



Bundesverwaltungsgericht

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

Leipzig, Germany

Answers to questionnaire: Croatia



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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 deduced 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.

Into the structured information mechanism as defined in Book VI we could classify a mechanism which is called "e-spis" ("e-case" in English) which enables Croatian courts access to different databases e.g. Ministry of interior or Tax administration to find e.g. address of parties, tax number, date of birth or death, change of name... "E-case" system is automated in a way that the system is daily updated to all information from appropriate register, so the system itself informs a court immediately about all relevant changes e.g. death of party, change of address... and a court is obliged to render a decision on the basis of this data (e.g. suspend a procedure).

Croatian courts as well as administrative bodies also have got direct access, without a prior request, to all public registers concerning data which are subject to birth, death, marriage, civil partnership or citizenship certificate.

As a “database” as defined in Book VI we could classify the Electronic Public Procurement Classifieds as a portal where are published notices in accordance with the Public Procurement Act of the Republic of Croatia. On this portal the list of all published public procurement notices and all documents related to the specific procedure, can be seen. To be able to download documents, one, as well as public authority from different jurisdiction, need to register for free and sign in, and are enabled to be informed about any public procurement procedure. It is IT supported system.

As a “database” as defined in Book VI we could also classify the system called Organized land, as a system of registering real properties and associated titles. The system is based on two registers: cadastre and land registers. The cadastre denotes records containing the data on land parcels and buildings permanently present on the land or beneath its surface, as well as the special legal status on the land surface. Land registers are public registers where the data on legal real property status of merit for legal transactions are recorded. Under the system, the Real Property Registration and Cadastre Joint Information System (JIS) was developed.

The JIS establishment has led to the creation of a unified register for the cadastre and land registers in which the systems are interlinked and exchange real property data. In simplified terms, a unified database and application bringing numerous benefits to the users have been established to keep and maintain the cadastre and land registry data. Apart from the time, needed to access the data and make a registration being significantly reduced, everyone interested, as well as public authority from different jurisdiction, today is able to see at one place the ownership structure of a real property and its location in space as well as numerous other functionalities. It is IT supported system.

Another part of the JIS is “One-Stop-Shop” (OSS) – a single service point for accessing land registry and cadastre data. The OSS includes two components:

- OSS public application is accessible to all users, regardless of the registration, and allows for searching and viewing the basic land registry data and the basic cadastral alphanumerical and graphic data;*
- OSS for registered users is available to registered users only and enables data viewing, filing applications for obtaining public deeds and solving at land registry and cadastral offices as well as receiving officially composed documents.*

As a “database” as defined in Book VI we could also classify IT supported Commercial and Companies Registry. Access is available to anyone interested, as well as public authority from different jurisdiction. The Registry is directly connected and updated to a different databases e.g. of Croatian Financial Agency.

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.

We are not aware of any other additional mechanisms of information exchange among authorities, which will fit under Book VI classification, but in the Republic of Croatia exist various ways of mutual assistance among public authorities as regulated in Book V.

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?

All of this forms of information exchange are established by law, so regular rules concerning adoption of the law were applied before introducing them.

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 High Administrative Court of the Republic of Croatia has not pronounced any judgement on mechanisms of advanced information exchange among authorities, and we are not aware of any judgment or proceeding before some other court.

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?

Usually a decision-making body relies on provided information, but the information is evaluated with other evidences needed for a specific decision.

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?

Please see the answer under 5a).

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?

Usually the provided information will concern parties of the specific case, so they will be informed about the information.

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?

All remedies provided for the protection of personal data will be at disposal of the concerned person.

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.

We are not aware of the specific regulation.

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?

All remedies provided for penal or damages liabilities are available. We are not aware of any political or academic discussion about (further) needs for specific legal safeguards in this context neither of any recent legislative proposals.

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.

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?

Background: see Question I.5.

The Republic of Croatia is still no member of Schengen area.

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.

The Republic of Croatia is still no member of Schengen area.

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).

We are not aware of the mentioned.