Bundesverwaltungsgericht

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

Leipzig, Germany

Answers to questionnaire: Romania

Activity co-financed by the Justice Programme of the European Union

The High Court of Cassation and Justice of Romania

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 interlinked information management between various national authorities as well as between national and European Union administrative bodies. Such inter-administrative information management is a major component of administrative procedures implementing European Union law. It reflects the need of public authorities for reliable and up-to-date information from various sources in cases concerning cross-border public or private activities within the internal market. In order to provide such information the European Union has established sets of mechanisms for cross-border and/or multi-level exchange of information. Prominent examples are rapid alert systems providing information about risks for consumers caused by dangerous food or feed or other products, the Internal Market Information System (IMI), information systems in the field of customs and taxation, and the growing number of information systems concerning migrants or travelers (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.e. 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.

Reply to questionnaire

Preliminary matters

For a better understanding of the perspective from which answers are provided to this Questionnaire and its inevitable limitations we need to make some clarifications:

1. First of all, we think it is important to provide a short description of the architecture of public administration in Romania. This is to provide the information absolutely necessary for an understanding of the similarities and differences between information management mechanisms as regulated by Book VI in the ReNEUAL Model Rules on European Union Administrative Procedure (hereinafter the ReNEUAL Rules) and the national mechanisms as regulated by domestic law that do not transpose a Directive or are not intended to help implement e Regulation of the European Union (hereinafter EU).

Thus, Romania is a unitary state with a central public administration (which has general jurisdiction to apply the law) and a local public administration (which has jurisdiction to apply the law at the level of administrative-territorial units: county, city, town, commune, City of Bucharest and its 6 districts). In that context “apply the law” means issuance of administrative acts with a regulatory or individual character, in conformity with the law.

The authorities of the central public administration have, in many situations, decentralized structures at local level that are subordinated to the central structure. As an example the National Tax Administration Agency (central authority) has decentralized structures in every county, city, town and commune.

The local public administration is decentralized and autonomous, which means they authority and the actual capacity to deal with and manage a significant part of the public affairs, as under the law, in their own name and in the interest of the local population.

Cooperation between authorities in the matter of managing shared-interest information takes place on the basis of a specific stipulation of the law.

2. The response to this Questionnaire does not include the manner of handling information devoted exclusively to police cooperation towards detecting, investigating and punishing crime, even if they might have similarities with models described in Book VI of the ReNEUAL Rules.

3. Given the extremely complex architecture of the national public administration, the links to the authorities of the European Union and to those in other EU Member States as well as the multitude of sources of information, the answers to this Questionnaire will not contain an exhaustive list or detailed description of manners to handle information. The answers will address the national rules which, while not codified by a general law (similar to the ReNEUAL Model Rules on European Union Administrative Procedure), can nevertheless be derived from the text in special laws, from administrative practice and comments on the doctrine.

Please also note that the distinction between national and European model (in the sense of being regulated by EU law) is a relative one, because of the decisive influence of EU law upon national law before and especially after accession. In other words, a so-called national model can copy a European model (from EU law or that of another Member State) without this being necessarily evident in the absence of a comparative study.

4. In the answers provided in this Questionnaire we are looking at the information handling models that are governed by domestic law, wherever the question does not specifically refer to EU law. Romania applies the EU Regulations and has transposed EU Directives that are particularly significant in this domain and to which the ReNEUAL Rules make reference. Thus, for instance, in Romania just like in the other Member States the information management system is in place that is ruled by Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC (“the IMI Regulation”). There is also domestic law that provides the necessary framework for the use of the Schengen Information System (SIS) by the Romanian authorities. There are nu-

merous examples such as this. Nevertheless, considering the goal of the event scheduled in Leipzig on 11 May 2020 and as emphasized in the penultimate paragraph of the introductory part of the Questionnaire, the answers will not refer to this but to models arising from the domestic legal order, except for cases when a question specifically refers to those.

5. The High Court of Review and Justice is the supreme court of Romania and has exclusively judicial responsibilities in having justice served together with the other courts of law. Its primary role is achieving uniform judicial practice. The High Court does not provide consultancy to the lawmaker (Parliament, Government), does not develop, analyze or sanction drafts laws or other pieces of regulation and does not play any part in coordinating and systemizing laws. Such responsibilities go to the Legislative Council, and verifying the constitutionality of the laws is the prerogative of the Constitutional Court.

So the perspective from which answers are provided in this Questionnaire is exterior to the lawmaking process and relies on observations arising from judicial practice and specialty doctrine.

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.

Answer:
Book VI in the ReNEUAL Model Rules on European Union Administrative Procedure (hereinafter the ReNEUAL Rules) establishes three mechanisms for the sharing of information between authorities (structured information mechanism, duties to inform, and shared databases) and, as far as we can tell, distinguishes them from the “simple” mutual information assistance (regulated in Book V) and from other forms of information sharing that are regulated in Books III, IV and especially V, at the very least in relation to the following criteria:
- absence of a request from one authority to the authority that has the information (paragraph 2 in the Explanations); the information circulates between at least two authorities on the basis of a structured mechanism, the duty to inform or shared access to a database;
- the information circulates between distinct authorities; so the mechanisms under discussion are not about the circulation of information inside a single authority (between its various divisions) or about the situations where individuals seek access to the information held by a specific authority;
- it is necessary to have a basic act (as under Art. VI-3).

Though some stipulations in Book VI are applicable only in case information management is supported by an “information system” (software program, IT system in the sense of Art. VI-2, 4), it spears to not be necessary in all situations, since the definitions in the first two mechanisms do not make specific reference to it. This means the information can circulate outside the information system too. In the case where the information management activity is supported by an information system it is necessary to have a Supervisory Authority (Art. VI-30).

In Romania neither the laws nor the doctrine nor the jurisprudence establish a ranking of types of mechanisms for the sharing of information between authorities, in the sense of the ReNEUAL Rules. Nevertheless there exist special laws that do regulate similar mechanisms.

For example a situation similar to the structured information mechanism seems to exist in electoral law. The elements of the mechanism and the way they interact are:
- The Permanent Electoral Authority (AEP) is an autonomous and fundamental administrative entity of the Romanian state and is about organizing and operating elections so as to ensure proper conditions to exercise electoral rights, equal opportunities in the political competition, transparency in the financing of political parties and election campaigns;
- AEP administers the portal www.registrulelectoral.ro, devoted developing electronic voting lists. To that effect data was imported from the Department for Population Records and Database Administration (DEPABD; a specialty body of the central public administration, a distinct legal entity and part of the public order and security structures of the Ministry of the Interior, directly under the Department for Public Order and Security) and from other sources (e.g. for Romanian citizens who live abroad the data was imported from the General Department for Passports);
- The www.registrulelectoral.ro portal is supported by a hardware and software architecture located in a secure Data Center and has two interfaces: a) one for mayors (in a private area of the portal) who on the one hand constantly work to update the data in the Electoral Registry and receive e-mail and Call Center support from AEP; and on the other hand benefit from the porta because they can use it to generate electoral packages containing the permanent voter lists grouped per ballot station as well as the deleted voters; b) the second interface is for voters (the public area of the portal); they have on-line access to the Electoral Registry, they can ask for corrections in the case of omissions, erroneous registrations and errors or can ask to be registered to vote abroad;
- the last element of the mechanism is the National Authority for the Supervision of Personal Information Processing (ANSPDCP), which is in charge of monitoring application of Regulation no 679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), so as to protect the fundamental rights and liberties of individuals as regards the processing of personal data and the free circulation of personal data within the EU; this element is included in the mechanism because ANSPDCP has general authority to supervise the processing of personal data.

We believe the structured information mechanism in the electoral domain, as described above, has a complete similarity to the analogous mechanism regulated by the ReNEUAL Rules.

Mechanisms based on an authority's duty to inform another without a prior request are numerous and reply on a specific legal requirement (the basic act). They usually arise from a protocol signed under the law or a joint order signed by two Ministers. An example of how such a mechanism might operate is described in the answer to Question 4 (letter "a" of the answer); please note however that in that situation there existed a legal stipulation which made the transfer of personal data possible between two authorities but that data did not include the income of the taxpayers who were subject to the data processing and did not compel their notification about the transfer. Such gaps in the law played a decisive role and led to a finding of unlawfulness in that transfer mechanism.

The general rules for the lawful operation of a mechanism based on a duty to inform (transfer of date between two or more authorities), as resulting from national jurisprudence, are the following: an authority A must have jurisdiction; such jurisdiction cannot be exercised without a transfer of data from authority B; there is a legal stipulation that is sufficiently precise and allows the sharing of the data; the persons whose data is involved must be notified of the processing so they might have the effective possibility to challenge the sharing or require corrections in the data.

Shared access to a database is a mechanism found in the relationship between a central authority and its own decentralized (territorial) structures. Please note that in Romania the central authority and its decentralized structures are distinct legal entities (distinct public authorities) in spite of a subordination of territorial to headquarters. Thus the decentralized structures have their own full organization of work and apply the law in their domain of jurisdiction, usually without the existence of a specific decision to that effect from the central authority (in other words they issue administrative acts directly on the basis of the law). Examples of that are the central tax authority's databases.

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.

Answer
There are, for instance, data-sharing mechanisms between authorities which in principle do not involve personal data and are ultimately intended for alerting the population in emergency situations (the RO-ALERT system, implemented on Romanian territory by the Ministry of the Interior through its General Inspectorate for Emergency Situations and with technical support from the Special Telecommunications Service, allows Cell Broadcast messages to be sent so as to warn or alert the population about emergencies, as under the law; the system is used in major emergencies where the citizens' life and health are at risk, such as extreme weather, major floods, terrorist attack or other situations that are a serious threat to communities). The manifestation of the system consists of warning messages sent to the citizens' mobile devices.

However, such a complex mechanism (which requires interagency cooperation both between public authorities and between such authorities and private companies, beyond information sharing) does not have the features of the mechanisms regulated under Book VI in the ReNEUAL Rules. That is why the short answer to this question is negative. It could only be nuanced if a significant departure were accepted from the mechanisms regulated under Book VI.

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?

Answer
Yes, for instance in order to digitize the permanent electoral lists and develop the Electoral Registry (see answer to first question), in 2009 AEP decided to start feasibility studies (the Electoral Registry became operational in 2014 after training sessions with the representatives of the municipalities in the previous years).

Beyond this administrative practice, also to be found in other cases, there is no general legal obligation that we know of and whose object might be to perform impact assessment studies before the implementation of a mechanism for exchanging information.

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?

Answer
Yes, Romanian courts of law have a lot of expertise in cases where the exchange of information between authorities played a decisive role.

The examples here are tax cases (which in Romania are in the jurisdiction of the administrative chambers of the courts). We are describing here two types of dispute that have led to repeated cases in court:

a) In the first case: The National Tax Administration Agency (ANAF), sends the National Health Insurance Authority (CNAS), on the basis of a memorandum of understanding signed under the law, date on the income declared by certain taxpayers who derive income from independent activities and who have outstanding debts in their contribution to the health insurance system. The data makes it possible to identify the taxpayer and their income and on that basis CNAS requires payment of the outstanding amounts. Neither ANAF nor CNAS inform the taxpayer about the transmittal and processing of the data and the law on hose basis the memorandum of understanding had been signed, while allowing the transfer of certain personal information, did not include the taxpayers' income within that information. This event (transfer of personal information concerning income without notification to the person whose data this was, in the absence of a legal basis) was the main contention in such case.

In one case the Romanian court asked the EU Court of Justice for an interpretation of Directive 95/46/CE of the European Parliament and Council of 24 October 1995 on protection of individuals as regards the processing of personal data and the free circulation of personal data within the EU (Case Bara and Others, C-201/14, ECLI:EU:C:2015:638).

The Court replied: *Articles 10, 11 and 13 in Directive 95/46/CE of the European Parliament and Council of 24 October 1995 on protection of individuals as regards the processing of personal data and the free circulation of personal data within the EU should be interpreted as opposing national measures such as those in discussion in the main dispute and which allow an authority of the public administration in a member state to transmit personal data to another authority of the public administration and subsequently process such data without the individuals concerned being informed of this transmittal and processing.*

The consequence was nullification of all individual administrative acts issued on the basis of income data communicated under the above-mentioned MoU and whereby CNAS was claiming the outstanding amounts of contribution.

b) In the second case, though the state of facts differed from one case to another, the main dispute was the following: in the period 2006 – 2010 various individuals divided pieces of land into lots which they sold or erected structures which they subsequently sold to third parties (the latter were not defendants in the litigation). All the sales contracts were signed at notary's offices (a necessary condition for the sale/purchase to be valid). They thus obtained income that exceeded the legal threshold past which they had to register as VAT payers so were supposed to collect and submit the corresponding amount of VAT. Starting in 2010 the tax authorities, seeing the sellers' statements of income obtained from transfer of ownership (necessary for the calculation of the corresponding tax), sent a series of tax inspections as part of which they required the notary's offices to release the sales contracts ; among other things those contracts contained personal data on the income obtained from the sale and thus they required the taxpayers to submit the VAT they had, of should have, collected (there was no mention of VAT in the sales contracts nor were any invoices issued), plus additional obligations (interest and delay penalties).

Though such cases mainly required an interpretation of VAT-related tax law (in two situations there was also a CJEU pronouncement following requests for preliminary ruling sent by the Romanian courts, in the connected cases: Tulică and Plavoșin, C-249/12 and C-250/12, ECLI:EU:C:2013:722 and the case Salomie and Oltean, C-183/14, ECLI:EU:C:2015:454), which is besides the interest of this Questionnaire, but in this line the main aspect of interest is collection of personal data by ANAF from notary's offices. In some of the cases the claim was unlawful processing of personal data, in relation too with the CJEU interpretation in the Bara case. The plaintiffs' claims were rejected on the grounds that the situations were dis-

tinct, in that the personal data came, on the one hand, from their own income statements and, on the other hand, from notary's offices as part of a tax inspection and thus before the issuance of the taxation decisions, and the taxpayers also had had the opportunity to ask for such data to be corrected if the situation required it.

5. a) Can a decision-making body in your country rely on information from partners of such national (!) information networks or is it obliged to scrutinize the information itself?

Background: In Case C-503/03 Commission v Kingdom of Spain [2006] the CJEU established an obligation for users of the Schengen Information System (SIS) to take advantage of the so-called SIRENE offices in the system in order to validate sensitive information provided through the SIS. This jurisprudence inspired Art. 25(2) SIS II-Regulation (EC) 1987/2006 and the general draft rule in Art. VI-21 of the ReNEUAL Model Rules.

b) If a decision-making body in your country is obliged to scrutinize information obtained from a national information network, what does this mean in practice? How far does this obligation reach?

Answer
There is no national law that would explicitly regulate the situation in letter a) above, and, based on the information we currently have, nor is there a national jurisprudence where this matter might have occurred as such.

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?

Answer
We can distinguish several situations, depending on the nature of the data or the purpose of the processing:
- the processing of genetic, biometric or health data in order to develop an automated decision-making process or to create profiles is allowed based on the explicit consent of the individual or, if the processing is performed based on specific legal stipulations, with the use of appropriate measures to protect the rights, liberties and legitimate interests of the individual; though there is no specific legal stipulation in this sense we believe that such measures would involve informing the individual, among other things;
- in case monitoring systems are used that employ electronic communication systems and/or video surveillance at the workplace, the processing of employees' personal data in order to achieve the legitimate interests pursued by the employer is permitted only if, among other things, the employer previously performed the obligatory, complete and explicit notification of their employees;
- in the case of personal data being processed by political parties and civic organizations belonging to national minorities or non-government organizations, one of the requirements is to notify the individual concerned;
- when the processing is necessary to achieve the goals of political parties and civic organizations belonging to national minorities or non-government organizations, the processing of data is also allowed without the specific consent of the individual concerned but only on condition of guaranteeing the transparency of information, communication and avenues for the individual's exercising their rights and guaranteeing the right to correction and deletion; though there is no specific legal stipulation to this effect we believe such guarantees involve notification of the individual concerned.

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?

Answer
Though we have not been informed of the existence of litigations where the court denied the notification request from an interested individual concerning the processing of their personal data, we believe that in situations such as those under letter a) the individual is entitled to require the courts to protect their right to be informed.

The typical situation here is that where a third party pursues, based on the law on unrestricted access to public-interest information, access to information that includes personal data that has been processed by a public authority. In such situation, a Decision returned by the High Court of Cassation and Justice as part of the mechanism for achieving uniformity of national judicial practice which is similar to the request for preliminary ruling in the EU and is subsequently mandatory for all national courts, ruled that the first name and the surname of an individual constitute personal data, irrespective of whether in a given situation they are sufficient or not in order to identify the individual; and that in the case of requests for unrestricted access to public-interest information, whenever the public-interest information and the personal data are present in one and the same document, irrespective of the medium, format or manner of expression of that information, access to public-interest information shall be allowed by redacting the personal data; denial of access to public-interest information where personal data has been redacted is not justifiable.

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.

Answer
In the domestic legal order the right to receive compensation for damage suffered in situations such as those describe in the question is governed by the regular law on tort, which basically implies the following rules:
- the entity that is liable is the authority that caused the harm in the way it processed personal data; if the harm was caused by several authorities it is possible to hold them liable for compensations jointly;
- the petitions in court may be also formulated personally against the person having processing the personal data or, as the case may be, who is guilty for the refusal to settle the petition referring to a subjective right, if the payment of compensations for the prejudice caused or for the delay is requested; in case the action is admitted, such person shall be obliged to pay the compensations jointly with the respondent public authority; the person sued may call as a guarantee his superior from whom he received a written order to draw up or not to draw up such act.

Our national law does not include stipulations such as those described in the background to the question (i.e. situations where only national authorities are involved; the mechanisms described in the background seem to mainly match the situations where the authorities involved in the processing are from different EU Member States).

Naturally, when EU law is applicable the right to compensation is governed by Consideration 146 and de Art. 82 in Regulation (EU) 2016/679 of the European Parliament and Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal

data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation; hereinafter GDPR).

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?

Answer
The level of protection of personal data in the Romanian legal order was influenced decisively by EU law, even before Romania jointed the EU in 2007. Thus, before the entry into force of the GDPR, domestic law (2001) was a genuine approximation of Directive 95/46/CE.

Previous to 2001 the level of protection was very basic in civil matters, insufficient for effective protection. Thus in a case where the European Court of Human Rights (ECHR) found a violation of three stipulations of the European Convention on Human Rights (Art. 6, 8 and 13; the Case Rotaru vs Romania), the Romanian courts refused to compel the Romanian Intelligence Service (SRI), owner of the archives of the former national security bodies, to delete a piece of information concerning the personal data of a citizen even though they found the information to be erroneous. In their decision they mainly held that the SRI was not at fault for recording the erroneous information in their documents, since they were simply storing the archives of the former national security bodies. The situation was corrected following a motion to review the final judgment, but only after the ECHR declared the plaintiff's complain admissible. Note here that the stipulations of civil law are insufficient for effective protection in this matter.

At present the protection level arises from GDPR and national law, especially the law on steps for the implementation of GDPR. There is a National Authority for the Supervision of Personal Information Processing which is in charge pf data protection and stipulations are in place instating corrective measures and penalties, while the courts recognize the right to file legal action of an interested individual for the correction of erroneous information or about illegal processing of their data.

However, at the level of special laws the national law does not regulate the right to compensations for harm caused by erroneous or illegal processing pf personal data but sends to the applicable stipulations in the general law (see answer to previous question).

We are not aware of academic or doctrine-based discussions about new legal guarantees or guaranteed better suited to the protection of personal data other than those currently regulated, nor of new legal initiatives targeting this particular matter. The latest legal initiatives in the matter of personal data protection were brought in 2018 and were about: (1) Directive (EU) 2016/680 of the European Parliament and Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by jurisdictional authorities in order to prevent, detect, investigate or prosecute crime or for the service of sentences and on the free movement of such data and to repeal Framework-Decision 2008/977/JHA of the Council and (2) the measures to implement GDPR (both initiatives resulted in the enactment or the respective laws).

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?

Answer
Litigations are numerous where such information exchanges are involved. For instance a search or the word “Schengen” in the database of the Romanian Legal Information Institute (ROLII), accessible to the public at www.rolii.ro, will return 4,496 hits (included will be criminal cases too; note however that the database does not include all judicial decisions). In the matter of administrative law such cases are in the jurisdiction of Tribunals and Courts of Appeals. It is difficult to provide a hierarchy or summary of the principles arising from such cases because they have not led to a need to send a preliminary question at the High Court of Justice (similar to the request for preliminary ruling in the EU).

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.

Answer
Though the number of cases with applicability of Regulation (CE) #1987/2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II) and Decision 2007/533/JHA on the establishment, operation and use of the second generation Schengen Information System (SIS II), and respectively of national law on the status of aliens in Romania, is relatively high, we have not identified judicial practice on the matter described in the question. In other words in the cases we are aware of the actions that led to an alert in SIS II were never challenged so as to lead to additional investigation and validation/invalidation of information.

We believe the matter is dealt with in part by the judicial practice of CJEU and by the legal stipulations mentioned in the first part of the question; as for the details raised by letter b) in the question we believe that the obligation of the requested Member State to immediately consult with the requesting State, via the SIRENE Office and in compliance with the SIRENE Manual, should not go so far as to make the requested State find a situation different from that of the requesting state if the latter maintains their request.

Judgments exist which quoted Case C-503/03 Commission v Kingdom of Spain [2006], but in different lines than those targeted by the question. We have not identified Romanian judicial practice where Art. 25(2) SIS II-Regulation (EC) 1987/2006 was applicable.

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.

Answer
We have not identified Romanian judicial practice in the domain specified by the question.

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).

Answer
We have not identified Romanian judicial criminal practice in the domain of Art. 111(1) of the Convention Implementing the Schengen Agreement or Art. 36 (5) CIS-Regulation 515/97.

Nevertheless there is substantial judicial practice in disputes about Romanian authorities using information received from the European Anti-Fraud Office (OLAF) in administrative acts with an individual character and which create obligations for certain individuals. The Romanian courts have constantly afforded the interested parties the possibility to bring evidence to refute the information in the OLAF reports.