



Bundesverwaltungsgericht

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

Leipzig, Germany

**Answers to questionnaire: Czech Republic**



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

11 May 2020

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.**

➤ **Structured information mechanism**

If the **Financial Intelligence Unit (FIU)** needs information stored in certain databases (such as the General Registers or the Cadastral Register), it may require the authority running the database to be provided with information in a way allowing remote and continuous access (section 30 of the Act no. 253/2008 Coll., On Some Measures Against Money Laundering). This kind of information exchange cannot be classified as a duty to inform nor as a shared database because the FIU has to request access to the information. It also cannot be classified as simple mutual assistance as there are specific legal requirements regarding the access to the information.

➤ **Duty to inform**

There are multiple situations in which the **Trade Licensing Offices** are obliged to provide data to another public body without prior request. **Firstly**, the office shall inform the Social Security Administration about self-employed persons who applied for old-age pension contributions or sickness insurance. **Secondly**, it must inform the Labor Office about the existence of vacancies when it receives such information. In the above-mentioned cases, the office shall send the information electronically. **Thirdly**, it provides the tax administrators with data for income tax and road tax purposes. This duty to inform shall be fulfilled by filing an electronic form (as there is an electronic form prepared for this purpose, it might also fall within the scope of definition of structured information mechanism). Lastly, when the office issues a trade license, it sends a so-called extract from the Trade Register, which confirms existence of the trade license, to multiple authorities.

Municipalities are obliged to immediately (i.e. without undue delay) inform the Ministry of Finance about gamble permits issued by them and changes therein (section 136 subsection 6 *in fine* of the Act no. 186/2016 Coll., On Gambles).

Per the Act no. 253/2008 Coll., On Some Measures Against Money Laundering, the executors and notaries (quasi-public bodies) are obliged to inform the FIU about suspicious transactions. The Act no. 253/2008 Coll. implements the EU AML Directive.

➤ **(Shared) databases**

**General Registers:** There are four registers established by the Act no. 111/2009 Coll., On General Registers – the register of citizens, the register of legal persons (where the legal entities, enterprising individuals and public authorities are enrolled), the register of territorial identification and the register of public authorities, their agendas, rights and duties. These four registers are mainly administered by the Ministry of Internal Affairs, but there are many other administrators (mainly local authorities) with limited competences to transmit data into those registers. The data are used mainly for internal purposes and exchange within public administration but some of the information, if certain conditions are fulfilled, can be provided to the public or concerned persons.

**ADIS (Automated Tax Information System):** This system serves to support activities of the financial administration of the Czech Republic. It consists of submodules for processing individual tax returns, modules of common crosscutting activities that are needed for administration, registration, collection, and recovery of taxes or transfer of funds to eligible beneficiaries. It communicates with other systems (for example the General Registers, the Cadastral Register or the Insolvency Register). It also provides information on the state social care, in particular on the eligibility to social benefits. ADIS provides also the international exchange of information in the area of tax administration.

**Register of Unreliable VAT Payers:** This database is run by the Ministry of Finance. It can be accessed by anyone via the internet. Tax authorities are eligible to enter data into this register.

**Insolvency Register:** This register is run by the Ministry of Justice. It can be accessed by anyone via the internet. The courts dealing with insolvency proceeding are eligible to enter data into this register.

**Alien Information System:** This database consists of multiple partial databases divided according to their subject-matter (e.g. register of asylum applicants, register of expellees, register of aliens with permanent or long-term residence in the Czech Republic). The administrator of this system is the Directorate of the Alien Police. Two other police bodies are eligible to enter data into this system.

**Cadastre of Real Estate:** The database stores data concerning real estate and rights connected to them. Cadastral Offices are eligible to enter data into the database. Anyone can access the database, however, certain information are not provided via the internet. Some authorities, on the other hand, may access all of the information remotely (section 13 of the Ministerial Decree no. 358/2013 Coll., On Provision of Data of the Cadastral Register).

**National Health Information System:** The National Health Information System is a unified national information system designed to process data on the health status of the population, on the activities of the health providers and their financial status, health professionals and persons with disabilities, and on reimbursement of health services covered by public insurance, to seek information within the scope of health services, healthcare management (including provision of services and their funding), equal access to health risk assessment and evaluation of health services and science and research in the field of healthcare. The National Health Information System is administrated by one statistical public authority and consists of several registers (such as the National Register of Healthcare Professionals, Healthcare Providers and Health Services Covered by Public Insurance). The data in the information system are transmitted by healthcare providers, insurance companies, competent administrative authorities or schools providing education in the field of healthcare or medical care and others.

**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.**

Agreements about information exchange between two public authorities (such as an Agreement between the Czech Trade Inspection and the General Directorate of Customs – information exchange in the field of fuel, marking and sale of spirits and tobacco products and information regarding the legislation on excise duties).

**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?**

Every public authority that intends to release regulation is obliged to draw up an impact assessment – Regulatory Impact Assessment (RIA). It is a set of steps analyzing the expected impacts of the proposed legislation. First, an overview of impact is made according to which is decided if a Regulatory Impact Assessment is needed. The main analysed areas are the impacts on the national budget, on the competitiveness of the Czech Republic, on the administrative procedures of the local authorities, social impacts or impacts on the business environment.

**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?**

Although there are some cases concerning such mechanisms, none covers the exchange of information between public bodies themselves. There are generally cases concerning the correction of data in the Cadastre of Real Estate (see judgement of the Supreme Administrative Court No. 6 As 166/2015-27 of May 12, 2016) and cases regarding information about foreign nationals taken from SIS (see case of the Municipal Court in Prague No. 9 Ca 75/2009-29 of April 27, 2012, published in the Collection of Decisions of the Supreme Administrative Court under No. 2697/2012).

The Ministry of the Interior provides from the Central Register of Population relevant data to the Central Register of Drivers managed by the Ministry of Transport. There has been a case considering the change of information about the place of birth in Central Register of Population (bringing the existing obsolete data into line with the current territorial breakdown); concluding that this change is not capable of violating public rights of an individual, even though the changed data had been used for purpose of issuing new driving license to that person (see judgement of the Supreme Administrative Court No. 2 Ans 6/2011-136 of June 25, 2012).

Case-law of the Supreme Administrative Court has also dealt with the concept of “unreliable tax-payer” in case of the VAT. Status of the “unreliable tax-payer” may be put in the VAT register that is available to the general public, not only public bodies. Overall, the exchange of information between public bodies with regards to taxation is facilitated via the Automated Tax Information System (ADIS). The Supreme Administrative Court has decided that ADIS shall not be exempted from the personal data protection (judgement of the Supreme Administrative Court No. 7 As 150/2012 of January 30, 2013).

**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.*

Under section 5 subsection 1 and 2 of the Act no. 111/2009 Coll., on General Registers, authorities are not obliged to scrutinize the information provided by the General Registries. However, if they are aware that data stored in the register is false or they have doubts concerning the stored data, they shall alert the editor of the false data.

**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 I/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?**

No, it does not. According to the Act no. 111/2009 Coll., On General Registers, the public authorities use the data from the information systems without notifying the person concerned.

**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?**

There is no possibility in the legal order to request information about the future exchange of personal data. However, the person concerned may request an excerpt from the General Register about use of his/her personal data over the last calendar year according to section 14 subsection 4 of the Act no. 111/2009 Coll., On General Registers. The excerpt is sent by the administrator of the relevant register free of charge to the data box of the person concerned. There is a possibility to request such an excerpt in a certified form, in this case a fee is required.

**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 not one specific public body. This area is regulated by the Act no. 82/1998 Coll., On Liability for Damage Caused by Public Authority by Decision or Maladministration, which falls into the jurisdiction of civil courts. A public body may be held accountable for and the damages may be sought against (i) illegal decision or (ii) maladministration. The maladministration is relevant in cases where the omissions and mistakes are not directly incorporated into a particular decision or are not vital to the decision-making process. Maladministration is a violation of rules prescribed by the law, which particular public body is obliged to follow.

The bodies responsible are (i) Ministry of Justice, in cases where the damage was caused in civil or criminal proceeding and cases of judgments issued by administrative courts against a decision of municipality acting within its exclusive jurisdiction; (ii) the respective public body that has jurisdiction over the branch/industry in question and also in cases of judgments issued by administrative courts against a decision of municipality acting within delegated jurisdiction with regards to that branch/industry. If such a body cannot be determined, the Ministry of Finance will act. In some cases, the Czech National Bank and the Supreme Audit Office are to be held accountable.

**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?**

Anyone can ask for an excerpt from basic registers (Act no. 111/2009 Coll.) that contains all information concerning this person and provided to other public bodies. This is further elaborated on in the question I. 6. b).

If the information falls into the category of personal data, the individual may ask the controller to make changes to the data or even erase the data by invoking their right to rectification or erasure under the Art. 16 and Art. 17 of the GDPR.

Another safeguard is to seek protection by the action against unlawful interference (other than decision) by a public body. This can be sought at the administrative court, provided that the claimant has exhausted all available administrative remedies. The action is not generally admissible if there are subsidiary mechanisms to seek the remedy. This, however, does not

apply in cases where the claimant only seeks a declaration that the interference was unlawful (see judgement No. 9 Aps 5/2010-81 below).

There has been a proposal implementing the Directive on Administrative Cooperation (DAC 6), however, it does not contain any specific measures that the EU Member States are allowed to implement.

## **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?**

Yes. The SAC's case law on cross-border and multi-level information exchange concerns mostly SIS and SIS II. We included the most important rules established by the case law in the following list:

- An alien with a valid permanent residence permit may reside in the Czech Republic even though there has been an alert entered into SIS II by another member state of the Schengen area indicating that the alien in question is *persona non grata*. The residence of such an alien cannot be deemed a serious threat to public order. (judgment of the Supreme Administrative Court No. 5 As 73/2011 of April 18, 2013, published in the Collection of Decisions of the Supreme Administrative Court under No. 2420/2011);
- If a person seeks the erasure of his/her data stored in SIS II, the competent authority shall take at least the following aspects into account: (i) nature and reasonability of the alert entered into SIS II, (ii) the lapse of time since the alert was made. (judgment of the Supreme Administrative Court No. 14 A 59/2017-52 of July 17, 2018, published in the Collection of Decisions of the Supreme Administrative Court under No. 3832/2019);
- The Police has to take all measures necessary for erasure of the claimant's data that has been stored in the SIS unlawfully. This applies even if the Police is not responsible for keeping the data accurate and up-to-date (judgment of the Supreme Administrative Court No. 1 Aps 15/2013-33 of June 25, 2014, published in the Collection of Decisions of the Supreme Administrative Court under No. 3088/2014);
- When an alert is made that a foreign national who already has a permanent residence permit in the Czech Republic has been expelled from other EU Member State, the Police shall in the proceeding according to Article 25 subsection 2 of the Convention Implementing the Schengen Agreement take all measures necessary to gain information about the grounds of the alert and all the relevant circumstances for the issuance of the expulsion order. However, the Police is not bound by the opinion of the state that entered the alert into SIS. (judgment of the Municipal Court in Prague No. 9

Ca 75/2009-29 of April 27, 2012, published in the Collection of Decisions of the Supreme Administrative Court under No. 2697/2012);

- The act of sending information via SCAC 2004 forms or entering information in EUROCANET may constitute an unlawful interference of an administrative body (judgment of the Supreme Administrative Court No. 9 Aps 5/2010-81, of November 16, 2010).

**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.*

In its decisions, the SAC followed the mentioned case law, but it has not dealt with the SIRENE offices. There is only one decision of a regional court that draws on the case law concerning information exchange. In this decision, the court emphasizes that information provided by the SIRENE offices along with information obtained from a foreign court (Appellate Court in Helsinki in this case) is sufficient for the competent authority to decide that the person concerned may threaten security or public order (judgment of the Regional Court in Ústí nad Labem No. 15 A 103/2016-50 of June 19, 2019).

**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.*

They have adjudicated on different legal issues other than subrogation mechanisms mentioned above [e.g. the right to the erasure of data in SIS II, retention reasons (see II. 1. point two above)]. The Supreme Court, which has jurisdiction over damages caused by the public bodies (see I. 7 for further reference), adjudicated only on criminal issues involving the Regulation 1987/2006 and the Convention implementing the Schengen Agreement (mostly illegal transfer of aliens and *ne bis in idem* principle under Art. 54 of the Convention; for further reference see judgment of the Supreme Court of the Czech Republic No. 5 Tdo 997/2015 of December 16, 2015, in which the Supreme Court revoked the judgment of the High Court as well as the judgment of the Regional Court because the appellant has been already convicted for similar crime – Distortion of Data on Status of Management and Assets – in Brescia, Italy).

**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 academ-**

**ic 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).*

There has been a proposal implementing the Council Directive 2018/822/EU on Administrative Cooperation (DAC 6), which introduces mandatory automatic exchange information in the field of taxation in relation to reportable cross-border arrangements. The reporting obligation may be motivated by a tax advantage to achieve tax transparency within the EU.

Besides, the Directive on the Prevention of the Use of the Financial System for Purposes of Money Laundering or Terrorist Financing has already been implemented in the Czech law. Nonetheless, the Act no. 253/2008 Coll., On Some Measures Against Money Laundering, is not very specific about safeguards with regards to cross-border information sharing as it only stipulates (section 33) that the FIU shall cooperate with foreign authorities as far as it is bound to do so by international treaties or on the grounds of reciprocity. The FIU may also cooperate with other organizations (i.e. even without an international treaty or reciprocity) if the information is shared exclusively for the purpose to prevent money laundering and it will be protected at least to the extent provided by the Act On Some Measures Against Money Laundering. This Act also stipulates that attorneys at law, notaries, banks, auditors etc. have a duty to inform towards the FIU under certain circumstances.

Other systems for exchanging information are used for customs duty:

**NCTS (New Computerized Transit System):** It is used to track goods in transit. It allows tracking a transit shipment at all stages of its processing.

**ECS (e-Export):** It is used to track goods under the export procedure. It enables tracking of exported consignment at all stages of its processing (from the office of export to the office of exit) and search for goods at foreign customs offices.

**ICS-AIS (e-Import):** On-line tracking of the import consignment at all stages of its processing. The application can among other things obtain information on the submitted entry summary declarations lodged in other EU Member States that preceded the filing of customs declarations in the Czech Republic.

**EMCS (Excise Movement and Control System):** EMCS is an electronic system for transport and tracking of excise products within the EU. The implementation of this system is

based upon the Decision of European Parliament and the Council of the European Union No. 1152/2003 ES on June 16, 2003.

**SEED:** SEED is an EU register of license holders (tax warehouses, shipment representatives); automatic data transmission from the Czech tax payers registers.

**VIES:** VIES is an international application of the financial management, in the Czech Republic used mainly by financial analysts and fiscal control. It contains information about registered subjects to VAT in the EU.

**CEPAN:** CEPAN is connected to ADIS (Automated Tax Information System) – central evidence of current overpayments and arrears in relation to both customs and tax authorities.

**EBTI (European Binding Tariff Information):** EBTI enables to apply for Binding Tariff Information (BTI) decision on custom duties payable on imports/exports and other related provisions. Via this system and its website everyone can view all currently valid BTI decisions in the public BTI database.