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AVIS DU COMITE DES EVALUATIONS D'IMPACT

COUNCIL FRAMEWORK DECISION

on the use of Passenger Name Record (PNR) for law enforcement purposes

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Brussels, 7 September 2007
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Opinion

Title **Impact Assessment on the use of passenger name record (PNR) data for law enforcement purposes**

(draft version of 8 August 2007)

Lead DG **DG JLS**

1) Impact Assessment Board Opinion

(A) Context

In 2003 a Commission communication announced a European policy in the area of air passenger name records. The European Council in 2004 and the JHA Council in 2005 called on the Commission to present a proposal for a common EU approach, and these calls were also reflected in the recent EU action plan on combating terrorism. The proposal for a directive delivers on these calls.

(B) Positive aspects

The IA report is well-written using a clear and concise style and non-technical language, and stays within the recommended maximum length of 30 pages (excl. annexes). This greatly facilitates understanding the issues at hand. In those respects this document can serve as an example for many other IA reports which are produced by the Commission.

(C) Main recommendations for improvements

The recommendations below are listed in order of descending importance. Some more technical comments have been transmitted directly to the author DG.

General recommendation: The IA report should be further improved by better illustrating the risk of no EU action, by explaining in more detail the choices made in shaping and selecting the preferred policy option, and by elaborating on the consequences for relations with third countries. During its meeting with the Board DG JLS agreed to amend the IA report on these points.

(1) The limitation of the scope to extra-EU flights should be better explained. The IA report sets out that extending the scope to non-airline traffic would be very costly

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considering that PNR data are not yet normally collected for those modes of transport. This point could be put into perspective by providing some data on the number of people entering or exiting the EU by train or boat. More importantly however, it should be made clearer to what extent the cost argument can justify that intra-EU flights should also fall outside the scope of the directive. The reasoning behind this choice needs to be reinforced, having regard not only of the cost component but also of the threat level posed by intra-EU flights. Furthermore the IA report should make it clear that the initiative does not aim to address the full range of law enforcement problems identified, and it should be clear about the implications of the chosen limitations of the scope.

(2) The choice of the preferred option should be better explained. It appears from the IA report that the two options involving EU action are not so different from each other, and that the 'centralised' option would be more effective in increasing security though at a higher cost for public authorities. The comparison should be further elaborated to make it clear why the decentralised option is preferred, and in doing so make a clear distinction between what would be preferred from a purely analytical point of view and what is preferred given the political context and views from stakeholders.

(3) Impacts on relations with third countries should be further elaborated. The IA report should assess in more detail the likely consequences of this directive for the existing agreements with the USA and Canada, as well as implications for external carriers and for relations with other third countries. It should be clarified whether adoption of the directive would mean that a round of bilateral negotiations is needed, and if so what issues the EU may be confronted with. This analysis should also specifically address privacy issues relating to passenger data that originates from or is sent to third countries.

(4) The problem definition should be strengthened by illustrating the risk of divergent national measures. The IA report informs about three Member States that have already prepared legislation in the area of PNR, but it should demonstrate the point that a proliferation of such national initiatives would lead to inefficiencies or distortion by illustrating the degree of divergence that is already visible with the three 'first movers'.

(D) Procedure and presentation

It appears that all necessary procedural elements have been complied with.

2) IAB scrutiny process

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