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from: UK delegation
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Subject: Proposal for a Directive of the European Parliament and of the Council on the use of Passenger Name Record data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime
- Proposed amendments

Intra-EU flights

The UK Government strongly supports the principle that Member States should collect Passenger Name Records (PNR), as these are a vital and proven tool in the fight against terrorism and serious crime. The UK also considers that Member States should be able to collect PNR data from intra-EU travel as well as travel between Member States and third countries. The volume of journeys between member states is three times greater than between Member States and third countries. A PNR system that covers only travel to and from third countries would seriously limit Member States' ability to tackle this type of criminality. Not collecting PNR on intra-EU routes - while at the same time introducing measures for extra-EU PNR collection – serves simply to displace rather than address the risk. This cannot be the intended consequence of a PNR Directive.

The UK's coalition Government also recognises the importance of protecting personal information and it is right that there should be robust data protection arrangements. Responsible governments must provide security for their citizens and protect their privacy. We do not agree with those who say that we have to choose between being safe and being free. This is a false choice – both are possible.

The proposed amendment set out below would make PNR data collection on flights between Member States optional on the part of any Member State. It would do this by extending the regime created by the Directive in respect of international flights to internal flights. A Member State who decides to apply the directive to intra-EU flights would also decide the particular intra-EU routes on which it wishes to collect PNR data. The routes would be selected as the ones the Member State considers necessary to further the purposes of this Directive.

Following publication of the proposal for the Directive, the Government will decide whether it wishes to opt in to the Directive, pursuant to Protocol 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, justice and security to the Treaty on European Union and the Treaty on the Functioning of the European Union.

NEW ARTICLE

“Article 6A

Application of the directive to internal flights

1. A Member State may give notice in writing to the Commission that it wishes to apply the provisions of this Directive to internal flights. The Commission shall publish such a notice in the *Official Journal of the European Union*. A Member State may give such notice at any time following the period of two years after the entry into force of this Directive.
2. Where such a notice is given, all the provisions of this Directive shall apply in relation to internal flights as if they were international flights and to PNR data from internal flights as if it were PNR data from international flights.
3. A Member State who applies this Directive to internal flights shall decide the particular internal flights for which it wishes PNR data to be transferred to its national Passenger Information Unit. It shall make this decision by choosing the particular flights it considers necessary in order to further the purposes of this Directive. It may decide to change the particular internal flights at any time. The Member State shall communicate its decision to each affected carrier in accordance with procedures adopted in accordance with Article 14.”

International flights

The current text of the Directive envisages all Member States collecting PNR data on all international flights into and out of their territories. This is to be achieved pursuant to a transitional period, under which after 2 years following entry into force of the Directive, PNR data on 30% of flights must be collected; after a further two years, PNR data on 60% of flights must be collected; and after an additional two years, PNR data on all international flights must be collected.

The purpose of the amendments set out below is to increase the proportionality of the current text, but removing the requirement for Member States to collect PNR data on every international flight (following the end of the transitional period mentioned above).

Recital 18:

(18) Each Member State should be responsible for assessing the potential threats related to terrorist offences and serious crime. Accordingly, each Member State shall decide the particular international flights for which it wishes PNR data to be transferred to its national Passenger Information Unit in order to further the purposes of this Directive.

Article 6 (obligations on air carriers)

Article 6 shall be amended as follows.

“1. Member States shall adopt the necessary measures to ensure that air carriers transfer ('push') the PNR data as defined in Article 2(c) and specified in the Annex, to the extent that such data are already collected by them, to the database of the national Passenger Information Unit of the Member State on the territory of which the international flight will land or from the territory of which the flight will depart.

1a Member States shall decide the particular international flights for which it wishes PNR data to be transferred to its national Passenger Information Unit. It shall make this decision by choosing the particular flights it considers necessary in order to further the purposes of this Directive. It may decide to change the particular international flights at any time. The Member State shall communicate its decision to each affected carrier in accordance with procedures adopted in accordance with Article 14. Where the flight is code-shared between one or more air carriers, the obligation to transfer the PNR data of all passengers on the flight shall be on the air carrier that operates the flight. Where the flight has one or more stop-overs at the airports of the Member States, air carriers shall may be required to transfer the PNR data to the Passenger Information Units of all the Member States concerned.”

Article 16 (transitional provisions)

This article is deleted.

CONSEQUENTIAL AMENDMENTS

This annex contains additional amendments which will need to be made in consequence of the inclusion of a new article 6A.

Recital (28):

This Directive does not affect the possibility for Member States to provide, under their domestic law, for a system of collection and handling of PNR data for purposes other than those specified in this Directive, or from transportation providers other than those specified in the Directive, subject to compliance with relevant data protection provisions, provided that such domestic law respects the Union acquis. A Member State may decide that it wishes air carriers on flights between that Member State and another Member State to transfer to its Passenger Information Unit PNR data of passengers for the purposes of this Directive. In such a case, the provisions of this Directive shall apply in relation to internal flights and to PNR data from those flights.

Article 1, paragraph 1:

1. This Directive provides for the transfer by air carriers of Passenger Name Record data of passengers of international flights to and from the Member States, and at the election of a Member State, to internal flights, and its exchange between them.

Article 2:

“(bb) ‘internal flight’ means any scheduled or non-scheduled flight by an air carrier (i) planned to land on the territory of a Member State which has given a notice under article 6A, having originated in another Member State; (ii) planned to depart from the territory of a Member State which has given a notice under article 6A with a final destination in another Member State; including in both cases any transfer or transit flights.”

Article 15:

- “1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive at the latest two years after the entry into force of this Directive, including those necessary for the application of the Directive to internal flights under article 6A. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.”

Article 17:

“On the basis of information provided by the Member States, the Commission shall:

- (a) review the feasibility and necessity of including a requirement on all Member States to collect PNR with regard to internal flights in this Directive, in the light of the experience gained by those Member States that collect PNR data with regard to internal flights. The Commission shall submit a report to the European Parliament and the Council within two years after the date mentioned in Article 15(1);
- (b) undertake a review of the operation of this Directive and submit a report to the European Parliament and the Council within four years after the date mentioned in Article 15(1). Such review shall cover all the elements of this Directive, with special attention to the compliance with standard of protection of personal data, the length of the data retention period and the quality of the assessments. It shall also contain the statistical information gathered pursuant to Article 18.”
