



Brussels, 8 November 2016
(OR. en)

13836/1/16
REV 1

LIMITE

**JAI 882
COSI 172
DAPIX 191
ENFOCUSTOM 176
ENFOPOL 382
AVIATION 219
GENVAL 113**

NOTE

From:	Presidency
To:	Permanent Representatives Committee/Council
Subject:	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 - Implementation of the PNR Directive

1. Introduction

Directive (EU) 2016/681¹ (PNR Directive) of 27 April 2016 on the use of passenger name record (PNR) data establishes at Union level a common legal framework for the transfer and processing of such data. The implementation deadline of the Directive is 25 May 2018.

The PNR Directive provides, in particular, for the establishment or designation of an authority competent for law enforcement to act as a passenger information unit (PIU). Two or more Member States may establish or designate a single authority to serve as their PIU.

¹ Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April 2016 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.

PIU Units are entitled to process PNR data and act, furthermore, as the lynchpin for information exchange:

- at domestic level for the transfer of the result of processing PNR data to national law enforcement authorities, tasked to further examine certain PNR data and to take appropriate actions,
- at Union level for the cross-border transfer of both PNR data and the result of processing thereof to corresponding national PIUs and to Europol.

Regarding its implementation, there was no equal level playing field on the date of entry into force of the Directive, as some Member States already had either a fully fledged PNR data exchange system in place or at least had already started preparations to implement such a system, whereas other Member States had no PNR system in place at all and have to start from scratch.

2. Implementation of the Directive

Discussions on implementation issues started immediately after the adoption of the Directive in view of the tight implementation schedule. These discussions took place either within or outside of Council structures, and on initiative of the Commission pursuant to certain provisions of the Directive.

With a view to supporting national implementation efforts, the **Commission** organised two dedicated meetings in Brussels (on 1 June and 28 September 2016) on a wide range of issues pertaining to the implementation of the Directive, including issues of legal interpretation of the Directive itself. A third meeting will be convened on 12 December 2016. By the end of November 2016, the Commission will present an implementation plan with specific milestones. In the context of comitology, it will also convene meetings in order to prepare the implementing act on common protocols and supported data formats to be used by air carriers for their data transfers. To that end, it will table a proposal by the end of the year.

In the light of the importance of the Directive in the fight against serious crime and terrorism, the Commission has sent a letter to eleven Member States, which are still at the very beginning of the implementation process, and promised to support their efforts with a view to enhancing its smooth implementation.

At the COSI meeting on 8 November 2016, the Commission also informed the Committee about additional funding (subject to approval), it intends to make available to advance the implementation of the PNR.

PNR related topics have also been on the agenda of the **Customs Cooperation Working Party (CCWP)**. Currently, delegations discuss how to involve 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 Directive. Already during the Cyprus Presidency, a threat assessment on air transit passengers² had been completed and, during the Irish Presidency, a study on Advanced Passenger Information (API) and Passenger Name Records had also been completed³. Any further work the CCWP might undertake in this area - for example drafting a manual detailing Member States best practices in setting up PIUs and the role of customs therein – would need to take into account these previous documents.

In the framework of the Information Management Strategy (IMS), dealt with by the **Working Party on Information Exchange and Data Protection (DAPIX)**, the HU led project on PNR data exchange (PNRDEP), funded by the Internal Security Fund –Police part, aims at defining IT solutions for exchanging PNR data between PIUs across borders in line with the Directive. The first results of a dedicated feasibility study are expected to be available in November. DAPIX will be informed about the results subsequent to expert discussions in December 2016.

In the margins of the closing conference on the national HU PNR project in Budapest on last 13 September, the NL led **informal working group on PNR (IWG PNR)** had its kick-off meeting in Budapest as well. Several Member States as well as the Commission assisted to that meeting. Results of the IWG PNR discussions are expected to be presented at the DAPIX December meeting.

² 5642/1/14 REV 1 + ADD 1 RESTREINT UE

³ 5947/13, 9262/1/13 REV 1

At the DAPIX meeting of 18 October 2016, Member States voiced concerns about the lack of concertation of the actions and widely supported the LT proposal⁴ to assign DAPIX an oversight role in the implementation, aimed at reaching a structured approach in view of the manifold initiatives above. This would, inter alia, support those Member States, which have not the means to be present at all meetings. A large majority underlined furthermore that an overall horizontal coordination would avoid the risk of fragmentation of the on-going activities. It would at the same time address the need for cooperation in order to reach a harmonised implementation and compatible solutions across borders.

Given its expertise on the technicalities of police information exchange, DAPIX would in the opinion of delegations appear to be the right forum to serve as a focal point where all information would be bundled.

3. Way forward

In view of the above on the ongoing work on the implementation of the PNR Directive, the Presidency invites:

- *the Commission to report on the state of play of regarding implementation of the PNR Directive; and*
- *Member States to inform the Council which challenges in the implementation require coordination among Member States.*

⁴ 12290/16