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COVER NOTE

From: Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director

date of receipt: 9 December 2021

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

Subject: REGULATORY SCRUTINY BOARD OPIONION

Proposal for a Directive of the European Parliament and of the Council on information exchange between law enforcement authorities of Member States, repealing Council Framework Decision 2006/960/JHA

Delegations will find attached document SEC(2021) 420 final.

Encl.: SEC(2021) 420 final.



EUROPEAN COMMISSION

27/09/2021

SEC(2021) 420

REGULATORY SCRUTINY BOARD OPINION

Proposal for a Directive of the European Parliament and of the Council on information exchange between law enforcement authorities of Member States, repealing Council Framework Decision 2006/960/JHA

COM(2021) 782

SWD(2021) 374

SWD(2021) 377



EUROPEAN COMMISSION
Regulatory Scrutiny Board

Brussels,
RSB

Opinion

Title: Impact assessment / EU police cooperation code

Overall opinion: POSITIVE

(A) Policy context

Europe faces evolving and increasingly complex cross-border security threats. Most organised crime groups are now active across the borders of Member States. Together with the increasing mobility of people within the EU, cross-border real time information exchange between law enforcement authorities has never been more crucial.

The existing EU legal framework for information exchange is constrained by: (i) the non-implementation of the 2006 Swedish Framework Decision; (ii) the overlaps with the 1990 Convention Implementing the Schengen Agreement and the Prüm Decisions; (iii) poor, under-resourced structures in Member States; and (iv) the multiplicity of different channels. In addition, the Swedish Framework Decision pre-dates the Lisbon Treaty and is not aligned with the Law Enforcement Data Protection Directive.

The present initiative aims to modernise and facilitate EU law enforcement information exchange by revising the legal framework and integrating it into a single police cooperation code.

(B) Summary of findings

The Board notes the useful 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 clearly set out the articulation of the initiative with the existing legal framework and with parallel initiatives in the security field.**
- (2) The report does not explain the benefits of the initiative for personal data protection.**
- (3) The report does not sufficiently assess policy options independently from the question of their political feasibility.**

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

Commission européenne, B-1049 Bruxelles - Belgium. Office: BERL 08/010. E-mail: regulatory-scrutiny-board@ec.europa.eu

(C) What to improve

1. The report should clarify how the initiative will articulate with the Automated Data Exchange Mechanism for Police Cooperation (Prüm II) and the Convention Implementing the Schengen Agreement (CISA). It should also clarify that the initiative aims to propose a Directive to update and replace the pre-Lisbon Swedish Framework Directive (adopted by both the Council and the European Parliament in the ordinary legislative procedure).
2. The problem analysis should be reinforced with anonymised evidence from the Schengen evaluation reports. The report should also explain why Member States do not or cannot address certain shortcomings themselves, e.g. ill-equipped national authorities, lack of common binding procedures.
3. Regarding personal data protection, the report should explain how the alignment with the 2016 Law Enforcement Data Protection Directive will provide the required level of data protection in the Union.
4. The political feasibility of the policy options should not determine their substantive assessment but rather be considered when comparing options. The criteria of legal and technical feasibility should be used to screen the options to be retained for further in-depth analysis. Only feasible options should be kept. Any difference in terms of their performance should then be reflected via the standard assessment criteria of effectiveness, efficiency and coherence.

The Board notes the estimated costs and benefits of the preferred option 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 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	EU police cooperation code – tackling cross-border serious & organised crime
Reference number	PLAN/2020/8314
Submitted to RSB on	25 August 2021
Date of RSB meeting	22 September 2021

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.

Indicative overview of possible costs – Preferred option						
	Citizens/Consumers		Member State Administrations		Union Agencies	
	One-off	Recurrent	One-off	Recurrent	One-off	Recurrent
Direct costs						
Case Management Systems in SPOCs	0	0	EUR 1.5m ¹	unknown	0	0
Case Management Systems in PCCCs and equivalent bodies	0	0	EUR 6.75m ²	unknown	0	0
SIENA integration in SPOCs CMSs	0	0	EUR 1m ³	unknown	Unknown	Unknown
SIENA integration in PCCCs CMSs	0	0	EUR 2.25m ⁴	unknown	Unknown	Unknown
Europol (including both policy options 3.2 & 3.3)	0	0	0	0	Unknown	EUR 1.7m as part of Agency' budget
Total	0	0	€11.5m	unknown	unknown	unknown
Indirect costs						
Training	0	0	0	As part of MS training budget + ISF support (via national programmes) [Wide differences between MS needs]	unknown	As part of Agency' budget

¹ Only 10 MS are expected to invest in a CMS at SPOC (hence a possible indicative cost of EUR 150.000 per Member State).

² The set-up of CMSs in a maximum of 45 PCCCs would cost EUR 6,750 million (45x EUR 150.000).

³ Only 20 MS are expected to invest in this integration (hence EUR 50.000 per Member State).

⁴ Out of the 59 identified PCCCs, 14 are already connected to SIENA. The SIENA connection to a maximum of 45 PCCCs would cost EUR 2,250 million (45x EUR 50.000).