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COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	14 December 2022
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	SEC(2022) 444 final
Subject:	REGULATORY SCRUTINY BOARD OPINION Advanced Information on Air Passengers Proposal for a Regulation of the European Parliament and of the Council on the collection and transfer of advance passenger information (API) for enhancing and facilitating external border controls, amending Regulation (EU) 2019/817 and Regulation (EU) 2018/1726, and repealing Council Directive 2004/82/EC Proposal for a Regulation of the European Parliament and of the Council on the collection and transfer of advance passenger information for the prevention, detection, investigation and prosecution of terrorist offences and serious crime, and amending Regulation (EU) 2019/818

Delegations will find attached document SEC(2022) 444 final.

Encl.: SEC(2022) 444 final



EUROPEAN COMMISSION

30.09.2022

SEC(2022) 444

REGULATORY SCRUTINY BOARD OPINION

Advanced Information on Air Passengers

{COM(2022) 729, 731}

{SWD(2022) 421-424}



EUROPEAN COMMISSION
Regulatory Scrutiny Board

Brussels,
RSB

Opinion

Title: Impact assessment / Advanced Information on Air Passengers

Overall opinion: POSITIVE

(A) Policy context

The Advanced Passenger Information (API) Directive aims at improving border control and combating illegal immigration. The Directive obliges air carriers to transmit to the competent authorities, prior to the flight's take-off, passenger data collected during check-in from travel documents. This allows for pre-checks of air travellers prior to their arrival at the external border. API data is subject to purpose limitations including a 24-hour retention period. The flexibility left to Member States by the Directive in terms of the collection and processing of API data leads to inconsistencies of flight coverage, data quality, and data reliability.

The Passenger Name Record (PNR) Directive regulates the collection of basic flight manifest, but not passenger travel document data for fighting serious crime and terrorism. This data is subject to a longer data retention period. The PNR Directive review showed that joint processing of API and PNR data plays a vital role in identifying, preventing, detecting and disrupting terrorism and serious crimes. United Nations Resolutions have called for the systematic use of API data for this purpose. However, there are currently no clear EU rules on the use of this data for law enforcement purposes leading to a security gap.

This impact assessment explores ways to improve the quality of API data and to enable its use in combination with PNR data for law enforcement purposes.

This opinion concerns a draft impact assessment which may differ from the final version.

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(B) Summary of findings

The Board notes the additional information provided in advance of the meeting and commitments to make changes to the report.

The Board gives a positive opinion. The Board also considers that the report should further improve with respect to the following aspects:

- (1) The report does not present specific evidence of the problems with border control and the security gap relating to the current EU legal framework and Member State practices on the collection and use of API and PNR data.**
- (2) The report does not provide a full overview of the costs and benefits for all key stakeholders. It does not sufficiently demonstrate the proportionality of the preferred option.**

(C) What to improve

(1) The report should present more specific evidence – including using case studies or illustrative real-life examples – on the problems and their scale. It should demonstrate that the selection of flights for which API data is collected through risk and operational assessments by national authorities under the current Directive results in ineffective border management. It should demonstrate with evidence how the lack of the joint processing of API and PNR data affects security.

(2) The analysis of costs and benefits should be strengthened. The report should present more clearly the cost estimates and justify the assumptions underpinning them. It should provide a more comprehensive overview of the benefits of the preferred option to help justify its proportionality.

(3) The report should explain the limited policy choices presented in the impact assessment as regards the scope of the initiatives. It should also better explain why the preferred option is a combination of four, cumulative, options.

(4) The report should set out how the envisaged API scope extension to domestic flights respects the proportionality and subsidiarity principles and the envisaged legal basis.

(5) The report should set out what success will look like and how progress will be measured. It should present a set of corresponding indicators, allowing effective monitoring of the achievement of the specific objectives. The report should specify how, and by when, the two instruments will be evaluated.

(6) The report should better present stakeholder views and show how they have been taken into account in the analysis. The report should explain the position of different categories of stakeholders as regards the policy options proposed. It should specify the impact of the different options and the preferred option on each group.

The Board notes the estimated costs and benefits of the preferred option(s) in this initiative, as summarised in the attached quantification tables.

Some more technical comments have been sent directly to the author DG.

(D) Conclusion

The DG may proceed with the initiative.

The DG must take these recommendations into account before launching the interservice consultation.

If there are any changes in the choice or design of the preferred option in the final version of the report, the DG may need to further adjust the attached quantification tables to reflect this.

Full title	Impact Assessment report accompanying the document of a Proposal for a Regulation of the European Parliament and of the Council on the obligation of carriers to communicate advance passenger data
Reference number	PLAN/2019/5452
Submitted to RSB on	31 August 2022
Date of RSB meeting	28 September 2022

ANNEX – Quantification tables extracted from the draft impact assessment report

The following tables contain information on the costs and benefits of the initiative on which the Board has given its opinion, as presented above.

If the draft report has been revised in line with the Board's recommendations, the content of these tables may be different from those in the final version of the impact assessment report, as published by the Commission.

I. Overview of costs Preferred option								
	Citizens/Consumers		Airlines		Member States Administrations		Eu-LISA	
	One-off	Recurrent	One-off	Recurrent	One-off	Recurrent	One-off	Recurrent
Inbound API	0	0	0	EUR 5,85m p.a.	EUR 13.5m	0	0	0
Outbound API	0	0	0	EUR 12,68m p.a.	EUR 54m	0	0	0
Intra-EU and domestic API	0*	0	EUR 75m*	EUR 27,04m p.a.	0	0	0	0
Improving API quality	0	0	EUR 200m	0	0	0	0	0
API router	0	0	0	0	0	0	EUR 34m	EUR 1.4m p.a.
<i>Costs related to the 'one in, one out' approach</i>								
Inbound API								
Outbound API								
Intra-EU API								
Improving API quality								
API router								

II. Overview of Benefits (total for all provisions) – Preferred Option		
<i>Description</i>	<i>Amount</i>	<i>Comments</i>
<i>Direct benefits</i>		
Reduced costs of transmitting inbound API data due to the router	€8,46m recurrent	Airlines
Reduced costs of transmitting outbound API data due to the router	€8,46m recurrent	Airlines
Reduced costs of transmitting intra-EU and domestic API data due to the router	€10,92m recurrent	Airlines
Reduced fines due to improvement of data quality	Up to €80m recurrent	Airlines
<i>Indirect benefits</i>		
None identified		
<i>Administrative cost savings related to the 'one in, one out' approach *</i>		
None identified		