Bundesverwaltungsgericht

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

Leipzig, Germany

Answers to questionnaire: Lithuania

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ACA-Colloquium
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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.

Yes, the Lithuanian legal order establishes mechanisms of information exchange among authorities, which may be regarded as similar to those provided in the Book VI.
The majority of national information exchange mechanisms are in the form of registers or information systems. Depending on the object, functions, the information accumulated and systematized within the register, they may be regarded as national registers, inter-institutional and institutional registers. Depending on their purpose and the availability of the information they may be either public or not public. For example, Residents' Register, Legal Entities' Register, Real Property Register and Cadastre, Mortgage Register, Register of Property Seizure Acts, Administrative Offences' Register and other. In essence all the above-mentioned registers function in a way, whereby a responsible authority (registrar, institution, designated person) enters data, concerning the object of the register, into the register and, depending on the type of register and the information, such information may be reviewed publicly, or accessible to the designated recipients (institutions'/persons') in the course of their functions and in as much as

it is required to carry out their functions, or an official extract may be provided upon the request of a person entitled to receive such information (either in the course of his/its functions, or due to the fact the information is related to him, or on the other grounds provided by the legislation). For example, the notaries have access to the data in the Real Property Register to carry out their functions. In our opinion, these registers would fall within the category of databases within the meaning of Book VI Art. VI-2.

There is also another information exchange mechanism, which in the Lithuanian national order is regarded as "information systems", however it is unclear, whether the same qualification could be attributed to them under the Book VI Art. VI-2. Information systems are mainly used for a specific function (specific functions). For example, Information System for Monetary Restrictions (hereinafter – PLAIS) is used by bailiffs and credit institutions in the process of court decisions' enforcement involving monetary obligations. The aim of PLAIS is to centrally handle data regarding debtor's cash restriction process, transmit instructions to the bank to restrict funds in debtor's accounts, to debit particular amounts and divide the amounts debited proportionally; to automatically perform the restriction and (or) debiting of funds and perform their control; to perform generalization, analysis and provide statistical data regarding debtor's monetary restrictions and (or) debiting processes.

Another information exchange mechanism, which *includes both certain national databases and N. SIS II* is the Information system of State Border Guard Service at the Ministry of the Interior of the Republic of Lithuania (hereinafter – VSATIS), which, in our opinion, could also be regarded as a database in a sense of Book VI Art. VI-2. VSATIS is used by the State Border Guard Service to verify the data of the persons and vehicles crossing the state border, their travel documents, to ensure the data flows between VSATIS and other national databases and for a prescribed term to accumulate data on the persons and vehicles crossing the border. VSATIS has links and ensures information exchange with the following registers: within the competence of the Ministry of Interior: Register of Wanted Persons, Unidentified Bodies and Unknown Helpless Persons, Register of Road Vehicles, Aliens' Register, N. SIS II, Visa information system (N. VIS); within the competence of the Ministry of Justice: Residents' Register; within the competence of the Police Department under the Ministry of the Interior: Register of Preventive Measures, Register of Searched and Found Numbered and Individual Items and Documents, Register of Searched Vehicles; within the competence of the National Division of Europol and Interpol of Lithuanian Criminal Police Bureau: Interpol General Secretariat's Stolen and Lost Travel Document database; within the competence of State Border Guard Service: system of arrival and departure. VSATIS is used by the State Border Guard Services, when carrying out its functions including granting the permission to enter the country or refusing entry of persons and (or) vehicles, checking the biometrical data in the travel documents and other.

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.

To the best of our knowledge there are no such mechanisms.

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?

There is no specific legal obligation to conduct an impact assessment regarding an establishment of advanced forms of information exchange. However, the basis of establishment of an advanced form of information exchange is a legal act. The Lithuanian Law on Legislative Framework, which establishes the principles and stages of legislation and the rights and duties of state and municipal institutions and bodies and other parties involved in legislation, also regulates the instances for conducting an impact assessment.
In accordance with Article 15(1) of the Law, an impact assessment of the effect of envisaged regulation *must be carried out*, when a draft legal act, which provides for regulation of previously unregulated relations, is being drawn up, also whereby the existing legal regulation is being substantially amended. The provision also establishes that the comprehensiveness of this assessment must be proportionate to the likely consequences of the envisaged legal regulation and that a decision on the assessment of the effect of envisaged legal regulation shall be adopted by the drafter. Article 15(2) states that, when carrying out an assessment of the effect of envisaged legal regulation, the likely positive and negative effect on the area of that legal regulation and on persons or groups thereof in respect of whom the envisaged legal regulation will apply shall be determined. Taking into account the nature and scope of the new legal regulation provided for in the legal act, the effect on the economy, state finances, social environment, public administration, legal system, crime situation, level of corruption, environment, administrative burden, regional development and other areas must be assessed.
It follows from the abovementioned provisions of the Law on Legislative Framework that in instances, when a new sphere of legal relations is being regulated or when the regulation is being substantially changed, an impact assessment is a prerequisite. This general provision is also applicable to establishing the advanced forms of information exchange insofar as they fall into the categories of the “new regulation” or “regulation being substantially amended”. Please take into consideration that it is up to the institution preparing the draft legislative act in question (“the drafter”) to take a decision regarding the impact assessment.

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

Both the Supreme Court of Lithuania and the Supreme Administrative Court of Lithuania have adopted a number of decisions regarding the public registers, such as the Legal Entities’ Register, the Real Property Register and others. In general the practice of these highest instance courts relates to either the right of a person to have the incorrect data in the register rectified and the duty of the registrar to do so; the duty of the registrar to duly check the documents, which are the basis for the change of data in the register; and the status of the data provided in the register.

It should be taken into account that it is not possible to answer this question in general and generalizations pertaining to the whole national legal order regarding information exchange mechanisms should not be drawn, as there are differences in regulation regarding various registers (depending on the object, data accumulated in the register, recipients of data and other). Therefore, the caselaw provided below should be regarded as examples.
In respect of the person's right to have the data in the register rectified, when deciding cases concerning the Register of Legal Entities, the Supreme Administrative Court of Lithuania has noted that after receiving a request of an interested person to correct erroneous data or information and the documents confirming the facts stated therein, the registrar has to perform correction within three working days (as provided in the regulations of the Legal Entities' Register) and inform the object, subject and the persons to whom erroneous data has been transmitted of the correction. The Supreme Administrative Court of Lithuania has stated that it is an obligation and not the right of the registrar to make such correction upon the request of and interested party (decisions of 9th January 2018, No. A-5-662/2018; 27th March 2019, No. EA-568-520/2019).
In respect of the registrar's duty to duly check the documents, which are the basis of the data entered into the register, and the status of the information, provided in the public register. In regard of the Real Property Register Supreme Court of Lithuania has indicated that with the mandatory legal registration of immovable property the state seeks to ensure the protection of ownership rights by providing reliable and lawfully obtained information about the constraints and changes in these rights. Obligation to register ownership implies a general obligation for the authority performing the registration to check the grounds of acquisition or transfer of ownership and, in case of doubt, to refuse such registration. Thus, the registrar must investigate the legal basis for acquisition (change, expiration) of ownership rights, its formalization, but does not establish the facts that need to be assessed, as it is a matter of judicial review. Such competence of the registrar ensures the principle of reliability of the data recorded in the register, which is enshrined in Article 4 of the Law on the Real Property Register - all data contained in the real property register *shall be considered legal and complete as long as they are not challenged in accordance with the law* (decisions of 4th October 2018, No. 3K-3-341-611/2018; 21st December 2009, No. 3K-3-364/2009 and other).

The Supreme Administrative Court of Lithuania, has also adopted several decisions regarding the status of the information provided in VSATIS. In the decision of 19th January 2012, No. A492-310/2012 the Supreme Administrative Court has noted that the period of stay in the Schengen area may be determined by the date stamps in the passport and also by checking the data contained in the VSATIS information system.
In a case, where the refusal to issue a long-term residence permit in the European Union was contested, the Supreme Administrative Court of Lithuania has also decided on the issue of the evaluation of evidence. The decision to refuse a long-term residence permit was based on the information provided in VSATIS regarding the time spent in the territory of the Republic of Lithuania and such data is recognized as suitable evidence in determining the time of stay. The applicant did not contest the correctness of data in VSATIS, however argued that he had

returned to Lithuania in April, 2015 substantiating this fact by the testimony of witnesses but not providing any documentary evidence. The court stated that, when determining the duration of the applicant's stay in the Republic of Lithuania, all the evidence has to be taken into account and evaluated, however, in this particular instance reached a conclusion that the applicant did not furnish sufficient evidence regarding his return to Lithuania in April 2015 (decision of 4th April 2018, No. A-3730-261/2018). Therefore, although the information in the VSATIS system is regarded as one of the sources of evidence in determining the time of stay within the territory of the Republic of Lithuania, it may be proved with other evidence as well.
In the decision of 25th September 2018 No. eA-1613-629/2018, the Supreme Administrative Court of Lithuania adjudicated on the matter of refusal to grant entry to the Republic of Lithuania on the ground of data in the VSATIS that an alien was considered a to be a threat to public policy, internal security, public health or the international relations of one or more Member States of the European Union. This data was entered on the basis of the decision of Migration Department under the Ministry of Interior of the Republic of Lithuania. In this decision the court noted that until the relevant decision of the Migration Department was not challenged, it constituted a valid legal basis for entering the data in the respective Register of Aliens and was a valid ground to adopt a decision to deny entry into the Republic of Lithuania.

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.

It is not possible to answer this question in general, regarding all national information networks (databases, registers, information systems, ect.) as there is no unified regulation of such information exchange mechanisms.
The data contained in public registers is usually considered accurate (correct) and the institutions may rely on it without further scrutiny. For example, Article 4 of the Law on Real Estate Register provides that all data the register shall be deemed to be correct and complete from the date of its entry in the register until it has been challenged in accordance with the law. The provision of the same effect is contained in the Law on the Residents' Register – they are deemed to be accurate until challenged in accordance with the national law or the European Union legal acts.
As far as the information contained in VSATIS is concerned it may be seen from the Supreme Administrative Court of Lithuania decision No. eA-1613-629/2018, briefly described in the answer to question 4, that a decision-making body can rely on the information from partners of such information networks.

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?

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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?

It depends on a particular database (register, information system), its object, the purpose, for which the information is used and the recipients of the information. In the instance of public registers the automatic information of a person would not be available to the general public, but it may be available to the recipients, who access the register or information system to perform their specific functions, e. g. notaries, bailiffs, municipal or state institutions.
In accordance with the regulations of VSATIS, personal data may be provided in the cases stipulated by GDPR in accordance with the personal data supply agreement concluded between VSATIS data operator and VSATIS data recipient, when the provision of data is continuous. In the case of a one-time provision, VSATIS data shall be provided upon the request of the recipient, specifying the basis for obtaining the requested data, the purpose for which it shall be used, the manner of provision and the scope of data.

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

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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 are no specific legal provisions, regulating the liability for damages caused by malfunctioning of the information networks. The general rules of civil liability apply, however as briefly

described in the answer to question 4, there is a duty of the registrar to check the documents, which are the basis for entering the data into register.

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

In accordance with the provisions regulating different registers (databases) or information systems, the person, who considers the information about him to be false (incorrect) may contact the manager of a particular register (database) or information system and request them to rectify and update the data. Generally, such actions have to be taken within one month from the receipt of the request.

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?

Please see the decision of 25th September 2018 No. eA-1613-629/2018 briefly described in the answer to the question 4. However in that particular instance the decision was made regarding the data entered in the Aliens' Register (one of the databases in VSATIS) by the Migration Department under the Ministry of Interior of the Republic of Lithuania.

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.

To the best of our knowledge there are no such decisions.

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.

To the best of our knowledge there are no such decisions.

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).

To the best of our knowledge, there are no new or specific legal safeguards with regard to cross-border or multi-level information sharing, no legislative proposals or active and widely known academic discussion in this regard.