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

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Answers to questionnaire: Estonia



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ACA-Colloquium

ReNEUAL II – Administrative Law in the European Union

Administrative Information Management in the Digital Age

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Bundesverwaltungsgericht (Federal Administrative Court), Leipzig

Answers to the Questionnaire

Supreme Court of Estonia

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.

In Estonia, a large number of databases are implemented in virtually all fields of public administration that could fall under the definition of a shared database according to ReNEUAL Book VI. What is more, the processes of gathering information into these databases may be seen to fall under the definition of a duty to inform according to ReNEUAL Book VI.

Chapter 5¹ of the Public Information Act¹ titled „Databases“ provides the general rules for the establishment of databases within the information system of the state, local government or other person in public law or person in private law performing public duties. According to section 43³ of the Public Information Act, a database is established on the basis of a law or other legislation issued on the basis thereof, following the conditions of obtaining the approval of the Estonian Information System's Authority and the Data Protection Inspectorate. All databases are described in their statutes. Pursuant to section 43⁵ of the Public Information Act, the statute of a database provides the procedure for maintaining the database, including the controller (administrator) and/or processor of the database, the composition of the data collected, the persons submitting data (providing the information) and other organisational matters related to the keeping of the database. These statutes also touch upon how the data can be used by other parties.

¹ In English: <https://www.riigiteataja.ee/en/eli/529032019012/consolide>.

All databases are registered in the administration system of the state information system. As of December 2019, this administration system contains more than 2,560 information systems in different stages of establishment, registration and development belonging to the state, local governments or other organisations. It should be noted that the administration system also contains information systems that do not fulfil the requirements of a database, standard solutions for information systems and other services, some of them already redundant.

The unified layer used to exchange data between the databases is called X-tee² and was established by a regulation of the Government of the Republic “Data Exchange Layer of Information Systems”³. In order to become a member of X-tee and enjoy the possibility of data exchange, a database has to be registered in the previously mentioned administration system of the state information system. There, the members of X-tee describe the data they share and other members can use that data based on an agreement. To guarantee the security of the data exchange, X-tee employs authentication, multi-level authorisation, a high-level system for processing logs, and data traffic that is encrypted and signed. In addition, the X-Road⁴ software solution based on X-tee is implemented in Finland, Kyrgyzstan, Faroe Islands, Iceland, Japan and other countries. Two X-Road systems can also be joined together to enable cross-border data exchange, as it has been done between Estonia and Finland since 2018.

As one of the most substantial databases in Estonia, the Population Register⁵ contains the main personal data of Estonian citizens and residents provided mainly by local governments, courts, the Police and Border Guard Board and other state agencies: name, sex, birth data, data on citizenship and residence, contact details, marital status, underage children, etc. State and local government agencies and legal and natural persons can access this information for performing public duties or in case of legitimate interest. The composition of the data in the register, the procedure for its maintenance, the entry and the processing of data as well as access to data and the exercise of supervision over such activities are provided in the Population Register Act⁶.

As another example, the e-Land Register⁷ is a web application that contains information on all ownership relations and limited real rights for properties and land parcels, containing over 1 million immovables. Chapter 10¹ of the Land Register Act⁸ defines and describes the electronic land register. It may be of interest that according to section 73¹³ of the Land Register Act, the land registry department retrieves the information in the land cadastre necessary for the maintenance of the land register and vice versa, without the requirement of a permission or agreement for the retrieval of such information.

Large-scale databases shared among Estonian administrative authorities also include the Traffic Register⁹, a database established by the Government of the Republic for the purpose of

² <https://www.ria.ee/en/state-information-system/x-tee.html>.

³ Only in Estonian: <https://www.riigiteataja.ee/akt/127092016004?leiaKehtiv>.

⁴ <https://e-estonia.com/solutions/interoperability-services/x-road/>.

⁵ <https://www.siseministeerium.ee/en/population-register>.

⁶ In English: <https://www.riigiteataja.ee/en/eli/522032019005/consolide>.

⁷ <https://www.rik.ee/en/e-land-register>.

⁸ In English: <https://www.riigiteataja.ee/en/eli/525032019009/consolide>.

⁹ <https://eteenindus.mnt.ee/main.jsf>.

maintaining records on vehicles, small ships and personal watercraft, driving licences and other documents certifying the right to drive, etc., provided for in sections 173–184 of the Traffic Act¹⁰, and the Register of Construction Works¹¹ that stores, provides and disseminates information regarding envisaged construction works, construction works that are being built, existing construction works, and the proceedings related to these. According to subsection 61 (1) of the Building Code¹², the information stored in the register of construction works has only informational and statistical significance.

In the field of health, education and social security, the Health Information System¹³, the Estonian Education Information System¹⁴ and the Social Security Information System¹⁵ are used. The statutes of these databases also specify several obligations to provide information for the database. Namely, for example for the Social Security Information System, the Population Register has a duty to provide the general data about a person needed for providing the person with necessary services; the Estonian Education Information System is required to provide the relevant data about persons' education level; the Register of taxable persons provides information concerning the persons' tax affairs, etc.

For an individual user, the necessary databases are available via eesti.ee, the gateway to the government information and e-services where citizens can view their personal information, use state e-services and read the messages sent by the government. This guarantees that all persons have up-to-date information concerning their data collected and stored in the state information systems, as well as an opportunity to view which administrative bodies or other stakeholders may have accessed their data.

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.

For example, the Draft Acts Information System (EIS)¹⁶ is a working environment where the coordination of documents between institutions takes place and where documents are submitted to the Government and the Parliament. This information system is designed to facilitate the process of participating in the process of legislative drafting and giving approval to draft acts. Also, the public consultation over documents takes place in EIS. In addition to national documents, the draft legislation of the EU and other documents related to the decision-making process of the EU are accessible via EIS.

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?

¹⁰ In English: <https://www.riigiteataja.ee/en/eli/525032019002/consolide>.

¹¹ <https://www.ehr.ee/app/esileht?0>.

¹² In English: <https://www.riigiteataja.ee/en/eli/529082019021/consolide>.

¹³ <https://www.digilugu.ee/login;jsessionid=85CD1F639206EE4726322D0728633637?locale=en>.

¹⁴ <http://www.ehis.ee/>.

¹⁵ <https://iseteenindus.sotsiaalkindlustusamet.ee/dashboard/portal/login?url=%2Fdashboard%2Fportal>.

¹⁶ <http://eelnoud.valitsus.ee/main#zLV5EWRf>.

As a database is established on the basis of a law or other legislation issued on the basis thereof, the general rules of carrying out an impact assessment as a part of legislative drafting apply. According to the Rules for Good Legislative Practice and Legislative Drafting¹⁷, an impact assessment is appended to the explanatory memorandum of the draft act if the implementation of the act presumably causes significant impact. The government authority drafting an act assesses its impact on interest groups and the society as a whole according to the Impact Assessment Guidelines¹⁸ compiled by the Ministry of Justice and the Government Office of the Republic of Estonia.

Furthermore, subsection 43³ (3) of the Public Information Act provides that before the establishment of a database or changing the composition of the data collected in a database, introducing a database or terminating a database, the technical documentation of the database shall be approved by the Ministry of Economic Affairs and Communications, the Data Protection Inspectorate and the Statistics Estonia. During this procedure, the impact of the planned information exchange is thoroughly evaluated.

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 the most important cases or principles established in this case law?

There have not been many disputes concerning this topic. However, there have been a few cases in recent years where the use by one administrative authority of information entered into a database by another administrative authority was among the central issues.

In its judgment of 20.04.2018 no. 3-15-443/54¹⁹, the Administrative Law Chamber of the Supreme Court of Estonia dealt with a dispute concerning the state supervision by the Veterinary and Food Board (VFB) over the activities of a farm raising livestock. As the VFB discovered several infringements, in addition to precepts that ordered the farm to correct these issues, it also entered information on these infringements into a database established on the basis of an agreement between the VFB and the Agricultural Registers and Information Board (ARIB). The purpose of this information exchange was the implementation of Art 1 (1) and Annex I (1)(C) of Commission Regulation (EC) No. 885/2006 and Art 2 of Commission Regulation (EC) No. 884/2006 which allowed paying agencies for EAFRD and EAGF (in this case, the ARIB) to delegate their tasks to another body (in this case, the VFB) on the basis of a written agreement which must specify, i.a., the nature of the information and the supporting documents to be submitted to the agency. On the basis of this information, the ARIB could (and did) lower the sums of agricultural aid paid to the farm. The Supreme Court took the position that this information exchange was internal to the administration and the information provided by the VFB was not binding for the ARIB – the farm could contest the VFB’s findings in the procedure conducted by the ARIB. However, since this information could be used as evidence of the farm’s infringements by the ARIB which did not have

¹⁷ In English: <https://www.riigiteataja.ee/en/eli/508012015003/consolide>.

¹⁸ Only in Estonian: https://www.riigikantselei.ee/sites/default/files/content-editors/Failid/mhm_03-12-12.pdf.

¹⁹ <https://www.riigikohus.ee/et/lahendid?asjaNr=3-15-443/54> (all judgments available only in Estonian).

an obligation to perform its own additional on-the-spot checks, the Supreme Court found that the farm could dispute the information forwarding activities of the VFB in administrative court (together with the precept on which this information was based).

In the case decided by the Supreme Court with judgment of 07.06.2018 no. 3-16-586/29²⁰, a person turned to the court because the Road Administration (RA) had not immediately registered his ownership of a vehicle, but instead had told him that it would need to forward the information concerning the registration to the Tax and Customs Board (TCB). In reaction to this, the TCB had demanded additional documents from the applicant as well as third persons to prove the applicant's ownership of the vehicle. As part of a cooperation agreement between the RA and the TCB, this lengthened the time of the RA registration procedure. Later, the applicant was allowed to register his vehicle, but an informational notice was added to the vehicle's registration data in the internal database of the RA. Part of the dispute did not reach a solution due to issues of standing based on national procedural rules. Among the topics that did, the Supreme Court discussed the question whether it was illegal that the TCB asked for information on ownership of the vehicle from third persons. The RA and the TCB had an agreement according to which officials of the TCB were entitled to ask for information from vehicle owners that was necessary for the registration of the vehicle. The Supreme Court considered it an agreement specifying the conditions of professional assistance between administrative authorities. According to the Supreme Court, administrative assistance by the TCB for the RA could be justified for example in cases where the question was whether the required taxes and fees had been paid for the vehicle. However, asking for information on ownership of the vehicle from third parties was not necessary for this purpose, as it was the applicant's obligation to provide this information, so the Supreme Court considered this activity illegal.

In the Supreme Court judgment of 27.06.2018 no. 3-15-2595/42²¹, the dispute concerned payment of child allowance in a case where the children's parents lived separately, but had shared custody over the children. There were no rules in the law for a situation where the children lived with both parents at the same time. Since there was no agreement between the parents on who was entitled to the child allowance, the Social Insurance Board had relied on the data of the Population Register to confirm the residence of the children (the deciding factor for child allowance). The Supreme Court stated that the Board could not rely on the data of the Population Register, since this register only had legal effect if provided by law, which was not the case here.

In addition, the Supreme Court found in the judgment of 26.03.2019 no. 3-14-52261/59²² that the person responsible for the entry of data in the Register of Construction Works is also responsible for the rectification of this data, not the person whose rights are infringed by this data. The local government has the right to submit the data to the register and thus has the right to rectify data on construction works without the notice of the owner. Although the Register on Construction Works has no legal value and its entries do not change the ownership, the data in this public register must be correct, accurate, up-to-date and clear, found the Court.

²⁰ <https://www.riigikohus.ee/et/lahendid?asjaNr=3-16-586/29>.

²¹ <https://www.riigikohus.ee/et/lahendid?asjaNr=3-15-2595/42>.

²² <https://www.riigikohus.ee/et/lahendid?asjaNr=3-14-52261/59>.

In the Tallinn Circuit Court judgment of 26.09.2018 no. 3-17-2685/15²³, the court ruled that even if the TCB enters wrong data (e.g. about the sum of social tax paid) into the Social Protection Information System, the National Social Insurance Board (NSIB) may base its decision on the rate of parental benefit solely upon this data. The TCB is responsible for the accuracy of data on taxes entered into this system and is thus entitled to correct the wrong data. The NSIB has no such rights and it may only contact the TCB when having suspicions about the accuracy of data. If the TCB confirms the accuracy of data, the NSIB has no ground upon which to base its decision other than the data appearing in the Social Protection Information System.

In short, the courts of first and second instance (i.e. administrative courts and circuit courts) have in recent years also judged upon a case concerning a private company leasing parking lots applying for access to the data in the Motor Register (Tallinn Circuit Court judgment of 20.09.2018 no. 3-17-321/36²⁴) and also upon a prisoner's right to release of data entered in his personal register (Tartu Administrative Court judgment of 27.09.2019 no. 3-19-546/11²⁵). Also, a couple of cases have concerned the misuse of the internal database of the Police and Border Guard Board by police officers (see Tartu Administrative Court judgment of 10.09.2019 no. 3-18-1454/15²⁶ and the Supreme Court judgment of 30.04.2019 no. 3-16-2498/30²⁷).

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?

This depends on the nature of the data and the specific regulation. For example, according to subsection 43⁶ (4) of the Public Information Act, data is given legal effect by law. Section 43⁶ further provides that *basic data* is the unique data collected in a database belonging to the state information system created in the process of performance of the public duties of the administrator of the database, and that the processing of data collected as basic data by another database must be based on the basic data of the other database.

For example, according to section 6 of the Population Register Act, the data entered in the population register is presumed correct, and the performance of public duties is based on the basic data entered in the population register. Similarly, according to subsection 56 (1) of the Law of Property Act²⁸, the information entered in the land register is presumed correct.

Thus, it is specified in laws (or other legislation issued on the basis thereof, for example a regulation of the Government of the Republic, as is the case for the National Place Names Register²⁹) which data of the database is given legal effect in specific decision-making procedures. In these cases, the decision-making bodies are not obliged to scrutinize the information themselves. However, as exemplified by the case law referred to in question 4, if there

²³ <https://www.riigiteataja.ee/kohtulahendid/detailid.html?id=234592154>.

²⁴ <https://www.riigiteataja.ee/kohtulahendid/detailid.html?id=234255848>.

²⁵ <https://www.riigiteataja.ee/kohtulahendid/detailid.html?id=256769648>.

²⁶ <https://www.riigiteataja.ee/kohtulahendid/detailid.html?id=255786490>.

²⁷ <https://www.riigikohus.ee/et/lahendid?asjaNr=3-16-2498/30>.

²⁸ In English: <https://www.riigiteataja.ee/en/eli/529082019011/consolide>.

²⁹ <http://xgis.maaamet.ee/knravalik/knr>.

is no provision on the binding effect of the data, the presumption is that the public authority must check the validity of the data itself.

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

As the Supreme Court explained in judgment no. 3-15-443/54 (see above in question 4), if the data is not binding, it can still be used as evidence, but the applicant may contest the data by providing information of his/her own. However, the Supreme Court's judgment no. 3-15-2595/42 (see above in question 4) shows that sometimes, the administrative authority also has a duty to investigate the issue itself. The difference might be related to the fact that in the former case, the information was specifically meant for the authority, while in the latter, the authority had been relying on general data not collected for the purpose of this authority's functions. However, there is no generalised case law of the Supreme Court on this issue.

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 data is exchanged between databases via X-tee, the unified layer used to exchange data between the Estonian information systems and there is no additional information mechanism for the persons concerned in place. The legal basis of any data exchange is set out in the acts concerning the specific databases and can generally take place either by permanent access to the data by a processor or on a contractual basis.

The persons concerned can view which administrative bodies or other stakeholders have accessed their personal data via eesti.ee, the gateway to the government information and e-services.

In the case of processing of personal data, the conditions of the Personal Data Protection Act³⁰ apply. For example, according to subsection 24 (1) of this act, data subjects have the right to obtain a confirmation from the processor of processing of their personal data, and at the request of the data subject, the processor of personal data shall communicate the relevant information to the data subject.

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?

No specific right is provided in the case of transfer of personal data. Naturally, persons' enforceable rights to be informed exist if personal data is processed (see answer a)).

³⁰ In English: <https://www.riigiteataja.ee/en/eli/523012019001/consolide>.

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?

As a general rule, the State Liability Act³¹ provides the bases of and procedure for the protection and restoration of rights violated upon the exercise of powers of a public authority and performance of other public duties and compensation for damage caused. According to subsection 12 (1) of this act, the public authority whose activities caused damage is required to compensate the injured party for the damage.

Specific provisions can also be found in the legal acts concerning specific databases. For example, since 2009, the land register has been fully electronic, and according to section 79⁵ of the Land Register Act, the state is liable for damage relating to transfer to an electronic land register which arises from errors in maintenance of the land register, in automated data processing or in the data processing equipment.

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?

According to section 25 of the Personal Data Protection Act, data subjects have the following rights:

- 1) the right to demand from the processor rectification of any inaccurate personal data based on facts concerning the data subject;
- 2) the right to request from the controller erasure of any incomplete personal data concerning the data subject if this is appropriate in light of the purpose of processing of personal data;
- 3) the right to demand from the controller erasure of the personal data collected if the processing of personal data is not permitted pursuant to law, the principles of processing of personal data were not taken into account upon processing of the personal data, or the controller is obliged to erase the data in order to comply with any obligations under the law, judgment, international agreement or other binding agreements.

The controller shall restrict processing of personal data instead of erasing, if the data subject contests the accuracy of the personal data and the accuracy or inaccuracy thereof cannot be ascertained, or the personal data must be retained for verification purposes (subsection 25 (4) of the Personal Data Protection Act). The controller must notify the data subject and give reasons for refusal to do any of the above (subsections 25 (5) and (6) of the Personal Data Protection Act). This can be disputed by turning either to the Data Protection Inspectorate or to court.

In a case where a person turned to the administrative court due to what that person claimed was incorrect information in the Register of Construction Works, the Supreme Court has stated that authority who entered the information into the register was responsible for the correction of

³¹ In English: <https://www.riigiteataja.ee/en/eli/507062016001/consolide>.

inaccurate data, not the person whose rights were infringed upon - so that meant the person had standing in administrative court (judgment of 26.03.2019 no. 3-14-52261/59, p 11).

The overarching principle behind X-tee is that, to burden a person less, information is only asked from him/her once, and afterwards, all administrative authorities can reuse the data through X-tee. Of course, this is always restricted by what is necessary for the exercise of the functions of the authority. While this certainly makes it more difficult for the person to guard his/her data, the person still has both the right to be informed of the processing of his/her personal data (see answer to question 6) and the right to demand from the processor rectification of any inaccurate personal data, erasure of any incomplete personal data or erasure of data collected illegally (section 25 of the Personal Data Protection Act). In practice, there exists quite thorough internal supervision over the processing of data by officials and employees of public authorities, and there have been many cases where such officials or employees have been released from service/employment due to illegal use of databases. In addition, the Data Protection Inspectorate has administrative supervisory powers in this area (sections 56 and 59 of the Personal Data Protection Act). Illegal collection, viewing, reading, use of personal data, enabling access thereto or making inquiries or extracts thereof is also punishable as a misdemeanour or, under special circumstances, even imprisonment of up to one year (section 71 of the Personal Data Protection Act, sections 157 and 157¹ of the Penal Code³²).

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 the most important cases or principles established in this case law?

No, there are neither judgments nor ongoing cases that concern these mechanisms.

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?

No.

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.

³² In English: <https://www.riigiteataja.ee/en/eli/516052019002/consolide>.

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?

Apart from general rules concerning data protection, there does not seem to be any new or specific legal safeguards in force. Nevertheless, it may be of interest that in the light of developing public e-services, in May 2019, an expert group led by the Ministry of Economic Affairs and Communications and the Government Office presented proposals on advancing the take-up of artificial intelligence in Estonia. Estonia's national artificial intelligence strategy 2019-2021³³ also includes several measures and activities concerning the development of data governance tools and the development of legal space needed for the adoption of a new kind of services. According to the expert group³⁴, there is no need for substantial changes in the basics of the legal system, but for the sake of legal clarity, it should be ensured that when exercising public powers or performing other public tasks, the actions of an AI will be attributed to the state through the company or body that used the AI in the meaning of state liability. According to the strategy, a draft legislation should be submitted to the Parliament in June 2020.

³³ In English: https://f98cc689-5814-47ec-86b3-db505a7c3978.filesusr.com/ugd/7df26f_27a618cb80a648c38be427194affa2f3.pdf.

³⁴ <https://www.kratid.ee/in-english>.