



Council of the
European Union

Brussels, 31 January 2017
(OR. en)

14785/3/16
REV 3

LIMITE

ENFOCUSTOM 202
DAPIX 224
JAI 989

NOTE

From:	Dutch delegation
To:	Customs Cooperation Working Party
No. prev. doc.:	DS 1494/16
Subject:	Common non-paper on the value of PNR for Customs law enforcement and risk management in light of the new PNR Directive

This document describes the value of PNR data in relation to the management of day to day passengers controls by customs in light of the new PNR Directive¹.

The document aims to support Customs Administrations in the Member States in the national implementation of the Directive by highlighting the added value of customs as part of the PIU. Additionally the document provides options and best practices for integrating this expertise in operational customs requirements into PIUs.

The document will be made available to the relevant Council working parties and working groups.

¹ Directive 2016/681/EU, Official Journal L119/132, 4.5.2016

1. Introduction

As the leading authority for controlling the movement of goods within the Justice and Home Affairs (JHA) area customs plays an important role in the general framework of supervising passenger traffic in order to achieve a more effective protection of the Union's citizens and the Union's economy against smuggling². This is an essential part of the contribution of customs authorities in the context of the European Security Agenda.

EU customs legislation provides the framework for managing the risks related to international movement of **goods**, including goods carried by persons. Under the Union Customs Code (UCC), **all goods** entering, passing through or leaving the EU are subject to **customs supervision** and liable to customs controls, which have to be based on risk management. The **Common Risk Management Framework** (CRMF) is the EU policy and legal framework for delivering an efficient and effective approach to the supervision of international movement of goods, balancing control for a range of risks (including safety/security) while facilitating legitimate trade. An efficient and effective customs control of the goods brought into or leaving the EU by passengers is significantly enhanced by the availability of timely, high-quality advance electronic data on passenger traffic as it would enable customs administrations to pre-select for control the high-risk movements of goods carried by certain passengers, while facilitating and accelerating the low-risk traffic. This could be achieved through access to Advance Passenger Information (API) and Passenger Name Record (PNR)³ data for use in risk management⁴.

Given the ongoing implementation of the PNR directive, this underlines the need for effective co-operation between customs and other relevant authorities with a task in passenger supervision.

² Council resolution of 13 December 2011

³ Or API data included in the PNR data

⁴ As was stated by the Directors General of Customs in their Riga statement

PNR data

Passenger Name Record (PNR) data is information provided by passengers during the reservation and booking of tickets and when checking in on flights. This data is collected by air carriers for their own commercial purposes. It contains several 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. The data is stored in the airlines' reservation and departure control databases.

PNR data has been used manually for almost 60 years by customs and other law enforcement authorities around the world. Customs authorities in several Member States have been using this data since some years now in order to fight cross-border crime. Currently, the legal basis is derived from either specific legislation or general legal powers.

Technological developments have made it possible to use PNR data more systematically for law enforcement purposes. The analysis of PNR data helps to identify high risk passengers previously unknown to law enforcement authorities. PNR data has proven to be an efficient and effective tool to identify high risk passengers in the context of combatting terrorism as well as drugs trafficking, trafficking in human beings, child sexual exploitation and other serious crimes.

A common EU approach regarding the use of PNR data by law enforcement agencies for specific purposes, Directive (EU) 2016/681 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime, was adopted by the European Parliament and the Council on 27 April 2016.⁵

⁵ 2016/681/EU Official Journal L119/132, 4.5.2016

API data

PNR data are different from and should not be confused with Advance Passenger Information (API). API data are the biographical information taken from the machine-readable part of a passport and contain the name, place of birth and nationality of the person, the passport number and expiry date. Thus they are different and more limited in scope than PNR data. In the EU, the use of API is regulated by the API Directive⁶. The Directive provides that API data should be made available to border control authorities, at the request of each Member State, for flights entering the territory of the EU for the purpose of improving border controls and combating irregular immigration. Even though their use for law enforcement purposes is permitted by the Directive, this is possible only if specific criteria are fulfilled. Thus, although API data are in some cases used by law enforcement authorities in order to identify suspects and persons sought, they are mainly used as an identity verification and border management tool. Moreover, API data do not enable law enforcement authorities to conduct an assessment of passengers, and therefore do not facilitate the detection of hitherto ‘unknown’ criminals or terrorists.

2. Case studies of current use of PNR data by Customs in law enforcement (success stories, added value etc.)

Already in 2012, the WCO Council adopted a Recommendation regarding the use of Advance Passenger Information (API) and Passenger Name Record (PNR) for efficient and effective customs control. This Recommendation is based on international experience of customs enforcement agencies in using API and PNR data to prevent and detect trans-national crime. The WCO Council took the view that use of API and/or PNR data for risk assessment would assist customs administrations in developing and exploiting the best possible intelligence for the control of travellers, would facilitate more efficient allocation of enforcement resources and would facilitate low risk passengers traffic.

⁶ Directive 2004/82/EC

A survey⁷ conducted by the Irish Presidency in 2013 found that 79% of the responding Member States (25, including Croatia) already had specific arrangements in place to ensure co-operation with airlines and other international passenger transport businesses to assist them in conducting risk analyses regarding travellers. In a more recent survey by the European Commission (DG Taxation and Customs Union), 11 customs administrations indicated they had some access to PNR for the purpose of customs risk management – ranging from very limited case-specific access to full real-time "push" access.

PNR data play an important role in identifying the risks associated with baggage of passengers (or cash carried by passengers), because they allow the customs authorities to carry out targeted and risk-based control, which helps to detect a number of serious offences and organised crime, while maintaining data protection and privacy. The use of PNR data has already led to a large number of seizure and arrest by customs authorities in the EU. These include seizures of cocaine, heroin, as well as cash, cigarettes and products. More specific examples of seizures and arrests made by customs authorities are contained in the Annex 1.

More in general, recent experience in France has showed that in a relative short period of time, a significant number of detections in fight against customs frauds could have been made with the support of PNR analyses. These detections at the Paris airports of Roissy and Orly included the confiscation of € 132.000 on suspicion of money laundering, seizures of tobacco and water pipe tobacco and tax adjustments of € 10,000.

In 2012 the Dutch Minister for Security and Justice informed the Dutch Parliament that the detection rate of illegal goods found by Dutch Customs with the support of PNR analyses proved to be 4 times higher than in cases where controls were carried out without PNR analyses. Equal results could only be achieved by submitting a large amount of passengers to physical controls. That would create a large disturbance in the passenger flow at the airport and more capacity from customs would be needed which would not be available elsewhere.⁸

⁷ 9262/1/13

⁸ Annex 1 to letter to parliament of the Netherlands (TK 2012, 32317-107)

Croatian Customs indicated that since the start of using PNR data as an analytical tool, the detection rate proved to be 8 times higher than before, when controls were carried without PNR analyses. At the same time the number of physical checks has decreased with the consequent positive effect on passenger flows.

3. Risk Management and PNR (in the light of the Union Customs Code)

As indicated under point 1, under the Union Customs Code⁹, all goods entering, passing through or leaving the EU, including goods carried by persons, are subject to customs supervision and liable to customs controls. Those customs controls shall be primarily based on an electronic risk analysis and carried out within a common risk management framework, based *inter alia* upon the exchange of risk information and risk analysis results between customs administrations¹⁰.

As stipulated in art 46 (4) UCC, risk management includes activities such as collecting data and information, analyzing and assessing risk, prescribing and taking action and regularly monitoring and reviewing that process and its outcomes, based on international, Union and national sources and strategies.

Obviously, PNR data is a key source of information in order to carry out and streamline customs controls on passengers traffic in an effective way. Analysis of PNR data can provide insight on trends in criminal modus operandi such as drug trafficking routes.

As mentioned before, the customs authorities in several Member States are already using PNR data to carry out risk analyses. Some Member States have indicated that the majority of their drug seizures in relation to passengers traveling by air in their countries are the results of processing PNR data. By using PNR data, both pro-actively and in real time, customs authorities can assess risks and combat serious crime and terrorism threats. Customs authorities, for example, can use results of PNR data analysis to enhance risk passenger profiles in order to perform their tasks as efficient as possible.

⁹ Regulation (EU) No 952/2013 of 9 October 2013

¹⁰ Art. 46-2 and 46-3 UCC

The need for PNR data in customs risk management has been underlined several times in the CCWP. The Studies and questionnaires which have been carried out in the CCWP during the past few years show that PNR data is supporting customs controls and risk management¹¹.

In 2012, a questionnaire¹² was submitted to the CCWP as part of a proposal of the Cyprus Presidency in order to prepare a threat assessment on air transit passengers. The aim of the questionnaire was to find out whether a common approach is applied towards air transit passengers by the Member States. In brief, the analysis of the questionnaire revealed that, in general, Member States considered the current community legal instruments as sufficient. However, access to PNR was considered to be crucial in order to perform a more effective risk analysis and control on air transit passengers. In addition, almost all Member States came across cases of air transit passengers using complicated (unusual) routes so as to avoid customs controls. With the highest risk attributed to the areas of cocaine, tobacco products and synthetic drugs.

In 2013, the Irish Presidency performed a study¹³, which concluded that most Member States were already aware of the possibilities of advance passenger data¹⁴ for Customs in a law enforcement context. One of the recommendations expressed that the benefits to be gained from effective use of advance information in an overall law enforcement context are very significant. Customs authorities were asked to consider taking into greater account the broader law enforcement context and examining ways to maximize the effective use of such information.

In 2014, the above mentioned threat assessment on air transit passengers¹⁵, carried out by the Cyprus delegation, recommended that the customs authority responsible for the transit area at the airport need to have direct access to the appropriate (risk) information; and that all Member States should have access to passengers information in order to perform more effective controls on air transit passengers.

¹¹ 5208/13, 5642/1/14 REV 1 + ADD 1 RESTREINT UE, 5947/13, 9262/1/13 REV 1

¹² CM 3743/12

¹³ 9262/1/13 REV 1

¹⁴ The study focused on use of both API and PNR data, that is why “passenger data is used in this paragraph

¹⁵ 5642/1/14 REV1 + ADD 1 RESTREINT UE

4. PNR directive, the case for customs as competent authority

The directive¹⁶ regulates the transfer of PNR data of passengers of international flights from the airlines to the Member States, as well as the processing of this data by the competent authorities. The directive establishes that PNR data collected may only be processed for the prevention, detection, investigation and prosecution of terrorist offences and serious crime.

Under the directive, air carriers will be obliged to provide Member States' authorities with the PNR data for flights entering or departing from the EU. It will also allow, but not oblige Member States to collect PNR data concerning all or selected intra-EU flights. However, considering the current security situation in Europe, all Member States declared that by the date of transposition of the directive they will make full use of the possibility provided for by Article 2 to include intra-EU flights.

Article 7 of the PNR Directive provides for the role of the competent authorities. It states that each Member State shall adopt a list of the competent authorities entitled to request or receive PNR data or the result of processing those data from the PIU in order to examine that information further or to take appropriate action for the purposes of preventing, detecting, investigating and prosecuting terrorist offences or serious crime.

These competent authorities are authorities competent for the prevention, detection, investigation or prosecution of terrorist offences or serious crime.

It should be emphasized that the question is not whether a competent authority is competent for all aspects of tackling an offence, but whether it is competent to act in detection, prevention, investigation or prosecution.

A list of criminal acts that can be considered as serious crime is included in Annex II of the Directive (see annex 2).

¹⁶ Directive (EU) 2016/681

In particular, “fraud, including that against the financial interests of the Union” falls under the direct remit of each customs authority of the Member State as import duties are part of the financial interest of the Union.

Customs administrations often have broader responsibilities, several other of the listed criminal acts, such as the illegal trade in narcotic substances and the illegal trade in firearms, ammunition and explosives, are offenses on which customs authorities are mostly a competent authority to prevent, detect and in some case to investigate.

Furthermore, as a competent authority for checking and supervising the external EU border, customs has a role in combating terrorism and serious crimes.

From the perspective of the **EU legislation** on customs controls and risk management, it is clear that "customs controls" (as defined in the UCC) can allow a national "customs authority" (also defined in the UCC) to contribute to detection and prevention in particular:

- all goods entering, passing through or leaving the EU customs territory, including goods carried by or on passengers, are subject to "customs supervision", and liable to "customs controls";
- the definition of "risk", for which customs controls are applied, covers many of the offences in Annex II, any kind of smuggling, and also terrorist offences in so far as they involve movement of goods.

Therefore it would be desirable for customs to be recognized as a competent authority for requesting or receiving PNR data or to receive information from the PIU. This can also include the involvement of customs authorities in the setting up of PIUs.

This is particularly justified in view of customs relevant topics in the list of offences set out in Annex II of the Directive¹⁷.

¹⁷ 13836/1/16

A legal basis to assign customs as a competent authority can be found in the legal basis for the directive, Article 87 TFEU. Cross-border law enforcement cooperation — involving the police, customs and other law enforcement services — is designed to prevent, detect and investigate criminal offences across the European Union. In practice, this cooperation mainly concerns serious crime (organized crime, drug trafficking, trafficking in human beings, cybercrime) and terrorism. Furthermore, customs can be considered as a key player due to the expertise on cross-border trade and crime.

5. Cooperation in PIU, linking directive and risk management

The PNR directive requires Member States to establish a Passengers Information Unit (PIU), which processes and analyses PNR data, and shares its analysis with other law enforcement agencies.

In a report published on 12 October 2016¹⁸, the Commission states that progress on the implementation of the EU PNR Directive risks being undermined by the lack of processing capacity in the majority of Member States for the data collected. So far, only one Member State (the United Kingdom) has set up a fully functioning PIU, two more Member States (France and Hungary) should achieve this by the end of 2016, and others have projects underway. However, on the basis of information provided by Member States to the Commission, eleven Member States have yet to start the work. The Commission stands ready to provide further legal assistance, expertise and financial support to achieve this.

Because work is still underway in many countries, it is an opportune moment for customs authorities to cooperate and collaborate with other authorities for implementing the PIU, either by participating in the PIU or maintaining close relations to it as a competent authority.

¹⁸ COM(2016) 670 final

As a designated competent authority (CA), customs would be able to cooperate with other authorities and contribute to the vital work of the PIU. That cooperation could include:

- contribute to the design, development and testing of "pre-determined criteria" (Article 6.3 (b) of the Directive);
- incorporate databases in the electronic comparison processes if appropriate and where legally possible;
- help with the continuous improvement of criteria and screening processes (for example, by analyzing PNR data "for the purpose of updating or creating new criteria to be used in the assessments").

In addition, provided that customs representatives are included in the national PIU structures, e.g. through secondment, they could also:

- participate in analysis of results of the electronic processes and the decision-making on which competent authority acts next, and which other Member States should also see the data and results (Article 6(4) of the Directive).
- provide the operational data and results where appropriate (and on behalf of the PIU) to national customs or to another Member State's PIU for attention of its customs (if CA) as per Article 9(1) or article 9(4).

The way authorities cooperate, including how functional and business contribution of customs authorities can be integrated in the functioning of PIU's, is up to the Member States. This should be done in the most appropriate manner according to resources and priorities. Options for achieving this cooperation could include:

- Formal inclusion of customs authorities in the national PIU governance structure if possible and desirable [e.g. if national implementation of the Directive involves a new or revised PIU]; or
- Secondment of specialist customs officers to PIUs under Article 4(3) on a full or part time basis. It should be noted that seconded customs officers could function as PIU staff and work fully under the PIU responsibility. At the same time they could have a special responsibility for ensuring the functional and business contribution from the perspective of the customs mission and for the external connection with customs as a competent authority.
- The customs authorities receive from PIU complete PNR data and results of their processing for a purpose of conducting a risk analysis and further manual verification of these information or to take appropriate steps in order to prevent terrorist offences or serious crime.

Apart from cooperation with the different authorities in the PIU or as competent authority, Customs authorities might also be entitled to receive the PNR data based on other national legislation. In such case it might be an appropriate solution to create a Single Window for receiving PNR data and subsequently distribute the data to all authorities involved, including PIU and customs.

At present, the implementation of the PIU is ongoing in most Member States or is already finished in several. Customs authorities from different Member States already highlighted the following opportunities and best practices for cooperation

In Sweden, Customs is working together with the National Police and the Security service setting up a national PIU. The idea is that these three authorities will staff the Swedish PIU. Swedish Customs is a key player contributing with skills and knowledge on how to analyse PNR-data.

6. Conclusions

CCWP sees relevance for customs to be designated as competent authority under Article 7 of the PNR directive.

Customs is able to provide an invaluable contribution to the work of the PIU because of existing and extensive knowledge and experience with of PNR data analyses, and because of the clear role of customs controls in detection and prevention of offences in scope where movement of goods is concerned.

Customs have been working on analyzing large amount of data in an operational setting for over many years now. Additionally, customs have a great deal of knowledge on data exchange and cooperation with trade (airlines).

Customs are experienced in establishing and agreeing on communication between operational analyses centers.

As a competent authority, customs should work with the PIU on the most appropriate way.

Specific examples of seizures based on analyzing of PNR data

In 2013 the Maltese Customs detected cocaine on the body of a passenger. Previous analyses of PNR raised interest of Customs due to the facts that the booking made close to departure, the travel itinerary and their stay abroad was abnormally short.

Also in 2013 the Maltese Customs detected heroin on the body of a passenger. Previous analyses of PNR raised interest of Customs due to the facts that the booking made close to departure, the travel itinerary and the ticket was cash paid.

In the summer over 2016 Irish Customs detected approximately 11 kilo of cocaine in the baggage of a passenger flying from Brazil (GRU-CDG-DUB). The advance PNR data allowed for Irish Customs to conduct relevant background checks, to organise a safe interception of both bag and passenger and to share the results of this seizure with other European jurisdictions, further strengthening Europe's fight against the drugs trade.

Irish Customs detected € 676.000,- in the baggage of a passenger flying to Belgium (DUB-BRU) due to advance access to PNR.

In autumn 2016, Danish Customs detected about 80 kilo of fresh and dried Khat in the baggage of 2 passengers flying to Kenya via AUH UAE-ZRH. Previous analyses of PNR raised interest of Customs due to the facts: it is not a normal itinerary for the travelers who were both Latvian citizens, the baggage weight was substantially lower than usually for both travelers and their stay abroad was abnormally short.

In November 2016, Danish Customs detected about 62 kilo fresh Khat in the baggage (4 suitcases) of 2 passengers flying from Kenya via CPH- AMS-AUH-UAE-NBO. Previous analyses of PNR raised interest of Customs due to the itinerary and the abnormally short stay.

In November 2016 UK Border Force detected 8 kilo of cocaine concealed in the baggage of a passenger returning to the UK from Aruba with the routing MAN-AUA-MAN. Analysis of the outbound PNR data had identified a number of risk indicators in respect of the itinerary, length of stay and when the booking had been made in relation to the date of travel.

In January 2017 UK Border Force detected 37 kilo of Khat in 2 suitcases belonging to a passenger who had travelled from Nairobi to Glasgow via Dubai. Analysis of the inbound PNR data identified a number of risk indicators in respect of the outbound routing to Kenya, baggage weights and when the booking had been made in relation to the date of travel.

In August 2014, Swedish Customs detected 40 100 Euro banknotes in the baggage of a passenger flying from Istanbul to Arlanda airport (IST-ARN). The banknotes were counterfeited. PNR analysis raised the interest of Customs due to the fact that it was a late booking and a cash paid one way ticket.

In September 2014, Swedish Customs detected 60 800 cigarettes in the baggage of a passenger booked to Linköping airport from Dubai via Amsterdam (DXB-AMS-.LPI) PNR analysis raised the interest of Customs due to the fact that it was a late booking with a known email reference previously used in other cigarette smuggling cases and payment for three extra pieces of baggage.

In the beginning of 2016 Dutch Customs detected over € 100.000 in the baggage of 2 passengers flying to Brazil (AMS-GRU-AMS). Previous analyses of the itinerary raised interest of Customs due to the differences in itinerary of passengers who obviously flew together, the short stay of 1 passenger and the fact that tickets were cash paid.

In the spring of 2015 Dutch Customs intercepted a passenger from Entebbe (AMS-EBB-AMS) who had swallowed pellets with drugs (cocaine). Previous analyses of the itinerary raised interest of Customs due to the fact that the ticket was booked 1 day prior to the trip and the passenger had no hold baggage despite the length of the journey.

In early 2014, Croatian Customs detected huge quantities of counterfeit goods (mostly drugs and cosmetics) in the baggage of passenger flying from Shanghai via Moscow to Zagreb (PVG-SVO-ZAG). The previous analyses of the itinerary had raised interest of the Customs due to the chosen route and length of stay in relation of the distance and length of flight. The court sentence in this case was five years of probation.

During last three years Croatian Customs Administration has detected the violation of CITES Convention in more than 20 different cases, from inbound and outbound passengers. The previous of the itinerary raised interest of the Customs due to the chosen routes (BKK, TPE,FNA,DXB) for inbound passengers and (PVG,SVO,DXB) for outbound passengers.

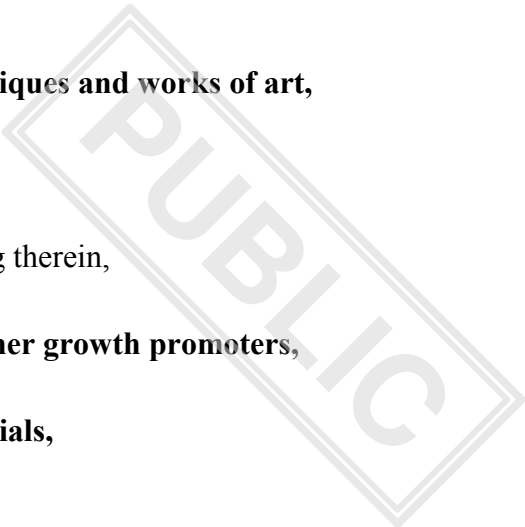
Additional examples

MS	Risk Indicators	Result
DK	DEL- ZRH-CPH • one-way ticket • bought with cash only and • less than 24 hours before departure • routing DEL-ZRH-CPH • one checked-in bag at 20 kg.	Suitcase with hash
MT	• Late booking • One-way ticket issued locally • Cash payment • Records of previous trips to Malta • Pet included in PNR details	Dog held for quarantine as passenger exited from Blue Exit and attempted to conceal the canine from Customs
MT	• Late booking • Nationalities: 1 pax from U.SA and the other from Panama • Records of previous trips to Malta • Booking details	Positive for Cocaine
MT	• Late booking • One-way trip • High-risk routing • Travel agency adversely known to our services • Similarity in booking with previous positive case • Nationality: Nigerian	Positive for Cocaine – Swallower
MT	• Passengers travelling together but had separate PNR's • One-way trip • Both exchanged their original booking • High-risk routing	Undeclared amount of cigarettes
MT	• Same day booking • One-way ticket • Cash payment • Checked PNR data following a tip off	Undeclared cash
NL	BLL-AMS-NBO-MBA-NBO-AMS-HAM • Route • Length of stay in relation to baggage • Moment of booking	Khat in baggage
SE	AMS-ARN • Route • Late booking • Cash Payment	329 gr Cocaine

List of offences that potentially fall under the remit of customs authorities

List of offences referred to in point (9) of Article 3

1. participation in a criminal organisation,
2. trafficking in human beings,
3. sexual exploitation of children and child pornography,
4. **illicit trafficking in narcotic drugs and psychotropic substances,**
5. **illicit trafficking in weapons, munitions and explosives,**
6. corruption,
7. **fraud, including that against the financial interests of the Union,**
8. laundering of the proceeds of crime and counterfeiting of currency, including the euro,
9. computer-related crime/cybercrime,
10. **environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties,**
11. facilitation of unauthorised entry and residence,
12. murder, grievous bodily injury,
13. illicit trade in human organs and tissue,
14. kidnapping, illegal restraint and hostage-taking,

- 
15. organised and armed robbery,
 - 16. illicit trafficking in cultural goods, including antiques and works of art,**
 - 17. counterfeiting and piracy of products,**
 18. forgery of administrative documents and trafficking therein,
 - 19. illicit trafficking in hormonal substances and other growth promoters,**
 - 20. illicit trafficking in nuclear or radioactive materials,**
 21. rape,
 22. crimes within the jurisdiction of the International Criminal Court,
 23. unlawful seizure of aircraft/ships,
 24. sabotage,
 25. trafficking in stolen vehicles,
 26. industrial espionage.
-