



Bundesverwaltungsgericht

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

Leipzig, Germany

**Answers to questionnaire: Slovakia**



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

**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**

**ANSWER**  
**Supreme Court of the Slovak Republic**

**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.

## **INTRODUCTION:**

The Supreme Court of the Slovak Republic is the highest judicial authority in matters falling within the competence of administrative courts. Within the administrative procedural law, there is administrative procedure and administrative judicial procedure. Public administrative body at first stage (not in meaning as first instance) conducts administrative procedure. Administrative procedure is the procedure of public administrative authorities, parties and other participants, the examination and enforcement of a decision issued in the form of an individual administrative act, in which administrative authorities decide on the specific rights, legitimate interests and duties of the parties. Administrative judicial procedure is the procedure of competent administrative courts in which the court acts and decides on decisions of lawful decision adopted (individual administrative act) by public administrative body in administrative procedure.

Firstly, Supreme Court is appellate court deciding on cassation complaints. Supreme Court as the highest judicial authority in matters of administrative justice also ensures the unity and lawfulness decision-making. Judicial review of legality is based on the findings from the contested administrative decision and from the administrative file in confrontation with the allegations in the action. Since the scope and grounds of the action are binding on the administrative court and the administrative court bases its legal opinion on the facts at issue established by the public administrative authorities, the administrative court generally has a complete set of information on which it should decide.

Supreme Court is the last instance in administrative judicial procedure, so it does not conduct original procedure (with fact-finding, evidence proceeding etc.), but just the review of the previous one (brought by the public administrative body). So the Supreme Court is not "factual" court and do not conduct fact-finding.

Cross border and/or multi-level exchange of information, the use of information systems (networks) with data, the use of shared databases may be up for public administrative bodies conducting administrative procedure at first level. Supreme Court do not use any of such multi systems, just the ones at national level as Commercial Register, Trade Register, and Register of natural persons and all that.

Any national legal order in such area (Administrative cooperation and exchange of information) concern public administrative authorities, for example ministry of finance or ministry of interior as central government bodies.

In May 2013, the Slovak republic became a party to the Convention on Mutual Administrative Assistance in Tax Matters ("the Convention"). The Convention facilitates international co-operation for a better operation of national tax laws, while respecting the fundamental rights of taxpayers. It provides for all possible forms of administrative co-operation between states in

the assessment and collection of taxes. This co-operation ranges from exchange of information, including automatic exchanges, to the recovery of foreign tax claims. The Convention on Mutual Administrative Assistance in Tax Matters is an effective instrument for broad international cooperation in the field of taxation and in combating tax fraud and evasion created in the context of the efforts of the international community, in particular the OECD and the Council of Europe. The most operative form of international cooperation is the exchange of information enabling the tax administrator to obtain data from the tax administrator from another country that are relevant for the purposes of tax administration, or for the purpose of correctly identifying and fixing taxes, ensuring their payment or for the purpose of any criminal proceedings. It contains provisions governing automatic exchange of information, exchange of information upon request and spontaneous exchange, simultaneous tax audits and assistance in the recovery of tax claims.

In October 2014, the Slovak republic also became a party to the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information (the "MCAA"). The MCAA is a multilateral framework agreement that provides a standardised and efficient mechanism to facilitate the automatic exchange of information in accordance with the Standard for Automatic Exchange of Financial Information in Tax Matters. The legal basis for the MCAA (which is agreed at competent authority level) rests in Article 6 of the Convention, which provides for the automatic exchange of information between Parties to the Convention, where two Parties subsequently agree to do so.

In January 2016, the Slovak republic also became a party to the Multilateral Competent Authority Agreement on the Exchange of Country – by – Country Reports.

Considering that the Slovak Republic has committed to automatically exchange information in/as of 2017 and that, in order to be able to automatically exchange information under Article 6 of the Convention in accordance with the timeline to which it has committed, the Slovak Republic has signed a Declaration on joining the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information (hereafter the "CRS MCAA") on 29 October 2014.

Considering that the Slovak Republic intends to start automatically exchanging CbC Reports as of 2018 and that, in order to be able to automatically exchange such information under Article 6 of the Convention, the Slovak Republic has signed a Declaration on joining the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports (hereafter the "CbC MCAA") on 27 January 2016.

## **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.

*We are not aware of the legislation governing the exchange of information at national level.*

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.

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?

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?

*Not yet.*

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.*

*For the purposes of decision-making processes in the Slovak Republic in the case of information exchange through the SIRENE offices on the records in the Schengen Information System, information is normally exchanged between the police and judicial authorities of the countries concerned. The information is essential for decision-making in the matter.*

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?

*For the purposes of the control of persons and things by police authorities, these are compulsorily checked in the Schengen Information System in accordance with the internal regulations of the Ministry of Interior.*

*As regards analysed case C-503/03, the procedure that should be applied by the competent authorities is given by Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, which was transposed in the Slovak Republic by act no. 404/2011 Coll. on the stay of foreigners.*

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?

*In the case of providing information and personal data to other public authorities, the Police Force provides these in accordance with act no. 171/1993 Coll. on the Police Force, if such information is necessary for the performance of their tasks under a special law.*

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?

*A person concerned may exercise his/her right to obtain information on processed personal data. If there is no legal obstacle to the disclosure of the information to the person concerned, such information shall be provided to him or her. These rules are regulated by act no. 18/2018 Coll. on the protection of personal data.*

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.*

*The regulation of this institute in relation to the Schengen Information System is given by the European legal acts on the operation of the Schengen Information System and the Slovak republic applies them directly, so in this case the Slovak Republic is governed by Art. 64 Council Decision 2007/533/JHA on the establishment, operation and use of the second generation Schengen Information System (SIS II) as well as Art. 48 Regulation (EC) No. 1987/2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II).*

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?

*The person concerned has the right under Act no. 18/2018 Coll. on the protection of personal data to provide information about processed personal data, the right to rectify incorrect personal data as well as the right to delete personal data. Furthermore, in accordance with the aforementioned Act, the person concerned has the right to proceedings on the protection of personal data, the purpose of which is to determine whether there has been a breach of the processing of personal data. It is possible to impose remedies or a fine in the proceedings.*

## **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?

*We did not find any available decisions on this issue.*

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 1.5.*

*The National SIRENE Office (as an organizational structure of the Office for International Police Co-operation of the Police Corps Presidium) does not have any information on the existence of a judgment of the judicial authority of the Slovak Republic based on the cited case.*

3. Has your court (or other courts of your country) delivered judgements drawing on a substitutional liability or subrogation mechanism in accordance with Art. 48 SIS II-Regulation (EC)

1987/2006, Art. 116(2) Convention implementing the Schengen Agreement, Art. 40(2), (3) CIS-Regulation 515/97) or similar provisions of EU law?

*Background: see Question I.7.*

*The National SIRENE Office (as an organizational structure of of the Office for International Police Co-operation of the Police Corps Presidium) does not have any information on delivered judgements of national judicial authorities in Slovakia in accordance with Art. 48 SIS II-Regulation (EC) or with Art. 116 (2) Convention.*

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).*