



## **Discussion Paper**

### **Informal Justice and Home Affairs Ministers' Meeting**

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Session II (Home Affairs)

#### ***Financing of PNR-systems***

1. As a response to the threat posed by serious crime and terrorism in Europe, the European Council in the Stockholm Programme called upon the Commission to present a proposal for the use of PNR data to prevent, detect, investigate and prosecute terrorism and serious crime.

On 2 February 2011, the Commission presented a proposal for a Directive of the European Parliament and of the Council on the use of Passenger Name Record data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime.<sup>1</sup>

During the discussions on the proposal a majority of the Member States have spoken in favour of EU wide use and exchange of PNR data and have welcomed the establishment of a European PNR-system as an essential tool in the fight against terrorism and serious crime in the EU. However, although good progress has been made during the negotiations there are still some outstanding issues.

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<sup>1</sup> Proposal for a Directive of the European Parliament and of the Council on the use of Passenger Name Record data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime (COM(2011) 32). This proposal replaces the 2007-proposal for a Council Framework Decision on the use of Passenger Name Record (PNR) data for law enforcement purposes (COM(2007) 654).

A number of Member States have expressed concern in regard to the financial impact of the future implementation of the PNR Directive and in regard to the ability of individual Member States to carry the full implications of the financial burden.

It is a general principle that Member States are responsible for the implementation of adopted EU legislation and in general also have to bear the costs flowing from the transposition of EU law. Member States can, however, within the different frameworks of EU funding, apply for financial support.

In an attempt to find a solution to the financial concerns expressed, it has been carefully considered whether it would be desirable and possible to insert an explicit provision regarding EU financing of a European PNR-system into the Directive.

The Commission has continuously stated its willingness to undertake a substantial part of the financing of the establishment of a European PNR-system under the relevant financial programmes. However, the Commission as well as the Council Legal Service have expressed serious budgetary and legal concerns in regard to inserting explicit provisions on costs into the future PNR Directive.

2. In the Stockholm Programme, the European Council calls upon the Commission to consider setting up an Internal Security Fund to promote the implementation of the Internal Security Strategy so that it becomes an operational reality.

In response to this, the Commission, in its communication of 29 June 2011 on the next multi-annual financial framework for the period 2014-2020<sup>2</sup>, suggested to set up an Internal Security Fund.

According to the proposal, the Internal Security Fund shall support the implementation of the five strategic objectives set out in the Internal Security Strategy:

1. disrupting international crime networks,
2. preventing terrorism and addressing radicalisation and recruitment,
3. raising the levels of security for citizens and businesses in cyberspace,

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<sup>2</sup> Communication from the Commission to the European Parliament, the Council, The European Economic and Social Committee and the Committee of the Regions A Budget for Europe 2020 (COM(2011) 500).

4. strengthening security through border management, and
5. increasing Europe's resilience to crises and disasters.

In the proposal, the Internal Security Fund is divided into two sector-specific regulations, one regarding police co-operation, preventing and combating crime, and crisis management and another regarding border management and common visa policy.

**3.** The general purpose of both instruments is to contribute to ensuring a high level of security in the European Union taking into account the five strategic objectives set out in the Internal Security Strategy.

Within this general objective, the instrument on police co-operation, preventing and combating crime, and crisis management<sup>3</sup> shall contribute to preventing and combating cross-border, serious and organised crime including terrorism, and reinforcing coordination and cooperation between law enforcement authorities of Member States and relevant third-countries.

The concrete measures supported by the instrument cover primarily actions aimed at strengthening Member States operational capacities, such as joint cross-border operations, exchange of best practices, testing and validating new methodologies and technologies, the acquisition of technical equipment and infrastructures, training and exchange of staff, analytical activities such as risk and threat assessments as well as networking.

The objectives and the measures eligible for financial support according to the instrument on police co-operation, preventing and combating crime, and crisis management are described in very general terms. This is in contrast to the instrument on border management and visa policy, which *inter alia* prescribes for specific funding of the European Border Surveillance System (EUROSUR).

**4.** Bearing in mind the Member States' concerns in regard to the financial impact of the future implementation of the PNR Directive as well as the budgetary and legal concerns that have been stressed by the Commission and the Council Legal Service in regard to inserting explicit provisions on costs into the future PNR Directive, the Presidency:

- Invites Ministers to consider whether financing of a future PNR-systems should be addressed in the relevant financial instruments?

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<sup>3</sup> Proposal for a regulation of the European Parliament and of the Council establishing, as a part of the Internal Security Fund, the instrument for financial support for police co-operation, preventing and combating crime, and crisis management (COM(2011) 753).

If so, do Ministers feel reassured that the current wording of the instrument for financial support for police co-operation, preventing and combating crime, and crisis management covers the implementation of the future PNR Directive or would it be desirable to refer explicitly in the instrument to the establishment of PNR-systems in Member States?

- Invites the Commission to elaborate on its previously expressed commitment to ensure substantial financial support for implementation of a future European PNR system and in this regard express its position with regard to the above mentioned questions.