Bundesverwaltungsgericht

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

Leipzig, Germany

Answers to questionnaire: Latvia

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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.

In Latvia, there is a special Law on State Information Systems[1] which 1) determines unified procedures by which information systems are established, registered, maintained, used, reorganised or liquidated; 2) determines the functions of the keeper of the information system and the rights and duties of the information system data subject; 3) governs the security management of information systems; 4) lays down the requirements to be conformed to for the protection of the information systems' integrator and the information systems being part of an integrated information system; 5) regulates the procedures by which the circulation of information is ensured with the assistance of an information systems' integrator.

[1] https://likumi.lv/ta/id/62324-valsts-informacijas-sistemu-likums

In total according to a national register there are 182 different level State Information Systems in Latvia.[2]

Additionally, Cabinet regulation 357 “Procedures by which Institutions Provide Information in Electronic Form when Co-operating, as well as Ensure and Certify the Credibility of such Information”[3] provides specific types and procedures for exchange of information. The article 4 of this regulation states: Information shall be provided in electronic form by institutions:
4.1. in online data transfer regime:
4.1.1. by co-operating between information systems;
4.1.2. by using network user interface (for example, that is based on web browser);
4.2. in accordance with the procedures prescribed in regulatory enactments regulating the circulation of electronic documents;[4]
4.3. using other electronic means available for the provider of information and applicant for information[5] (electronic communications means that are suitable for the processing of the data received or transmitted via the electronic communications network (also for digital compression) and storage thereof, as well as for the data transfer via electronic communications networks), for example, using data transport servers; or
4.4. using electronic mail.

Structured information mechanism

Exchange of information concerning the place of residence of a person. The Law on Declaration of Place of Residence has established exchange of information concerning the place of residence of a person. The Office of Citizenship and Migration Affairs provides information on the place of residence to State authorities and administration institutions, local governments and their institutions, organisations and other legal persons to which State administration functions have been delegated, as well as to the court and the Office of the Prosecutor (Article 13 (2) of the Law on Declaration of Place of Residence). However, today this exchange of information has taken rather a form of shared database.

Exchange of information concerning tax risks when registering a new company. There is exchange of information between Tax Administration and Enterprise Register to allow Tax Administration to assess the information on applications for entering a record in the commercial register. Tax Administration has to provide an opinion within 10 working days to Enterprise Register, indicating the information at the disposal of the Tax Administration that is indicative of the tax risks of the holder of the right (Article 18 (1) (26) of the Law on Taxes and Duties).[6]

[2] https://www.visr.eps.gov.lv/visr/default.aspx?action=2&type=8
[3] https://likumi.lv/doc.php?id=208840
[4] https://likumi.lv/ta/id/68521-elektronisko-dokumentu-likums
[5] https://likumi.lv/ta/id/96611-elektronisko-sakaru-likums
[6] https://likumi.lv/ta/id/33946-par-nodokliem-un-nodevam

A duty to inform

State Unified Computerised Land Register. In Latvia, immovable properties have to be registered in Land Registers and the rights related thereto must be corroborated therein. There is also an electronic data base. The keeper of the State Unified Computerised Land Register (Court Administration) has a duty to regularly electronically notify 1) the State Land Service and local governments regarding each case of the recording and transition of an immovable property; 2) local governments regarding each case of corroborating, changing and extinguishing rental and lease rights; 3) the State Land Service and local governments regarding each case of corroborating, changing and extinguishing the right of superficies. However, the State Unified Computerised Land Register serves also as a shared database (Article 135 of the Land Register Law).[7] https://www.zemesgramata.lv/

Tax Administration has a duty to regularly inform the Enterprise Register on newly discovered risk-persons and risk-addresses for tax purposes, as well as to inform about people who soon will be subjected to a tax audit (Article 18 (1) (21) and (25) of the Law on Taxes and Duties). The purpose of the legislator here was to limit a possibility to register a new company (Judgment of Administrative District Court of 25 October 2016, case No. A420163316).

Shared databases

Population Register has information regarding citizens of Latvia, persons who have received a residence permit, registration certificate or a permanent residence certificate in Latvia, persons who have been granted the status of a stateless person, refugee or alternative status or temporary protection in Latvia. It, inter alia, includes personal identity number, name and surname, birth date, gender, nationality, ethnicity, address of the declared place of residence, registered or indicated by the person etc. The law obliges state authorities, administration institutions, local governments, courts, sworn notaries to provide the information to the register. Providers of information are responsible for the timely and correct provision of information to the Office of Citizenship and Migration Affairs.[8] The register serves as a (shared) database. https://www.pmlp.gov.lv/

Credit register provides information to its members, the Treasury of the State, Financial and Capital Market Commission, National Central Bank of Latvia information of financial character, including credit debts and credit offences. https://manidati.kreg.lv/. **Court information system** provides information on all types of court procedures, statistics, case law etc. not only to judges and court staff, but state institutions and municipalities as well if it is necessary to perform their duties. https://tis.ta.gov.lv/. **Tax Information System** provides information on registration of taxpayers, registration of value added tax payers, taxpayers' reports and declarations, disability information received from the National Health Service, unified registration of administrative tax violations, special permits (licenses) and certificates issued by the Tax Administration etc. https://www6.vid.gov.lv/. **National Research Information System** provides information on national scientific institutions, scientific institution staff, experts of the Latvian Council of Science,

[7] https://likumi.lv/ta/id/60460-zemesgramatu-likums
[8] https://likumi.lv/ta/id/49641-iedzivotaju-registra-likums

project proposals, projects, scientific activity and research results, scientific equipment and software etc. https://sciencelatvia.lv/. **Official Electronic Address Information System** provides information on electronical addresses. In Latvia, state institutions and legal entities (starting from year 2020) are obliged to use in correspondence their electronical address. Ordinary citizens at this moment are not obliged to use their electronical address, however, they can do it voluntarily. https://mana.latvija.lv/e-adrese/. **Punishment Register**: the purpose of this database is to establish a uniform record-keeping regarding persons who have committed criminal offences and administrative violations in order to facilitate the prevention and disclosing of such offences and violations, as well as regarding control of execution of the punishment and restriction of the rights imposed on a person for the committed offences and violations. www.ic.iem.gov.lv. **E-health**: here data of the health sector is accumulated in order to ensure organisation of health care and to facilitate the provision of health care services. The information system ensures 1) centralised processing of the data that is needed for medical treatment, statistics and research; 2) writing out electronic prescriptions and circulation between a medical practitioner and pharmacist; 3) issue and circulation of sick-leave certificates between a medical practitioner and competent institution in the field of social insurance and State social benefits; 4) electronic booking of a patient's appointment by a medical practitioner as well as electronic processing of referrals for receipt of a health care service; 5) electronic transmission of payment data on State funded health care services etc. http://eveseliba.gov.lv

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.

It does not seem that the national law provides any additional mechanisms of information exchange among authorities, it rather specifies the mechanisms already mentioned in ReNEUAL Book VI. As it was mentioned in the previous answer, national law specifically mentions circulation of electronic documents (Article 4.2. of the Cabinet regulation 357) and non-exhaustive “other electronic means available for the provider of information and applicant for information”, (for example, electronic communications networks (also for digital compression) and storage thereof, as well as for the data transfer via electronic communications networks), for example, using data transport servers (Article 4.3. of the Cabinet regulation 357). Thus, in short, there is a wide variety of information exchange mechanisms which corresponds (more or less) to the ReNEUAL categories.

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?

First of all, in Latvia a state information system can be established only on the basis of laws and regulations (Article 5 of the Law on State Information Systems,[9] similar to ReNEUAL Book VI-3). Therefore, it is necessary to conduct an impact assessment before such a law is adopted (Article 31 (2) Cabinet Structure Law)[10] and the information exchange is established. Further, there is a special law on development of national information systems: Cabinet Regulation No. 71[11] which stipulates what the responsible institution has to do before it creates such an information system, including developing the project (Article 2), submitting documents to the responsible ministry (Ministry of Environmental Protection and Regional Development) (Article 3) and finally, it is up to the responsible ministry to issue an opinion on such an information system (Article 7 – 10). Thus, in short, establishment of state information systems is strictly regulated.

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?

There are number of cases where courts have pronounced judgements on such mechanisms.

For example, in one case the court has, inter alia, mentioned that the increasing access to information technologies and the quality, efficiency and speed of data exchange has allowed ever faster and better exchange of information between state authorities, thus enabling them to assess better the information available to them and to take decisions which are in the best interest of the state (Judgment of the Administrative District Court of 17 July 2019 , case No. A420227218 (judgment under appeal)).

Exchange of information between state institutions is to be considered neither administrative act, nor action. It is a simple operation between state institutions that per se cannot be contested in courts (Judgment of the Supreme Court of 30 November 2016, case No. SKA-1572/2016, judgment of the Supreme Court 17 August 2016, case No. A420180016, judgment of the Supreme Court of 29 July 2016, case No. 680024916).

Also, see case law mentioned in question 8 on safeguards of individuals considering information about them to be false or an exchange of information about them to be illegal.

[9] https://likumi.lv/ta/id/62324-valsts-informacijas-sistemu-likums
[10] https://likumi.lv/ta/id/175919-ministru-kabineta-iekartas-likums
[11] https://likumi.lv/ta/id/126703-valsts-informacijas-sistemu-attistibas-projektu-uzraudzibas-kartiba

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?

According to the Article 18 of the Cabinet regulation No. 357[12] (on electronic exchange of information) an applicant for information (the one who acquires the information) has the right to rely that the information provided in the ways and in accordance with the procedures determined in this regulation is true and plausible (it applies also to the online data transfer regimes).

However, in case if one institution finds a mistake in information received from partners, it has to contact the partner institution. For example, the Cabinet regulation No. 951 (on information exchange between State Social Insurance Agency and Tax Administration concerning income tax) explicitly states that the State Social Insurance Agency has to verify and register the information received from the Tax Administration. In case if it discovers a mistake, it has to inform the Tax Administration (Article 4).[13]

Thus, in short, generally there is a presumption of true and plausible information, however, different sectoral regulations can provide additional verification responsibilities and further actions (compare: ReNEUAL Book VI-21).

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?

As it was mentioned before, Article 18 of the Cabinet regulation 357 provides presumption that the information received is true and plausible. Additionally, it is possible to mention that the authenticity of the information and irrevocability of the fact of provision of information is protected in the following ways: 1) the provider of information carries out audit trail by ensuring the protection of its integrity and authenticity (for example, by regular signing of audit trails) and availability; 2) a provider of information conducts record-keeping (Article 20 of the Cabinet regulation 357). An applicant for information has the right to ascertain how the provider of information ensured the previous requirements (Article 23 of the Cabinet regulation 357).

[12] https://likumi.lv/doc.php?id=208840
[13] https://likumi.lv/ta/id/219423-kartiba-kada-valsts-socialas-apdrosinasanas-agentura-registre-valsts-socialas-apdrosinasanas-obligatas-iemaksas-un-apmainas-ar-...

To conclude, in short, although there is presumption that the information received is true and plausible, parties can argue that information is false (to rebut the presumption). In such a case, the court will scrutinize information obtained from a national information network. The extend how far does this obligation reach will vary from sectoral law and the nature of party's arguments.

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? (a) Votre ordre juridique national prévoit-il la fourniture automatique (sans nécessité d'en faire la demande) des données de la personne concernée ?)
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?

Answering to both questions above, it must be stated that the Law on State Information Systems explicitly provides an article on rights and duties of the data subject (Article 9). The rights of the data subject are as follows: 1) to receive data from the State information system, that concerns the data subject; 2) to inform the keeper of the State information system regarding shortcomings perceived in the data that concerns the data subject, and request the correction of this data (Article 9 (1) (see ReNEUAL Book VI-15)). Also, it is a duty of the data subject to provide complete and honest information in accordance with the procedures laid down in laws and regulations regarding him or her and his or her cognisable objects to be registered (Article 9 (2)).

However, it is not possible to identify a general duty in national law to provide automatic information to the person concerned in case of the transfer of personal data. Moreover, for example, article 80 of Medical Treatment Law explicitly provides that the manager or holder of the health information system, if the functions of the holder of such system have been transferred to an authorised institution, is entitled not to inform the data subject regarding processing of personal data in the health information system, unless the data subject is specifically requesting it.

Apart from that, Regulation 2016/679 (General Data Protection Regulation) provides number of rights of data subject, including the right of access by the data subject (Articles 12 – 15 of the General Data Protection Regulation).

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?

In Latvia, in the end the state or local government will be liable for any damage (generally). According to the Article 34 (1) of the Administrative Procedure Law the Republic of Latvia or a local government [..] may be a defendant in court. The exact institution from which an applicant requires particular action will simply be invited to participate on the defendant's (Latvia's or

local government's) side (Article 34 (2) of the Administrative Procedure Law). And further according to the Law on Compensation for Damage to National Regulatory Authorities the loss caused will be compensated from either the basic budget of state or the municipal budget (generally) (Article 3 of the Law on Compensation for Damage to National Regulatory Authorities).

Looking into more details, according to the Article 18 of the Cabinet regulation 357[14] an applicant for information (the one who acquires the information) has the right to rely that the information provided in the ways and in accordance with the procedures determined in this regulation is true and plausible.

According to the Article 8 of the Law on State Information Systems[15] the keeper of the state information system is responsible for data collection, registration, input, processing, storage, utilisation, transmission, publication of data, compliance with data submitted, updating, correcting, as well as the quality of data in the State information system. The keeper of the state information system has to keep a reference to the data output source, if data is not obtained directly from the data subject. However, if the data is obtained directly from the data subject, according to the Article 9 (2) of the Law on State Information Systems it is a duty of the data subject to provide complete and honest information in accordance with the procedures laid down in laws and regulations regarding him or her and his or her cognisable objects to be registered. It must be stressed that these are general norms, but the laws for specific information network can provide more detailed regulation, for example, the Article 115 of the Land Register Law provides that the Court Administration is the keeper of the State Unified Computerised Land Register. The Court Administration ensures organisational and technical maintenance of the Computerised Land Register. However, the decision to enter the date in the land register is taken by a judge (Article 79 of the Land Register Law). Thus, the question on the liability for any damage is very complex and can vary from one type of national information network to another.

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.

[14] https://likumi.lv/doc.php?id=208840
[15] https://likumi.lv/ta/id/62324-valsts-informacijas-sistemu-likums

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?

As it was mentioned before, the Law on State Information Systems explicitly provides that data subjects (individuals) have the right 1) to receive data from the state information system, that concerns him or her; 2) to inform the keeper of the state information system regarding shortcomings perceived in the data that concerns him or her, and to request the correction of this data (Article 9 (1)). Apart from that, the General Data Protection Regulation provides number of rights of data subject, including the right to access, the right to rectification and right to erasure (Articles 15, 16, 17 of the General Data Protection Regulation). These rights however, may not apply to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security (General Data Protection Regulation 2 (2)).

National legal framework (Administrative Procedure Law) provides some restrictions on acquisition of information by public authorities. Firstly, national institution may collect or require the submission of such information as is provided for by the relevant regulatory enactment or is directly necessary for deciding the matter. Secondly, national institution may not collect, or use in an administrative proceeding information acquired by illegal methods (Article 60 of the Administrative Procedure Law). Thus, national authorities are obliged to consider whether the information provided by other institution in fact was acquired legally (Judgment of the Supreme Court of 12 November 2019, case no A420277116).

However, the fact that national authority has acquired or collected information which was not provided for by the relevant regulatory enactment does not automatically lead to conclusion that the piece of information should be considered as being acquired by illegal methods in the sense of Article 60 of the Administrative Procedure Law and thus cannot be used to adopt the administrative act. In such a case the party shall have an opportunity to contest the usage of such an information and this piece of information (evidence) cannot serve as the sole evidence of the fact (Judgment of the Supreme Court of 12 November 2019, case no A420277116).

There are not any other particular political or academic discussion about (further) needs for new or more specific legal safeguards in this context, nor 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?

Information acquired for tax purposes as a result of information exchange among European authorities shall be considered as a restricted information (confidential information), however, according to national regulation such information may still be issued to a private party if he or she provides appropriate reasons (Judgment of Administrative District Court of 22 October 2018, case No. A420198618)

In Latvia, generally, Tax Administration is subjected to strict deadlines to adopt its decision. However, when Tax Administration is obliged to request information from a foreign tax administration, the time of exchange of information between two institutions is excluded from total time (deadline) to adopt the final tax decision. Thus, in case if a foreign tax administration delays adoption of decision, it does not affect deadlines designated to national Tax Administration (Judgment of the Administrative District Court of 22 August 2018, case No. A420238617, judgment of the Supreme Court of 5 June 2015, case No. SKA-102/2015).

From our case law it is visible that national courts rely on information received from foreign institutions, however, if parties contest the information, the court scrutinizes the information received from foreign institutions (Judgment of the Administrative District Court of 8 March 2018, case No. A420264816, judgment of Regional Administrative Court of 7 December 2016, case No. A420165215). Information received from foreign institutions is considered to have evidential value (Judgment of Regional Administrative Court of 5 June 2017, case No. A420320415).

However, as for the road traffic matters, there is stricter approach. In a case where Polish authorities informed Latvian authorities that Latvian national has been punished in Poland for drunk-driving and imposed a ban on driving a car for 3 years, Latvian authorities consequently registered this ban on driving a car in Latvia as well. Latvian court agreed that the decision of Latvian authority is correct and that national authority is not competent to assess the rightfulness of Polish judgment. In this case, the applicant has to contest Polish judgment in Poland (Judgment of Administrative District Court of 30 January 2019, case No. A420267618, judgment of Regional Administrative Court of 30 October 2019, case No. A420267618 (judgment under appeal)). Thus, there is a principle that a person has to contest foreign decision in a country of origin.

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?

Yes, national courts referencing to the CJEU judgment in case C-503/03 have stressed that evidence [that there is a reason to justify refusing a person entry into the Schengen Area] must be corroborated by information enabling a Member State which consults the SIS to establish, before refusing entry into the Schengen Area, that the presence of the person concerned in that area constitutes a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. In that regard, it should be pointed out that Article 94(i) of the CISA expressly authorises the reason for the alert to be stated (Judgment of the Supreme Court of 15 April 2016, case No. SA-1/2016).

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, our national courts have not delivered judgements drawing on a substitutional liability or subrogation mechanism.

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?

Legal safeguards on acquisition of information for the adoption decision

National legal framework (Administrative Procedure Law) provides some restrictions on acquisition of information. Firstly, national institution may collect or require the submission of such information as is provided for by the relevant regulatory enactment or is directly necessary for deciding the matter. Secondly, national institution may not collect, or use in an administrative proceeding information acquired by illegal methods (Article 60 of the Administrative Procedure Law). Although not explicitly stated, these provisions will also apply to cross-border or multi-level information exchange. Thus, national authorities are obliged to consider whether the information provided by other institution in fact was acquired legally (whether their partners have acquired this information legally) (compare: Judgment of the Supreme Court of 12 November 2019, case no A420277116).

However, the fact that state authority has acquired or collected information which was not provided for by the relevant regulatory enactment does not automatically lead to conclusion that the piece of information should be considered as being acquired by illegal methods in the sense of Article 60 of the Administrative Procedure Law and thus cannot be used to adopt the

administrative act. In such a case the party shall have an opportunity to contest the usage of such an information and this piece of information (evidence) cannot serve as the sole evidence of the fact (Judgment of the Supreme Court of 12 November 2019, case no A420277116).

As for the information received from the OLAF (for example, a report which is designated for the adoption of national decision), in academic writings it has been stated that national courts cannot assess whether European Union institutions (for example, OLAF) have acquired all the information legally (using legal methods), since it is the competence of the Court of Justice of European Union to perform this kind of assessment. However, when national courts are called to assess the illegality of OLAF's actions, they have to consider the option to ask the Court of Justice of European Union to give a preliminary ruling (Potaičuks A. OLAF ziņojuma ietekme uz lietu izskatīšanu administratīvajā tiesā. Latvijas Universitātes 77. zinātniskās konferences rakstu krājums, ISBN 978-9934-18-445-1).

Control of processing personal data as a legal safeguard

As it was mentioned before, the Law on State Information Systems explicitly provides that data subjects (individuals) have the right 1) to receive data from the state information system, that concerns him or her; 2) to inform the keeper of the state information system regarding shortcomings perceived in the data that concerns him or her, and to request the correction of this data (Article 9 (1)). Apart from that, the General Data Protection Regulation provides number of rights of data subject, including the right to access, the right to rectification and right to erasure (Articles 15, 16, 17 of the General Data Protection Regulation). These rights however, may not apply to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security (General Data Protection Regulation 2 (2)). In case if the rights of data subject are not respected, he or she can write a complaint to Data Protection Inspection and / or bring an action before courts (Article 77 – 79 of the General Data Protection Regulation, Article 24 of the Personal Data Processing Law).

Additionally, national Data Protection Inspection can perform inspections (which includes all types of activities which can be performed in order to ascertain conformity of the data processing to the personal data regulation and requirements of other laws and regulations, including visiting of the place of data processing, obtaining of information by using all legal methods, and other necessary activities (Article 15 of the Personal Data Processing Law).

Other legal safeguards

What concerns cross-border or multi-level tax information sharing, national legislator has adopted special Cabinet regulation No 1245[16] which strictly regulates sharing tax information

[16] https://likumi.lv/ta/id/261702-kartiba-kada-tiek-veikta-informacijas-apmaina-nodoklu-joma-starp-latvijas-un-citu-eiropas-savienibas-dalibvalstu-kompetentajam-...

with EU and non-EU countries. This regulation set rules for the Tax Administration to consider before sharing information (Articles 18, 28) as well as restrictions and confidentiality requirements for the exchange of information, as well as usage of such information (Articles 35 – 40, compare: ReNEUAL Book VI-24, 28). Thus, specific regulation on sharing information with other EU and non-EU countries provides additional safeguards to individuals.

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).