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Linked National Public Authorities – a Study on IMI

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MEMBER STATES AND EUROPEAN INTEGRATION

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Preface

In order to ensure the free movement of goods, capital, services and people in the European Union there is a constant development of common rules and standards. A proper functioning of the internal market is, however, also dependent on the correct application of these common rules and standards in the Member States. Furthermore, cooperation and mutual assistance between the authorities in different Member States is essential if the common rules and standards are to be effective.

Digitalization opens up new and more efficient ways for cooperation and, as a result, the authorities in the Member States are brought more closely together. The digitalization process, however, raises questions relating to the absence of a common administrative law culture in the EU. One such question is whether the new tools for administrative cooperation could jeopardize legal certainty and privacy.

In this report the author analyses the development of the Internal Market Information (IMI) system from a legal perspective. The purposes of the IMI system include helping the competent authorities in the Member States to identify their counterparts in other Member States, managing the exchange of information, including personal data, on the basis of unified procedures, and overcoming language barriers. The report highlights some legal challenges that arise from the more interlinked administrative structures in the EU Member States, and that are reflected in, for example, the IMI Regulation.

It is my hope that this report will provide some fruitful legal knowledge for further discussions on e-government and all the possible solutions that digitalization will offer us in the future.

Eva Sjögren
Director

About the author

Gustaf Wall is a Researcher at the Department of Law, Uppsala University. His research and teaching interests lies in general administrative law and administrative procedural law, including European and Constitutional perspectives. In 2014 he defended his doctoral dissertation on the principle of Res Judicata in administrative law.

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Executive summary

For an effective internal market it is crucial to give EU and Member States institutions and authorities the right tools for cooperation and mutual assistance, including the exchange of information. The encouragement and obligation to cooperate has in many ways, been simplified and improved by technological developments, not at least by the use of databases and information management systems. This report examines the Internal Market Information System (IMI) introduced in 2004 and laid down in 2012 in Regulation (EU) 1024/2012. IMI is now used in eight different policy areas,[1] and will most likely expand into new areas in the future. IMI facilitates the functioning of the internal market, and can be described as a new tool in the modern information technology society.

With IMI as an example, the aim of this report is to expose how authorities link together in various fields and how new forms of administrative cooperation may be established. Such cooperation may take other forms than domestic similarities that might be shared by the Member States and yet also entail deviations from the national administrative law and principles. This report deals specifically with IMI and its potential shortcomings as a legal phenomenon. What legal issues may the IMI system give cause to, and what benefits are there to gain? An overall question could be if the system, and similar systems, is appropriate in the absence of general administrative legislation at the EU level. Or, in other words, is it appropriate to simplify the administrative cooperation under IMI, and is it possible to do so without jeopardizing legal certainty and privacy?

IMI does not in itself create obligations to cooperate or to provide mutual assistance between authorities. Nevertheless, several of the acts to which IMI is connected require mutual assistance and the exchange of information. The aim of IMI is instead to provide an effective tool for facilitating such administrative cooperation. There are still certain provisions in the IMI Regulation calling for some type of collaboration when public bodies come into contact with each other via IMI and the legislative acts connected. At a general level, this report discusses the obligations for administrative cooperation in the EU. It is necessary to emphasize both the obligations and the encouragements arising from this European cooperation. It is also important to point out that cooperation, for the most part, is rather essential to administrative procedures. Where a unified structure exists at the national level, this latter assertion is nothing less than an undisputable statement. The EU, however, lacks uniform regulation regarding administrative procedures and there is no fixed common structure for administration or administrative cooperation. Instead, information management

[1] Services, Professional qualifications, Posting of workers, Euro-cash transportation, Patient's rights, E-commerce, Public procurement and the Return of unlawfully removed cultural objects.

systems and informal networks for cooperation have become increasingly commonplace within various policy areas of the internal market.

There are several advantages of the IMI system, the primary of these being the ability to streamline and simplify the exchange of information between competent authorities connected to IMI. The application of certain European Union acts within the internal market area requires that authorities cooperate and exchange information. As the EU expands, it has become more urgent to eliminate obstacles for an effective and functioning internal market. Difficulties finding the right authority in the Member States, language barriers and the lack of established common working techniques are examples of problems which could be effectively removed via the use of IMI.

This report also examines the IMI Regulation and its background. The Regulation is based on six chapters (including the general provisions) and the report primarily discusses the functions, responsibilities, information management, security, rights of data subjects and supervision. To put the IMI system in a wider comparative perspective, three other systems or informal information networks for information management are highlighted: EESSI, SOLVIT and the PPN.[2] These systems contain both similarities and differences and provide a snapshot of the heterogeneity circumscribing information management within EU. In connection to this, certain objections on IMI from the European Data Protection Supervisor (EDPS) are presented along with the potential for development this information system still has.

Finally, the report deals with information management and exchange of information from a general administrative law perspective, focusing on data protection, publicity vis-á-vis secrecy and general rules for the administrative procedure such as the obligation to investigate and rapid handling of administrative matters. Based on these general perspectives, the report concludes with an inventory of potential problems of IMI from a Swedish perspective.

IMI brings together many important components of administrative cooperation into one information management unit and interlinks authorities in cross-border internal market matters or affairs. It leads from plurality to uniformity. Hence, IMI theoretically appears to be an effective and ideal system for joint informational cooperation but it also gives rise to specific legal questions on a Member State level. An overall assumption is that IMI and its potential development in the future may put the EU a step closer to a common European Administrative Procedure Act. Although IMI does not require an obligation to cooperate, the system is prepared and built around the fact that the EU is expanding its requirements for national authorities and the EU institutions

[2] EESSI (Electronic Exchange of Social Security Information), SOLVIT (Solutions to problems with your EU rights), PPN (Public Procurement Network).

to work together and mutually assist each other. For this purpose, IMI could potentially become the only common network of information management linking various EU authorities together.

1 Introduction

There are a lot of different forms of information management and of cooperation. This report discusses both of these issues. As the EU becomes more and more relevant and integrated into the national process and administration, the need for information networks and systems continues to grow. One such relatively new system is the Internal Market Information System (IMI),[3] which aims to facilitate the gathering and exchange of information in order to maintain effective functioning of the internal market. The purpose of IMI is to abolish limitations on free movement, such as language barriers. It also enables mutual assistance between member state authorities. Informational mutual assistance can be described as 'support by a requested authority to a task which, by law is assigned to the requesting authority.'[4] It has been reported how increased procedural integration of administrations is achieved through shared implementation of 'composite' decision-making procedures, that one key instrument for such decision-making is joint gathering of information through information exchange networks or systems, and that those systems have become the default approach and an important foundation for the ongoing European integration process.[5] IMI plays a new and important role for this matter and for the effective functioning of the internal market.

Integrated or composite European administration is, a bit simplified, often used to conceptualize these processes involving the European Union institutions, the Member States and their public bodies both vertically and horizontally.[6] In this report, the concept 'linked national public authorities' will be used to describe transboundary cooperation between authorities, especially with regard to their obligation in the internal market legislation to exchange information. Hence, this report has an internal market perspective with IMI in focus and the analysis of the obligations of mutual assistance and exchange of information is delimitated to these issues.

The purpose of this report is to highlight and describe the IMI system and how it creates new forms of administrative collaboration, thereby increasingly

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[3] 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').

[4] See Schneider, J.P., *Basic Structures of Information Management in the European Administrative Union*, EPL, 2014 pp. 89-90.

[5] Galetta, D.-U., Hofmann, H. C. H. & Schneider, J.P., *Information Exchange in the European Administrative Union: An Introduction*, EPL 2014, pp. 66-68.

[6] See for example Schmidt-Aßmann, E., *Administrative Law in Europe: Between Common Principles and National Traditions*, pp. 8-11. See also Galetta, D.-U., Hofmann, H. C. H. & Schneider, J.-P., *Information Exchange in the European Administrative Union,* supra note 5, pp. 66-67.

linking authorities together within the EU. This report has an administrative law perspective and it will therefore more specifically examine the legal conditions and implications of IMI. In this context, the report will analyse administrative law aspects such as information management and cooperation in a broad sense, the authorities' obligation to investigate matters before taking a decision, and access to information and documents. Along with this follows a focus on classic issues such as legal certainty and personal integrity for individuals. Even if IMI has been positively welcomed by many authorities,[7] discussion is merited and this report will hopefully shed light on its potential shortcomings or complications. This analysis therefore delves into the issues of what legal problems may arise within the framework of IMI and what the potential benefits may be. An overall question is to what extent IMI and other information systems might be opportune in the absence of general administrative legislation at the EU level.

The report is structured as follows. First, there will be a general discussion regarding the objectives of cooperation and mutual assistance in administrative law. This includes discussions on both the obligations and encouragements to cooperate prescribed in EU law (treaties and secondary legislation) and national law (section 2). Thereafter, the IMI system and the IMI Regulation are analysed with the legal and technical conditions in focus. In this section, the opinion of the European Data Protection Supervisor regarding IMI and the possible expansion of the system are discussed (section 3). IMI also raises several questions on how the exchange of information might affect such aspects as data protection, transparency, and the duty to investigate, here addressed from a general administrative point of view (section 4). Lastly, the report concludes with some general thoughts and conclusions summarizing the outcomes of the discussions.

[7] See for example Com (2011) 522 and Opinions EDPS, 2012/C 48/02. See also the European Commission, *All User Survey 2015. Summary of Results*, 14/09/2015, at: http://ec.europa.eu/internal_ market/imi-net/ index_en.htm.

2 Administrative cooperation from a general point of view

As in most legal systems, cooperation between authorities is extremely beneficial in attaining rapid and secure handling of administrative matters. In fact, an isolated procedure without support and mutual assistance may lead to losses for individuals and legal insecurity in general. Support between authorities in the exercise of administrative tasks within the scope of EU law is, according to Hofmann et al., an under-researched element of EU administrative law. The authors point out that mutual assistance takes place when an authority in a Member State or on a level of the EU requests administrative support from an authority which is located in a different EU jurisdiction acting in the scope of EU law.[8] In this report, which focuses on the Internal Market Information System, mutual assistance and cooperation in administrative procedure will be of certain significance. IMI does not in itself impose an obligation to cooperate, but is rather a tool for effective cooperation. Although this report will focus on IMI as a tool, it is also relevant to discuss administrative cooperation from a general point of view. The IMI sidesteps more traditional forms of administrative cooperation and with that comes specific issues and maybe some problems.[9]

When talking about cooperation or administrative cooperation, one must be aware of its wide interpretation. At a national level, authorities could be obliged to cooperate with each other in order to make correct and lawful decisions. Administrative cooperation often involves the exchange of information, either through classic exchange of documents and other forms of written information or through modern exchange of data information and the use of databases. Information can also be transmitted orally for the purpose of cooperation between authorities. This could be regarded as cooperation in the narrower domestic perspective between national public bodies. Traditionally, administrative law has been regarded as closely connected to the nation state and state sovereignty. The principle of territoriality and the administration's main task to implement policies enacted by the national legislator play important roles in this respect.[10] However, alongside the domestic perspective, administrative cooperation can

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[8] Hofmann, H. C. H., Schneider, J.-P. & Ziller, J., *The Research Network on European Law's Project on EU Administrative Procedure*, Review of European Administrative Law, 2014:2 p. 60.

[9] See below section 4.

[10] Reichel, J., Transparency in EU Research Governance? A Case Study on Cross-border Biobanking, in Lind, A.-S., Reichel, J. & Österdahl, I. (eds.), *Information and Law in Transition – Freedom of Speech, the Internet and Democracy in the 21st Century* pp. 354-355.

also, to a wider extent, take place at both the European and international levels and involve multiple institutions, organizations and networks.[11]

According to Schmidt-Aßmann, cooperation fulfils several tasks in EU law where its major function is to provide the relevant national administration with the necessary information (informational cooperation). Additionally, to fulfil the duties of informational cooperation, relevant procedures must be available (procedural cooperation). Lastly, he ascertains that cooperation can also be carried out by agencies set out for that purpose (institutional cooperation), such as management boards and the comitology system. Schmidt-Aßmann describes European administration 'as a network of administration on data exchange, decision-making and control.'[12] For the purpose of this report, cooperation through data exchange will be the main object of examination. But of course there are numerous and diverse criteria for administrative cooperation. It is therefore rather difficult to divide the obligation to cooperate and mutual assistance into well-defined categories. The 'pure essence' of administrative cooperation does not in itself require a specific type of definition, but rather holds that public agencies should assist each other as far as possible, with the scope and limitations of the relevant legislation taken into consideration.

The rationales for mutual assistance or joint cooperation could mainly be regarded as the requirement to make a correct decision in accordance with legislation and the general principles. It is also important for the public administrations to get the information as soon as possible when making individual decisions.[13] This is all in line with an effective administration investigating and collecting relevant information in concrete cases.[14]

In article 4.3 TEU the duty to cooperate is laid down by the Union legislator. The article provides for loyal cooperation when Member States implement Union law. More specifically, the article states:

> Pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties.

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[11] See Wettner, F., The General Law of Procedure of EC Mutual Administrative Assistance, in Jansen & Schöndorf-Haubold (eds.), *The European Composite Administration*, p. 307. See also Wenander, H., A Toolbox for Administrative Law Cooperation Beyond the State, in Lind, A.-S. & Reichel, J. (eds.), *Administrative Law Beyond the State. Nordic Perspectives*, p. 68.

[12] Schmidt-Aßmann, E., Introduction: European Composite Administration and the Role of European Administrative Law, in Jansen & Schöndorf-Haubold (eds.), *The European Composite Administration*, p. 5.

[13] Lottini, M., *An Instrument of Intensified Informal Mutual Assistance: The Internal Market Information System (IMI) and the Protection of Personal Data*, p. 109.

[14] Sommer, J., Information Cooperation Procedures – With European Environmental Law Serving As an Illustration, in Jansen & Schöndorf-Haubold (eds.), *The European Composite Administration*, p. 63-65.

> The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union.
>
> The Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the Union's objectives.

However, with due respect to the provisions of loyal or sincere cooperation, the Union may not impose any obligation on Member States to assist each other outside the scope of EU law. It follows from Article 5.2 TEU that under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States. Again, however, when acting within the scope of EU law, Member States have to act loyal and with mutual respect assist each other to fulfil the incentives of the Treaties and the Union's objectives. The principle of sincere cooperation has been recognized in case law. In the PFOS case[15] the court held that Article 10 EC (now 4.3 TEU) requires Member States to facilitate the achievement of the Union's tasks and to abstain from any measure which could jeopardize the attainment of the objectives of the Treaty. The duty of cooperation is further of general application.[16]

European administrative law contains to a large extent legal arrangements for the management of information needed in administrative proceedings, which are essential elements of composite administrative procedures. This creates a manifold of both horizontal and vertical interactions between authorities from different Member States as well as European authorities.[17]

As already mentioned above, obligations of cooperation in composite procedures arise from the principle of sincere cooperation or from European legislation containing detailed provisions in several policy areas.[18] In this context, some examples of legislation containing provisions on cooperation can be given. In the Regulation on Coordination of Social Security Systems,[19] Article 76.2 provides

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[15] Case C-246/07 European Commission v. Kingdom of Sweden, EU:C:2010:203, paras 69-71.

[16] See also Case C-459/03 Commission v. Ireland, EU:C:2006:345; Case 14/83 Sabine von Colson and Elisabeth Kamann v. Land Nordrhein-Westfalen, EU:C:1984:153, para 26; Case 2/88 Imm, J. J. Zwartveld and Others, EU:C:1990:315, paras 17-18.

[17] Galetta, D.-U., Hofmann, H. C. H. & Schneider J.-P., *Information Exchange in the European Administrative Union*, supra n. 5, pp. 66-67.

[18] Ibid, p. 68. See also Lafarge, F., *Administrative Cooperation between Member States and Implementation of EU Law*, p. 602. Lafarge divides administrative cooperation between duties to cooperate and encouragements to cooperate, stemming both from Treaty and legislative provisions.

[19] Regulation (EC) no 883/2004, of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems.

that the competent authorities of the Member States shall 'lend one another their good offices and act as though implementing their own legislation'. The Regulation further provides that authorities and institutions may 'communicate directly with one another and with the persons involved', but also that the 'institutions and persons covered by the Regulation shall have a duty of mutual information and cooperation to ensure the correct application of the Regulation' (Article 76.3-4). Similar obligations to cooperate are laid down in the Services Directive and the Professional Qualifications Directive.[20] Article 28.1 of the Services Directive states that 'Member States shall give each other mutual assistance, and shall put in place measures for effective cooperation with one another, in order to ensure the supervision of providers and the services they provide'. In paragraph three of the same article, it is prescribed that 'information requests and requests to carry out any checks, inspections and investigations under this Chapter shall be duly motivated, in particular by specifying the reason for the request'. Article 8 of the Professional Qualifications Directive stipulates that 'the competent authorities shall ensure the exchange of all information necessary for complaints by a recipient of a service against a service provider to be correctly pursued'. Article 56.1 of the same Directive holds that the 'competent authorities of the host Member State […] shall work in close collaboration and shall provide mutual assistance in order to facilitate application of this Directive'. The last sentence of this paragraph, which prescribes that the authorities involved 'shall ensure the confidentiality of the information which they exchange' is quite interesting.[21] These are only a few examples of legislation which contain provisions on the obligation to cooperate. Thus, it is obvious that the obligation of cross-border cooperation in such situations could lead to certain problems, like the appearance of language barriers. Information technology used in different kinds of EU systems can assist in overcoming such barriers.[22] As will be examined below, IMI facilitates the functioning of the internal market, and can be described as a new tool in the modern information technology society.

With transboundary cooperation and collaboration through European or international networks and integrated decision-making procedures, certain challenges may arise, such as effective judicial protection and the existence of remedies and the possibility to account for responsibility. In legal scholarship two main approaches to international cooperation within administrative law have been prominent – the development of international networks and the conflicts of law.[23] It could be argued that neither network procedures nor the conflict

[20] Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market; Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualification.

[21] See also infra section 4.3 Guaranteeing Transparency (Public Access) and its Limits.

[22] Galetta, D.-U., Hofmann, H. C. H. & Schneider J.-P., *Information Exchange in the European Administrative Union*, supra n. 5, p. 68.

[23] Wenander, H., *A Toolbox for Administrative Law Cooperation Beyond the State*, supra n. 11, p. 47.

of law perspective are sufficient to ensure legal remedies in multi-jurisdictional networks.[24] The mere nature of integrated decision-making networks could make it difficult to determine authorship and allocate responsibility for actions.[25] This might be a problem since it is not always obvious which authority is responsible in a specific case, especially when secondary law does not explicitly provide for it. According to Hofmann and Tidghi, procedures designed for implementation of EU law policies, including its rules on information, need to comply with basic constitutional norms and principles, such as legality, good administration, data protection and access to information. They argue that such procedural design is directly connected to constitutional choices, and they give two examples to illustrate the relevance of procedural law, namely the duty of care and the right to a fair hearing.[26] Both of these two procedural rights could result in certain difficulties within information networks or composite decision-making.

It is worth emphasizing that when authorities make decisions on the basis of information networks and composite decision procedures, each authority applies their own national procedural legislation. This is because the EU lacks a common administrative framework and the implementation of EU law is dependent on the national authorities applying the Union acts. Hence, Member States have a *procedural* and *institutional autonomy*,[27] which gives the Member States liberties to independently organize their institutions and to decide what procedures to apply. The principle of equivalence and effectiveness thus functions to limit institutional and procedural autonomy. National rules must, regarding to these principles, not be less favourable than those governing similar domestic actions nor render virtually impossible or excessively difficult the exercise of rights conferred by Union law.[28]

Moreover, it could be necessary to state that the principle of autonomy also needs to be read in conjunction with the abovementioned principle of loyal cooperation (Article 4.3 TEU) and the conferral of powers (Article 5.2 TEU). Member States shall take any appropriate measures to fulfil obligations arising from the Treaties or the Union institutions acts. Nevertheless, there is no duty to act outside the scope of EU law or where no competences have been conferred to the EU. It is, however, no secret that the EU over the years has been transferred further competences in several areas outside the traditional scope of internal

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[24] Hofmann, H. C. H. & Tidghi, M., *Rights and Remedies in Implementation of EU Policies by Multi-Jurisdictional Networks*, pp. 161-163.

[25] Ibid, p. 159.

[26] Ibid, pp. 150-151. See further section 4.4 Guaranteeing Time Aspects, the Principle of Investigation and Hearing.

[27] The principle of institutional and procedural autonomy was established in Case 51-54/71 International Fruit Company v. Produktscap voor groenten en fruit, EU:C:1971:128 and Case 33/76 Rewe-Zentralfinanz v. Landwirtschaftskammer für das Saarland, EU:C:1976:188, respectively.

[28] See Case 312/93 Peterbroeck, Van Campenhout & Cie SCS v Belgian State, EU:C:1995:437 para 12.

market.[29] The EU thus lacks competence within the area of administrative law, even if the Lisbon Treaty of 2009 includes a general competence in this field in Article 6g TFEU. However, that competence is strictly limited to supporting, coordinating or supplementing the actions of the Member States. In this respect, Article 197.1 under the title 'Administrative cooperation' should be mentioned, stating that 'the effective implementation of Union law by the Member States […] shall be regarded as a matter of common interest'.[30] Even if there is no general competence for EU to regulate the Member States' administration there is often a legal ground elsewhere in the Union law. For example, the enactment of the IMI Regulation was grounded on the provisions for establishment and functioning of the internal market, Article 114.1 TFEU.

Finally, it is not possible to generally examine the extent and scope of the duties to cooperate.[31] Both Treaty provisions and secondary law include duties and encouragements to collaborate at EU and Member State level. This is important, not at least according to the functioning of the internal market, and it is here that IMI comes into the picture, working as a tool to facilitate the cooperation between the competent authorities.

[29] Reichel, J., *Transparency in EU Research Governance?* Supra n. 10, p. 358.
[30] Ibid, p. 360.
[31] See Lafarge, F., *Administrative Cooperation between Member States and Implementation of EU Law*, p. 608.

3 The Internal Market Information System (IMI)

3.1 What is the IMI?

As mentioned above, The Internal Market Information System (IMI)[32] is intended to function as an effective and flexible internet-based communication tool. A pertinent keyword for the system is 'cooperation', here in the more specific meaning of administrative cooperation.[33] Consequently, IMI aims to make it easier for public authorities to enable and exchange information with each other. First and foremost, it aims to prevent breaches of the internal market.[34] In its 2011 Communication to the European Parliament, 'Better governance of the single market', the Commission held that:

> European citizens and businesses benefit every day from the opportunities offered by the Single Market. To ensure that the market functions smoothly, Member State administrations need to work closely together by providing mutual assistance and exchanging information. The benefits of the single market will not materialise unless EU law is correctly applied and the rights it creates are upheld. Administrative cooperation between Member States is essential to create a truly borderless Single Market.[35]

Taking into consideration that the European Union now covers 28 Member States (27 when UK leaving the EU) with somewhat different legal cultures and language, it has become more necessary than ever to stimulate a composite administration.[36] The functioning of the internal market requires an effective cooperation between Member State agencies. Obstacles such as language barriers and different administrative and working techniques must be removed.[37] Yet

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[32] See the definition of IMI in Regulation 1024/2012 article 5(a): 'IMI' means the electronic tool provided by the Commission to facilitate administrative cooperation between competent authorities of the Member States and between competent authorities of the Member States and the Commission.

[33] See the definition of IMI in Regulation 1024/2012 article 5(b): 'administrative cooperation' means the working in collaboration of competent authorities of the Member States or competent authorities of the Member States and the Commission, by exchanging and processing information, including through notifications and alerts, or by providing mutual assistance, including for the resolution of problems, for the purpose of better application of Union law.

[34] Lottini, M., *An instrument of intensified informal mutual assistance,* supra n. 13, p. 125.

[35] Communication from the Commission to the European parliament, the Council, the European economic and social committee and the Committee of the regions. Better governance of the Single Market through greater administrative cooperation: A strategy for expanding and developing the Internal Market Information System ('IMI'). COM(2011) 75 final, p. 3.

[36] Cfr. Reichel, J., BBMRI-ERIC – An analysis of a multi-level governance tool for the EU and beyond, in Lind, A.-S. & Reichel, J. (eds.), *Administrative Law Beyond the State – Nordic Perspectives*, 2013, pp. 93-94.

[37] See Lottini, M., *An instrument of intensified informal mutual assistance,* supra n. 13, p. 109.

within an effective and flexible European administration, other legal issues may also arise, especially such a relevant aspect as protection of privacy and personal integrity. How do information systems in general and IMI in particular relate to this counter side of administrative cooperation and effectiveness? This question is in a greater sense significantly important for a growing EU and the expanding use of information systems within the area of mutual assistance.[38] However, IMI is said to be a welcomed data information system in order to facilitate rather than aggravate joint cooperation, and its scope of applicability within new sectors seems to continuously expand. IMI was initially built as a communication tool for one-to-one exchanges of information under the Professional Qualification Directive and the Services Directive.[39]

At present there are provisions on administrative cooperation in some specific Union acts that are implemented by means of IMI, namely:

- Directive 2006/123/EC on services in the internal market
- Directive 2005/36/EC on the recognition of professional qualifications
- Directive 2011/24/EU on the application of patients' rights in cross-border healthcare
- Regulation 1214/2011 on the professional cross-border transport of euro cash by road between euro-area Member States
- Commission Recommendation (7/12/2001) on principles for using 'SOLVIT' – the Internal Market Solving Network
- Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services.[40]

Besides these areas of administrative cooperation there have also been a couple of ongoing EU pilot projects testing the operability and usefulness of IMI. From April 2015, IMI can be used within the area of 'public procurement' and from December 2015 in the 'return of unlawfully removed cultural objects'.[41]

The outline for this section is first to analyse the scope and applicability of the IMI Regulation and its legal background. Thereafter, some comparable information system will be briefly highlighted in order to set IMI in the broader context of administrative cooperation. The European Data Protection Supervisor (EDPS)

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[38] See Galetta, D.-U., Hofmann, H. C. H. & Schneider, J.-P., *Information Exchange in the European Administrative Union*, supra n. 5, p. 69.

[39] Lottini, M., *An instrument of intensified informal mutual assistance,* supra n. 13, p. 112.

[40] See Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation'): Articles 6 and 7, Article 10(3), and Articles 14 to 18.

[41] Directive 2014/24/EU on public procurement and Directive 2014/60/EU on the return of cultural objects unlawfully removed from the territory of a Member State.

opinion will then be analysed as it concerns several rather important issues, such as secrecy, integrity and data protection. Lastly, the possible expansion of IMI will be examined, including a discussion on to what further areas this information system could be applied. The forthcoming evaluation will not, however, provide more in-depth discussion on specific or practical technical *details* about IMI.[42]

3.2 The scope and applicability

When EU introduced ten new Member States in 2004, the need for a common multilingual information system became obvious.[43] But it was not until 2008 that the Commission launched the IMI to support the abovementioned directive on the Recognition of Professional Qualifications. From 2009, the IMI has been used to support the administrative cooperation provisions of the Services Directive.[44] Cross-border cooperation, as in the case with the Services Directive and the Professional Qualification Directive, involves processing and exchanging the personal data of EU citizens. While IMI was grounded on several decisions,[45] and lacked a legally binding instrument adopted by the European Parliament and the Council, this aspect came to be seen as an obstacle. The Commission holds that a single legal instrument would remove any doubts as to the binding rules for the processing of personal data in the system and that such a single legal instrument also lays down the main principles of data processing and the rights of data subjects, increasing transparency and enhancing legal certainty.[46] The IMI Regulation was enacted with Article 114 TFEU as a legal basis and was adopted on 25 October 2012.

Recital 2 of the IMI Regulation states that: 'IMI is a software application accessible via the internet, developed by the Commission in cooperation with the Member States, in order to assist Member States with the practical implementation of information exchange requirements laid down in Union acts by providing a centralized communication mechanism to facilitate cross-border exchange of information and mutual assistance.' To some extent, this passage is vital in that it lays down the core idea not only according to IMI but also in the wider sense of administrative cooperation. Words such as *practical implementation*, *cross-border*, *exchange of information* and *mutual assistance* play an important role in this respect.

As concerns the further scope, Article 3 of the Regulation states that IMI shall be used for administrative cooperation between competent authorities of the

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[42] See instead for example The European Commission Internal Market Information (IMI) System User Handbook, update 2012.

[43] COM(2011) 75 final, p. 3.

[44] See Directive 2005/36/EC Art. 8, Art. 50(1), (2) and (3) and Art. 56 and Directive 2006/123/EC Art. 39(5) respectively.

[45] See COM(2011) 522 final, Proposal for a Regulation of the European Parliament and the Council on administrative cooperation through the Internal Market Information System ('the IMI Regulation'), p. 3.

[46] COM(2011) 522, pp. 4-5.

Member States and between competent authorities of the Member States and the Commission necessary for the implementation of Union acts in the field of the internal market, within the meaning of Article 26(2) of the TFEU, which provides for administrative cooperation, including the exchange of personal data, between Member States or between Member States and the Commission. The scope of applicability is rather vague in the current article. Even if chapters II–VI of the Regulation outline such important issues as 'Functions and Responsibilities', 'Processing of Personal Data and Security' and 'Rights of Data Subjects' it is, however, still not obvious to what extent IMI is more specifically intended to be applied. At this stage, as mentioned above (section 3.1), IMI is connected with the Union acts listed in the Annex to the Regulation. Since the conditions for the scope are vague, it is also difficult to set up a general legal frame for the application in each concrete situation.

However, irrespective of the vague scope, it is interesting to analyse the following chapters in the Regulation and some of the applicable articles. *Chapter II* consists of rules on 'Functions and responsibilities in relation to IMI', *Chapter III* deals with 'Processing and personal data and security' while *Chapter IV* stipulates rules on 'Rights of data subjects and supervision'. *Chapters V* and *VI* include the 'Geographic scope of IMI' and 'Final provisions'. The analyses below will focus on chapters II–IV.

It should first of all be pointed out that the definitions laid down in Directive 95/46/EC and Regulation (EC) No 45/2001 shall apply for the purposes of the IMI Regulation. Article 5 of the IMI Regulation also contains the following definitions:

a. 'IMI' means the electronic tool provided by the Commission to facilitate administrative cooperation between competent authorities of the Member States and between competent authorities of the Member States and the Commission;
b. 'administrative cooperation' means the working in collaboration of competent authorities of the Member States or competent authorities of the Member States and the Commission, by exchanging and processing information, including through notifications and alerts, or by providing mutual assistance, including for the resolution of problems, for the purpose of better application of Union law;
c. 'internal market area' means a legislative or functional field of the internal market, within the meaning of Article 26(2) TFEU, in which IMI is used in accordance with Article 3 of this Regulation;
d. 'administrative cooperation procedure' means a pre-defined workflow provided for in IMI allowing IMI actors to communicate and interact with each other in a structured manner;
e. 'IMI coordinator' means a body appointed by a Member State to perform support tasks necessary for the efficient functioning of IMI in accordance with this Regulation;

f. 'competent authority' means anybody established at either national, regional or local level and registered in IMI with specific responsibilities relating to the application of national law or Union acts listed in the Annex in one or more internal market areas;
g. 'IMI actors' means the competent authorities, IMI coordinators and the Commission;
h. 'IMI user' means a natural person working under the authority of an IMI actor and registered in IMI on behalf of that IMI actor;
i. 'external actors' means natural or legal persons other than IMI users that may interact with IMI only through separate technical means and in accordance with a specific pre-defined workflow provided for that purpose;
j. 'blocking' means applying technical means by which personal data become inaccessible to IMI users via the normal interface of IMI;
k. 'formal closure' means applying the technical facility provided by IMI to close an administrative cooperation procedure.

Chapter II Functions and responsibilities in relation to IMI

The provisions laid down in this chapter are crucial for the efficient functioning of the system, for example the respective roles of the IMI coordinator and competent authorities.[47] Article 7 states that when cooperating by means of IMI, competent authorities, acting through IMI users in accordance with the applicable Union act, shall ensure that an adequate response is provided within the shortest possible period of time, and in any event within the deadline set by that act.[48] Accordingly, this provision contains time limits though these are rather undefined. Of course, the specific Union act might state a certain deadline, but these kinds of recommendations of prompt response or information are open to interpretation and are often difficult to follow in reality.

Conversely, Article 7, paragraph 2 states that a competent authority should not be allowed to question or reject as evidence any information, document, finding, statement or certified true copy which it has received electronically by means of IMI from another Member State. This could be interpreted to be a concretization of a principle of equality, i.e. documents shall be treated in the same way irrespective of from where the information derives. On the contrary, the IMI Regulation does not contain any provision on how to solve disputes between competent authorities if requested information is not satisfactorily replied.[49]

As concerns access rights of IMI for actors and users, Article 9 paragraphs 4–6 includes important rules on accessibility. For example, Article 9(4) states that IMI users are allowed access to personal data processed in IMI only on

[47] COM(2011) 522, p. 7.
[48] See for example the Professional Qualification Directive, 2005/36/EC, art. 51.
[49] Lottini, M., *An Instrument of Intensified Informal Mutual Assistance*, supra n. 13, p. 118.

a need-to-know basis and within the internal market area. There is, further, a prohibition on using personal data processed in IMI for a purpose incompatible with an original purpose, Article 9(5). In administrative cooperation, only the IMI actors participating in a procedure involving processing of personal data have access to such data (Article 9 p. 6).

Regarding confidentiality in Article 10, it is up to every Member State to apply its own rules of secrecy to its IMI actors and users in accordance with national or Union law. The provisions on confidentiality also hold that IMI actors shall ensure that requests of other IMI actors for confidential treatment of information exchanged by means of IMI are respected by IMI users under their authority. This is a rather crucial statement because it seems to both widen and to restrict the applicability of national rules of secrecy and public access.[50]

Chapter III Processing of personal data and security

This chapter covers five articles which deal with aspects such as purpose limitation, retention of personal data and security. It is relevant here to emphasize that IMI actors shall exchange and process personal data only for the purposes defined in the relevant provisions of the Union acts listed in the Annex (Article 13). The information exchanged by means of IMI must of course not be used outside the purposes for which the data were submitted. This is a fairly logical order but it is also important to remember the potential future expansion of IMI. An expansion of IMI creates a broader scope of application and situations where personal data are exchanged and processed. Galetta has, for example, identified and welcomed the possibility for IMI to converge existing cooperation networks, including those for the resolution of internal market disputes, into one system.[51]

Provisions on retention of personal data are stated in Article 14, and there are plenty of relevant rules to pay attention to in this matter. Especially in terms of time aspects, the article contains certain important limitations concerning retention periods. In the IMI proposal, the Commission held that personal data processed by means of IMI shall not remain accessible for longer than necessary. It is therefore important to establish maximum retention periods following which the data should be blocked, i.e. rendered inaccessible to IMI users via the normal interface and then automatically deleted from the system five years after the closure of an administrative cooperation (Article 13).[52] However, in the Regulation this rule was formulated more restrictively and the time period for when blocked data shall be automatically deleted became limited to three years (Article 14.4). The main rule (Article 14.1) is that personal data processed in IMI shall be blocked 'as soon as they are no longer necessary for the purpose for which they were collected, depending on the specificities of each type of

[50] See infra section 4.2, 4.3 and 4.5.

[51] Galetta, D.-U., *Informal Information Processing in Dispute Resolution Networks: Informality versus the Protection of Individual's Rights?* p. 86.

[52] See COM(2011) 522 final, p. 8.

administrative cooperation and, as a general rule, no later than six months after the formal closure of the administrative cooperation procedure'. This article also states that personal data, if a longer period is provided in an applicable Union act listed in the Annex, may be retained at a maximum of 18 months after the formal closure of an administrative cooperation procedure. Hence, Article 14 contains provisions of importance regarding retention periods and blocking of personal data. The abovementioned rule stating that blocked data shall be automatically deleted plays an essential role in the security of the system.

Chapter IV Rights of data subjects and supervision

Chapter four is of uttermost importance, dealing with general provisions on rights and supervision. Article 18 gathers some statements regarding information to data subjects and transparency, for which paragraph one holds that IMI actors shall ensure that data subjects are informed about processing of their personal data in IMI as soon as possible and that they have access to information on their rights and how to exercise them. Paragraph two in the article states that the Commission shall make, for example, publicly available and easily accessible information concerning IMI and information on the data protection aspects of administrative cooperation procedures in IMI.

Besides the right to information, data subjects must be given the possibility to effectively exercise their right of access to data relating to them in IMI, and the right to have inaccurate or incomplete data corrected and unlawfully processed data deleted, in accordance with national legislation. The rules laid down in Article 19 are, so to speak, the practical outcome of the more general right to information and transparency outlined in the abovementioned article. The responsibility to supervise and verify that these rights are protected is held by each Member State's National Supervisory Authority in accordance with Article 21 with a reference to Article 28 of the Data Protection Directive (95/46/EC). Hence, these authorities shall independently monitor the lawfulness of the processing of personal data by the IMI actors of their Member State.[53]

3.3 Other comparable information systems

IMI is, of course, not the only information system in the EU; there are likely a number of comparable information systems.[54] In this section, three different systems or networks will be examined for the purpose of making, if not a comparison, at least an overarching illustration. The relevant objects in question here are the European Social Security Information System (EESSI), SOLVIT (hereafter Solvit) and the Public Procurement Network (PPN). Both Solvit and PPN are informal information networks but it is indeed interesting to compare the rationales of such cooperative networks with IMI.

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[53] See Marsch, N., *Networks of Supervisory Bodies for Information Management in the European Administrative Union*, pp. 129-133.

[54] See for example Schengen Information System (SIS), Visa information System (VIS), EURODAC, Customs Information System (CIS).

EESSI

The Electronic Exchange of Social Security Information (EESSI) is an IT system that will help social security bodies across the EU exchange information electronically. At present, the EESSI is a pilot project and not yet fully running.[55]

Like IMI, the EESSI is an information system aiming to make it easier for EU authorities, in this case social security bodies, to exchange information more rapidly and securely. Thus, there is no specific EESSI regulation; instead the obligation to fulfil information exchange is stated in Regulation 883/2004.[56] Recital 40 of the regulation holds that the use of data-processing services for exchanging data between institutions requires provisions guaranteeing that the documents exchanged or issued by electronic means are accepted as equivalent to paper documents. In Article 78.1 of the same regulation it is stated that Member States shall progressively use new technologies for the exchange, access and processing of the data required to apply this Regulation and the Implementing Regulation. Each Member State shall also, in accordance with Article 78.2, be responsible for managing its own part of the data-processing services in accordance with the Community provisions on the protection of natural persons with regard to the processing and the free movement of personal data.

The provisions on data processing should be read in conjunction with the provisions on cooperation and data protection laid down in Articles 76 and 77. Article 76 (1–4) contains the main rules on cooperation and speaks generally about the competent authorities' mutual communication of information (76.1), administrative assistance (76.2), direct communication (76.3) and mutual information and cooperation to ensure the correct implementation of regulation 883/2004 (76.4).[57] Article 77 stipulates rules on protection of personal data and provides a division on responsibility between transmitting and receiving authorities. Under Article 77.1 it is stated: 'Where, […], the authorities or institutions of a Member State communicate personal data to the authorities or institutions of another Member State, such communication shall be subject to the data protection legislation of the Member State transmitting them. Any communication from the authority or institution of the receiving Member State as well as the storage, alteration and destruction of the data provided by that Member State shall be subject to the data protection legislation of the receiving Member State.'

Some apparent similarities with IMI are first of all that EESSI is an information exchange system for the secure and rapid handling of matters in individual cases.

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[55] The timeline for national institutions in each country to be ready for electronic messaging for all social security coordination activity on the EESSI platform is planned for the end of 2018. See the European Commission 'The EESSI Read' Newsletter – Issue 1, 02/2015, p. 5.

[56] Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems.

[57] See further Wenander, H., *A Network of Social Security Bodies – European Administrative Cooperation under Regulation (EC) No 883/2004,* pp. 52-66.

It is furthermore a tool for achieving effective cooperation and mutual assistance. Both social security coordination and the internal market legislation require authorities to cooperate in order to abolish different obstacles in the concrete application situation. Since both EESSI and IMI concern the movement of personal data it has been important to create a strong regulation on data protection according to the information systems.

SOLVIT

Solvit is an online service aiming to deliver fast, effective and informal solutions to problems individuals and business encounter when their EU rights in the internal market are being denied by public authorities. According to Recital 3 of the Commission Recommendation on the principles governing SOLVIT, the Solvit network was created as a network of centres set up by Member States within their own national administrations, as a fast and informal means of resolving problems individuals and businesses encounter when exercising their rights in the internal market.[58] Lottini points out that Solvit is designed to provide for a quick and cost-effective, although not binding, system for the settlement of disputes, where its operation is based on the 'mutual cooperation' between different levels of administration.[59] It is important, though, to emphasize that Solvit is an informal solution mechanism and thus not binding. Furthermore, it does not substitute the right to legal proceedings; it is rather a complement to the right to a trial. For example, applicants should be informed of the informal nature of Solvit including information about other possible means of redress, a warning that handling a case in Solvit does not put on hold national deadlines for appeal, and that solutions offered by Solvit are informal and cannot be appealed.[60]

The objective of Solvit has already been mentioned, i.e. to deliver solutions to problems concerning individuals and businesses when their EU rights have been breached by public authorities. It further contributes to a better-functioning single market by fostering and promoting better compliance with Union law.[61] For that reason, several principles have been set up for national Solvit centres to follow. There is, for example, in Chapter V of the recommendation (SOLVIT procedure) principles governing the handling of Solvit cases. According to Chapter V(1–2) Solvit cases should be handled by two centres, the Home centre and the Lead centre and both of the centres should cooperate in an open

[58] Commission Recommendation of 17.9.2013 on the principles governing SOLVIT, C(2013) 5869 final. See also Commission Recommendation of 7 December 2001 on principles for using SOLVIT – the Internal Market Problem Solving Network, 2001/893/EC.

[59] Lottini, M., *Correct Application of EU Law by National Public Administrations and Effective Individual Protection: the SOLVIT Network*, p. 8.

[60] Chapter III (5) of the Recommendation C(2013) 5869, supra note 58. However, chapter III(6) states that whereas SOLVIT proceedings are of an informal nature, it does not preclude an applicant from launching formal proceedings at national level, which will result in closure of the SOLVIT case.

[61] Chapter I (A) of the Recommendation C(2013) 5869, supra note 58.

and transparent manner with a view to finding fast and effective solutions for applicants. Chapters IX and X contain provisions on cooperation with other networks and contact points and protection of personal data and confidentiality. It is necessary to ensure that applicants get effective help and therefore chapter IV(2) states that Solvit centres should be in regular contact and cooperate with their national EU Pilot Contact Points, in order to secure a proper exchange of information on cases and complaints received. Such cooperation and exchange of information requires vital protection of personal data and confidentiality. Chapter X of the recommendation holds that:

The processing of personal data for the purposes of this Recommendation, including, in particular, transparency requirements and the rights of data subjects, is governed by the IMI Regulation. In line with that Regulation, the following should apply:

1. Applicants should be able to submit their complaints to SOLVIT through a public interface linked to the Internal Market Information System, put at their disposal by the Commission. Applicants do not have access to the SOLVIT database.
2. Home and Lead centres should have access to the SOLVIT database and be able to deal with the case they are involved in through this database. This includes access to personal data of the applicant.
3. Other SOLVIT centres not involved in a particular case and the Commission should have read-only access to anonymous information on the case.
4. The Home centre should normally disclose the applicant's identity to the Lead centre to facilitate problem solving. The applicant should be informed of this at the start of the process and offered the opportunity to object, in which case the applicant's identity should not be disclosed.
5. The information provided by the applicant should be used by the Lead Centre and the public authorities concerned by the complaint only for the purpose of trying to resolve the case. Officials dealing with the case shall process the personal data only for the purposes for which they were transmitted. Appropriate steps should also be taken to safeguard commercially sensitive information not including personal data.
6. A case can be transferred to another problem-solving network or organisation only with consent of the applicant.
7. Staff of the Commission should only have access to personal data of applicants where this is necessary in order to:
   (a) avoid parallel treatment of the same problem submitted to the Commission or another Union institution by means of another procedure;
   (b) offer informal legal advice in accordance with Section VI;
   (c) decide on the possible follow-up to cases already handled by SOLVIT;

(d) resolve technical issues affecting the SOLVIT database.

8. Personal data related to SOLVIT cases should be blocked in the Internal Market Information System 18 months after the closure of a SOLVIT case. Anonymised descriptions of SOLVIT cases should remain in the SOLVIT database and may be used for statistical, reporting and policy development purposes.

It is obvious that Solvit covers a strong protection of personal data and its provision in Chapter X is governed by the IMI Regulation. One important similarity with IMI is that processing of personal data shall only be used for the purpose for which they were transmitted, or for a specific purpose. However, there are also some differences between the systems. Regarding confidentiality, IMI seems to be a bit more restrictive, and IMI actors such as a public authority shall respect the request for confidentiality from another IMI actor.[62] In Solvit, on the other hand, appropriate steps should be taken to safeguard commercially sensitive information not including personal data.

It is worth reiterating here that IMI shall be used when implementing the Solvit recommendation.[63] There have also been discussions on integrating and rebuilding Solvit as a stand-alone module within the IMI tool. A certain problem with such integration would be that the exchange of information in IMI must have an appropriate legal basis in specific internal market legislation. Solvit is only regulated by 'soft law' (a Commission Recommendation and Communication). Thus, the legal basis of processing of personal data may be 'consent' of the data subjects.[64]

PPN

The public procurement network (PPN) has a lot in common with Solvit, functioning as a problem-solving service, although PPN is specialized within the framework of public procurement. The objective of the network is to strengthen the application and the enforcement of the procurement rules through mutual exchange of experience and benchmarking, and to create a reliable and effective informal cooperation including problem-solving in cross-border cases related to public procurement. Full membership in the PPN is open to all EU Member States.[65] The network strives to help companies facing problems with a procurement procedure abroad. It is not unusual for companies to face barriers when taking part in public procurements abroad, such as illegal requirements in documentation or misunderstandings in relation to forms or specifics of national

[62] See article 10 of Regulation 1024/2012.

[63] For this matter, see Article 3 and the Annex of Regulation 1024/2012.

[64] Lottini, M., *An Instrument of Intensified Informal Mutual Assistance*, supra n. 13, pp. 114-115; Galetta, D.-U., *Informal Information Processing in Dispute Resolution Networks*, supra n. 51, pp. 83-84. See also Recital 18 of Regulation 1024/2012.

[65] See http://www.ppneurope.org.

regulation.[66] Every participating country in PPN has a contact point that cooperates with each other in order to find a solution before a contract has been awarded and signed. There is, though, no specific legislation laying down the rules for this cooperation and information exchange. Instead, the participating countries mutually agree to act in accordance with common rules set out to solve different kinds of public procurement problems.[67]

Obstacles such as unreasonable requests for documentation, requirements for technical specifications or obligations to invite tenders could be diminished by the action of the informal system of PPN. However, like Solvit, an informal complaint via PPN does not have any suspensive effect on award procedures or on time limits applicable for referring cases to formal review bodies.

The PPN guideline brochure describes how the network deals with complaints. Interesting is the fact that PPN is an informal 'pre-court' system aiming to prevent breaches in the procurement procedure. The cooperation between two contacts or a contact and a contracting authority abroad involves the exchange of information regarding the supplier (Complainant Company), which mostly, however, is of a rapid and informal nature (phone and email). It is necessary to point out that PPN contact points, unlike those from IMI, EESSI and Solvit, are not connected by an online database and there is no recording of information.[68] Even if PPN differs in character from an online database system, it is rather fascinating how informal cooperation without any concrete legal basis involves to a relatively high degree the exchange of information and contact between authorities.

3.4 The opinion of the European Data Protection Supervisor

Before the proposal for a Regulation on IMI was adopted, it was sent to the European Data Protection Supervisor (EDPS) for consultation. The EDPS is an independent supervisory authority with a specific task to ensure that EU authorities and Member States process personal data lawfully.[69] Since the IMI affects personal data issues, it is of interest to take some notice of the EDPS view in respect to these and related questions.

First of all, it is important to accentuate that EDPS was positive overall to the IMI proposal, the establishment of an electronic system for the exchange of information and to regulating its data protection aspects.[70] However, and

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[66] Ibid, under 'Problem-solving in cross-border cases'.

[67] Ibid, see link under 'The structure'.

[68] Galetta, D.-U., *Informal Information Processing in Dispute Resolution Networks,* supra n. 51, p. 80.

[69] The role and task of the EDPS is defined in Regulation 45/2001/EC art. 1(2), 41-48.

[70] Opinion of the European Data Protection Supervisor on the Commission proposal for a Regulation of the European Parliament and of the Council on administrative cooperation through the Internal Market Information System (IMI), 2012/C 48/02, see section 2.1, Recital 11.

this is important to emphasize, the EDPS recognized several risks with the establishment of a single centralized electronic system for multiple areas of administrative cooperation. One of the most important risks was that of a broad access to information in general and the security aspects of this:

> '… [more] data might be shared and more broadly than strictly necessary for the purposes of efficient cooperation, and that data, including potentially outdated and inaccurate data, might remain in the electronic system longer than necessary. The security of the information system accessible in 27 Member States is also a sensitive issue, as the whole system will be only as secure as the weakest link in the chain permits it to be.'[71]

These issues could be said to affect more technical legal questions related to data protection and security of information in a greater sense.[72] For example, how long is it possible to store data and what about rules concerning retention? Or: what organ is responsible for the maintenance of the security in the IMI? Subsequent to this the EDPS stressed two more general challenges with regard to the legal framework for IMI. *First*, the need to ensure consistency, while respecting diversity, and *second,* the need to balance flexibility and legal certainty.

As regards *consistency, while respecting diversity*, the EDPS held that the differences between the Member States' national administrative procedures and national data laws, implies that IMI must be built in accordance with national law. Hence, the users must be able to comply with national laws when exchanging information through IMI. On the other hand, the data subjects must also be reassured that their data will be consistently protected irrespective of transfer of data via IMI to another Member State.[73] It is obvious that this certain key challenge involves a battle between consistency and diversity. To uphold a fair balance in this dichotomy, complexity and fragmentation must be avoided. At the same time it is important to have not only transparency but also a clear allocation of responsibility and supervision.

As regards the abovementioned second key challenge, *balancing flexibility and legal certainty*, the EDPS pointed out the wide scope of IMI. While IT systems such as Schengen Information System and the Visa Information System have clearly more specific and defined areas of cooperation, the IMI can be used in many different policy areas.[74] The wide scope of application makes it, according

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[71] Ibid, section 2.1, Recital 13.

[72] See for example, Hofmann, H. C. H. & Tidghi, M., *Rights and Remedies in implementation of EU Policies by Multi-Jurisdictional Networks*, pp. 159-162.

[73] EDPS opinion, supra n. 70, recital 16. Here it is also possible to ask how different levels in security between Member States will affect the legal protection for individuals. See section 4.5 below for a Swedish example.

[74] See below section 3.5.

to the EDPS, more difficult to clearly define the functionalities of the system and the data exchanges that may take place in the system. Therefore, it is also more challenging to clearly define the appropriate data protection safeguards.[75]

It is fairly apparent that the data protection supervisor is aware of the future risks in a system that is not fixed but certainly open for new policy areas. According to the imminent flexibility of the IMI, the EDPS stated the following:

> [However], this should not lead to lack of clarity or legal certainty in terms of the functionalities of the system and the data protection safeguards that are to be implemented. For this reason, whenever possible, the proposal should be more specific and go beyond reiterating the main data protection principles set forth in Directive 95/46/EC and Regulation (EC) No 45/2001.[76]

Furthermore, the Supervisor stated that adequate procedural safeguards should be applied to ensure that data protection will be carefully considered during the future development of IMI.[77] With the EDPS opinion in mind it could be convenient to touch upon the possibilities of an expansion of IMI.

3.5 Future expansion of IMI

As the EDPS points out, the IMI is not fixed but rather open for new policy areas. Along with that come certain risks. Lottini also recalls that IMI is a relatively new system whose effects and possible developments are still to be investigated, although its establishment has been welcomed both at a national and European level.[78] The effects of a future expansion of the information system are at present not possible to fully foresee.

In the IMI Regulation, the expansion of systems is outlined in a couple of recitals and articles. Recital 5 points out the necessity of establishing a sound legal framework for IMI and a set of common rules to ensure that IMI functions efficiently. It is also stated in Recital 11 that IMI in the future may be expanded to new areas, where it can help to ensure effective implementation of a Union act. Such an expansion of future Union acts is further a matter for the ordinary legislative procedure. Article 4 of the IMI Regulation states that the Commission may carry out pilot projects in order to assess whether IMI would be an effective tool for implementing provisions for administrative cooperation of Union

[75] EDPS opinion, supra n. 70, recital 17.
[76] EDPS opinion, supra n. 70, recital 18.
[77] EDPS opinion, supra n. 70, recital 93.
[78] Lottini, M., *An Instrument of Intensified Informal Mutual Assistance*, supra n. 13, p. 125.

acts not listed in the Annex.[79] For that reason, the Commission shall adopt an implementing act to determine which provisions of Union acts shall be subject to a pilot project and to set out the modalities of each project.

According to the Commission, there is from a technical point of view no limit to the number of new areas that can be added to IMI. However, there are organizational constraints to expansion. To select and prioritize expansion areas, the following criteria could be used:[80]

1. The new user group should preferably be linked to or partly overlap with existing user groups so that expansion contributes to offering a multi-purpose tool for part of the user community;
2. Priority should be given to adding areas that can use existing functions and that do not require any additional IT development;
3. If adding a new legal area or supporting new tasks within existing areas requires the development of new functions, this should be done in a generic way so that the new module can be adapted easily for other user groups (no single-purpose developments);
4. The costs of any further development needed should be justified by the expected added value of using IMI for the new or existing user groups and for the implementation of EU law and the benefits to citizens and businesses;
5. New areas and functions or links to other tools should not increase the complexity of the system for its users.

Despite the lack of a common European centralized administration, information systems such as the IMI have played an important role in abolishing limitations to the movement of persons, goods, services and capital. But it has also, according to Galetta et al., increased the need of the competent authorities for cross-border information and led to the development of a multitude of information networks which compensate for the abolishment of limits on cross-border traffic.[81] Such positive European integration aspects nevertheless strengthen the evolution of new areas and legislation for which pilot projects on IMI may be tested. The question is, thus, whether an expanded use of IMI implies negative effects from an administrative law perspective, or if it is merely positive. Some of these aspects will be highlighted in the next section (4).

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[79] See also Recital 12 of the IMI Regulation, recommending pilot projects as a useful tool for testing whether the expansion of IMI is justified and for adopting technical functionality and procedural arrangements to the requirements of IMI users before a decision on the expansion of IMI is taken. At present, IMI is regulated in a specific number of Union acts; see supra section 3.1.

[80] COM(2011) 75, p. 7.

[81] Galetta, D.-U., Hofmann, H. C. H. & Schneider, J.-P., *Information Exchange in the European Administrative Union,* supra n. 5, p. 68.

4 Exchange of Information from an Administrative Law Perspective

4.1 Introduction

Exchange of information is the nucleus for achieving effective administrative cooperation. Public authorities must communicate in different ways and at different levels in order to get the right information for the handling of administrative matters. With IMI as an example in this report, it has been shown that administrative IT tools may facilitate the cross-border cooperation between competent authorities. The exchange of information in IMI primarily concerns individuals and their personal data, even if there are exceptions such as notification procedures and alerts.[82] This raises several questions not only on how the exchange of information might affect data protection (4.2) and on how transparency and public control matter (4.3), but also on how these have an influence on issues such as time aspects or the principle of investigation (4.5). In this section, these questions will be addressed from a general administrative law point of view. The section ends with an inventory of some specific problems which potentially may occur within a Swedish IMI context (4.5).

4.2 Guaranteeing personal data protection

As described above, the rationale for IMI is the exchange of information on a one-to-one communication basis in order to diminish different kinds of hindrance of the internal market. In all sorts of administrative cooperation and networks, the exchange of information between subjects is decisive for an effective procedure. But such handling of material and personal data also requires effective safeguards to protect individuals in concrete cases. Advocate General Elenor Sharpston has in her opinion of the Bavarian Lager case[83] aptly pronounced that:

> A democratic society governed by the rule of law has a fundamental interest both in wide public access to documents and in ensuring the protection of individual privacy and integrity. Both public access to documents and the protection of privacy are fundamental rights duly recognised under European Union law.[84]

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[82] Lottini, M., *An Instrument of Intensified Informal Mutual Assistance*, supra n. 13, p. 119.

[83] Case C-28/08 P, European Commission v. The Bavarian Lager Co. Ltd, EU:C:2010:378.

[84] Opinion of Advocate General Sharpston delivered on 15 October 2009. European Commission v. The Bavarian Lager Co. Ltd, para I(1), EU:C:2009:624.

These principles – access to documents and protection of privacy – that Sharpston expresses here often tend to collide or clash with each other. Relevant legal provisions on these principles are laid down as general principles both in primary law (Treaty on the Functioning of the European Union, TFEU)[85] and in secondary law (Regulations and Directives).[86] When processing personal data, it is important to inform the registered about the processing operation. It could even be considered to be a pillar in any data protection scheme that data handlers provide information to data subjects about the processing of their personal data.[87]

In TFEU Article 16, it is stated that everyone has the right to protection of personal data concerning them. The article also states that the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall lay down the rules relating to the protection of individuals with regard to the processing of personal data. This provision in TFEU is complemented with Article 8 of the Charter of Fundamental Rights of the European Union (Charter).[88] Article 8(2) of the Charter holds that personal data shall lay down the rules relating to the protection of individuals with regard to the processing of personal data. Apart from that, individuals shall not only have access to collected data, but also the right to have it rectified.

As concerns secondary legislation, the Data Protection Directive still is the most relevant Union act.[89] A central passage, especially for this report, is found in Recital 3 of the Directive: 'the establishment and functioning of an internal market […] require not only that personal data should be able to flow freely from one Member State to another, *but also that the fundamental rights of individuals should be safeguarded*' (my italics). The Directive, which is supposed to be implemented within the Member States' national legislation, contains vital safeguards. Article 6 lays down principles relating to data quality, stating for example that personal data must be processed fairly and lawfully (a) or that personal data must be collected for specified, explicit and legitimate purposes.

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[85] See for example Article 15 regarding publicity, and Article 16 regarding data protection. See also the Charter of Fundamental Rights Articles 8 and 42.

[86] See for example, Directive 95/46 infra note 89.

[87] Lottini, M., *An Instrument of Intensified Informal Mutual Assistance*, supra n. 13, p 123.

[88] OJ 2012/C 326/02.

[89] Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 *on the protection of individuals with regard to the processing of personal data and on the free movement of such data*. See also Regulation 45/2001/EC of the European Parliament and of the Council of 18 December 2000 *on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data*. It is, of course, worth mentioning here the Commission's Proposal for a Regulation of the European Parliament and the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation), COM(2012)11 final. The General Data Protection Regulation was adopted by the European Parliament and the Council on 27 April 2016. The Regulation entered into force on 4 May and it shall apply in the Member States from 25 May 2018.

Further, Section II includes criteria for making data processing legitimate, whereas Article 7(a) states that Member States shall provide that personal data may be processed only if the data subject has unambiguously given his consent. If consent is not given, processing of personal data could be provided only if necessary and under certain conditions (b–f).

Individuals should furthermore be given information by the collector in cases of data collection from the data subject (Article 10)[90] and Member States shall guarantee the data subject's right of access to data (article 12).[91] Individuals shall also be given the possibility to make an objection to the processing of data relating to him (Article 14) and, importantly, the possibility for every person to a judicial remedy for any breach of the rights guaranteed him by the national law applicable to the processing in question. One problem with the Data Protection Directive is that it has not prevented fragmentation in the way personal data protection is implemented across the Union. With the new General Data Protection Regulation a stronger and more coherent data protection framework in the EU is constructed, allowing the digital economy to develop across the internal market and put individuals in control over their own data.[92] However, even if there is a set of new rules in the Regulation, the principles and objectives stemming from the Directive still remains valid.[93]

The Rijkeboer case[94] deals with protection of individuals with regard to the processing of data. More specifically, the case concerned the right of a complainant (Mr Rijkeboer) to be notified of all instances in which data relating to the complainant from the local authority personal records had been disclosed to third parties. A central aspect in this case is thus the possibility for the registered to be informed of personal data processing. The court held that the purpose of Directive 95/46, pursuant to Article 1, is to protect natural persons' right to privacy with respect to the processing of personal data. That right to privacy means that the data subject may be certain that his personal data are processed in a correct and lawful manner, that is to say, in particular, that the basic data regarding him are accurate and that they are disclosed to authorized recipients. The court considers the importance of fixed time limits for storage of information and access to that information. This constitutes a balancing

[90] See supra note 87.

[91] See C-553/07, College van burgemeester en wethouders van Rotterdam v M. E. E. Rijkeboer, EU:C:2009:293.

[92] See COM 2012(11) final p. 2 and Recital 7 and 9 of the Regulation (EU) 2016/679 of the European Parliament and of the 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).

[93] See Recital 9 General Data Protection Regulation (EU) 2016/679. It could also, for this report, be of interest to notice that according to Recital 8 of the IMI Regulation 1024/2012 "Administrative cooperation by electronic means between Member States and between Member States and the Commission should comply with the rules on the protection of personal data." See also section 4.5.

[94] Supra note 91.

operation, taking into account the interest of the data subject in protecting his privacy, in particular his rights to rectification, erasing and blocking of data, but also rights to object and to bring legal proceedings.[95] It is thus worth stating that protection of personal data not only becomes relevant by automatic performance, but also arises when someone, for example, wants to get access to physical documents.

Public non-accessibility and secrecy in regard to information held by authorities have generally been the norm in many European countries and their administrative traditions. Hofmann points out that this general norm gradually changed when Sweden and Finland became members of the European Union, countries with a tradition of recognizing the individual's right to information, which had a strong influence in the EU. However, this increased right on access to documents or freedom of information has its limitations and results not least in data protection rights of individuals.[96] This leads somewhat back to Sharpston's words in the beginning of this section: both public access to documents and the protection of privacy are fundamental rights duly recognized under European Union law.

4.3 Guaranteeing transparency (public access) and its limits

As mentioned in the previous section, the right of access to information and privacy are fundamental rights in the EU and in many constitutional systems in the Member States. Such general and fundamental principles often tend to collide. However, none of the principles could be regarded as a fixed quantity, but rather as possible to set aside if there are significant grounds. In many situations it is therefore important to weigh the interest of, for example, the right to object as a safeguard to personal data on the one hand and on the other, transparency and the widest possible access to documents.[97] Craig defines transparency as an important principle, central in all democratic polities. He also recognizes several values served by transparency, such as public control over governmental actions (reasons and accountability), the improvement of decision-making in general and the possibility for individuals to check the correctness of information held about them. In a wider EU perspective, public control or transparency furthermore functions as a valuable method of ensuring that Member States adhere to their EU obligations.[98]

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[95] C-553/07, paras 46, 49 and 64. See also case C-362/14, Maximillian Schrems v Data Protection Commisioner, EU:C:2015:650, para 39 and case C-131/12, Google Spain SL Google Inc. v Agencia Española de Protección de Datos (AEDP) Maria Costeja Gonzalés, EU:C:2014:317, para 74.

[96] Hofmann, H. C. H., General Principles of EU Law and Administrative Law, in (Barnard, C. and Peers, S., reds.), *European Union Law*, pp. 217-218.

[97] Advocate General Sharpston in C-28/08, para 217. See supra note 84.

[98] Craig, P., *EU Administrative Law*, p 356.

In Article 15(3) TFEU, the right of access to documents is provided and it states that any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to documents of the Union's institutions, bodies, offices and agencies, whatever their medium. But as early as in Article 1 of the Treaty on European Union, the concept of openness is prescribed, stating the idea of an ever-closer union among the peoples of Europe, in which decisions are taken as openly and closely as possible to the citizen. The right of access to documents and information is also laid down in Article 42 of the Charter, stating that any EU citizen and any natural or legal person of a Member State has a right to European Parliament, Council and Commission documents. These provisions in primary law are complemented with Regulation 1049/2001 regarding public access to the aforementioned institutions' documents.

As described above in section 2, the Member States shall follow their own procedural and institutional rules when implementing EU law.[99] As concerns the access to information and documents deriving from a Member State, the administration normally has to apply national law. The same applies to national legislation on secrecy. Regulation 1049/2001, however, contains provisions on the right of access to documents of the Union institutions, but it also contains provisions on exceptions from that right. Article 2 of the Regulation draws up the line on beneficiaries and scope. Of particular relevance here is paragraph 1, which points out the recipients of the rights in question and paragraph 3, which states that the Regulation shall apply to all documents held by an institution, which means documents drawn up or received by it and in its possession. There is of course no unrestricted right to access and Article 4 of the Regulation stipulates relevant exceptions. Some exceptions from the right of access to documents relate to the protection of the public interest such as public security, international relations or monetary policy of the Community or a Member State (paragraph 1a). The institutions shall also refuse access to documents where a disclosure would undermine the protection of privacy and integrity of individuals, in particular the protection of personal data (paragraph 1b). To what extent these or other exceptions will have an impact on the right of access to documents will be dependent on the scope and content of the application.[100] However, tendency or not, it is rather interesting to follow the present evolution of the courts case law, where the protection of privacy, integrity and personal data are most highly valued.[101] One can therefore ask how this present interpretation in case law will affect the view of access to documents and information. Might it be that protection of privacy and integrity will overrule transparency? Though it is worth remembering that the conflict between privacy/integrity/personal data

[99] See above, section 2.

[100] Cfr Craig, P., *EU Administrative Law*, pp. 365-366.

[101] See for example joined cases C-293/12, Digital Rights Ireland Ltd v Minister for Communications et al., and C-594/12, Kärntner Landesregierunf, et al., EU:C:2014:238, case C-131/12, Google Spain SL Google Inc., case C-362/14, Maximillian Schrems.

protection vis-á-vis openness and transparency rests on fundamental principles which must be weighed against each other in concrete cases.

In the case of *Spirlea v European Commission*[102] which concerned, among other things, the right to documents under Regulation 1049/2001, and which originated from Germany in the context of an EU Pilot procedure, the court discussed the scope of the concept '*general interest*' (Article 4.2 of Regulation 1049/2001). In short, the background was that the applicants, who were parents, had lost their child as a result of a specific medical treatment in a private clinic in Düsseldorf. They lodged a complaint with the European Commission's Directorate-General for Health in which they claimed that German authorities had been inactive and violated a regulation on advanced therapy medicinal products.[103] The Commission then initiated an EU Pilot procedure and contacted German authorities in this matter. The Federal Republic of Germany complied with the request for information. The applicants then applied for access to information on the processing of the complainant; in particular they asked to consult the observations lodged by the Federal Republic of Germany. One of the pleas of the applicant was that there had been an infringement of the last clause of Article 4.2 of Regulation 1049/2001. Their main argument was that the Commission failed to provide an adequate statement of reasons in its decision regarding the absence of any overriding interest (in this case the protection of health). Furthermore they submitted that the Commission had not correctly weighed the opposing interests, and that there were no interests outweighing the interest of the EU pilot procedure such as might justify the disclosure of the document in issue.[104] The court found that it is for the person alleging the existence of an overriding interest to state the specific circumstances which justify the disclosure of the documents concerned, and moreover that a statement of purely general considerations is not sufficient to establish that an overriding public interest outweighs the reasons justifying a refusal to disclose the documents in question.[105] The court, however, held that while the burden of proof, when applying the exception (third intent of Article 4.2), rests on the institution invoking that exception, it is for the party alleging an overriding public interest, within the meaning of Article 4.2 in fine, to prove that interest.[106]

It is, with the Spirlea case as an example, not obvious that general principles such as transparency will always succeed in concrete cases, or if detailed provisions of legislation and the court's interpretation of exceptions and limitations on

[102] Case T-669/11, Darius Nicolai Spirlea and Mihaela Spirlea v European Commission, EU:T:2014:814.

[103] Regulation (EC) No 1394/2007 of the European Parliament and of the Council of 13 November 2007 on advanced therapy medicinal products and amending Directive 2001/83/EC and Regulation (EC) No 726/2004.

[104] Case T-669/11, para 88.

[105] Ibid, paras 91-92.

[106] Ibid, para 97.

access to documents and information will instead have a significant impact on the extent of openness and publicity. Here, Craig reminds us that it should not be forgotten that there can be clashes between transparency and Charter rights, such as the protection of personal data.[107] Hence, the rationales for an extensive public access within the Union could somewhat be interpreted as being quite restrictive and also a partly political.

4.4 Guaranteeing time aspects, the principle of investigation and hearing

Thus far, I have generally investigated the guarantees for personal data protection and the right of public access to documents and information and its limits. These issues, in particular, play an important role within the context of IMI. However, the use of IMI and the demands on cooperation between public bodies, when acting in the internal market, also invoke several procedural aspects. In this section, such things as time aspects, the principle of investigation or duty of care and the right to be heard will be briefly described. Cross-border cooperation between national authorities might include specific problems, which differ somewhat from a strict national perspective.

A general principle of administrative law is that public authorities have to act rapidly and effectively when handling administrative matters. At the same time, authorities have to deal with the matters in a careful and exhaustive way. This means that public authorities could not stay passive in single-case situations or by other means provide a slow process. However, guaranteeing prompt decision-making or time aspects as process rights are often dependent on other process rights such as diligent examination, hearing, reasons etc.[108] These procedural rights are subject to the so-called principle of good administration, which is laid down in the Charter, Article 41. Paragraph 1 of the Article states that: 'Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.' The scope of 'reasonable time' is not defined in the Charter. Thus, in Article 17 of the European Code of Good Administrative Behaviour it is prescribed that 'The official shall ensure that a decision on every request or complaint to the institution is taken within a reasonable time-limit, without delay, and in any case not later than two months from the date of receipt.'[109] Certain time limits could also be found in the Union legislation, where two examples with relevance for the IMI are the Services Directive and the Professional Qualification Directive. With regard to authorisation procedures for establishment, Article 13 of the Services Directive states that such procedures and formalities shall provide

[107] Craig, P., *EU Administrative Law*, p. 366.

[108] Ibid, p. 320. Notice that Craig points out the relationship between the right to be heard, the obligation of diligent examination and the duty to give reason. As an appropriate visual metaphor for this relationship he uses overlapping circles, where each of the circles represents a particular process right.

[109] See European Ombudsman, *The European Code of Good Administrative Behaviour*, p. 19.

applicants with a guarantee that their application will be processed as quickly as possible and within a reasonable period which is fixed and made public in advance.[110]

Similar provisions can be found within the Professional Qualification Directive. For example, Article 7(4), paragraph 2 of the Directive holds that within a maximum of one month of receipt of the declaration and accompanying documents, the competent authority shall endeavour to inform the service provider either of its decision not to check his qualifications or of the outcome of such check. Regarding the procedure for the mutual recognition of professional qualifications, the Directive states:

1. The competent authority of the host Member State shall acknowledge receipt of the application within one month of receipt and inform the applicant of any missing document.
2. The procedure for examining an application for authorization to practise a regulated profession must be completed as quickly as possible and lead to a duly substantiated decision by the competent authority in the host Member State in any case within three months after the date on which the applicant's complete file was submitted. However, this deadline may be extended by one month in cases falling under Chapters I and II of this Title.
3. […]

It is not possible to fully give an adequate answer as to what act rapidly or promptly means or what the criteria of 'act within a reasonable time' are.[111] As shown, though, the Directives give examples of more or less clear guidelines of the time aspects for respective areas. The obligation to act rapidly is intertwined with and dependent on other procedural rights. For instance, one could assert that the possibility of prompt acting is partly contingent on the duty of diligent examination. More complicated matters or affairs require more time from the authority before settling the case.

The principle of diligent examination or the principle of care is significant for the administration and the possibility to take legitimate decisions in specific cases. The principle establishes a duty for authorities to carefully examine both legal and factual aspects of the individual case.[112] As a procedural right, the principle of care could be considered vital in a state based on the rule of law. The absence of duty to investigate matters in front of administrative agencies might lead to a risk of legal uncertainty and maladministration. Schneider regards the duty

[110] See also article 15(7) paragraph 2 where a time limit of 3 months is prescribed regarding prohibited requirements and the Commission's examination.
[111] Nehl, H. P., Good administration as procedural right and/or general principle, in Hofmann & Türk (eds.) *Legal Challenges in EU Administrative Law*, p. 332 with references to case law.
[112] Craig, P., *EU Administrative Law*, p. 33.

of careful investigation as a centrepiece of procedural impartiality and fairness. However, he emphasizes that it is important to differentiate the duty of careful investigation from the administrative instruments created to fulfil this duty.[113]

Here it is relevant, once again, to emphasize Craig's words that the process rights depend on each other and a careful investigation must include the right to be heard, the duty to give reasons, etc. Article 41 of the EU Charter, which has been mentioned above, does not give any closer guidance as to the extent of diligent examination. Regarding the duty to investigate, Article 41.1 states that every person has the right to have his or her affairs handled impartiality and fairly by the institutions and bodies of the Union.[114] However, the second subparagraph (Article 41.2) lists several procedural rights which are included in the obligation to investigate, such as the right to be heard, access to files and the obligation to give reasons. There is no closer definition in the European Code of Good Administrative Behaviour on careful investigation. Thus, in Article 9 of the Codex it is provided under 'objectivity' that when taking decisions, the official shall take into consideration the relevant factors and give each of them its proper weight in the decision, whilst excluding any irrelevant element from consideration.[115]

4.5 An inventory of some specific or potential problems: IMI and the Swedish example

Thus far in this section, issues such as data protection, publicity and several other administrative law procedural aspects have been analysed. It has been shown that information exchange in general is desirable for an effective administration but also that different safeguards must be taken into account to secure the administrative procedure. I will now end this section by shedding light on how some of the aspects discussed above (4.2–4.4) could have an effect on the administration when authorities apply IMI. For this reason, the inventory will have a Swedish perspective in order to bring out examples of potential problems.

The ideal handling of administrative matters should be rapid but at the same time solidly carried out.[116] Public bodies are supposed to conduct a reliable investigation before taking a decision in individual cases. In Swedish administrative law, the Chancellor of Justice has stated several times that authorities must act promptly and not slowly or passively. The general Swedish Administrative Procedure Act, however, contains no fixed time limits for when a decision must be taken. Paragraph 7 of the Administrative Procedure Act

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[113] Schneider, J.-P., *Basic Structures of EU Information Management*, p. 94.

[114] See for example Hofmann, H. C. H. & Tidghi, M., *Rights and Remedies in Implementation of EU Policies by Multi-Jurisdictional Networks*, p. 150 with references to case law.

[115] See European Ombudsman, *The European Code of Good Administrative Behaviour*, p 16.

[116] See for example Craig, P., *EU Administrative Law*, pp. 333-340, Hofmann, H.C.H., *General Principles of EU Law and Administrative Law*, supra n. 96, pp. 214-215, Harlow, C, *Law and Administration*, pp. 534-537.

(1986:223) only stipulates that 'Each matter to which a person is a party shall be handled as *simply*, *rapidly* and *economically* as possible without jeopardizing legal security'. This is certainly rather vague and empty wording. However, in Union secondary legislation such as the Professional Qualifications Directive and the Services Directive there are time limits for the authorities to follow.[117] This is also one reason for the establishment of IMI, namely to make it easier for authorities to cooperate and to speed up the handling of internal market affairs. With IMI, the exchange of relevant information is improved. Thus, in Swedish law there are no provisions on action of delay or any other effective means to bring pressure on the authorities. In Article 7 of the IMI Regulation it is stated that competent authorities, when cooperating by means of IMI, shall ensure that an adequate response is provided within the shortest possible period of time, and in any event within the deadline set by the applicable Union act. Hence, there is no provision in the IMI Regulation to bring pressure on competent authorities when delaying a response. IMI coordinators are, however, empowered to support IMI actors and ensure the efficient functioning of IMI, including the provision of timely and adequate responses to requests for administrative cooperation.[118] General provisions in Directives on the obligation to cooperate, mutual assistance, time limits and exchange of information can often require a regulation in domestic law.[119]

Another aspect of the duty to investigate is to what extent IMI leads to a more one-dimensional procedure, in the sense of abandoning other, and more traditional, ways of cooperating and exchanging information. One could assert that because all information under IMI goes through predefined and pre-translated questions, it will diminish more extensive examination in concrete cases. Public authorities could simply and uncritically accept an answer from a predefined question. This is of course an imaginable scenario, but IMI does not hinder investigation 'outside the system', and it is possible to exchange forms and other official papers through IMI as linked documents. Communication through email and regular mail is still conceivable. On a more general level, the pre-translated question/answer sets and the European Commission Machine Translation (ECMT) tool are altogether interesting solutions. The main idea is to use pre-translated questions and replies. For example, an IMI user in Sweden can send a pre-translated question in Swedish to its counterpart in Germany and get the reply from the German IMI user back in Swedish. When using free text information, in more complex cases, it is recommended to write as clearly as possible with short sentences, and to use a language understood by the contacted authority. For this purpose, IMI can provide support by indicating the language understood by the users in each competent authority and it can provide for a

[117] See above, section 4.4 Guaranteeing Time Aspects, the Principle of Investigation and Hearing.
[118] See also Article 14(7) and Article 28 of the IMI Regulation.
[119] See for a Swedish example, SOU 2015:13, section 7.4.4.

rough translation of the free text information.[120] Competent and investigating authorities must therefore, for legal purposes, be aware of the shortcomings of the predefined and pre-translated questions and answers and the ECMT tool. However, authorities have the possibility through IMI to translate in several languages and thereby compare different lingual versions. It is also possible for the authorities to obtain official translations if necessary. This is of course dependent on the case and context and it is always a question for the authority to assess when a case or a matter is sufficiently investigated.

In a European perspective, Sweden is quite unique with its principle of public access to official documents. The balancing between publicity and privacy has overweighed heavily in favour of openness, and this has been a conscious choice.[121] With this in mind, it is quite interesting to point out that IMI is a rather closed system, which Recital 17 of the IMI Regulation indicates: 'IMI is in essence a communication tool for administrative cooperation between competent authorities, which is not open to the general public'. This reason is thus complemented with the statement that technical means may need to be developed to allow actors (citizens, enterprises, organizations) to interact with the competent authorities, by supplying and retrieving information. However, such technical means should be developed technically and completely separately from IMI. To this date, no such technical means seem to have been launched and running.

Nevertheless, as mentioned, principles of openness and transparency are highly valuable in Sweden despite the closed nature of IMI. In Chapter 2 Article 1 of the Instrument of Government the freedom of information is laid down with a reference to the right of access to official documents regulated in the Freedom of the Press Act. This latter act stipulates that every Swedish citizen shall be entitled to have free access to official documents.[122] The right of access to public documents can be restricted on several foundations and such restrictions shall be specified in a provision of a special law,[123] which in this case is the Public Access to Information and Secrecy Act (2009:400). Provisions on secrecy or confidentiality are not unusual or remarkable in any way. Rather, Article 10 paragraph 1 of the IMI Regulation states that each Member State shall apply its rules of secrecy to its IMI actors or IMI users in accordance with national or Union legislation. In Chapter 8 of the Swedish Access to Information and Secrecy Act it is stated for whom secrecy applies. Apart from individuals, secrecy applies

[120] The European Commission Internal Market Information (IMI) System User Handbook, p. 7.

[121] Österdahl, I., Transparency versus Secrecy in an International Context: a Swedish Dilemma, in Lind, A.-S., Reichel, J. & Österdahl, I. (eds.), *Information and Law in Transition – Freedom of Speech, the Internet and Democracy in the 21st Century*, p. 78.

[122] Chapter 2, Article 1 Freedom of the Press Act. See also Chapter 14 article 5 Freedom of the Press Act: "Except as otherwise laid down in this Act or elsewhere in law, foreign nationals are equated with Swedish citizens."

[123] Chapter 2, Article 2 Freedom of the Press Act.

between authorities, both national and foreign. The aforementioned Article 10 of the IMI Regulation, however, contains the principle of originator control,[124] in that it stipulates that IMI actors shall ensure that requests of other IMI actors for confidential treatment of information are exchanged in accordance with IMI. Hence, Article 10(2) enables a foreign authority to transmit information to another authority with a request for confidential treatment by the receiving authority. From a Swedish perspective, a provision such as this may lead to an increased limitation and restriction of the constitutional right of public access to official documents. What is critical here is how the influence from a directly applicable Union act (Regulation) may affect fundamental law in a Member State and its constitutional identity. By extension this could also lead to difficult demarcation issues in concrete cases before the authorities and in their choice between potentially conflicting legislation.

In relation to data protection and processing of personal data, the IMI Regulation has relatively strong safeguards to protect personal integrity of individuals. According to Recital 7, IMI follows the privacy-by-design principle and is developed with the requirements of data protection legislation in mind and has been data protection-friendly from its inception.[125] Administrative cooperation by electronic means between Member States and the Commission should, according to Recital 8, apply with the rules on the protection of personal data laid down in the Data Protection Directive (95/46/EC). In Sweden, Directive 95/46 is implemented through the Personal Data Act (1998:204).[126] The provisions in the IMI Regulation thus seem to be consistent with Swedish legislation. However, it can be worth stressing that personal data should not remain longer in the system than absolutely necessary and that competent authorities should only process personal data for the purposes defined in the relevant Union acts.

Finally, a certain issue could be raised in relation to IMI and potential problems in Swedish law. A unique feature in Sweden is the independency of authorities. Chapter 12 Article 2 of the Instrument of Government states that no public body may determine how an administrative body shall decide in a particular case relating to the exercise of public authority. Lottini has noticed an earlier document from the Commission in which it was provided that an IMI coordinator had the possibility to intervene in an information process if so requested from an interlocutor who was not satisfied with an answer from a competent authority.[127] There is no such provision in the IMI Regulation but Article 6 gives the coordinator certain functions and responsibilities, including support tasks. From a Swedish perspective, it is relevant to emphasize that the

[124] See Österdahl, I., *Transparency versus Secrecy in an International Context*, supra note 121, p. 92.
[125] See also Recital 22, 26 and Articles 13-21.
[126] The Swedish Personal Data Act will be replaced in May 2018 by the new General Data Protection Regulation. See supra section 4.2 and note 89. See also Dir. 2016:15 Dataskyddsförordningen.
[127] Lottini, M., *An Instrument of Intensified Informal Mutual Assistance,* supra n. 13, p. 118.

IMI coordinator must not intervene in a particular case and thereby jeopardize the competent authorities' independence. The IMI coordinator's role should be mere supportive.

In conclusion, this section has briefly discussed and made an inventory of some potential or specific problems that may arise within the use of IMI, here with Sweden as an example. Other Member States may have different problems in relation to IMI. Nevertheless, IMI has been positively welcomed by many instances and it is quite easy to admit that the system yields many benefits.[128] It is also worth mentioning that IMI is a relatively new and still evolving system and the extent of its pros and cons has not yet been fully examined in either legal literature or in case law.

[128] See for example COM (2011) 522 and Opinions EDPS, 2012/C 48/02.

5 Concluding remarks

The overall aim of this report has been to examine the Internal Market Information System (IMI) and its role in cross-border administrative cooperation between authorities, especially due to obligations under internal market legislation. For the effective functioning of this market, competent authorities must assist each other and exchange information with one another. This is by no means surprising since it follows from EU law principles and explicit from Treaty provisions on sincere cooperation and is laid down in secondary legislation. In this respect, IMI could be considered to be a web-based tool for such cooperation and primarily for information exchange, which would otherwise take place in other ways, for example by regular mail.

In addition to the preceding discussions and analysis, some conclusions can be made. However, it is important to emphasize that IMI is still a relatively new IT solution with obvious potential for expansion into further policy areas, and maybe even for replacing existing information systems and databases. It is also worth reiterating that IMI has evolved in partnership with the Member States and the system offers uniform working methods agreed on by every EU country. One could therefore claim the existence of consensus between the Member States on the design and the security of the system.

This report has discussed several potential legal issues that come with the system, from both a general administrative law basis and from a more specific ground with Sweden as an example. To a large extent, the question of sufficient protection on data is vital and has been subject of many discussions regarding IMI. Consequently, IMI invokes a lot of legal measures for maintaining high security standards when processing personal data and from its inception, the system has followed the privacy-by-design principle. However, systems such as IMI, evolved for facilitating collaboration between authorities, may apart from data protection, give rise to several potential administrative law issues. Such aspects as openness, transparency, investigation and other matters relevant for administrative procedure have been brought up and highlighted in the report. It seems to be rather apparent that IMI could affect domestic administrative law and to some extent constitutional principles. As IMI is still a relatively closed system, it is specifically important that such aspects as responsibility and supervision are consequently considered. The Commission, the EDPS and national data protection authorities in the Member States play a vital role in this respect. It is also important to ensure that the exchange and processing of personal data shall be used only for the purpose of the Union acts listed in the Annex of the IMI Regulation.

More generally speaking, IMI both joins many important components of administrative cooperation into one information management unit and interlinks authorities in cross-border internal market matters or affairs. It leads from plurality to uniformity. What is relevant to emphasize here is thus that other, and more traditional, forms of information exchange and investigation are not excluded. There is, of course, always a risk that when using a simplified, effective and manageable system such as IMI, the authorities could become too fixated on the system itself. Even if the IMI system is regarded as a tool for effective cooperation, other ways for sharing information and investigation must still be available. It is, thus, in this context worth repeating that IMI has improved cross-border cooperation and the exchange of information has become more effective. The potential problems described here with IMI could of course actualize in cooperation outside the system. In conclusion, IMI theoretically appears to be an effective and ideal system for joint informational cooperation but it also gives rise to specific legal questions on a Member State level. This is primarily because of the absence of general EU administrative legislation and the presence of institutional and procedural autonomy in the EU countries.

In addition to this, an overall assumption is that IMI and its potential development in the future may be a step closer to a common European Administrative Procedure Act. The main advantages of such a joint regulation would be the presence of a consistent and common procedure for national authorities when implementing Union law. Although IMI does not require an obligation to cooperate, the system is prepared and built around the fact that the EU in more and more areas requires national authorities and the EU institutions to work together and mutually assist each other. For this purpose, IMI could seemingly be the only common network of information management linking various EU authorities together.

References

Official documents

Directive 95/46/EC of the European Parliament and of the Council, of 24 October 1995, on the protection of individuals with regard to the processing of personal data and on the free movement of such data

Directive 2005/36/EC of the European Parliament and of the Council, of 7 September 2005, on the recognition of professional qualification

Directive 2006/123/EC of the European Parliament and of the Council, of 12 December 2006 on services in the internal market

Regulation 45/2001/EC of the European Parliament and of the Council of 18 December 2000, on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data

Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems

Regulation (EU) 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')

Regulation (EU) 2016/679 of the European Parliament and of the 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)

COM(2011) 75 final, Communication from the Commission to the European parliament, the Council, the European economic and social committee and the Committee of the regions. Better governance of the Single Market through greater administrative cooperation: A strategy for expanding and developing the Internal Market Information System ('IMI')

COM(2011) 522 final, Proposal for a Regulation of the European Parliament and the Council on administrative cooperation through the Internal Market Information System ('the IMI Regulation')

COM(2012)11 final, Proposal for a Regulation of the European Parliament and the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation)

C(2013) 5869 final, Commission Recommendation of 17.9.2013 on the principles governing SOLVIT

Opinion of the European Data Protection Supervisor on the Commission proposal for a Regulation of the European Parliament and of the Council on administrative cooperation through the Internal Market Information System ('IMI') (2012/C 48/02)

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Literature

Craig, P., EU Administrative Law, Oxford University Press, 2012

Galetta, D.-U., Informal Information Processing in Dispute Resolution Networks: Informality versus the Protection of Individual's Rights? European Public Law 20, no 1, 2014

Galetta, D.-U., Hofmann, H. C. H. & Schneider, J.-P., Information Exchange in the European Administrative Union: An Introduction, European Public Law 20, no 1, 2014

European Commission "The EESSI Read" Newsletter – Issue 1, 02/2015

European Commission Internal Market Information (IMI) System User Handbook, update 2012.

European Ombudsman, The European Code of Good Administrative Behaviour, 2015

Harlow, C., Law and Administration, 3. ed., Cambridge University Press, 2009

Hofmann, H. C. H., General Principles of EU Law and Administrative Law, in (Barnard, C. and Peers, S., reds.), European Union Law, Oxford University Press, 2014

Hofmann, H. C. H. Schneider, J.-P. and Ziller, J., The Research Network on European Law's Project on EU Administrative Procedure, Review of European Administrative Law, Review of European Administrative Law, vol. 7, nr 2, 2014

Hofmann, H. C. H., & Tidghi, M., Rights and Remedies in implementation of EU Policies by Multi-Jurisdictional Networks, European Public Law 20, no 1, 2014

Lafarge, F., Administrative Cooperation between Member States and Implementation of EU Law, European Public Law 16, no 4, 2010

Lottini, M., Correct Application of EU Law by National Public Administrations and Effective Individual Protection: the SOLVIT Network, Rewiew of European Administrative Law (REALaw), vol. 3, nr 2, 2010

Lottini, M., An Instrument of Intensified Informal Mutual Assistance: The Internal Market Information System (IMI) and the Protection of Personal Data, European Public Law 20, no 1, 2014

Nehl, H. P., Good administration as procedural right and/or general principle, in Hofmann & Türk (eds.), Legal Challenges in EU Administrative Law: towards an integrated administration, Edward Elgar, 2009

Reichel, J., BBMRI-ERIC – An analysis of a multi-level governance tool for the EU and beyond, in Lind, A-S & Reichel, J. (eds.), Administrative Law Beyond the State – Nordic Perspectives, Martinus Nijhoff Publishers, 2013

Reichel, J., Transparency in EU Research Governance? A Case Study on Cross-border Biobanking, in Lind, A.-S., Reichel, J. & Österdahl, I. (eds.), Information and Law in Transition – Freedom of Speech, the Internet and Democracy in the 21st Century, Liber, 2015

Schmidt-Aßmann, E.,Introduction: European Composite Administration and the Role of European Administrative Law, in Jansen & Schöndorf-Haubold (eds.). The European Composite Administration, Intersentia, 2011

Schmidt-Aßmann, E., Administrative Law in Europe: Between Common Principles and National Traditions, in (Ruffert, M., ed.) Administrative Law in Europe: Between Common Principles and National Traditions, Europa Law Publishing, 2013
Schneider, J.-P., Basic Structures of EU Information Management in the European Administrative Union, European Public Law 20, no 1, 2014
Sommer, J., Information Cooperation Procedures – With European Enviromental Law Serving As an Illustration, in Jansen & Schöndorf-Haubold (eds.), The European Composite Administration, Intersentia, 2011
Wenander, H., A Toolbox for Administrative Law Cooperation Beyond the State, in Lind, A.-S. & Reichel, J., Administrative Law Beyond the State. Nordic Perspectives, Martinus Nijhoff Publishers, 2013
Wenander, H., A Network of Social Security Bodies – European Administrative Cooperation under Regulation (EC) No 883/2004, Review of European Administrative Law (REALaw), 2013/1
Wettner, F., The General Law of Procedure of EC Mutual Administrative Assistance, in Jansen & Schöndorf-Haubold (eds.), The European Composite Administration, Intersentia, 2011
Österdahl, I., Transparency versus Secrecy in an International Context: a Swedish Dilemma, in Lind, A.-S., Reichel, J. & Österdahl, I. (eds.), Information and Law in Transition – Freedom of Speech, the Internet and Democracy in the 21st Century, Liber, 2015

Cases

51-54/71 International Fruit Company v. Produktscap voor groenten en fruit, ECLI:EU:C:1971:128
33/76 Rewe-Zentralfinanz v. Landwirtschaftskammer für das Saarland, ECLI:EU:C:1976:188
14/83 Sabine von Colson and Elisabeth Kamann v. Land Nordrhein-Westfalen, ECLI:EU:C:1984:153
2/88 Imm, J. J. Zwartveld and Others, ECLI:EU:C:1990:315
C-312/93 Peterbroeck, Van Campenhout & Cie SCS v Belgian State, ECLI:EU:C:1995:437.
C-459/03, Commission v. Ireland, ECLI:EU:C:2006:345
C-246/07 European Commission v. Kingdom of Sweden, ECLI:EU:C:2010:203
C-553/07, College van burgemeester en wethouders van Rotterdam v M. E. E. Rijkeboer, ECLI:EU:C:2009:293.
C-28/08 P, European Commission v. The Bavarian Lager Co. Ltd, ECLI:EU:C:2010:378
T-669/11, Darius Nicolai Spirlea and Mihaela Spirlea v European Commission, ECLI:EU:T:2014:814
C-131/12, Google Spain SL Google Inc. v Agencia Española de Protección de Datos (AEDP) Maria Costeja Gonzalés, ECLI:EU:C:2014:317
C-293/12, Digital Rights Ireland Ltd v Minister for Communications et.al, and C-594/12, Kärntner Landesregierunf, et al, ECLI:EU:C:2014:238
C-362/14, Maximillian Schrems v Data Protection Commisioner, ECLI:EU:C:2015:650

Svensk sammanfattning

För att den inre marknaden ska fungera effektivt krävs att EU:s och medlemsstaternas institutioner och myndigheter ges förutsättningar och verktyg för att kunna samarbeta och bistå varandra med bland annat utbyte av relevant information. Den tekniska utvecklingen och inrättande av databaser och informationshanteringssystem har bidragit till att detta samarbete på många sätt har förenklats och förbättrats. Inom ramen för denna rapport undersöks informationssystemet för den inre marknaden (IMI) som introducerades år 2004 och sedan år 2012 regleras i förordning 1024/2012. I nuläget används IMI på åtta områden[129] men kan komma att utvidgas till flera andra områden i framtiden. IMI kan beskrivas som ett nytt verktyg i det moderna informationstekniska samhället med syfte att underlätta den inre marknaden.

Rapporten syftar till att med IMI som exempel visa hur myndigheter länkar samman på olika områden och skapar nya former av förvaltningssamarbete. Dessa samarbetsformer kan delvis se annorlunda ut i jämförelse med medlemsstaternas inhemska och samtidigt innebära avvikelser från nationella förvaltningsrättsliga regler och principer. Mer specifikt behandlar rapporten IMI som rättslig företeelse och dess eventuella brister. Vilka rättsliga problem kan t.ex. uppstå inom ramen för IMI å ena sidan och vilka fördelar står att vinna? En övergripande fråga kan sägas vara om detta system, och för den delen liknande system, är lämpligt i brist på en sammanhållen förvaltningsrättslig reglering på EU-nivå. Eller med andra ord, är det lämpligt att förenkla det administrativa samarbetet så som skett genom IMI eller finns det risk att det sker på bekostnad av sådant som rättssäkerhet och personlig integritet.

IMI skapar i sig inga skyldigheter att samarbeta eller att ge ömsesidigt bistånd myndigheter emellan. Däremot innehåller flera av de rättsakter till vilka IMI är knutet krav på samarbete mellan myndigheter. Syftet med IMI är istället att bistå med ett effektivt hjälpmedel för att underlätta det administrativa samarbetet. Det finns dock vissa bestämmelser i IMI-förordningen som kräver viss typ av samarbete när myndigheter kommer i kontakt med varandra genom IMI och de rättsakter som är anslutna. I rapporten diskuteras dock på ett övergripande plan de skyldigheter som finns kring administrativt samarbete inom EU. Det är nödvändigt att framhålla både de krav och främjanden som finns när det gäller europeiserat samarbete. Det är viktigt att poängtera att sådant samarbete i de allra flesta fall är nödvändigt, och på nationell nivå där en enhetlig förvaltningsstruktur i regel finns ses detta ofta som en självklarhet. Inom det EU-rättsliga samarbetet

[129] Tjänster, yrkeskvalifikationer, utstationering av arbetstagare, transport av kontanter i euro, patienträttigheter, e-handel, offentlig upphandling och återlämnande av olagligen bortförda kulturföremål.

saknas dock en enhetlig reglering avseende de förvaltningsrättsliga förfarandena och det finns ingen gemensam struktur för förvaltningen eller det administrativa samarbetet. I stället har det blivit allt vanligare med informationshanteringssystem och informella samarbetsstrukturer inom ramen för olika politikområden, som t.ex. här inom ramen för den inre marknaden.

Det finns förstås en rad fördelar med IMI-systemet, varav den främsta är möjligheten att effektivisera och förenkla informationsutbytet mellan de behöriga myndigheterna som är anslutna till IMI. För tillämpningen av vissa unionsakter inom ramen för den inre marknaden krävs att myndigheter samarbetar och utbyter information. I takt med att EU har utvidgats alltmer ställer upprätthållandet av den inre marknaden betydligt större krav på undanröjande av hinder för detta ändamål. Svårigheter att hitta rätt myndighet att kontakta i medlemsstaterna, språkbarriärer och brist på etablerade gemensamma arbetssätt är exempel på problem som genom användandet av IMI effektivt kan avhjälpas.

Vidare behandlas IMI-förordningen och dess bakgrund i rapporten. Förordningen bygger på sex kapitel (inklusive de allmänna bestämmelserna) där framförallt frågor om funktioner, ansvar, uppgiftshantering, säkerhet och rättigheter för de registrerade samt övervakning diskuteras. För att sätta IMI-systemet i ett större jämförande perspektiv belyses även tre andra system eller informella nätverk för informationshantering, problemlösning och samarbete; EESSI, SOLVIT och PPN.[130] Dessa system innehåller både skillnader och likheter och ger en ögonblicksbild över den heterogenitet som kringgärdar informationshantering inom EU. I anslutning till detta redogörs för vissa invändningar som den europeiska datatillsynsmannen (EDPS) uttalat i förhållande till IMI och de potentiella utvecklingsmöjligheter detta informationssystem alltjämt har.

Slutligen behandlar rapporten informationshantering och utbyte av information från ett allmänt förvaltningsrättsligt perspektiv, med fokus på dataskydd, offentlighet och sekretess samt allmänna förfaranderegler som utredningsskyldighet och skyndsamhet. Utifrån dessa allmänna perspektiv avslutas rapporten med en probleminventering där potentiella problem med IMI betraktas från ett svenskt perspektiv.

IMI kopplar ihop flera viktiga delar för administrativt samarbete i ett enhetligt informationshanteringssystem och länkar samman myndigheter i gränsöverskridande inremarknadsärenden. Det leder från pluralitet till likformighet. Teoretiskt förefaller IMI vara ett effektivt och idealiskt system för informationsutbyte, men det ger också upphov till specifika frågor på nationell nivå. Ett mer övergripande antagande är att IMI-systemet och dess potentiella utveckling till nya områden och ersättande av befintliga informationssystem och

[130] EESSI (Electronic Exchange of Social Security Information), SOLVIT (Solution to problem with EU rights), PPN (Public Procurement Network).

databaser kan vara ett steg närmare en gemensam europeisk förvaltningsrättslig förfarandelag. Även om IMI inte kräver en samarbetsskyldighet så är systemet förberett och uppbyggt kring förekomsten av att EU på allt fler områden förutsätter att medlemsstaternas myndigheter och EU:s institutioner samarbetar och ger varandra ömsesidigt bistånd. För detta ändamål tycks IMI framgent kunna bli det enda gemensamma nätverket för informationshantering som länkar samman unionens olika myndigheter.

"As the EU expands, it has become more urgent to eliminate obstacles for an effective and functioning internal market. Difficulties finding the right authority in the Member States, language barriers and the lack of established common working techniques are examples of problems which could be effectively removed via the use of IMI."

Gustaf Wall

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