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**LIMITE**

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COSI 28  
DAPIX 33  
ENFOCUSTOM 28  
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AVIATION 25  
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**NOTE**

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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 / Exchange of views

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**1. Introduction**

In November 2016, the Commission issued an implementation plan for the PNR Directive. This plan set out six 'indicative milestones' which Member States should meet in order to ensure the timely implementation of the PNR Directive. In doing so, the plan was meant to be a guidance tool for Member States. Implementation is regularly discussed by the Informal Working Group on PNR (IWG PNR), currently chaired by Germany, and in the informal implementation meetings chaired by the Commission.

Over the last months, substantial progress has been achieved by the Member States towards the adoption of their national transposition measures, the setting up of their passenger information units (PIUs), the development of their capability to collect and process PNR data and the establishment of connectivity with air carriers. The implementation process has been a cooperative endeavour characterised by the building of mutual trust among the Member States through the Informal Working Group on PNR and the Commission's regular implementation meetings.

Within this context, Member States have been able to benefit from peer-to-peer assistance and an open exchange of experiences and lessons learned. The Commission has supported the process through the provision of financial assistance and legal expertise in the framework of daily bilateral cooperation and quarterly implementation meetings.

While work continues at national level, a number of legal and operational issues remain to be addressed in the coming months to complete the implementation process. Member States are encouraged to use all the means at their disposal in order to ensure full implementation of the Directive by the set deadline (25 May 2018).

## **2. State of play**

In December 2017 the Commission published an overview of the state of play of the Directive's implementation, as part of the Twelfth Progress Report towards an effective and genuine Security Union<sup>1</sup>. Based on the information available to the Commission as at 16 February 2018, the overall picture provided in the report can be updated as follows:

1. A first cluster of nine Member States (up from seven mentioned in the Twelfth Security Union Progress Report) are at an advanced stage of the implementation process. Of these, three have notified the Directive's transposition to the Commission.
2. A second cluster encompasses 13 Member States which are at an intermediate stage of implementation (two of these Member States were moved from the group of 'less advanced' Member States referred to in the Twelfth Security Union Progress Report).

Four of the Member States included in this cluster have established and equipped their PIUs, but do not collect and process real PNR data due to the lack of a legal basis allowing the collection of personal data. The other nine Member States are at various stages of finalisation of the development or installation of the PIU and of the technical solution to be used to process PNR data according to the requirements of the PNR Directive, while engagement with air carriers is still ongoing.

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<sup>1</sup> COM(2017) 779 final.

In addition, within this group a distinction can be made based on the progress (or lack thereof) achieved in the legislative process to transpose the Directive:

- In one Member State legislation has already been approved by parliament.
  - In three Member States the draft PNR legislation is currently in the parliamentary phase.
  - In the remaining nine Member States draft legislation appears to be still in the pre-parliamentary phase.
3. A third cluster consists of five Member States (down from the seven mentioned in the Twelfth Security Union Progress Report), which are at a relatively early stage of the implementation process. These Member States still need to define the administrative architecture of their PIU, and/or submit the relevant legislation to their parliaments, and/or start installing the technical solution to be used by the PIU, and/or launch the process to connect with air carriers.

### **3. Exchange of views**

The PNR Directive is crucial to the European Union's response to the threat of terrorism and serious crime. Only once all Member States have operational PNR systems in place and are able to effectively exchange data among themselves and with Europol will it be possible to deploy to full effect at EU level. This task should be accomplished by 25 May 2018 at the latest. As the transposition deadline is fast approaching, ministers are invited to have an exchange of views on the state of implementation of the Directive.

The exchange of views is meant to draw attention to the importance of the timely transposition of the PNR Directive. Furthermore, it aims to encourage Member States to use the remaining three months before the deadline to step up their efforts to fully implement the Directive.

To that effect, the following topics should be addressed: the state of play in the implementation process, the remaining challenges and any further support needed to finalise the implementation process. Delegations are invited to comment on the following issues:

- *Could you confirm that all possible measures are being put in place to ensure a speedy adoption of the national legislation transposing the PNR Directive by 25 May 2018?*
  - *Which are the major challenges remaining to be addressed?*
  - *Which further support do you expect from each other or the Commission to facilitate timely implementation?*
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