



Bundesverwaltungsgericht

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

Leipzig, Germany

Answers to questionnaire: Sweden



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

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

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.

The Swedish legal order does not establish a mechanism of information exchange similar to structured information mechanisms or shared databases.

In some situations, however, authorities have a duty to provide information to another authority without prior request. All such situations are regulated by law. The following situations are examples of that.

Authorities appointed by the government have an obligation to provide information to another authority to prevent or detect criminal activities that are serious or extensive in nature and are conducted in an organized form or systematically. This obligation exist only when there is a specially decided collaboration between the authorities.

The Swedish Tax Agency have an obligation to report to the Swedish Prosecution Authority as soon as there is reason to believe that crimes under the Tax Offences Act have been committed.

Certain authorities are obliged to notify statutory bodies that decides about certain financial benefits and aid to people if there is reason to assume that a financial benefit has been decided incorrectly.

There are authorities that are obliged to immediately notify the social welfare council, if in their activities they become aware of or suspect that a child is maltreated.

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.

There are no other mechanisms of information exchange in the Swedish legal order where different authorities provide information to each other without prior request.

Usually, authorities hand over information to each other only after a request has been made. In some cases, this process has been simplified by creating digital services that facilitate information exchange. One such example is SSBTEK, composite base service for social welfare. The service works in such a way that a social welfare officer at a social council asks a question via its operating system. SSBTEK receives the call and relays it to the associated authority's base services through technical processing. The authority's base service answers the question asked

and sends its answer back to SSBTEK. SSBTEK compiles received responses to the municipality. This handling is also done through technical processing. The municipality's operating system presents the results to the social welfare officer.

The described service is different from the structured information mechanism described in the ReNEUAL Model Rules since the digital service does not create a workflow allowing authorities to interact with each other but simply facilitates the gathering of information for the social welfare officer.

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?

Before digital services are created that facilitate information exchange between authorities it must be ensured that there are no confidentiality rules that prevent the exchange of information.

In cases where it has been regulated by law that some authorities are obliged to inform another authority in certain situations without prior request, like the situations described earlier, an impact assessment has usually been carried out. For example, the law that provides that certain authorities are obliged to provide information to another authority to prevent or detect criminal activities in some situations, was preceded by an extensive analysis of the balance between efficiency and integrity for the individual.

In the Instrument of Government, which is a part of the Constitution of Sweden, there is a requirement concerning the preparation of the Government's decisions, including decisions to present legislation to parliament. It is stated that in preparing Government decisions the necessary information and opinions shall be obtained from the public authorities concerned. Information and opinions shall be obtained from local authorities as necessary. Organizations and individuals shall also be given an opportunity to express an opinion.

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?

The only advanced information exchange among authorities identified as being similar to the described categories of inter-administrative information management is when authorities have a duty to provide information to another authority without prior request. To our knowledge there is no case law in Sweden regarding this situation.

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?

A decision-making body can usually rely on information from other authorities. If, however there are circumstances in the individual case which causes a reason to doubt the information, it may be relevant to scrutinize the information.

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?

Since there are no rules in the Swedish legal order regarding an obligation to scrutinize information obtained from a national information network we cannot contribute with further information in this matter.

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?

The Swedish legal order does not provide that the person concerned in an automatic exchange of personal data is informed about the exchange.

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?

It is not provided in the Swedish legal order that the person concerned in an exchange of personal data always have a right to be informed of the exchange upon request.

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?

There are no rules in Sweden comparable to those described in the background of the question. There is however a general possibility to make a claim for damages against the state.

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 principle of public access to official records is very strong in Sweden and the principal rule for all documents filed with the authorities are that they are public. When a document is requested, the authority examine, in accordance with the Public Access to Information and Secrecy Act, whether the document can be handed out or not.

Sweden has enacted some rules due to the General Data Protection Regulation concerning, among other things, administrative fees and damages.

Unfortunately, we cannot contribute with further information regarding discussions or recent legislative proposals on this topic.

II. Cross-border and multi-level information sharing and the case law of your court or other courts of your country

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

There are some judgements from the Supreme Administrative Court and the Administrative Courts of Appeal concerning information exchange between Sweden and other European authorities. They all handle questions on secrecy and the Public Access to Information and Secrecy Act and how these rules effect information exchange between countries.

The Supreme Administrative Court, case number RÅ 2006 not 136

Documents received from England were requested to be disclosed by the individual subject to taxation. England had accepted that the documents were disclosed, but considered that an exception should be made for information on the name of the official who acted on behalf of the authority. Since the name of the official already had been disclosed earlier in the process, the Supreme Administrative Court found that the information could not be confidential with regards of Swedish law. However, the information about the official's name could be classified if the information had not been previously disclosed.

The Administrative Courts of Appeal

The Courts have in several judgements pronounced that information about an individual's personal or financial circumstances is not normally of such nature that it could cause Sweden's relations to another country to be disturbed.

The Administrative Court of Appeal in Stockholm has pronounced that disclosure of information on foreign reference numbers would harm Sweden's intergovernmental relations or otherwise damage the country. The information was therefore classified in accordance with the Swedish Public Access to Information and Secrecy Act (case number 2909-14, case number 5-15 and case number 3038-14).

The Administrative Court of Appeal in Jönköping has pronounced that the foreign authority's opinion, on whether the information should be classified or not, cannot be decisive for the judging of whether the information should be classified in accordance with the Swedish Public Access to Information and Secrecy Act. It is Swedish courts and authorities that independently try whether the information can be disclosed or not (case number 3556-16).

We are not aware of any ongoing cases.

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?

Below are two cases from Swedish Courts where the CJEU case C-503/03 has been mentioned.

Migration Court of Appeal, case number MIG 2009:21

The Court found, in the light of the above-mentioned case, that according to chapter 8, section 1 of the Aliens Act, refusal of entry is not mandatory. It is the authority at hand that decides whether to refuse entry to Sweden or not.

The Supreme Court of Sweden, case number B 1310-14

In accordance to above-mentioned case law, rules of expulsion of an EEA citizen must be given a restrictive interpretation. Expulsion may only take place if the citizen's personal conduct constitutes a genuine and sufficiently serious threat affecting one of the basic interests of society and which goes beyond the disruption of the order in society which any violation of law entails. The Court found that the crimes committed by the defendant – theft of goods of low value – cannot be regarded as a real and sufficiently serious threat affecting one of the basic interests of society and which goes beyond the disruption of the system. Nor would it be a proportionate measure in relation to the crime and to the defendant's personal behavior to expel him. Therefore, considering the restrictive interpretation of the rules that applies to expulsion of EEA citizens, the defendant should not be expelled.

Below are two cases from the Swedish Migration Court of Appeal where Art. 25(2) SIS II-Regulation (EC) 1987/2006 is mentioned.

Migration Court of Appeal, case number MIG 2008:25

The court found that it must be confirmed whether a foreigner is registered on the alert list in the Schengen Information System (SIS) before a residence permit is granted.

Migration Court of Appeal, case number MIG 2012:18

Chapter 4 Section 21 of the Aliens Regulation states that - before a residence permit is granted to a foreigner – the Swedish Migration Board shall carry out such consultation as referred to in Article 25 of the Schengen Convention with the state behind the registration of the foreigner on the alert list. According to the same provision a Migration Court and the Migration Court of Appeal may request from the Swedish Migration Board to carry out the stated consultation.

The Migration Court of Appeal found that if there is reason to grant a foreigner a residence permit, but the foreigner is on the alert list, a migration court should not remand the case back to the Migration Board. Instead the court shall request from the Swedish Migration Board to carry out the consultation with the relevant state and await the outcome of that. Thereafter, the court shall consider whether there are obstacles related to Article 25 of the Schengen Convention to grant residence permit and finally rule on the issue of residence permit.

3. Has your court (or other courts of your country) delivered judgements drawing on a substitutional liability or subrogation mechanism in accordance with Art. 48 SIS II-Regulation (EC) 1987/2006, Art. 116(2) Convention implementing the Schengen Agreement, Art. 40(2), (3) CIS-Regulation 515/97) or similar provisions of EU law?

No, not that we are aware of.

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?

See answer in above question I.8.