

RECENT DEVELOPMENTS IN THE TRANSNATIONAL INFORMATION EXCHANGE BETWEEN LAW-ENFORCEMENT AUTHORITIES IN THE EU: THE INTRODUCTION AND IMPLEMENTATION OF THE PRINCIPLE OF AVAILABILITY

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SUMMARY

The exploitation of personal information as one of the most effective and advantageous means for the implementation of the political and operational activities falling within the realm of the former Title VI of the TEU is far from being a novelty to the European state of affairs. In this respect, the joint database of the Schengen Information System, one of the most significant countervailing measures against the abolition of EU's internal borders, established by art. 92 of the 1990 Convention Implementing the Schengen Agreement, as well as the, initially set up in 1995, computerized system of collected information which is maintained by Europol, bear clear testimony to the diachronic recognition of the free circulation of personal data as a key tool for the enhancement of police and judicial cooperation in criminal matters, including the transnational cooperation through the EU's coordinating institutions and networks of penal repression. In turn, the said cooperation is steadily perceived as a major prerequisite for the progressive establishment of a European security area, as it is highlighted, among others, in the Presidency Conclusions of the Tampere European Council.

In recent years, however, the terms under which the establishment of the aforementioned space is being promoted and, by extension, the conditions under which the citizens' supply with a high level of internal security within the EU's area of freedom, security and justice is being ventured seem to have undergone a substantial alteration. The latter is illustrated, among others, by the intensification, with a remarkable speed and in an exponentially growing number, of EU concerted law and policy-making efforts towards the expansion of law enforcement authorities' access to an ever increasing volume of personal data on the one hand, as well as towards the abolition of the existent institutional impediments hampering the third pillar cooperation in data exchange, on the other.

Amidst this multitude of security-enhancing policies which compound a series of data protection concerns, defying thus EU's role as a staunch defender of human rights, a groundbreaking development has been the introduction of the principle of availability by the Hague Program in 2004, as the guiding principle for information flows within the European Union. The purpose of the present contribution shall be to shed some light onto the said overarching and yet highly controversial principle. To this end and by narrowing the focus of enquiry onto the historic background preceding the official adoption of the said principle, the first part shall seek to segregate the particulars

comprising the all-encompassing notion of availability, especially vis-à-vis its' conceptual overlap with the notion of equivalent access. Following this brief notional clarification, the emphasis will then shift to the presentation and analysis of the three keynote legal instruments whose promotion was associated, in the relevant discourse and to varying degrees in each case, with the implementation of the availability principle; namely the so-called Swedish initiative, the Prüm Treaty and the Commission Proposal for a Council Framework Decision on the exchange of information under the principle of availability. Drawing upon the critical assessment and interpretative evaluation of the said initiatives, some more concrete insights are intended to be gleaned, by way of conclusion, into the future prospects of the availability principle as well as its' contribution to the construction of EU's internal security architecture in the post-Stockholm era.