Bundesverwaltungsgericht

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

Leipzig, Germany

Answers to questionnaire: Bulgaria

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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 interlinked 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.

Legally settled shared databases and structured information mechanisms or information obligations of national authorities to the jurisprudence of the courts are not known.

There is no legal framework for the exchange of information. In progress is a project of the Supreme Judicial Council for a unified information system of courts in Bulgaria through which will be implemented certain exchanges of information between the courts and will store a database of court decisions. This year, the Single e-Justice Portal was launched, suggesting that not only all the courts in Bulgaria but also most of the electronic registers are connected.

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.

In our national law, the principle is that institutions do not require a document or data which is on the public register or can be obtained ex officio from another institution. Such public registers are the Commercial Register, the Property Register, the citizens' criminal records, etc.

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?

According to the Law on Regulations, each draft law must be accompanied by an impact assessment report. This also applies where such a way of exchanging information is established by law or regulation. Therefore, when such a legal order is established, it should be subject to such an assessment.

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?

The Supreme Administrative Court has not yet delivered such judgments.

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?

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?

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?

In processing personal data for the purposes of law the personal data must:

1. be processed in a lawful and conscientious manner;
2. be collected for specific, explicit and legitimate purposes and not processed in a manner inconsistent with those purposes;
3. be appropriate, relevant and not go beyond what is necessary in relation to the purposes for which the data are being processed;

4. be accurate and, if necessary, kept up-to-date; all necessary measures must be taken to ensure the timely erasure or correction of inaccurate personal data, taking into account the purposes for which they are processed;
5. be kept in a form, which permits identification of the data subject for a period, no longer than is necessary for the purposes for which they are being processed;
6. be processed in such a way, as to ensure an adequate level of security of personal data, including protection against unauthorized or unlawful processing and against accidental loss, destruction or deterioration, by applying appropriate technical or organizational measures.

The processing of personal data by an administrator, who originally collected them or by another administrator for any of the purposes - prevention, investigation, detection or prosecution of criminal offenses or execution of penalties, including prevention from threats to public order and security and their prevention, other than the purpose for which the personal data are collected, shall be permitted provided that:
1. the administrator is authorized to process personal data for such purpose in accordance with European Union law or the legislation of the Republic of Bulgaria;
2. processing is necessary and proportionate to this different purpose in accordance with European Union law or the legislation of the Republic of Bulgaria.

The processing by an administrator may include archiving in the public interest, scientific, statistical or historical use of the data for the purposes - prevention, investigation, detection or prosecution of criminal offenses or execution of penalties, including prevention from threats to public order and security and their prevention, when applying appropriate safeguards for the data subject's rights and freedoms. The administrator shall be responsible for compliance and must be able to prove it. The competent authority shall take the necessary measures to ensure that personal data, which are inaccurate, incomplete or no longer up to date are not transmitted. To this end, each competent authority shall, as far as possible, verify the quality of the personal data, prior to its transmission. As far as possible, each transmission of personal data shall include the necessary information to enable the receiving competent authority to assess the degree of accuracy, completeness and reliability of personal data and to what extent they are up to date. Where the transmitted personal data are inaccurate or have been transmitted unlawfully, the recipient shall be notified immediately. In this case, the transmitting competent authority and the recipient shall correct, delete or restrict the processing of personal data.Where the European Union law or the legislation of the Republic of Bulgaria, applicable to the transmitting competent authority provides for specific conditions for the processing of personal data, the body shall inform the recipient of the data about these conditions and his obligation to observe them. Taking of a decision, based solely on automated processing, including profiling, which causes or significantly impinges on the data subject shall be prohibited, except when it is provided for in European Union law or in the legislation of the Republic of Bulgaria, and adequate safeguards for the data subject's rights and freedoms are provided, at least human interference in the relevant decision by the administrator. Profiling is prohibited, which leads to discrimination of natural persons, based on the categories of personal data. The data subject shall have the right to obtain information about the processing, to express its opinion, to obtain an explanation for the decision , taken as a result of such processing, as well as appeal against the decision.

The administrator shall provide to the data subject at least the following information:
1. the data, that identify the administrator and the contact details of the administrator;
2. the contact details of the data protection officer, where applicable;
3. the purposes, for which the personal data are processed;
4. the right of appeal to the Commission, respectively the Inspectorate, and their contact details;
5. the right to require from the administrator access, correcting, supplementation or deletion of personal data and restriction of the processing of personal data, relating to the data subject;
6. the possibility of refusal to exercise his rights through the Commission, respectively through the Inspectorate.
The administrator shall, at the request of the data subject, or on his own initiative, provide the data subject, in specific cases and in order to enable him to exercise his rights, the following additional information:
1. the legal ground for the processing;
2. the term, for which the personal data will be stored, and if this is impossible, - the criteria, used for defining that term;
3. where applicable, recipients or categories of recipients of personal data, including in third states or international organizations;
4. where necessary, other additional information, in particular in cases, where personal data are collected without the knowledge of the data subject. The administrator may delay or refuse all, or part of the provision of the where this is necessary to:
1. not prevent the obstruction of official or statutory inspections, investigations or procedures;
2. not be admitted adverse effect on the prevention, detection, investigation or prosecution of criminal offenses or execution of penalties;
3. be protected public order and security;
4. to be protected the national security;
5. be protected rights and freedoms of other persons.
When making a decision the controller shall take into account the fundamental rights and legitimate interests of the natural person concerned.
The data subject shall have the right to obtain from the administrator a confirmation, whether personal data concerning him / her are being processed and, if so, to have access to them.
The data subject shall have the right to request the administrator to correct the inaccurate personal data related to him / her. Given the purpose of the processing, the data subject shall be entitled to request that incomplete personal data be supplemented, including by providing a further application.
The administrator shall be obliged to delete the personal data and the data subject shall have the right to ask the administrator to delete the personal data, that concern him, when the processing violates the provisions of law, or when the personal data must be deleted in order to comply with a legal obligation by the administrator.
b) Does you national legal order provide for an enforceable right of the person concerned that he/she be informed of such an exchange upon request?

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.

The subject may claim compensation for the damage, suffered as a result of the unauthorized processing of personal data by the administrator, or the data processor. The liability shall be exercised in accordance with the provisions of the State and Municipal Liability for Damage Act.

8. In you 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?

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?

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?

There is still no national jurisprudence on mechanisms for advanced exchange of information between the authorities in our country.

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?

Background: see Question I.7.

There is no such jurisprudence yet.

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).