the facts of the case, require the agency to obtain information from other agencies.***

***The PPA Section 13 provides a general duty of secrecy for “any person” that executes work for an administrative agency. This pertains to information concerning the personal affairs of an individual, or business secrets. This duty of secrecy also applies in the relationship between authorities/agencies. This entails that any sharing of information requires a legal basis.***

***The PPA is currently being revised. A working group has suggested that the revised-PPA should give increased opportunity for sharing of information between agencies. The aim is, at least partly, to facilitate increased automated case work.***

***At the present time the prominent mechanisms of information sharing are shared data-bases. Most of them have been adopted in view of the “once only”-principle, e.g. the Act on submissions from businesses (“Oppgaveregisterloven”) and the Act on information from employers (“A-opplysningsloven”). Both these acts aim to co-ordinate different agencies need for information. The information is distributed to the agencies based on the agencies legal basis to acquire the information.***

***The general duty to inform the police of serious criminal acts in order to prevent them from occurring or continue also applies to public employees, without regard to the duty of secrecy. There are also other duties to inform spread across different sectors of legislation. For example, the Alcohol Act section 1-15 gives the police and tax authorities a duty to inform the alcohol licensing authorities if they discover information they believe may have considerable impact on a licence to sell alcohol. Another example is the Criminal Procedure Act section 232a which gives the police a duty to inform the child protection services if an investigation against a child under 18 is launched.***

***There are different internal procedures within the government which addresses the need for co-operation and information sharing. These procedures contain limited information on how the actual information sharing is facilitated.***

2. Are there additional mechanisms of information exchange among authorities within your country which are not covered by those categories? If so, please provide examples, describe how they work and explain their specifics in relation to the ReNEUAL categories.

***No, not to my knowledge.***

3. In your country, do there exist legal obligations or a political practice to conduct an impact assessment before such advanced forms of information exchange are established?

***The evaluation procedure (“utredningsinstruksen”) imposes a duty to assess the consequences of state measures. This procedure will also apply when establishing advanced forms of information exchange.***

4. Has your court (or other courts of your country) pronounced judgements on such mechanisms of advanced information exchange among authorities within your country? Are you aware of ongoing court proceedings concerning such matters? What are most important cases or principles established in this case law?

***No, not to my knowledge.***

5. a) Can a decision-making body in your country rely on information from partners of such national (!) information networks or is it obliged to scrutinize the information itself?

***The obligation for an administrative body to scrutinize information in general (including information from other administrative bodies) was, when the PPA was adopted relaxed due to the size of the caseload and a wide opportunity for appeal. However, the standard of scrutiny will vary dependent on the circumstances of the individual case and the source of the information.***

*Background: In Case C-503/03 Commission v Kingdom of Spain [2006] the CJEU established an obligation for users of the Schengen Information System (SIS) to take advantage of the so-called SIRENE offices in the system in order to validate sensitive information provided through the SIS. This jurisprudence inspired Art. 25(2) SIS II-Regulation (EC) 1987/2006 and the general draft rule in Art. VI-21 of the ReNEUAL Model Rules.*

b) If a decision-making body in your country is obliged to scrutinize information obtained from a national information network, what does this mean in practice? How far does this obligation reach?

**See answer under 5 a)**

6. In case of an information exchange between national authorities which concerns the transfer of personal data:

a) Does your national legal order provide for the automatic (i.e. without request) information of the person concerned?

***Regulation (EU) 2016/679 article 13 and 14 establishes a duty to inform the person concerned when acquiring information. The regulation is incorporated into national law.***

b) Does your national legal order provide for an enforceable right of the person concerned that he/she be informed of such an exchange upon request?

**See 6a.**

7. Who is liable for any damage caused by malfunctioning of those national information networks or by false information entered into the system by a partner institution?

*Background: In the legal framework of some European information systems the legislator established a substitutional liability or subrogation mechanism (Art. 48 SIS II-Regulation (EC) 1987/2006; see also Art. 116(2) Convention Implementing the Schengen Agreement; Art. 40(2), (3) CIS-Regulation 515/97). Art. VI-40 ReNEUAL Model Rules formulates a general rule*

*along these lines in order to enhance the protection of individuals facing damages caused by such mechanisms. In addition, Art. VI-40(2) provides for a compensation mechanism among the participating authorities in order to provide incentives to comply with their respective legal obligations.*

***There is no general provision on liability for damage caused by malfunctioning of national information networks or by false information entered into the system by a partner institution. Liability will ultimately be dependant on the facts of the individual case.***

8. In your national legal order, are there any specific safeguards or legal remedies of individuals considering information about them to be false or an exchange of information about them to be illegal? Is there a political or academic discussion about (further) needs for new or more specific legal safeguards in this context? Are there any recent legislative proposals on this topic?

***Regulation (EU) 2016/679 article 16 gives an individual the right to demand that incorrect information is corrected or amended. The agency responsible for the registered information will have to perform the correction within one month and is usually obligated to make sure that and recipients of the information received notice of the correction.***

***Article 21 gives the right to protest, inter alia, the grounds of which the agency have obtained the information.***

## **II. Cross-border and multi-level information sharing and the case law of your court or other courts of your country**

1. Has your court (or other courts of your country) pronounced judgements on such EU mechanisms of advanced cross-border or multi-level information exchange among European authorities? Are you aware of ongoing court proceedings concerning such matters? What are most important cases or principles established in this case law?

***No. Not to my knowledge.***

2. Has your court (or other courts of your country) delivered judgements drawing on the CJEU case law in Case C-503/03 Commission v Kingdom of Spain [2006] or on Art. 25(2) SIS II-Regulation (EC) 1987/2006?

***No. Not to my knowledge.***

*Background: see Question I.5.*

3. Has your court (or other courts of your country) delivered judgements drawing on a substitutional liability or subrogation mechanism in accordance with Art. 48 SIS II-Regulation (EC)

1987/2006, Art. 116(2) Convention implementing the Schengen Agreement, Art. 40(2), (3) CIS-Regulation 515/97) or similar provisions of EU law?

**No. Not to my knowledge.**

*Background: see Question I.7.*

4. In your national legal order, are there any new or specific legal safeguards with regard to cross-border or multi-level information sharing? Is there a political or academic discussion about (further) needs for new or specific legal safeguards in this context? Are there any recent legislative proposals on this topic?

*Background: At least in some sector-specific secondary EU law new approaches are developed in order to avoid either gaps of judicial oversight or to minimize factual burdens for concerned citizens to initiate effective judicial review. One of these new instruments allows for trans-national representative legal action (compare Art. 111(1) Convention Implementing the Schengen Agreement; Art. 36 (5) CIS-Regulation 515/97).*

**No. Not to my knowledge.**