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**NOTE**

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From:	Presidency
To:	Working Party on Information Exchange and Data Protection (DAPIX)
No. prev. doc.:	10597/19; 11433/19
Subject:	Widening the scope of passenger name record (PNR) data legislation to transport forms other than air traffic - An impact assessment - Draft Council Conclusions

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On initiative of the Presidency, DAPIX discussed the issue of using passenger name record (PNR) data in the fight against terrorism and serious crime. The objective was to explore to what extent Member States would support the widening of the scope of the EU PNR Directive to transportation forms other than air traffic.

DAPIX extensively dealt with the issue on the basis of Presidency papers 10597/19 and 11433/19. Subsequently, the Presidency drafted Council Conclusions that reflect the outcome of these discussions. The draft Conclusions pertaining at a study, i.e. exploring the need and feasibility of widening EU PNR legislation by means of an impact assessment, to be carried out by the Commission were discussed by DAPIX in its meeting of 10 October 2019.

Delegations find in annex the revised draft Council Conclusions on widening the scope of EU PNR legislation on the use of passenger name record (PNR) data. Delegations are invited to agree on the revised draft Conclusions with a view to submit the draft to COREPER / Council for adoption as a I/A item at one of their forthcoming meetings.

Draft

**Council Conclusions**

**of ....**

**on**

**Widening the scope of the use of passenger name record (PNR) data  
to transport forms other than air traffic**

THE COUNCIL OF THE EUROPEAN UNION,

RECALLS that the PNR Directive<sup>1</sup>, applies to PNR data on air traffic and does not cover any other transportation form. PNR may contain different types of data, such as travel dates, travel itinerary, ticket information, contact details, travel agent through which the flight was booked, means of payment used, seat number and baggage information. Air carriers are required to transfer the registered data for all passengers on extra EU flights and Member States can decide to apply the same obligation to intra EU flights,

ACKNOWLEDGES that traffic volumes from both within and outside the Schengen area are increasing. Besides air traffic, also ferry, ship, boat, train and bus traffic carry large numbers of passengers on a daily basis across the borders,

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<sup>1</sup> Directive (EU) 2016/681 of the European Parliament and of the Council on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime, OJ L 119/132, 4.5.2016.

NOTES that gathering and analyzing PNR **and closely linked up API data**<sup>2</sup>, is deemed important for combating terrorism and serious crime. Through handling and analyzing PNR **and API** data, law enforcement authorities' actions and resources are directed more efficiently and in a targeted way,

TAKES NOTE that in some Member States, PNR data is already collected from other transportation forms than air traffic. However, the **collection and processing** of PNR data for these transportation forms is not regulated at EU level,

TAKES NOTE of the Presidency initiative to launch discussions in DAPIX about widening, **if appropriate**, the scope of the EU PNR legislation to other transport forms than air traffic,

REMINDS the outcome of these discussions<sup>3</sup>, where some Member States welcomed the Presidency initiative and acknowledged the potential added value for preventing, detecting, investigating and prosecuting terrorist offences and serious crime,

REMINDS the concerns voiced by delegations about the timing and likely legal, technical and financial challenges, **notably with regard to fundamental rights and the principles of proportionality and necessity, and**

**REMINDS** their suggestion to carry out a thorough impact assessment, which should take into account the outcome of **both** the review **of the PNR Directive, envisaged in 2020** as provided for by **Article 19** of the Directive, **and of the current evaluation of the tightly correlated API Directive,**

**RECOMMENDS** therefore that subsequent to the PNR review the European Commission **conduct** a thorough impact assessment on widening the scope of **the** PNR Directive to **cross-border** travelling forms **other** than air traffic,

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<sup>2</sup> Changes to the text with regard to the initial version are set out in **bold**.

<sup>3</sup> 11433/19

EMPHASISES that in making the impact assessment, it is important to closely study the legal, operational, technical and other **issues**, especially including:

- the travel forms to be included,

the impact on **fundamental rights, such as** data protection and **the freedom of movement within the territory of the Member States,**

- the extent to which operators dealing with other modes of transportation already collect PNR data in the normal course of business, and the impact of additional mandatory processing of their business data,

- **the obligatory collection of a minimum set of passenger data, and the impact of such a collection on carriers, travellers and automated PNR data processing within the PIU,**

- the impact on widely used travel options with flexible tickets not bound to a specific person or a specific connection, **i.e. whether a widening of the scope of the PNR Directive could restrict or impede the use of such tickets,**

- the lack of common protocols and data formats,

- the compliance with the principles of proportionality and necessity,

- the different needs in Member States due to their geographical situation,

- the costs for both public and private sector, **in particular the potential repercussions on the economic situation of carriers,**

CONCLUDES that the aim **of such an impact assessment is to** explore the necessity and feasibility of the collection, storage and processing of PNR data from **cross-border** transport forms **other** than air traffic.

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