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NOTE

From: Presidency
To: Working Party on Information Exchange and Data Protection (DAPIX)
Subject: Monitoring the implementation of Directive (EU) 2016/681 on the use of passenger name record (PNR) data
– State of play and way forward

1. INTRODUCTION

On 27 April 2016, the European Parliament and the Council adopted 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. Member States were obliged to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive by 25 May 2018. The implementation, in particular at technical and operational level, is still of concern at Member States' level.

By means of this report, the Presidency aims at

- evaluating progress made, and at
- allowing for an early assessment of issues to be addressed by the relevant stakeholders for further developing the architecture of the PNR environment and for fine-tuning the mechanisms already in place in order to ensure prompt and reliable results.

2. STATE OF PLAY

The **current state of implementation** varies across Member States. Out of 27 Member States, which are bound or subject to application of the Directive¹, currently 20 Member States have notified the Commission to have fully transposed the Directive into national legislation, 3 Member States have notified partial transposition and 4 Member States have not yet communicated any transposition measures. In addition, 24 Member States have notified the establishment of their Passenger Information Unit²; all Member States have notified the Commission of the list of competent authorities referred to in Art. 7(3) of the Directive; 24 Member States have notified the Commission of their decision to apply the Directive to intra-EU flights.

2.1. MEMBER STATES COORDINATION IN IMPLEMENTING THE DIRECTIVE

The challenges of implementing the Directive together with the given transposition deadline led to the establishment of the **Informal Working Group on Passenger Name Record (IWG PNR)**. The informal forum was created to promote a coherent and harmonised implementation of the Directive, foster mutual support as well as the sharing of best practices and knowledge in this field. In line with the IWG PNR working methods, four sub-working groups (SWG) were created, each dedicated to different aspects of PNR work: the Operational, Interoperability, Legal and Carrier Connection SWGs. DAPIX was regularly updated by the chair of the IWG PNR on the outcome of the meanwhile eight meetings , which focussed on topics such as:

a) Interoperability level

- SIENA as the preferred channel for the PIU/PIU information exchange;
- Contents and methods of data exchange between PIUs currently using SIENA as it is and on the longer term;
- Europol Platform for Experts (EPE) / ROVER;

¹ In accordance with Articles 1 and 2 of the Protocol No 22 on the position of Denmark annexed to the Treaty of the European Union and the Treaty of the Functioning of the European Union, Denmark was not taking part in the adoption of the Directive and is not bound by it or subject to its application.

² OJ 230/02.07.2018, OJ 332/19.09.2018

- SIENA mailbox for all PIUs;
- Best practices for PIU/ cooperation.

b) Operational level

- PIU /PIU communication template;
- Minimum standards for setting up an operational PIU;
- Identifying and developing best practice for PNR targeting across the EU;
- Recent operational examples;
- Organisational PIU structures, information on which is uploaded on ROVER;
- Discussing the ‘duly reasoned’ concept: different requirements among Member States for the requesting competent authorities/PIUs;
- Potential operational pilots between Member States and third countries;
- PNR training strategy at EU level;
- Complementarity between both the API and PNR directives;
- Statistical model in accordance with Article 20 of the Directive.

c) Legal

- Analysing and discussing topics in reference to the transposition and interpretation of the Directive in a coherent and harmonised manner in all Member States;
- Analysing and discussing topics regarding information exchange, including those between Member States and third countries in view of different data protection levels;
- Exchanging views on national and international legal matters including on UN resolutions related to collecting, processing and analysing, passenger name record data;
- Channelling Member States’ legal issues and submit them to the Commission.

d) Carrier Connection

- Transparency on each national implementation status and their individual challenges;
- Different IT strategies and approaches to collect passenger data;
- Air carriers not pushing the PNR data due to different reasons (technical, legal, etc.);
- Feasibility study on a Central Routing Mechanism;
- Roll-out plan to inform Member States in a timely manner about changes regarding the use of specific data providers by air carriers;
- Consequences of the ETIAS/EES implementation on the collection of API data;
- Travel Agency Code lists which are provided by IATA;
- Carriers matrix, which include on overview on carriers and their data providers;
- Open discussions between carriers, data providers and governments;
- Responsibility of air carriers and their data providers regarding data quality;
- Need for a basic common approach in respect of the used terms (e.g. number of pushes, GOVREQ (art. 8.5), ACKRES & COA, data transmission security, data matrix, small airlines.

2.2. COMMISSION'S SUPPORT TO MEMBER STATES

The **Commission** has continuously supported all Member States in their efforts to implement the Directive. On 28 November 2016, the Commission adopted an Implementation Plan³, which identified a number of indicative milestones that Member States should meet in order to have functional PNR systems in place by May 2018.

³ Implementation Plan for Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime, SWD(2016) 426 final

In April 2017, the Commission adopted the implementing decision on data formats and common protocols to be used by air carriers for the transfer of PNR data to Member States.

The Commission chairs regular meetings on implementation and application issues, held approximately every three months, which provide a forum for Member States to discuss questions linked to the interpretation and implementation of the Directive and to share queries, lessons learnt and best practices. The meetings also provide a venue to facilitate the peer-to-peer support between Member States, for instance as regards technical expertise and the use of existing IT solutions for PNR data processing. In addition, the meetings enable the Commission to identify particular implementation challenges that Member States may be facing and subsequently provide additional assistance and guidance where necessary.

The Commission has also provided financial assistance to the Member States. Before the adoption of the PNR Directive, 15 Member States received grants to develop their PNR systems under national law under a 2012 ISEC (Specific Programme for Prevention of and Fight against Crime) Targeted Call for Proposals. The final grants paid to the Member States amounted to EUR 37.2 million⁴ (see Annex).

Member States have also been able to benefit from the 2017 top-up to their national programmes under the Internal Security Fund-Police. EUR 70 million have been made available to the Member States and allocated according to the ISF Police's standard distribution key.

In addition to providing financial assistance for the setup of national PNR systems, the Commission has also supported the development of mechanisms for the exchange of PNR data among PIUs by funding two projects led by consortia of Member States⁵. Overall, some EUR 4.8 million have been awarded to these projects.

⁴ The final amounts paid to the Member States are lower than the maximum amounts foreseen in the initial grant agreements and described in the Implementation Plan⁴ because they reflect the costs incurred by the Member States in the implementation of their PNR projects, which were considered eligible.

⁵ The 'Pilot programme for data exchange of the Passenger Information Units' (PNRDEP) project and the PIU.net project.

An additional call for proposals⁶ was launched by the Commission in December 2018, to support projects on interconnectivity between the PIUs. The aim of this call is to strengthen the ability of the staff working for the PIUs to use and share PNR data through training and awareness raising activities. Capacity building activities in the Western Balkan countries can also be funded in so far as they supplement activities aimed at the EU Member States.

2.3. EUROPOL`S SUPPORT TO MEMBER STATES

Member States agreed to exchange PNR data and/or the results of its analysis via the SIENA channel. This applies not only to communication between PIUs and Europol, but also to communication between PIUs. Moreover, in order to allow for an effective and timely exchange of PNR data, a SIENA mailbox was created for the national PIU in some of the Member States. Member States can furthermore exchange PNR Data with Third Countries (TCs) under the conditions foreseen by their own legislation implementing the PNR Directive. SIENA can be used for the exchange of PNR data with those Third Countries with which Europol has cooperation agreements in place.

In order to share best practices, documentation, knowledge and non-operational data, Europol created the sub-platform ROVER dedicated to PNR topics on Europol Platform for Experts (EPE). ROVER is accessible only to PNR practitioners and ensures a secure environment and provides useful information on the meetings of the IWG PNR (minutes, presentations, documents).

Apart from supporting Member States in its role as the Secretariat of the IWG PNR, Europol aims at supporting Member States by developing its capabilities in the area of travel intelligence. This goal is pursued by means of:

- Defining the strategic positioning of Europol within the travel intelligence architecture of the EU and develop a strategy to realise that objective.
- Establishing a dedicated capability within Europol to support Member States in the operational and strategic use of travel related information and intelligence stemming from PNR, API and (eventually) ETIAS.

⁶ http://ec.europa.eu/research/participants/data/ref/other_eu_prog/home/wp/isfp-call-fiche-2018-ag-piu_en.pdf

- Defining, developing and delivering concrete operational and strategic products and services on the basis of travel information and intelligence to support the Member States.
- Delivering a strategic product reflecting crime specific characteristics concerning travel movements as input for the definition of targeting rules.
- Assessing mid- and long-term business requirements of the travel intelligence community.
- Ensure enhanced cooperation, alignment and compatibility with activities of the Commission, Frontex and eu-LISA in the area of travel intelligence.

Concretely, this has resulted in the establishment of the travel intelligence team within the Operations Directorate, which attached a first liaison officer from one of the PIUs to stimulate operational cooperation. The team has launched several operational pilots, among others to enable checks of PNR data against Europol data and submitting duly justified requests for PNR data. The travel intelligence team has offered several forms of operational support to the PIUs and to Member States' investigations (through the Operational Analysis Projects at Europol). At a more strategic level, Europol has actively contributed to the coordination, development and delivery of training at EU level to staff of the emerging PIUs.

3. OUTCOME OF QUESTIONNAIRE

In parallel to a questionnaire submitted to IWG PNR participants by the IWG PNR chair and focused on working methods, the RO IWG PNR delegation submitted in December a 2018 a questionnaire aimed at collecting thoughts and opinions in order to highlight issues that need to be tackled in the framework of the implementation of the PNR Directive in a broader context.

The latter questionnaire was submitted to a variety of representatives within the PNR community within the EU and beyond, and for some countries to multiple recipients. Hence, the answers should be seen as representing a cross-set of function groups within the PIUs and the Member States.

25 Member States replied, which was a very good result and conferred the outcome a high level of representativeness allowing, if appropriate, for launching a discussion within DAPIX.

The questions referred to:

- **Transforming the IWG into “Other”**

On the question of transforming the IWG PNR into “Other”, 62% of the answers were in favour of a change (29%- European Network, 19%- Heads/Board of PIUs).

Member States pointed towards the informal character of the IWG PNR, which does not allow for binding decisions to be taken.

In general, there was a split between Member States calling for improving the IWG PNR structure and its influence on the actual developments, others believe that it wouldn't be a bad idea to limit the number of participants per Member States, like for example limiting it to Heads or Deputy Heads of PIUs, whilst others still saw the need and benefit of subject specific meetings and more management-level fora.

- **Involving Europol in the development and dissemination of common sets of indicators, targeting rules and risk profiles**

A clear majority of the Member States considered that “a great idea” (88%). Europol could contribute to the developing of good rules and indicators, due to its central position and its important role in gathering and sharing information on targeting rules and/or risk profiles.

In that sense, some Member States considered that even if Europol's support was welcomed, it was up to each PIU and Member State to decide if they would invite Europol to develop such sets and to what extent these sets would be considered as obligatory.

In general terms, the Member States agreed that Europol could facilitate cooperation on the development of common risk indicators, offering also training opportunities and guidance for Member States.

- **Europol acting as depository for the sets of indicators/targeting rules**

In general, a small majority of the Member States (52%) considered that Europol, due to its central position, could support/act as a depository for rules. Disclaimers indicated that the storing of indicators/targeting rules could only be done with prior approval and consent from the national level, and with the condition/awareness that not all rules are applicable to all Member States. Again, any sharing of common rules would be dependent on prior approval of the contributing Member State.

Contrary to the above, other Member States did not see the added value in centrally storing indicators/targeting rules at Europol and some would even consider it as a possible / potential information security breach that would jeopardise their (national PIUs) effectiveness.

Finally, for some Member States the concept of “depository” was not clear and they asked for a clarification of the term in order to give a proper opinion.

- **Receiving targeting rules and supporting intelligence from other Member States**

86% of the Member States reacted positively on this suggestion.

Some Member States considered that sharing such rules could be beneficial, but underlined that rules and profiles developed by a national security service could not be shared by the initiative of the PIU. Again, approval of the “competent authority owning the rule” will always be a pre-condition prior to any sharing with other Member States or even national competent authorities.

In any case, most of the written replies were in favour of sharing knowledge and information as a way of enhancing cooperation between the Member States. It was also seen that the sharing of rules would be beneficial and contribute towards a more coherent approach at European level. Along the same line of argumentation, Member States commented that sharing and receiving are two sides of the same coin, hence those who expect to receive must be prepared to deliver.

Europol itself will not be in a position to use the targeting rules since it does not have a PIU with PNR data processing capabilities. Still it did indicate that it would be positive towards facilitating the (including bi-lateral) sharing of targeting rules between PIUs.

- **Collaboration between Member States and Europol in the definition of targeting rules**

The clear majority (90%) considered that collaboration between Member States and Europol in the definition of targeting rules would be beneficial.

The PIUs, in particular those of smaller Member States, welcomed Europol offering its guidance and support within this field. Again, the benefit of cooperation was stressed and should be enhanced, but national specificities and approval / testing could not be disregarded. Still, Europol would be welcomed to act as an intermediary. No process of sharing should be seen as a binding agreement of implementation of a specific rule, since this remained a national decision.

Given the explanations provided by some Member States that responded in a negative manner, the above question must have been interpreted by some Member States as referring to Europol having an exclusive role/position in defining targeting rules, an interpretation which however was not in line with the question's intention.

- **Handbook for PIUs comprising common procedures**

Analysing the quantitative data, 93% of the Member States saw a need of having a handbook for PIUs on common procedures on PNR data exchange; 68% saw a need for a Handbook for PIUs on common procedures on connecting air carriers, while 78% of the Member States considered a need for a Handbook for PIUs on common procedures on creating / adapting / implementing / monitoring / updating risk profiles.

One of the reasons why handbooks were in general supported is because they were deemed a powerful tool for solving PNR issues and sharing knowledge and best practices or, another reason, because all Member States should work in a similar fashion and follow the same rules. Hence, a Handbook could serve as valuable help to all Member States in the daily work.

However, several comments pointed out that in any case, risk profiles should not follow a common procedure because they are dependent on local / national requirements / specificities. Some Member states also considered that this “need” depended on what such a handbook would contain, because there is already a manual on how to use SIENA for exchanging data, and it was asked which group would be responsible for drafting the handbook.

- **Retrieving PNR data from other Member States**

Some Member States have pointed out the need for having a standard procedure for sharing PNR data since it would be easier and faster to retrieve/request data by means of a standard template. This template might also include more detailed rules.

At the same time, a number of Member States answered that due to the lack of actual operational capacity of several PIUs it was difficult to have a proper exchange system yet. Other Member States considered that the insufficient possibility of retrieving data was due to the failure to connect all PIUs to SIENA.

In general, the overall assumption of the Member States was that more time would be needed to properly answer this question, because PIUs must become operational and gain some experiences in sharing and retrieving PNR data. However, Member States underlined a need for standardisation of the information exchange process.

- **Processing PNR data in connection with EES/ETIAS**

86% of the Member States considered that both EES as well as ETIAS need to be taken into account when processing PNR data.

The majority of the Member States agreed that a combined analysis will be useful for the Competent Authorities. One line of reasoning for this suggested by the Member States was that EES and / or ETIAS could be used to verify the quality of the PNR data in order to generate better results.

The Member States pointed out though that even if it can enhance the interoperability among the different tools, it is important to have a clear distinction between them, because while ETIAS and EES are developed for border management, PNR is focused on the fight against serious crime and terrorism.

- **Placing ETIAS, PNR, API and EES units in the same administrative structure**

The majority of the Member States thought that there is an operational added value / benefit in placing the above mentioned units in the same administrative structure.

The Member States that considered it being beneficial saw that it could easily enhance cooperation and information sharing of these different data sources and units. It would also strive towards enhanced efficiency and avoiding duplication of efforts and wasting resources, overall the co-placement would additionally be likely to minimize the economic impact.

However, some Member States underlined that such decision would depend on the Member States.

- **Broadening the scope of PNR Directive to other types of transportation**

With regard to the quantitative replies, the majority of the Member States agreed on broadening the scope of the PNR Directive. The percentages were the following: 83% wants to broaden it to maritime, 76% to railway, and 67% to road traffic.

The negative replies highlighted arguments related to the increase of data to be processed by the PIU, something which was unlikely to be manageable, and could even be seen as an intrusion into privacy.

Overall, Member States were in favour of broadening the scope of data collection to other types of transportation, but that it was important to first implement of the PNR Directive as it is, ensure that PIUs can manage the PNR data and are fully operational.

- **Exchange of information in connection to SIS alerts**

38% of the Member States considered that the exchange of information should be done directly from PIU to PIU. Some Member States think that the ideal exchange scenario would be that Member States combine their PIUs with their Sirene bureaux, having the quickest possible communication channel.

However, a Member States also saw that a direct PIU to PIU communication regarding SIS alerts may be “too big a burden for smaller PIUs”.

At the same time, also 38% of the participants considered that the best option for the exchange of information in connection to SIS alerts were via the national SIRENE bureaux, justified by the fact that SIS alerts are much broader than PNR related issues and national SIRENE bureaux are already established and operational. Hence, they have experience in information sharing and are therefore better versed in this type of exchange.

- **Taking into the consideration the new Schengen legal framework, which other articles should fall under the scope of PNR Directive?**

The majority of the Member States considered that the specifically listed articles should fall under the scope of the PNR Directive, in particular Art. 26 on persons wanted for arrest was the most supported (93%). Besides other articles being applicable receiving the lowest percentage of favourable Member States, the return decision information (52%) and the Art. 40 Unknown wanted persons for identification under national law (62%) are the least favoured articles, but still with a slight majority of positive answers.

Still, it should be assumed that the above presented opinions are not a full legal assessment or feasibility study of the actual use of all listed SIS articles (in relation to false / positive hits).

4. CONCLUSIONS - EXCHANGE OF VIEWS

The overall situation concerning the implementation and application of the Directive is reflecting the joint efforts of the Member States that continuously analysed the provisions of the legal framework, identified the technical issues and suggested solutions within the IWG PNR forum.

Against the factual background detailed in the state of play section and the results of the questionnaire, the Presidency took stock of the situation and considers that all relevant actors in this field should discuss the way forward whilst taking into account the following:

- IWG should continue to be a forum for practitioners to meet but must evolve in order to act as supporting forum for EU decision making, enabling binding decisions to be taken. It should be able to discuss from the business perspective the future review of API and PNR Directive, the feasibility of broadening the scope of both directives (API for intra EU flights and PNR for other type of transportation. It should also discuss a coordinated approach on the issue concerning the refusal from certain third countries to transfer PNR data to the Member States PIUs, motivated by lack of reciprocity and the absence of an appropriate legal basis in EU law for the transfer of PNR data from the EU to such third countries.

- When deciding upon the best way ahead, IWG PNR should corroborate the findings of the questionnaire of the RO IWG PNR delegate with the results of the questionnaire of the IWG PNR chair and strive to find a solution to accommodate the needs of the Member States.
- Given Member States' participation track record in the IWG (not all Member States can ensure participation in each SWG), it is highly recommended that each SWG has a roadmap in place in order to avoid overlapping efforts, and more important to set a clear register of objectives, laying down the achievements and concentrating on means to accomplish future goals.
- The IWG chair should consider taking over the responsibility to draft a handbook comprising common procedures on: PNR data exchange, connecting air carriers and creating / adapting / implementing / monitoring / updating risk profiles.
- Europol could be involved in the development and dissemination of common sets of indicators, targeting rules and risk profiles. Subject to prior approval and consent from Member States, EUROPOL might act as depository for the sets of indicators/targeting rules. The Member States are also willing to work together with EUROPOL for the definition of targeting rules.
- Member States are interested to receive targeting rules and supporting intelligence from other Member States as a way of enhancing cooperation between the Member States.
- Member States should continue their efforts to increase the operational capacity of their PIU's for retrieving data. In addition, Member States should further strive towards standardising the information exchange process.
- With respect to processing PNR data in connection with EES/ETIAS, Member States should explore the advantages of combined analysis of these two categories of data. Member States should consider the opportunity of placing ETIAS, PNR, API and EES units in the same administrative structure whilst taking into account the advantages but also their institutional architecture.

- Member States should address the issue of PIU – SIRENE exchange of information in connection to SIS alerts, in joint working groups (DAPIX and SIS-SIRENE).
- Member States should foster the cooperation between PIU and SIRENE on the articles of SIS that fall under the scope of PNR Directive.
- When considering broadening the scope of PNR Directive, the Commission should take into account Member States' opinion concerning other types of transportation as shown in the questionnaire.
- The Commission should assess the results of the first collection of statistics and define the lessons learned.

5. **EXCHANGE OF VIEWS**

Taking the above into consideration, the Presidency invites Member States to consider the following questions:

- Do you agree upon the findings of the questionnaire?
- How can the coordination of initiatives, actions, projects of Member States and different actors in the field of PNR Directive application be improved in general?
- In this regard, would you consider that DAPIX (law enforcement information exchange) invite the IWG PNR and Europol to further pursue the conclusions above?

6. **WAY FORWARD**

The Presidency therefore invites Member States to exchange views on the above mentioned findings at the DAPIX meeting of 21 February 2019. In order to facilitate and prepare the discussion, the Presidency suggests to take note of the above report and to comment if possible before the meeting to dapix@consilium.europa.eu and dapixinfoexchange@mai.gov.ro.

Table 1 – Grants awarded under the Call for Proposals PNR 2012 under ISEC (Specific Programme for Prevention of and Fight against Crime 2007-2013)

Beneficiary's Coordinator	Member State	Total final grant amount
PRIME MINISTER'S CABINET OFFICE - DEPARTMENT FOR INFORMATION AND SECURITY	IT	€62.482,97
POLICE DEPARTMENT UNDER THE MOI OF LT	LT	€86.278,18
MINISTRY OF INTERIOR	BG	€1.634.961,10
MINISTRY OF INTERIOR	HU	€1.911.294,82
MINISTRY OF THE INTERIOR AND PUBLIC ADMINISTRATION OF THE REPUBLIC OF SLOVENIA, POLICE	SI	€640.180,91
SUB-DIRECTORATE GENERAL FOR PLANNING AND INFRASTRUCTURES MANAGEMENT AND MATERIAL FOR SECURITY	ES	€2.019.671,71
CRIMINAL POLICE	PT	€73.526,33
GENERAL INSPECTORATE FOR ROMANIAN BORDER POLICE	RO	€133.442,66
MINISTRY OF SECURITY AND JUSTICE	NL	€3.706.203,80
SWEDISH NATIONAL POLICE BOARD	SE	€133.928,16
INFORMATION CENTRE OF THE MINISTRY OF INTERIOR OF THE REPUBLIC OF LATVIA	LV	€3.482.821,18
ESTONIAN MINISTRY OF THE INTERIOR	EE	€546.490,73
FRENCH GENERAL DIRECTORATE OF CUSTOMS AND EXCISE	FR	€15.585.026,31
NATIONAL POLICE BOARD	FI	€1.994.939,08
FEDERAL AGENCY FOR STATE PROTECTION AND COUNTER TERRORISM	AT	€7.109,36

Table 2 – Grants awarded under Union Actions ISF Police 2014-2020

Beneficiary's Coordinator	Member State		Maximum grant awarded
Ministry of Interior	HU	2014 grant under "Call for Proposals Law enforcement information exchange" – <i>Ongoing</i>	€1.153.318,68
MINISTERIE VAN VEILIGHEID EN JUSTITIE	NL	2016 grant under "Call for proposals restricted to Member States aiming at improving law enforcement information exchange by interconnecting Passenger Information Units (PIUs) to facilitate the exchange of PNR data" - <i>to be signed by end 2017</i>	€3.779.912,81