

Self-Assessment

Multiple-choice questions

1. SUBJECT 9:

The expression "a law enforcement officer in one Member State who needs information in order to perform his duties can obtain this from another Member State and that the law enforcement agency in the other Member State which holds this information will make it available for the stated purpose, taking into account the requirement of ongoing investigations in that State" is the formulation of the:

- ☐ a) principle of subsidiarity
- ☐ b) principle of data quality
- ☒ c) **principle of availability**
- ☐ d) principle of subsumption

Comment: The correct answer is c). It is the definition provided by The Hague Programme of the 10th of May 2005.

2. SUBJECT 9:

With regards to the principle of availability, the so-called "Swedish Decision or proposal":

- ☐ a) Is a failed attempt to transpose the principle of availability.
- ☒ b) **Corresponds to Framework Decision 2006/960/JHA of the 18th of December on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States.**
- ☐ c) Is the name given to Decision JHA/615/2008, which integrates the Prüm Treaty into the legal framework of the European Union.
- ☐ d) Is Framework Decision 2006/JHA of the 18th of December on the organisation and content of the exchange between the Member States of information held in their criminal records registries.

Comment: The correct answer is b). Originally, in a proposal by Sweden, it lent its name to Framework Decision 2006/960/JHA of the 18th of December, the name and content of which refers to the "simplification of the exchange of information and intelligence between law enforcement authorities of the Member States" and not to criminal records, as asserted by incorrect answer d). In the opinion of some authors, it is the first regulatory approach to the principle of availability, after the failure of the Proposal for a Council Framework Decision of the 12th of October 2005.

3. SUBJECT 9:

In accordance with Framework Decision 2006/960/JHA of the 18th of December on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States:

- ☐ a) No reasons for refusing the communication of information or intelligence are stipulated.
- ☐ b) Only optional reasons for a refusal of the communication of information or intelligence are stipulated.
- ☐ c) The request for information or intelligence pertains to an offence punishable by a term of imprisonment of one year or longer under the law of the Member State addressed.
- ☒ d) **There are reasons to refuse the communication of information or intelligence but the refusal is only mandatory when the competent judicial authority has not authorised access to or the exchange of the information requested.**

Comment: The correct answer is d). The reasons for refusal stipulated in the Decision are optional except in the case of the absence of the necessary judicial authorisation, even where the request pertains to an offence punishable by a term of imprisonment of one year or less. Therefore, there is no minimum sanction requirement.

4. SUBJECT 9:

Is the Prüm Treaty a convention based on the system of enhanced cooperation?

- ☒ a) No; initially it was only signed by seven States.

- b) **In the opinion of at least one author, it is the manifestation of false enhanced cooperation.**
- c) Yes, due to the number of signatories as well as the subject matter concerned.
- d) No, given the number of signatories as well as the subject matter in question.

Comment: *The correct answer is b). Jacques Ziller is of the opinion that it is the manifestation of false enhanced cooperation owing to the initial number of signatory States: seven, not eight, as the Treaty on European Union stipulates. However, having made this assertion, he also believes that it is truly enhanced cooperation because it coincides with one of the aims of Article 29 of the Treaty on European Union, "the prevention of crime, organised or otherwise (of terrorism, in particular)".*

5. SUBJECT 9:

In the Prüm Treaty, the signatories' main goals are:

- a) **The identification of individuals and vehicles as the method for attaining the purposes sought by enhanced cross-border cooperation, in particular with regards to combating terrorism, cross-border crime and illegal migration.**
- b) The identification of individuals and vehicles to prevent internal illegal immigration amongst the Member States.
- c) It does not seek to identify individuals or vehicles, but to prevent terrorists from entering the EU.
- d) The protection of personal data.

Comment: *The correct answer is a). Although they did not deny concerns involving the protection of data, basically the signatories of the Prüm Treaty sought to step up cross-border cooperation in the fight against terrorism, cross-border crime and illegal migration via an enhanced exchange of information linked to various types of data bases in order to identify individuals (e.g. fingerprints and genetic profiles) and vehicles.*

6. SUBJECT 9:

With regards to security escorts during flights, the Prüm Treaty stipulates that:

- a) only law enforcement officers may be appointed as security escorts;
- b) a Contracting Party that sends an air marshal in an aircraft registered in their country must send the other Contracting Party notice of the fact in writing prior to embarking said escort;
- c) They are authorised to carry arms on flights to or from airports in Contracting Parties, under no conditions other than the general permission granted to that effect.
- d) **None of the previous answers are correct.**

Comment: *The correct answer is d) because, in fact, none of the other ones are correct. The security escorts on the flights referred to in the Convention shall be law enforcement officers but they may also be other public employees with the appropriate training. Therefore, answer a) is incorrect. In general, before a Contracting Party deploys security escorts, its relevant national contact point must give notice in writing of their deployment at least three days before the flight. The notice of the deployment of said escort must contain the information stipulated in the Annex to the Convention. However, in the event of imminent danger, notice must be given without further delay, as a rule before the aircraft lands. Therefore, b) is not the correct answer. Finally, although it is stipulated that, at the request of a Contracting Party, the Contracting Parties shall grant security escorts deployed by other Contracting Parties general permission to carry arms, ammunition and equipment on flights to or from airports in Contracting Parties, such permission shall be subject to the following conditions: 1. Those carrying arms and ammunition may not disembark with them from aircraft at airports or enter restricted-access security areas at an airport in another Contracting Party, unless escorted by a representative of its competent national authority. 2. The arms and ammunition carried must, immediately upon disembarking from the aircraft, under escort, be deposited for supervised safekeeping in a place designated by the competent national authority. Therefore, answer c) is also incorrect.*

7. SUBJECT 9:

Currently, the Prüm Treaty is:

- a) void of content, because it has been subject to Communitisation via Decision JHA/615/2008;

- b) still in force amongst the signatory States, although certain aspects, such as the DNA data bases, are not included in Decision JHA/615/2008;
- c) has been derogated by the Lisbon Treaty;
- **d) remains in force within the signatory States, although it has been partially integrated into Community law via Decision JHA/615/2008.**

Comment: *The correct answer is d). The transposition to the legal framework of the EU arising from Decision JHA/615/2008 has left out matters governed by the Prüm Convention, such as crossing borders, security escorts on flights and anything relating to illegal migration. In contrast, it does address the conditions and procedures for the automated transfer of DNA profiles.*

8. SUBJECT 9:

Which of the following assertions is correct?

- a) The Stockholm Programme does not mention the principle of availability because it responds to a very different political scenario than the one in which the Hague Programme was approved.
- b) The Stockholm Programme only mentions the principle of availability in passing and makes referral to Decision JHA/615/2008.
- **c) The Stockholm Programme expressly mentions the principle of availability, when it states that "it will continue to give important impetus" to the work of managing the flow of information. It also highlights the need to make it compatible with the fundamental rights.**
- d) The Stockholm Programme highlights the coherence of the instruments identified to meet such aims as the protection of data, and clearly gives priority to security issues.

Comment: *The correct answer is c). The Stockholm Programme expressly mentions the principle of availability and recognises the value indicated in this answer. However, it is certainly true that it does not fail to address the coherence of previous legislation and shows special concern for the protection of fundamental rights, such as the right to privacy.*

9. SUBJECT 9:

Decision 2005/876/JHA

- a) It has been derogated by Framework Decision 2008/675/JHA.
- **b) It has been derogated by Framework Decision 2009/315/JHA, on the organisation and content of the exchange of information extracted from the criminal record between Member States.**
- c) It is in force because the deadline for transposing Framework Decision 2009/315/JHA on the organisation and content of the exchange of information extracted from the criminal records has not yet expired.
- d) It substantially amended the information on criminal records stipulated in the Convention of 1959.

Comment: *The correct answer is b). Regardless of whether or not it has been transposed, the deadline ended on the 26th of March 2012 and replaces Decision 2005/876/JHA, which made no substantial changes to the conventional regime of 1959. Framework Decision 2008/675/JHA had a different purpose: to take into consideration the sentences issued in another Member State.*

10. SUBJECT 9:

With regards to Framework Decision 2009/315/JHA:

- a) Private individuals may not obtain information on sentences issued in another Member State.
- b) The information may only be provided to incorporate it into criminal proceedings.
- **c) It recognises the principle of data linked to purpose.**
- d) The period for transposition has not yet expired.

Comment: *The correct answer is c), although exceptions to the link are permitted to prevent imminent and serious danger to public safety.*