



EUROPEAN COMMISSION  
Impact Assessment Board

Brussels,  
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## Opinion

### Title

**Impact Assessment accompanying the proposal for a Directive on a Common Approach to the Use of Passenger Name Records (PNR) Data**

**(draft version of 23 August 2010)**

### **(A) Context**

In the Hague programme for 2005-2010, the Council called for a common EU approach to the use of passengers' data for law enforcement purposes. The Commission adopted a proposal for a Council Framework Decision on the use of Passenger Name Record (PNR) data for law enforcement purposes on 6 November 2007. On the entry into force of the Treaty of Lisbon the proposal, which had not been adopted by the Council by that date, became obsolete. The Stockholm Programme has called on the Commission to present a proposal for the use of PNR data. This impact assessment is an update of the impact assessment that was presented with the Commission's original proposal.

### **(B) Overall assessment**

**The Board welcomes the fact that the Directorate General for Home Affairs has resubmitted an updated impact assessment on this issue. The report provides a sound basis for action, and would benefit from additional work in the following areas. First, it should illustrate further, through examples, the claim that collecting and exchanging PNR data is an effective tool for combating terrorism and other serious crime. Second, the report should clarify further the rationale for the scope of this initiative (extra-EU flights) and reflect this more clearly in the objectives. Third, the report should discuss further what ranges of possible retention periods can be considered a good balance between law enforcement needs and data protection, and the optimal duration of the transition period from the 'pull' to the 'push' method of transmission of PNR data. It should also provide more clarity on the possible cost for carriers, public authorities and passengers.**

### **(C) Main recommendations for improvements**

**(1) Demonstrate further that collecting and exchanging PNR data between different countries is an effective tool for combating terrorism and other serious crime.** The report should discuss to what extent PNR data is currently exchanged in the EU and provide examples to show that these exchanges have led to investigations or identification of suspects. It should also explain more clearly the value added of the initiative in the context of the "other border initiatives" referred to in the Resolution of the European Parliament of 20 November 2008 (e.g. Council Directive 2004/82/EC on the obligation of carriers to communicate passenger data, Entry-Exit scheme, etc.).

**(2) Clarify the rationale for the scope of this initiative (extra-EU flights).** The report should explain more clearly why this initiative only covers extra-EU flights and not intra-EU flights and other modes of transport (such as rail or ferry), and ensure that the objectives are aligned with this approach. The report should also indicate more clearly which types of crime mentioned in the problem definition would be investigated more effectively thanks to collecting and exchanging PNR data from extra-EU flights.

**(3) Strengthen justification for the proposed approach.** First, while it is difficult to provide an analytical justification for the 3 year retention period for PNR data, the report should discuss further what ranges of possible retention periods can be considered a good balance between law enforcement needs and data protection (for example on the basis of international experience). Second, the report should be more precise about the length of the proposed transition period for from the 'pull' to the 'push' method of transmission of PNR. Third, the report should explain why voluntary cooperation between Member States to set up PNR systems combined with coordination by the Commission could not achieve the objectives of this initiative. Finally, the report should present an overview of the position of Member States on this initiative (e.g. outcome of the discussions in the Council working groups, elements on which consensus was reached already). Given that the report draws on the results of the 2007 consultations, it should explain whether the views of stakeholders can be considered to be still current.

**(4) Provide more clarity on the ultimate costs for carriers, public authorities and passengers.** The report should explain more clearly how the cost estimates for public authorities and EU carriers have been established and what assumptions were used. Given the significant difference between the two cost estimates provided, the report should explain what underlies this difference and if possible indicate with greater precision the most likely range of ultimate costs. Given that the initiative entails costs for air carriers, the report should also discuss whether/to what extent it would lead to an increase in prices of air tickets.

*Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report.*

### **(D) Procedure and presentation**

A reference should be added to the report "Study on Ways of setting up an EU network on exchange of PNR data for law enforcement purposes".

<b>(E) IAB scrutiny process</b>	
Reference number	2010/HOME/036
External expertise used	No
Date of IAB meeting	8 September 2010