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**5618/1/09
REV 1**

**CRIMORG 7
AVIATION 3
DATAPROTECT 2**

NOTE

from : Presidency

to : Multidisciplinary group on organised crime

No. prev. doc. : 7656/3/08 CRIMORG 49 AVIATION 77 DATAPROTECT 14
16457/08 CRIMORG 208 AVIATION 286 DATAPROTECT 100 +
COR 1 + COR 2

Subject : Proposal for a Council Framework Decision on the use of Passenger Name
Record (PNR) for law enforcement purposes

Background

1. The Commission submitted the above proposal for a framework decision to the Council on 17 November 2007 and presented its contents to the Multidisciplinary group on organised crime (MDG) on 30 November 2007. At the Informal JHA Ministerial meeting on 25-26 January 2008, the Ministers of Interior discussed a number of general questions regarding this Commission proposal. During the Slovenian Presidency three readings of the proposal took place.

2. During the French Presidency, a thematic approach was followed and the most important themes surrounding the possible introduction of a system of collecting and processing PNR data in the European Union were studied in depth. The results of these discussions in the MDG are set out in three outcomes of proceedings¹ and were the subject of ministerial discussions at the Council meetings of 25 July and 27 November 2008².
3. At its meeting of 27 November 2008, the Council instructed the preparatory bodies of the Council “to examine all the outstanding issues, whether legal or operational, in the light of the report and all the work already carried out with a view to possible decisions at a later date”. This Presidency has sought to follow this instruction by endeavouring to incorporate the main findings at which the MDG arrived during the French Presidency into the text of the draft Framework decision, as it stood at the end of the Slovenian Presidency³. The attached text therefore introduces a significant number of changes which, in the Presidency’s view, fairly translate these MDG findings; while bearing in mind that not all these results were supported by all delegations. The Presidency has also, again based on the excellent work carried out during the French Presidency, incorporated some proposals that were made with regard to items on which clearly no consensus has been reached yet, like the retention period and the use of sensitive data.
4. In the meantime, the text set out in 5618/09 CRIMORG 7 AVIATION 3 DATAPROTECT 2 has been discussed at the MDG meetings of 2-3 and 17 February and 17 March 2009. In redrafting the following text, the Presidency has endeavoured to accommodate the remarks by delegations as much as possible.

¹ 13319/08 CRIMORG 144 AVIATION 187 DATAPROTECT 62; 13860/08 CRIMORG 159 AVIATION 216 DATAPROTECT 71 and 15441/08 CRIMORG 188 AVIATION 260 DATAPROTECT 89.

² 13803/1/08 CRIMORG 157 AVIATION 211 DATAPROTECT 70 and 16457/08 CRIMORG 208 AVIATION 286 DATAPROTECT 100 + COR 1+ COR 2.

³ 7656/3/08 CRIMORG 49 AVIATION 77 DATAPROTECT 14.

5. The attached text is subject to the following reservations: reservation by AT, linguistic reservation by HU, general scrutiny reservation by BE, BG, CZ, DK, FI, HU, IT, LU, LV, LT, MT, PL, PT and SK. In addition, a number of delegations also entered a parliamentary scrutiny reservation: CZ, DK, EE, FR, HU, IE, LT, MT, NL, PL, PT, SE and UK. DE welcomed that the Commission had tabled a proposal on the use of PNR data, as requested by the Council. DE however pointed out that specific provisions of the Draft Framework decision still needed a thorough examination in order to ensure that it would be compatible with all data protection and constitutional requirements. DE (and AT) think that in particular the retention of data concerning innocent data subjects should be further examined carefully. AT has also stressed the need for a further examination of the legal basis for this proposal in the light of the opinion of the Council Legal Service⁴. Several delegations (AT, HU and PL) have voiced their concerns on the potential financial impacts of the setting up and running of a system for the collection and processing of PNR data. The Commission has indicated its willingness to look into possibilities for funding national PNR systems.

For the MDG meeting on 23 April 2009 the Presidency submits following re-draft of Articles 1 – 10.

⁴ 16614/07 JUR 462 CRIMORG 194 AVIATION 229 DATAPROTECT 61.

CHAPTER I

GENERAL PROVISIONS

Article 1

Objectives

This Framework Decision provides for the transfer or the making available by air carriers of PNR data of passengers of international flights to the Member States, for the purpose of preventing, detecting, investigating and prosecuting terrorist offences or serious crime, as well as the processing of those data, including their collection, use and retention by the Member States and their exchange between them.

Article 2

Definitions¹⁸

For the purpose of this Framework Decision the following definitions shall apply:

- (a) ‘air carrier’ means an air transport undertaking with a valid operating licence or equivalent permitting it to carry out carriage by air of passengers, as stated in the operating licence. The obligations under this Framework Decision shall be incumbent on the air carrier also in the event that the air carrier designates an intermediary for the purposes related to this Framework Decision¹⁹;
- (b) “flight” means the whole flight from point of departure until point of final destination according to the booking, including any transfer or transit flights.

¹⁸ SE scrutiny reservation.

¹⁹ COM indicated that the current definition covered so-called air taxis, but excludes purely private flights. Cargo flights would be excluded, as they normally do not gather PNR data. The question to what extent data collected by code-sharing air carriers would be governed by this instrument would be further examined by the Commission.

- (c) "international flight" means any flight by air carrier planned or intended²⁰ to enter the territory of at least one Member State of the European Union originating in a third country or to depart from the territory of at least one Member State of the European Union with a final destination in a third country;
- (d) 'Passenger Name Record (PNR)' means a record of each passenger's travel requirements which contains all information necessary to enable reservations to be processed and controlled by the booking and participating air carriers for each journey booked by or on behalf of any person. Such a record may be contained in reservation systems, Departure Control Systems (DCS), or equivalent systems providing the same functionalities. In the context of this Framework Decision, PNR data shall mean the data elements described in the Annex and only to the extent that these are collected by the carrier;
- (e) 'passenger' means any person, except members of the crew²¹, carried or to be carried in an aircraft with the consent of the carrier;
- (f) 'reservation systems' means the air carrier's computerised inventory system, in which PNR data are collected for the handling of reservations ;
- (g) 'Push method' means the method under which air carriers transmit the required PNR data into the database of the authority requesting them;
- (h) "Pull method" means the method under which the authority requiring the data can access the air carrier's reservation system, departure control system and equivalent system and extract the required data into their database;
- (i) "terrorist offences" means the offences under national law, referred to in Articles 1 to 4 of the Council Framework Decision 2002/475/JHA on combating terrorism;

²⁰ DE, FR, LU and NL scrutiny reservation.

²¹ RO scrutiny reservation.

- (j) "serious crime" means the offences under national law, referred to in Article 2 of Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime as well as the offences under national law, referred to in Article 2(2) of the Council Framework Decision on the European Arrest Warrant and the surrender procedures between Member States if they are punishable by a custodial sentence or a detention order for a maximum period of at least three years under national law of the Member State collecting the PNR data²².

²² Addition in order to clarify under whose domestic law this threshold needs to be assessed. NL and UK scrutiny reservation on the threshold. DE, ES, FI, NL, PT and SI reservation on the introduction of the concept of serious crime in the Framework Decision. Consequently, these reservations pertain to all instances in the Framework Decision where this concept is used.

CHAPTER II

RESPONSIBILITIES OF THE MEMBER STATES

Article 3

*Passenger Information Unit*²³

1. Each Member State shall set up or designate a law enforcement authority or a branch of such an authority to act as its "Passenger Information Unit" responsible for collecting the PNR data from the airlines, store them, analyse them and transmit the result of the analysis to the competent authorities referred to in Article 4. Its staff members may be detached from competent public authorities. Each Member State shall notify its Passenger Information Unit to the Commission and the General Secretariat of the Council within twelve months after this Framework Decision enters into force, and may at any time update its notification. The Commission shall publish this information in the *Official Journal of the European Union*.
2. The Passenger Information Unit shall be responsible for collecting the PNR data transferred or made available by air carriers, according to Article 5, in relation to international flights which arrive or depart from the territory of the Member States which it serves. Should the PNR data transferred or made available by air carriers erroneously²⁴ include data beyond those listed in the Annex, the Passenger Information Unit shall delete such data immediately upon its receipt.

²³ DE and NL scrutiny reservation. PL indicated it was still pondering the respective (dis)advantages of a centralised vs. a decentralised system of data collection.

²⁴ Suggested amendment in order to emphasise that, as a rule, air carriers should not transfer any other data than those listed in the Annex.

3. The Passenger Information Unit shall process PNR data only for the following purposes:

- (a) carrying out real time risk assessment of the passengers²⁵ in order to identify the persons who may be involved in a terrorist offence or serious crime and who require further examination by the competent authorities of the Member State, referred to in Article 4. In carrying out such risk assessments, the Passenger Information Unit may process PNR data against pre-determined risk criteria and against relevant international, European or national files on persons or objects sought or under alert, in accordance with European, international and national rules applicable to such files. Member States shall ensure that a positive match as a result of such automated processing is manually reviewed (...) in order to verify whether (...) to the competent authority referred to in Article 4 needs to take action with a view to preventing, detecting, investigating or prosecuting terrorist offences or serious crime²⁶;
- (b) responding, on a case-by-case basis, to requests from competent authorities to provide PNR data and process PNR data in a specified manner and to provide the competent authorities with the results of such processing. Such requests shall relate to a specific investigations or prosecutions concerning a terrorist offences or serious crime and must be reasoned; and
- (c) analysing PNR data for the purpose of identifying trends and allowing the PIU and/or competent authorities referred to in Article 4 to update or create new risk criteria for carrying out risk assessments according to paragraph (a).

²⁵ Some delegations have pleaded in favour of some degree of harmonisation with regard to the risk assessment: AT, LU and PT.

²⁶ BE reservation: BE thought the manual review should not necessarily be carried out by the PIU; but could also be carried out by the competent authority. Several other delegations indicated their willingness to accept a system under which the manual review could be carried out either by the PIU or by the competent authority: COM, FR, HU, IT, NL and UK. PT insisted it be carried out by the PIU. Presidency believes that the necessity of manual review should be introduced in the text, while the identification of most appropriate body conducting such review may be left to Member States.

4. The criteria and guarantees in respect of real time risk assessments referred to in paragraph 3(a) will be provided for under national law, taking due account of the recommendations for common general criteria, methods and practices for risk assessments which shall be adopted under the procedure of Articles 13, 14 and 15. Member States shall ensure that the risk criteria shall be set by the PIU and/or²⁷ by the competent authorities referred to in Article 4 and shall in no circumstances be based on a person's race or ethnic origin, religious or philosophical belief, political opinion, trade union membership, health or sexual orientation.
5. The transmission by the Passenger Information Unit of a Member State of the PNR data or analysis of PNR data of the individuals identified in accordance with paragraph 3(a) and (b) (...) for further examination to the relevant competent authorities of the same Member State shall take place by electronic means or, in case of technical failure, by any other appropriate means²⁸.
6. Two or more Member States may jointly set up or designate the same authority to serve as their Passenger Information Unit. Such Passenger Information Unit shall be established in one of the participating Member States and shall be considered the national Passenger Information Unit of all such participating Member States²⁹. The participating Member States shall agree on the modalities of the operation of the Passenger Information Unit, the control of the data and in particular on the applicable requirements on data security, data protection and supervision, in accordance with the requirements laid down in this Framework decision.

²⁷ In response to DK reservation on the exclusive allocation of this task to the competent authorities.

²⁸ SE asked for the deletion of alternative means.

²⁹ AT and SK pleaded in favour of a supranational analysis of PNR data, or at least a 'single window' for the collection of PNR data from air carriers.

Article 4
Competent authorities

1. Each Member State shall adopt a list of the competent authorities which shall be entitled to request or receive PNR data or analysis of PNR data from the Passenger Information Units in order to examine this information further or take appropriate action.
2. Competent authorities shall only include authorities of the Member States which are responsible for the prevention, detection, investigation or prosecution of terrorist offences or serious crime.
3. Each Member State shall notify the list of its competent authorities in a declaration to the Commission and the General Secretariat of the Council within twelve months after this Framework Decision enters into force, and may at any time update its declaration. The Commission shall publish the declarations in the *Official Journal of the European Union*.
4. The PNR data of passengers and the analysis of PNR data by the Passenger Information Unit may be further processed by the competent authorities of the Member States only with the aim of preventing, detecting, investigating or prosecuting terrorist offences or serious crime.
5. The limitation set out in paragraph 4 shall not affect or interfere with national law enforcement or judicial powers in case other offences, or indications thereof, are detected in the course of enforcement action further to such processing.³⁰
6. The competent authorities of the Member States shall not take any decision which produces an adverse legal effect on a person or significantly affects him only by reason of the automated processing of PNR data or only on the basis of a person's race or ethnic origin, religious or philosophical belief, political opinion, trade union membership or health or sexual orientation.

³⁰ ES scrutiny reservation.

Article 5

*Obligation on air carriers*³¹

1. Member States shall adopt the necessary measures³² to ensure that air carriers transfer or make available the PNR data of the passengers of international flights to the national Passenger Information Unit of the Member State on whose territory the international flight referred to is landing, departing or transiting, in accordance with the conditions specified in this Framework Decision. In cases in which an international flight is code-shared between one or more air carriers, the obligation to transfer or to make available the PNR data of all passengers of the flight should be on the air carrier that operates the flight. In cases in which a transiting international flight includes a segment involving two or more different Member States, air carriers should transfer or make available the PNR data of the passengers to the Passenger Information Units of all the involved Member States³³.
- 1a. During [3] years following [the date referred to in Article 16] Member States shall ensure that the PNR data from at least 30 % of all flights referred to in paragraph 1 are collected. During next [3] years Member States shall ensure that the PNR data from at least 60 % of all flights referred to in paragraph 1 are collected. After [6] years following [the date referred to in Article 16] Member States shall ensure that the PNR data from all flights referred to in paragraph 1 are collected.³⁴
2. Air carriers shall transfer or make available to the Passenger Information Unit the PNR data as defined in Article 2(c) and specified in the Annex (...)³⁵.

³¹ CZ scrutiny reservation.

³² PL reservation on paragraph 1. PL in particular queried the meaning of 'necessary measures'.

³³ AT, LT and RO reservation: unacceptable to oblige air carriers to provide data to more than one Member State. This question may need further reflection, in particular, as all the PNR data of a international flight entering the EU will be communicated to the PIU of the Member State concerned, including those of transit passengers. NL asked that the scope would not only include transit, but also transfer flights.

³⁴ There is no consensus among delegations as to the length of the transitional periods. Some delegations (DE, FR, PL and UK) opined that these periods might have to be longer, whereas others (DK and ES) thought they might need to be shorter. To avoid confusion, the reference to "risk flights" has been deleted.

³⁵ IT linguistic reservation.

3. Air carriers shall transfer or make available twice such data by electronic means using the common protocols and supported data formats to be adopted according to the procedure of Articles 13, 14 and 15, or, in case of technical failure, by any other appropriate means ensuring an appropriate level of data security:

(a) once in advance, 48 hours before the scheduled time for flight departure. However, Member States may decide to allow the air carrier to transfer or make available the data in a period between 48 and not less than 24 hours before the scheduled time for flight departure, (...)

and

(b) once immediately after flight closure, that is immediately after the passengers have boarded the aircraft in preparation for departure and it is no longer possible for further passengers to board. Member States may³⁶ permit air carriers to limit this transfer or making available to updates of the first transmission. In relevant cases Member States may bring this moment forward to half an hour before flight closure.³⁷

In specific cases, when there is an indication that early access is necessary to assist in responding to a specific and actual threat related to terrorist offences or serious crime, a Passenger Information Unit may, in accordance with national law³⁸, require an air carrier to transfer or to make available to it PNR data prior to 48 hours from the scheduled time for flight departure or between the two moments referred to in (a) and (b)^{39 40}.

³⁶ Pertains to the request of EE.

³⁷ Reaction to situations mentioned by some Member States where the flight takes too short a time for law enforcement authorities to prepare necessary actions.

³⁸ This addition was made in order to clarify that the ad hoc powers of PIUs to request PNR data in specific cases are regulated by national law. This sentence merely acknowledges the possibility for national law to provide for such powers, in addition to the general EU obligation to transmit PNR data, set out at the beginning of paragraph 1.

³⁹ Language suggested in order to accommodate DK remark.

⁴⁰ DE scrutiny reservation on paragraph 3.

4. Following the expiry of a transition period of two⁴¹ years after the [the date referred to in Article 16 (1)], all air carriers shall be required to use the "push method" to transfer the data to the Passenger Information Units. During the transition period, air carriers that do not possess the necessary technical architecture to use the "push method", shall be obliged to permit the Passenger Information Unit, to extract the data from their databases using the "pull method".
5. Member States shall ensure that air carriers or their agents or other ticket sellers for the carriage of passengers on air services inform passengers in accordance with Article 11c of this Framework Decision.

Article 6

Intermediary

Article 7

*Exchange of Information between Member States*⁴²

1. Member States shall ensure that the PNR data or analysis of PNR data⁴³ with regard to persons identified by a Passenger Information Unit in accordance with Article 3(3)(a) shall be transmitted by that Passenger Information Unit to the Passenger Information Units of other Member States only in such cases and to the extent that such transmission is necessary in the prevention, detection, investigation or prosecution of terrorist offences or serious crime. The Passenger Information Units of the receiving Member States shall transmit such PNR data or analysis of PNR data to their relevant competent authorities⁴⁴.

⁴¹ AT pleaded in favour of a period of two years, as in the EU-AUS PNR Agreement.

⁴² IT scrutiny reservation.

⁴³ CZ scrutiny reservation.

⁴⁴ RO suggested to clarify that this paragraph pertained to the exchange of information upon request. Other delegations (FR, LU, NL, SE), however, were of the opinion that spontaneous exchange of information should also be allowed.

2. The Passenger Information Unit of a Member State shall have the right to request, either on an ad hoc or on a regular basis⁴⁵, the Passenger Information Unit of any other Member State to provide it with PNR data which are kept in the latter's database as per Article 9(1), and, if necessary, also the analysis of PNR data⁴⁶. The request for such data may be based on any one or a combination of data elements, as deemed necessary⁴⁷ by the requesting Unit for the prevention, detection, investigation or prosecution of terrorist offences or serious crime. Passenger Information Units shall provide requested PNR data as soon as practicable and shall provide also analysis of PNR data, if it already exists⁴⁸.

⁴⁵ COM clarified that this paragraph could also be used to make a regular, standing request to the PIU of another Member State for certain types of PNR data.

⁴⁶ In view of the strong concern of several delegations that requests from PIUs of other Member States could impose an undue burden on a PIU, the Presidency has followed the suggestion by DE and NL to limit the possibility of requesting processing of PNR data to cases where such analysis is necessary (first sentence) and already exists (last sentence). As pointed out by SE, this is also in accordance with the availability principle, namely that only the information which exists has to be made available to other Member States.

⁴⁷ AT and DE had proposed to limit the PIU-to-PIU exchange to 'PNR data of individuals who may be involved in a terrorist offence or serious crime according to the provisions of Article 3(3)'. Several other delegations (BE, CY, DK, ES, FR, HU, LU, and NL), however, thought this wording was unduly restrictive and risked to limit the exchange of PNR data too much. The Presidency has sought to encapsulate the idea that any exchange of PNR data must take place in view of fighting terrorist or serious offences by inserting the word 'necessary'.

⁴⁸ CZ, LV and UK scrutiny reservation. DE constitutional reservation. SE thought these requests should be governed by the Framework Decision of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union. Whether the latter Framework Decision, including the strict time limits laid down therein, can be made applicable to the exchange of PNR data between PIUs merits further reflection.

- 2a. Only in those cases where it is absolutely necessary for the prevention of an immediate and serious threat to public security, shall the competent authorities of a Member State have the right to request directly (...) the Passenger Information Unit of any other Member State to provide it with PNR data which are kept in the latter's database as per Article 9(1) (2)(...). Such requests shall relate to a specific investigation or prosecution of terrorist offences or serious crime. Passenger Information Units shall respond to such requests as a matter of priority. (...)⁴⁹. In all other cases the competent authorities shall channel their requests through the Passenger Information Unit of their own Member State.
3. When a Passenger Information Unit (...) requests specific PNR data of another Member State which are kept in archives as per Article 9(2), the request shall be made to the Passenger Information Unit of that Member State. Such request shall be made only in exceptional circumstances⁵⁰ in response to a specific threat or a specific investigation or prosecution related to the prevention, detection, investigation or prosecution of terrorist offences or serious crime.
4. In exceptional circumstances, when there is an indication that early access is necessary to assist in responding to a specific and actual threat related to the prevention, detection, investigation or prosecution of terrorist offences or serious crime, the Passenger Information Unit of a Member State (...) shall have the right to request the Passenger Information Unit of another Member State to provide it with PNR data of flights arriving or, departing from the latter's territory prior to 48 hours before the scheduled time for flight departure.

⁴⁹ DE constitutional reservation. In view of the many objections (BE, ES, GR, IT, LT, LU, PL and RO) against the possibility of the competent authorities requesting directly a PIU from another Member State, the Presidency proposes to restrict this possibility to cases of extreme urgency.

⁵⁰ COM clarified that it was for the requesting Member State to assess the exceptional nature of such circumstances.

Article 8

Transfer of Information to Third Countries⁵¹

1. PNR data and the analysis of PNR data may be transferred or made available by a Member State to a third country only on a case-by-case basis and only if the Member State is satisfied that:
 - (a) the transfer is necessary-for the purpose of preventing, detecting, investigating or prosecuting of terrorist offences or serious crime;
 - (b) the receiving authority in the third country is an authority responsible for the prevention, investigation, detection or prosecution of terrorist offences or serious crime;
 - (c) in case the PNR data was obtained from another Member State, that Member State has given its consent to the transfer in compliance with its national law;
 - (d) the third country ensures an adequate level of protection for the intended data processing; and
 - (e) the third country shall not transfer the data to another third country without the express consent of the Member State⁵².

2. By way of derogation from paragraph 1(c), data may be transferred to a third country without the prior consent of the Member State from which the data was obtained only if the transfer of the data is essential for the prevention of an immediate and serious threat related to the prevention, detection, investigation or prosecution of terrorist offences or serious crime, and the prior consent cannot be obtained in time. The transferring Member State shall inform the Member State from which the data was obtained without delay.

⁵¹ CZ, HU and PL scrutiny reservation. ES linguistic reservation. AT raised the issue of possible financial implications in case of damages caused by the use of data transmitted to third countries. It appeared that this question could not be dealt with in the context of this Framework Decision, which can only set the conditions under which Member States collect, process and transfer PNR data.

⁵² The request from PL to add the condition that there should be an international agreement with the third State concerned was rejected by COM as unduly restrictive.

3. The adequacy of the level of protection referred to in paragraph 1(d) shall be assessed in the light of all the circumstances surrounding the data transfers. Particular consideration shall be given to the purpose of the use of the data, the data retention period, the country of final destination of the data, the rule of law in force in the third country and its security measures.
4. In addition, such transmissions may only take place in accordance with the national law of the Member State concerned and any applicable international agreements.

Article 9

*Period of data retention*⁵³

1. Member States shall ensure that the PNR data provided by the air carriers to the Passenger Information Unit are kept in a database at the Passenger Information Unit for a period of three years after their transfer to the Passenger Information Unit of the first Member State on whose territory the international flight is landing, departing or transiting.
2. Upon the expiry of the period of three years of the transfer of the PNR data to the Passenger Information Unit referred to in paragraph 1, the data may be archived at the Passenger Information Unit for a further period of [(....) not more than seven⁵⁴] years. During this period, the PNR data may be accessed, processed and used only by specially authorised personnel of the Passenger Information Unit, who have received a specific training regarding the applicable legislation on the collection and use of PNR data. Access shall be permitted only in response to a specific and actual⁵⁵ threat or risk or a specific investigation or prosecution or for analytical purposes related to the prevention, detection, investigation and prosecution of terrorist offences or serious crime.

⁵³ HU, IE, and PT scrutiny reservation; DE scrutiny reservation on the collection and processing of personal data in the absence of concrete suspicions. See also the new recital 9a regarding the retention of PNR data by police or judicial authorities.

⁵⁴ It is clear that no consensus has been reached yet on the question of the exact length of the additional retention period and therefore the Presidency considers this subject to be under scrutiny reservation by all delegations. Some delegations would have liked a completely harmonised time period, but the Presidency deems it highly unlikely that a consensus can be reached among 27 delegations on an exact retention period.

⁵⁵ MT and UK argued in favour of a lower threshold without need to demonstrate the actual nature of the threat.

3. Member States shall ensure that the PNR data is deleted from all the databases of their Passenger Information Unit upon the expiry of the period specified in paragraph 2.
- 3a. The result of matching referred to in Article 3(3)(a) shall be kept by the Passenger Information only as long as necessary to inform the competent authorities of a positive match. Where the result of an automated matching operation has, further to manual verification, proven to be negative, it may, however, be stored so as to avoid future "false" positive matches [for a maximum period of three years]⁵⁶.

Article 10

*Sanctions*⁵⁷

Member States shall ensure, in conformity with their national law, that dissuasive effective and proportionate sanctions, including financial penalties, are provided for against air carriers which, with regard to PNR data collected by them, do not transmit all data required under this Framework decision or do not do so in the required format or otherwise infringe the national provisions adopted pursuant to this Framework Decision.

⁵⁶ BE, HU, NL and SE scrutiny reservation.

⁵⁷ FR thought that the Framework Decision should provide that also PIU staff who unlawfully disclose PNR data should be subject to dissuasive effective and proportionate sanctions. FR also advocated the idea that all PIU staff should receive adequate training.