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NOTE

From:	Presidency
To:	Working Party on Information Exchange and Data Protection (DAPIX)
No. prev. doc.:	10597/19
Subject:	Widening the scope of PNR to other forms of transportation in addition to air traffic

INTRODUCTION

The PNR Directive¹, which came into force in May 2016 and had to be transposed by 25 May 2018, applies to PNR data on air traffic. PNR data may contain different types of information, 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.

The Directive does currently not cover other transportation forms than air traffic. The Presidency initiative does not envisage a legislative proposal for the near future. It aims to explore whether this is an issue that should be further studied.

¹ 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.

PNR ON OTHER TRAVELLING FORMS

Traffic volumes from both within and outside the Schengen area are increasing. Widening the scope of the PNR Directive to other forms of transportation than air traffic could include for example sea traffic and international high speed trains.

DAPIX delegations have previously answered a questionnaire on the PNR Directive, which included a question about gathering PNR data on other transportation forms. Based on a Presidency paper (10597/19), DAPIX started discussions on widening the scope of the PNR Directive to other forms of transportation than air traffic. The outcome of the discussion so far can be summarised as follows.

Many Member States welcomed the initiative to start handling this topic, but at the same time there was concern about the timing and possible legal, technical and financial challenges. Many Member States thought that there could be added value in widening the scope of the PNR Directive, but that the issue should to be carefully considered and studied and a thorough impact assessment would be very important. Many Member States felt, that it would be too soon to make changes to the PNR Directive and widening the scope of the Directive was not a priority for them. Many felt that it would be important to wait for the evaluation of the implementation of the PNR Directive before considering changes to the Directive. Some pointed out, that the geographical situation leading to different needs to gather PNR data in different Member States should be taken into consideration.

In some Member States, PNR data is already collected from other transportation forms than air traffic. However, the handling and use of PNR data for these transportation forms is not regulated at EU level. One of the aspects of the issue is the possibility of legally providing at Union level for establishing specific entities responsible for the collection, storage and processing of PNR data from also other travelling forms than air traffic, which should be studied.

Gathering and analysing PNR data was deemed important for combating terrorism and serious crime across borders. Through handling and analysing PNR data, law enforcement authorities' actions and resources could be directed more usefully.²

If the scope of the PNR Directive would be widened, an impact assessment on widening the scope of PNR Directive to other travelling forms was considered necessary. In making the impact assessment, it would be important to closely study the legal issues, including the impact on data protection and other fundamental rights as well as compliance with the principles of proportionality and necessity, the technical and operational challenges and the costs for both public and private sector. It was expected that widening the scope of the PNR Directive to other travelling forms would cause costs for the transportation companies. Establishing a single PIU responsible for the handling of PNR data of all traffic forms involved would streamline significantly the collecting and processing of PNR data within the wider scope of the Directive. Having common obligations and rules among EU Member States would help to clarify the obligations for traffic operators.

FEEDBACK TO THE QUESTIONS ON WIDENING THE SCOPE OF PNR

1. Which kind of PNR data is collected from other travelling forms than air traffic in Member States?

In most Member States PNR data is gathered only from air traffic. In some Member States there is a possibility to gather PNR data from other travelling forms according to national legislation or PNR data is already gathered from other travelling forms, such as sea, river, railway and bus traffic.

2. Is PNR the best instrument in collecting that data? If not, which other instruments are deemed more useful and why?

Most Member States thought that PNR is the best instrument for collecting data and there were no suggestions for other instruments.

² In Finland, the number of people travelling by sea traffic and air traffic are about the same; approximately 20 million travels are made with both transportation forms to and from Finland. Like air traffic, sea traffic can be used to transport illegal firearms and drugs and to facilitate illegal entry into the country and human trafficking.

3. What would be the benefits of gathering PNR on other travelling forms?

Most Member States saw that there could be additional value for Member States' capability to prevent, detect, investigate and prosecute terrorist offences and serious crime, for instance by the PIUs increased capability to detect suspicious travel patterns and to reveal complete travel movements of persons falling within the scope of the PNR Directive.

4. What are the possible problems (legal, technical, operational) in widening the scope of the PNR directive?

The problems and challenges mentioned were legal issues concerning data protection, fundamental rights and the principle of proportionality, technical and operational issues, financial reasons and the different needs in different Member States to gather and exchange data.

While extending the scope of the PNR Directive might benefit law enforcement, there needs to be enough justification for the extension to avoid the risk of violating the fundamental right to privacy and data protection. It should be taken into consideration, that one of the reasons the PNR Directive was considered compatible with EU law was the limited scope. On the other hand, it can be seen as discriminatory to gather PNR on air travel only.

Different travel operators, like rail and sea carriers will not necessarily use the same reservation systems, so additional costs and technical issues are likely to arise. Differing specificities (technical, operational) of each transport modes raise questions concerning the feasibility of introducing harmonised regulations and technical requirements.

Some Member States felt that they should retain the option to apply the PNR Directive to intra-EU travel based on the risk assessment.
