



**COUNCIL OF
THE EUROPEAN UNION**

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LIMITE

**GENVAL 43
AVIATION 100
DATAPROTECT 34
CODEC 648**

OUTCOME OF PROCEEDINGS

from: Council
on: 11 April 2011

No. prev. doc.: 8016/1/11 REV 1 GENVAL 27 AVIATION 62 DATAPROTECT 16
CODEC 466

Subject: 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
- The possible inclusion of intra-EU flights

1. On 3 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. The scope of the Commission proposal is restricted to international flights, that is flights arriving from or departing to a third (non-EU country). Intra-EU flights are not included, but Article 17(1) of the draft Directive obliges the Commission to submit a report to the EP and the Council within four years following the entry into force of the Directive, on the feasibility of including internal flights in the scope of the Directive. Recital 28 of the draft Directive also states that the Directive "does not affect the possibility for Member States to provide, under their domestic law" for the collection of PNR data regarding internal flights, a possibility which is acknowledged by Article 17.

2. The UK advocated that Member States be able to collect PNR data on intra-EU travel as well. In the note it had submitted¹, the UK delegation proposed an amendment which would make PNR data collection on flights between Member States optional on the part of any Member State, by extending the regime created by the Directive in respect of international flights to internal flights. A Member State which decides to apply the directive to intra-EU flights would also decide the particular intra-EU routes on which it wishes to collect PNR data. As far as the possible costs of including intra-EU flights is concerned, it was emphasised that setting up a European PNR has a fixed cost and variable costs and that the more the system is used, the more the fixed costs per data collected are reduced. It was indicated that the total estimated cost would be lower than 10 cents per passenger per flight. The Commission indicated it would look into the financial support it could offer to Member States to set up a Passenger Information Unit (PIU).
3. At the Council meeting many Member States have emphasized the operational added-value of including intra-EU flights, referring inter alia to high proportion of these flights out of the total number of flights.
4. Regarding the concerns on the compatibility of the inclusion of intra-EU flights in the scope of the EU PNR Directive with the Schengen Border Code and the free movement of persons², the Council Legal Service has provided a written opinion on these questions³. Most delegations concurred with the Presidency in that an inclusion of targeted intra-EU flights surrounded with sufficient safeguards could be achieved in compliance with EU law on free movement of persons. Some Member States raised questions regarding the compatibility of the proposed directive with data protection requirements, but the Presidency stated that this was an issue in its own right, which would need to be dealt with separately.

¹ 6359/11 GENVAL 8 CATS 10 AVIATION 21 DATAPROTECT 9.

² The Commission has referred to the opinion of the Commission Legal Service, according to which the inclusion of intra EU flights would not infringe the Schengen Border Code or the free movement of persons.

³ 8230/11 JUR 115 GENVAL 29 AVIATION 72 DATAPROTECT 21 CODEC 509.

5. The Presidency had submitted the following four options for dealing with the question of the inclusion of intra-EU flights:
- 1) *The non-inclusion of intra-EU flights;*
 - 2) *The optional inclusion of some intra-EU flights, on targeted routes.*
 - 3) *The mandatory inclusion of some intra-EU flights.*
 - 4) *The mandatory inclusion of all intra EU-flights.*
6. A minority of Member States stated their clear preference for option 1, arguing that the collection of PNR data needed to be limited to the absolute minimum. The majority of the Member States clearly stated their preference for the second option, with several Member States expressing a preference for option 4 which would offer most operational added value. The latter could, however, accept option 2, as a compromise. The idea of a review clause was advanced in order to assess, after a few years, the possibility of covering all intra-EU flights.
7. In view of the above and on the understanding that the issue of data protection will need to be addressed at a later stage, the preparatory work on the draft PNR Directive will continue at expert-level on the basis of the indication by the Council that the Directive should allow individual Member States the option to mandate the collection of PNR data with regard to targeted intra-EU flights and that the collection and processing of such data should be subject to the legal regime created by the PNR Directive. The possibility of inserting a review clause will also have to be studied.
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