

8.4.2016

A8-0248/ 001-052

**AMENDMENTS 001-052**

by the Committee on Civil Liberties, Justice and Home Affairs

**Report**

**Timothy Kirkhope**

**A8-0248/2015**

Fight against terrorism and serious crime: use of passenger name record (PNR) data

Proposal for a directive (COM(2011)0032 – C7-0039/2011 – 2011/0023(COD))

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**Amendment 1**

**Proposal for a directive**

**Title**

*Text proposed by the Commission*

*Amendment*

Proposal for a

Proposal for a

DIRECTIVE OF THE EUROPEAN  
PARLIAMENT AND OF THE COUNCIL

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

on the use of Passenger Name Record data  
for the prevention, detection, investigation  
and prosecution of terrorist offences and  
serious *transnational* crime

**Amendment 2**

**Proposal for a directive**

**Recital 4 a (new)**

*Text proposed by the Commission*

*Amendment*

*(4a) The purpose of this Directive is to  
ensure security, to protect the life and  
safety of the public, and to create a legal  
framework for the protection and  
exchange of PNR data between Member*

### **Amendment 3**

#### **Proposal for a directive**

##### **Recital 5**

*Text proposed by the Commission*

(5) PNR data are necessary to effectively prevent, detect, investigate and prosecute terrorist offences and serious crime and thus enhance internal security.

*Amendment*

(5) PNR data are necessary to effectively prevent, detect, investigate and prosecute terrorist offences and serious ***transnational*** crime and thus enhance internal security.

### **Amendment 4**

#### **Proposal for a directive**

##### **Recital 6**

*Text proposed by the Commission*

(6) PNR data help law enforcement authorities prevent, detect, investigate and prosecute serious ***crimes***, including acts of terrorism, by comparing them with various databases of persons and objects sought, to construct evidence and, where relevant, to find associates of criminals and unravel criminal networks.

*Amendment*

(6) PNR data can help law enforcement authorities prevent, detect, investigate and prosecute serious ***transnational crime***, including acts of terrorism, by comparing them with various databases of persons and objects sought, to find the necessary evidence and, where relevant, to find associates of criminals and unravel criminal networks.

### **Amendment 5**

#### **Proposal for a directive**

##### **Recital 7**

*Text proposed by the Commission*

(7) PNR data enable law enforcement authorities to identify persons who were previously "unknown", i.e. persons previously unsuspected of involvement in serious crime and terrorism, but whom an analysis of the data suggests may be involved in such crime and who should therefore be subject to further examination by the competent authorities. ***By using PNR data law enforcement authorities can address the threat of serious crime***

*Amendment*

(7) PNR data enable law enforcement authorities to identify persons who were previously "unknown", i.e. persons previously unsuspected of involvement in serious ***transnational*** crime and terrorism, but whom an analysis of the data suggests may be involved in such crime and who should therefore be subject to further examination by the competent authorities.

*and terrorism from a different perspective than through the processing of other categories of personal data. However, in order to ensure that the processing of data of innocent and unsuspected persons remains as limited as possible, the aspects of the use of PNR data relating to the creation and application of assessment criteria should be further limited to serious crimes that are also transnational in nature, i.e. are intrinsically linked to travelling and hence the type of the data being processed.*

#### **Amendment 6**

##### **Proposal for a directive Recital 8**

*Text proposed by the Commission*

(8) The processing of personal data must be proportionate to the specific *security goal* pursued by this Directive.

*Amendment*

(8) The processing of personal data must be *necessary and* proportionate to the specific *aim* pursued by this Directive.

#### **Amendment 7**

##### **Proposal for a directive Recital 10**

*Text proposed by the Commission*

(10) To prevent, detect, investigate and prosecute terrorist offences and serious crime, it is therefore essential that all Member States introduce provisions laying down obligations on air carriers operating international flights to or from the territory of the Member States *of the European Union*.

*Amendment*

(10) To prevent, detect, investigate and prosecute terrorist offences and serious *transnational* crime, it is therefore essential that all Member States introduce provisions laying down obligations on air carriers *and non-carrier economic operators* operating international flights to or from the territory of the Member States.

#### **Amendment 8**

##### **Proposal for a directive Recital 11**

*Text proposed by the Commission*

(11) Air carriers already collect and

*Amendment*

(11) Air carriers *and non-carrier*

process PNR data from their passengers for their own commercial purposes. This Directive should not impose any obligation on air carriers to collect or retain any additional data from passengers or to impose any obligation on passengers to provide any data in addition to that already being provided to air carriers.

*economic operators* already collect and process PNR data from their passengers for their own commercial purposes. This Directive should not impose any obligation on air carriers *or non-carrier economic operators* to collect or retain any additional data from passengers or to impose any obligation on passengers to provide any data in addition to that already being provided to air carriers *and non-carrier economic operators*.

## **Amendment 9**

### **Proposal for a directive Recital 11 a (new)**

*Text proposed by the Commission*

*Amendment*

*(11a) Non-carrier economic operators, such as travel agencies and tour operators, sell package tours making use of charter flights for which they collect and process PNR data from their customers, without necessarily transferring the data to the airline operating the passenger flight.*

## **Amendment 10**

### **Proposal for a directive Recital 11 b (new)**

*Text proposed by the Commission*

*Amendment*

*(11b) Each Member State should be responsible for the costs of running and maintaining its own PNR system, including the costs of appointing and running a competent authority and a national supervisory authority. The costs incurred by transferring PNR data held by passenger airlines in their reservation systems to national law enforcement agencies and competent authorities should be borne by the airlines.*

## Amendment 11

### Proposal for a directive Recital 12

#### *Text proposed by the Commission*

(12) The definition of terrorist offences should be taken from Articles 1 to 4 of Council Framework Decision 2002/475/JHA **on combating terrorism**<sup>37</sup>. The definition of serious crime should be taken from Article 2 of Council Framework Decision 2002/584/JHA **of 13 June 2002 on the European Arrest Warrant and the surrender procedure between Member States**<sup>38</sup>. **However, Member States may exclude those minor offences for which, taking into account their respective criminal justice system, the processing of PNR data pursuant to this directive would not be in line with the principle of proportionality. The definition of serious transnational crime should be taken from Article 2 of Council Framework Decision 2002/584/JHA and the United Nations Convention on Transnational Organised Crime.**

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<sup>37</sup> OJ L 164, 22.6.2002, p. 3. **Decision as amended by Council Framework Decision 2008/919/JHA of 28 November 2008 (OJ L 330, 9.1.2.2008, p. 21)**

<sup>38</sup> OJ L 190, 18.7.2002, p. 1.

## Amendment 12

### Proposal for a directive Recital 13

#### *Text proposed by the Commission*

(13) PNR data should be transferred to a single designated unit (Passenger

#### *Amendment*

(12) The definition of terrorist offences should be taken from Articles 1 to 4 of Council Framework Decision 2002/475/JHA<sup>37</sup>. The definition of serious **transnational** crime should be taken from Article 2 of Council Framework Decision 2002/584/JHA<sup>38</sup> **and should encompass the crimes listed in this Directive.**

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<sup>37</sup> **Council Framework Decision of 13 June 2002 on combating terrorism** (OJ L 164, 22.6.2002, p. 3).

<sup>38</sup> **Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States** (OJ L 190, 18.7.2002, p. 1).

Information Unit) in the relevant Member State, so as to ensure clarity and reduce costs to air carriers.

Information Unit) in the relevant Member State, so as to ensure clarity and reduce costs to air carriers **and non-carrier economic operators. Members States should exchange the information through the use of the Secure Information Exchange Network Application (SIENA), in order to ensure information sharing and interoperability between Member States.**

## Amendment 13

### Proposal for a directive

#### Recital 14

##### *Text proposed by the Commission*

(14) The contents of any lists of required PNR data to be obtained by the Passenger Information Unit should be drawn up with the objective of reflecting the legitimate requirements of public authorities to prevent, detect, investigate and prosecute terrorist offences or serious crime, thereby improving internal security within the Union as well as protecting the fundamental rights of citizens, notably privacy and the protection of personal data. Such *lists* should not contain any personal data that could reveal racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership or data concerning health or sexual life of the individual concerned. The PNR data should contain details *on* the passenger's reservation and travel itinerary ***which enable competent authorities to identify air passengers representing a threat to internal security.***

##### *Amendment*

(14) The contents of any lists of required PNR data to be obtained by the Passenger Information Unit should be drawn up with the objective of reflecting the legitimate requirements of public authorities to prevent, detect, investigate and prosecute terrorist offences or serious ***transnational*** crime, thereby improving internal security within the Union as well as protecting the fundamental rights of citizens, notably privacy and the protection of personal data, ***by applying high standards in accordance with the Charter of Fundamental Rights of the European Union (the 'Charter'), the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data ('Convention No 108'), and the European Convention for the Protection of Human Rights and Fundamental Freedoms (the 'ECHR').*** Such *data sets* should not contain any personal data that could reveal racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership or data concerning health or sexual life of the individual concerned. The PNR data should contain ***only details of*** the passenger's reservation and travel itinerary ***as referred to in this Directive.***

## Amendment 14

### Proposal for a directive Recital 15

*Text proposed by the Commission*

(15) There are two possible methods of data transfer currently available: the ‘pull’ method, under which the competent authorities of the Member State requiring the data can reach into (access) the air carrier’s reservation system and extract (‘pull’) a copy of the required data, and the ‘push’ method, under which air carriers transfer (‘push’) the required PNR data to the authority requesting them, thus allowing air carriers to retain control of what data is provided. The ‘push’ method is considered to offer a higher degree of data protection and should be mandatory for all air carriers.

## Amendment 15

### Proposal for a directive Recital 16

*Text proposed by the Commission*

(16) The Commission supports the International Civil Aviation Organisation (ICAO) guidelines on PNR. These guidelines should thus be the basis for adopting the supported data formats for transfers of PNR data by air carriers to Member States. ***This justifies that*** such supported data formats, as well as the ***relevant*** protocols applicable to the transfer of data ***from air carriers should be adopted in accordance with the advisory procedure foreseen in Regulation (EU) No..... of the European Parliament and the Council [.....]***

*Amendment*

(15) There are two possible methods of data transfer currently available: the ‘pull’ method, under which the competent authorities of the Member State requiring the data can reach into (access) the air carrier’s reservation system and extract (‘pull’) a copy of the required data, and the ‘push’ method, under which air carriers ***and non-carrier economic operators*** transfer (‘push’) the required PNR data to the authority requesting them, thus allowing air carriers to retain control of what data is provided. The ‘push’ method is considered to offer a higher degree of data protection and should be mandatory for all air carriers ***and non-carrier economic operators***.

*Amendment*

(16) The Commission supports the International Civil Aviation Organisation (ICAO) guidelines on PNR. These guidelines should thus be the basis for adopting the supported data formats for transfers of PNR data by air carriers ***and non-carrier economic operators*** to Member States. ***In order to ensure such transfer of PNR data, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) should be delegated to the Commission in respect of adopting a list of*** such supported data formats as well as ***of the accepted common*** protocols applicable to the transfer of data. ***It is of particular importance that the Commission carry out appropriate***

*consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.*

## **Amendment 16**

### **Proposal for a directive**

#### **Recital 17**

##### *Text proposed by the Commission*

(17) The Member States should take all necessary measures to enable air carriers to fulfil their obligations under this Directive. Dissuasive, effective and proportionate penalties, including financial ones, should be provided for by Member States against those air carriers failing to meet their obligations regarding the transfer of PNR data. Where there are repeated serious infringements which might undermine the basic objectives of this Directive, these penalties may include, in exceptional cases, measures such as the immobilisation, seizure and confiscation of the means of transport, or the temporary suspension or withdrawal of the operating licence.

##### *Amendment*

(17) The Member States should take all necessary measures to enable air carriers **and non-carrier economic operators** to fulfil their obligations under this Directive. Dissuasive, effective and proportionate penalties, including financial ones, should be provided for by Member States against those air carriers **and against non-carrier economic operators** failing to meet their obligations regarding the transfer of PNR data **and the protection of that data**. Where there are repeated serious infringements which might undermine the basic objectives of this Directive, these penalties may include, in exceptional cases, measures such as the immobilisation, seizure and confiscation of the means of transport, or the temporary suspension or withdrawal of the operating licence.

## **Amendment 17**

### **Proposal for a directive**

#### **Recital 18**

##### *Text proposed by the Commission*

(18) Each Member State should be responsible for assessing the potential threats related to terrorist offences and serious crime.

##### *Amendment*

(18) Each Member State should be responsible for assessing the potential threats related to terrorist offences and serious **transnational** crime.



## Amendment 18

### Proposal for a directive Recital 19

*Text proposed by the Commission*

(19) Taking fully into consideration the right to the protection of personal data and the right to non-discrimination, no decision that produces an adverse legal effect on a person or seriously affects him/her should be taken only by reason of the automated processing of PNR data. Moreover, no such decision should be taken by reason of a person's race or ethnic origin, religious or philosophical belief, political opinion, trade union membership, health or sexual life.

*Amendment*

(19) Taking fully into consideration the right to the protection of personal data and the right to non-discrimination, ***in accordance with Articles 8 and 21 of the Charter***, no decision that produces an adverse legal effect on a person or seriously affects him/her should be taken only by reason of the automated processing of PNR data. Moreover, no such decision should be taken by reason of a person's race or ethnic origin, religious or philosophical belief, political opinion, trade union membership, health or sexual life.

## Amendment 19

### Proposal for a directive Recital 19 a (new)

*Text proposed by the Commission*

*Amendment*

***(19a) The result of the processing of PNR data should in no circumstances be used by Member States as a ground to circumvent their international obligations under the Geneva Convention Relating to the Status of Refugees of 28 July 1951, as supplemented by the New York Protocol of 31 January 1967 and should not be used to deny asylum seekers safe and effective legal avenues to the Union territory to exercise their right to international protection.***

## Amendment 20

### Proposal for a directive Recital 19 b (new)

***(19b) Taking fully into consideration the consequences of the judgment of the Court of Justice in Joined Cases C-293/12, Digital Rights Ireland and C-594/12, Seitlinger and others, the application of this Directive must ensure the full respect of fundamental rights and the right to privacy, the principle of proportionality. It must also genuinely meet the objectives of what is necessary and proportionate in order to achieve the general interests recognised by the Union and the need to protect the rights and freedoms of others in the fight against terrorism and serious transnational crime. The application of this Directive must be duly justified and the necessary safeguards must be in place in order to ensure the lawfulness of any storage, analysis, transfer and use of PNR data.***

## Amendment 21

### Proposal for a directive Recital 20

(20) Member States should share with other Member States the PNR data that they receive where such transfer is necessary for the prevention, detection, investigation or prosecution of terrorist offences or serious crime. The provisions of this Directive should be without prejudice to other Union instruments on the exchange of information between police and judicial authorities, including Council Decision 2009/371/JHA *of 6 April 2009 establishing the European Police Office (Europol)*<sup>39</sup> and Council Framework Decision 2006/960/JHA *of 18 September 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union*<sup>40</sup>. Such exchange of PNR data between law

(20) Member States should share with other Member States ***and at Union level, as through Europol***, the PNR data that they receive where this is necessary for the prevention, detection, investigation or prosecution of terrorist offences or serious ***transnational crime or for the prevention of an immediate and serious threat to public security. Passenger Information Units should, in any case, without delay, transmit the result of the processing of PNR data to the Passenger Information Units of other Member States for further investigation.*** The provisions of this Directive should be without prejudice to other Union instruments on the exchange of information between police and judicial authorities, including Council Decision 2009/371/JHA<sup>39</sup> and Council Framework

enforcement and judicial authorities should be governed by the rules on police and judicial cooperation.

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<sup>39</sup> OJ L 121, 15.5.2009, p. 37.

<sup>40</sup> OJ L 386, 29.12.2006, p. 89.

Decision 2006/960/JHA<sup>40</sup>. Such exchange of PNR data between law enforcement and judicial authorities should be governed by the rules on police and judicial cooperation **and should not undermine the high level of privacy and protection of personal data in accordance with the Charter, Convention No 108 and the ECHR.**

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<sup>39</sup> **Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol)** (OJ L 121, 15.5.2009, p. 37).

<sup>40</sup> **Council Framework Decision 2006/960/JHA of 18 September 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union** (OJ L 386, 29.12.2006, p. 89).

## Amendment 22

### Proposal for a directive Recital 20 a (new)

*Text proposed by the Commission*

*Amendment*

***(20a) The exchange of information through a secure Union system for the exchange of PNR data between Member States and between Member States and Europol should be guaranteed. The development and operational management of that system could be the responsibility of Europol. A one-stop shop could be created as part of that system to register and transmit the requests for information exchanges. The European Data Protection Supervisor should be responsible for monitoring the processing of the personal data performed through this Union system for exchange of PNR data with Europol.***

## Amendment 23

### Proposal for a directive

## Recital 21

*Text proposed by the Commission*

(21) The period during which PNR data are to be retained should be proportionate to the purposes of the prevention, detection, investigation and prosecution of terrorist offences and serious crime. Because of the nature of the data and their uses, it is necessary that the PNR data are retained for a sufficiently long period for carrying out analysis and for use in investigations. In order to avoid disproportionate use, it is necessary that, after an initial period, the data are **anonymised** and only accessible under very strict and limited conditions.

*Amendment*

(21) The period during which PNR data are to be retained should be **necessary for, and** proportionate to, the purposes of the prevention, detection, investigation and prosecution of terrorist offences and serious **transnational** crime. Because of the nature of the data and their uses, it is necessary that the PNR data are retained for a sufficiently long period for carrying out analysis and for use in investigations. In order to avoid disproportionate use, it is necessary that, after an initial period, the data are **masked out** and only accessible under very strict and limited conditions.

## Amendment 24

### Proposal for a directive

#### Recital 21 a (new)

*Text proposed by the Commission*

*Amendment*

***(21a) PNR data should be processed to the greatest extent possible, subject to masking out, in order to ensure the highest level of data protection by making it impossible for those with access to that data to identify the data subject and to draw conclusions as to what persons are related to that data. Re-identifying masked out data should be possible only under conditions ensuring a high level of data protection.***

## Amendment 25

### Proposal for a directive

#### Recital 23

*Text proposed by the Commission*

*Amendment*

(23) The processing of PNR data domestically in each Member State by the Passenger Information Unit and by competent authorities should be subject to

(23) The processing of PNR data domestically in each Member State by the Passenger Information Unit and by competent authorities should be subject to

a standard of protection of personal data under their national law which is in line with Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters<sup>41</sup> ('Framework Decision 2008/977/JHA').

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<sup>41</sup> OJ L 350, 30.12.2008.

a standard of protection of personal data under their national law which is in line with *Council* Framework Decision 2008/977/JHA<sup>41</sup>, and *Union data protection law, including the specific data protection requirements laid down in this Directive.*

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<sup>41</sup> *Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters* (OJ L 350, 30.12.2008).

## Amendment 26

### Proposal for a directive Recital 24

#### *Text proposed by the Commission*

(24) Taking into consideration the right to the protection of personal data, the rights of the data subjects to processing of their PNR data, such as the right of access, the right of rectification, erasure and blocking, as well as the rights to compensation and judicial remedies, should be in *line* with Framework Decision 2008/977/JHA.

## Amendment 27

### Proposal for a directive Recital 25

#### *Text proposed by the Commission*

(25) Taking into account the right of passengers to be informed of the processing of their personal data, Member States should ensure they are provided with accurate information about the collection of PNR data and their transfer to the

#### *Amendment*

(24) Taking into consideration the right to the protection of personal data, the rights of the data subjects to processing of their PNR data, such as the right of access, the right of rectification, erasure and blocking, as well as the rights to compensation and judicial remedies, should be in *accordance* with Framework Decision 2008/977/JHA, *Union data protection law, and the high level of protection provided by the Charter and the ECHR.*

#### *Amendment*

(25) Taking into account the right of passengers to be informed of the processing of their personal data, Member States should ensure they are provided with accurate information *that is easily accessible and easy to understand* about

Passenger Information Unit.

the collection of PNR data and their transfer to the Passenger Information Unit, *as well as their rights as data subjects.*

## Amendment 28

### Proposal for a directive Recital 26

*Text proposed by the Commission*

(26) Transfers of PNR data by Member States to third countries should be permitted **only** on a case-by-case basis and in compliance with Framework Decision 2008/977/JHA. To ensure the protection of personal data, such transfers should be subject to additional requirements relating to the purpose of the transfer, the quality of the receiving authority and the safeguards applicable to the personal data transferred to the third country.

*Amendment*

(26) Transfers of PNR data by Member States to third countries should be permitted ***pursuant to an international agreement or*** on a case-by-case basis and in ***full*** compliance with ***the provisions laid down by Member States pursuant to*** Framework Decision 2008/977/JHA. To ensure the protection of personal data, such transfers should be subject to additional requirements relating to the purpose of the transfer, the quality of the receiving authority and the safeguards applicable to the personal data transferred to the third country, ***as well as to the principles of necessity and proportionality relating to the transfers, and to the high level of protection provided by the Charter, Convention No 108, and the ECHR. If the national supervisory authority finds the transfer of PNR data to a third country to be in breach of any of the principles referred to in this Directive, it should have the right to suspend the data flow to that third country.***

## Amendment 29

### Proposal for a directive Recital 28

*Text proposed by the Commission*

***(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***

*Amendment*

***deleted***

*providers other than those specified in the Directive, regarding internal flights subject to compliance with relevant data protection provisions, provided that such domestic law respects the Union acquis. The issue of the collection of PNR data on internal flights should be the subject of specific reflection at a future date.*

## Amendment 30

### Proposal for a directive

#### Recital 29

*Text proposed by the Commission*

(29) As a result of the legal and technical differences between national provisions concerning the processing of personal data, including PNR, air carriers are and will be faced with different requirements regarding the types of information to be transmitted, as well as the conditions under which this information needs to be provided to competent national authorities. These differences may be prejudicial to effective cooperation between the competent national authorities for the purposes of preventing, detecting, investigating and prosecuting terrorist offences or serious crime.

*Amendment*

(29) As a result of the legal and technical differences between national provisions concerning the processing of personal data, including PNR, air carriers **and non-carrier economic operators** are and will be faced with different requirements regarding the types of information to be transmitted, as well as the conditions under which this information needs to be provided to competent national authorities. These differences may be prejudicial to effective cooperation between the competent national authorities for the purposes of preventing, detecting, investigating and prosecuting terrorist offences or serious **transnational** crime.

## Amendment 31

### Proposal for a directive

#### Recital 32

*Text proposed by the Commission*

(32) In particular, the scope of the Directive is as limited as possible, it allows retention of PNR data for period of time not exceeding 5 years, after which the data must be deleted, the data **must be anonymised** after **a very short period**, the collection and use of sensitive data **is** prohibited. In order to ensure efficiency and a high level of data protection,

*Amendment*

(32) In particular, the scope of **this** Directive is as limited as possible, **and** allows retention of PNR data for **a** period of time not exceeding **five** years, after which the data **should** be deleted, the data **should be masked out** after **30 days**, the collection and use of sensitive data **should be** prohibited. In order to ensure efficiency and a high level of data protection, **it**

**Member States are required to ensure** that an independent national supervisory authority is responsible for advising and monitoring how PNR data are processed. All processing of PNR data **must** be logged or documented for the purpose of verification of the lawfulness of the data processing, self-monitoring and ensuring proper data integrity and security of the data processing. Member States **must** also ensure that passengers are clearly and precisely informed about the collection of PNR data and their rights.

**should be ensured** that an independent national supervisory authority **and, in particular, its data protection officer** is responsible for advising and monitoring how PNR data are processed. All processing of PNR data **should** be logged or documented for the purpose of verification of the lawfulness of the data processing, self-monitoring and ensuring proper data integrity and security of the data processing. Member States **should** also ensure that passengers are clearly and precisely informed about the collection of PNR data and their rights.

## Amendment 32

### Proposal for a directive Article 1

*Text proposed by the Commission*

#### CHAPTER I

#### GENERAL PROVISIONS

##### Article 1

##### Subject matter and scope

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, as well as the processing of that data, including its collection, use and retention by the Member States and its exchange between **them**.

2. The PNR data collected in accordance with this Directive may be processed only for the **following** purposes:

**(a) The prevention, detection, investigation and prosecution of terrorist**

*Amendment*

#### CHAPTER I

#### GENERAL PROVISIONS

##### Article 1

##### Subject matter and scope

1. This Directive provides for the transfer by air carriers **and non-carrier economic operators** of Passenger Name Record data of passengers of international flights to and from the Member States, as well as the processing of that data, including its collection, use and retention by the Member States and its exchange between **the Member States and between the Member States and Europol**.

2. The PNR data collected in accordance with this Directive may be processed only for the purposes **of the prevention, detection, investigation and prosecution of terrorist offences and of certain types of serious transnational crime in accordance with Article 4(2) or the prevention of an immediate and serious threat to public security**.



*offences and serious crime according to Article 4(2)(b) and (c); and*

*(b) The prevention, detection, investigation and prosecution of terrorist offences and serious transnational crime according to Article 4(2)(a) and (d).*

### **Amendment 33**

#### **Proposal for a directive Article 2**

*Text proposed by the Commission*

Article 2

Definitions

For the purposes of this Directive 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;

(b) ‘international flight’ means any scheduled or non-scheduled flight by an air carrier planned to land on the territory of a Member State originating in a third country or to depart from the territory of a Member State with a final destination in a third country, including in both cases any transfer or transit flights;

(c) ‘Passenger Name Record’ or ‘PNR data’ means a record of each passenger’s travel requirements which contains 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, whether it is contained in reservation systems, Departure Control

*Amendment*

Article 2

Definitions

For the purposes of this Directive the following definitions 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;

*(aa) ‘non-carrier economic operator’ means an economic operator, such as travel agencies and tour operators, which provides travel-related services, including the booking of flights for which they collect and process PNR data of passengers;*

(b) ‘international flight’ means any scheduled or non-scheduled flight by an air carrier planned to land on the territory of a Member State originating in a third country or to depart from the territory of a Member State with a final destination in a third country, including in both cases any transfer or transit flights;

(c) ‘Passenger Name Record’ or ‘PNR data’ means a record of each passenger’s travel requirements which contains 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, whether it is contained in reservation systems, Departure Control

Systems (DCS) or equivalent systems providing the same functionalities;

(d) ‘passenger’ means any person, except members of the crew, carried or to be carried in an aircraft with the consent of the carrier;

(e) ‘reservation systems’ means the air carrier’s internal inventory system, in which PNR data are collected for the handling of reservations;

(f) ‘push method’ means the method whereby air carriers transfer the required PNR data into the database of the authority requesting them;

(g) ‘terrorist offences’ means the offences under national law referred to in Articles 1 to 4 of **Council** Framework Decision 2002/475/JHA;

***(h) ‘serious crime’ means the offences under national law referred to in Article 2(2) of Council Framework Decision 2002/584/JHA if they are punishable by a custodial sentence or a detention order for a maximum period of at least three years under the national law of a Member State, however, Member States may exclude those minor offences for which, taking into account their respective criminal justice system, the processing of PNR data pursuant to this directive would not be in line with the principle of proportionality;***

(i) ‘serious transnational crime’ means the offences under national law referred to in Article 2(2) of Council Framework Decision 2002/584/JHA ***if*** they are punishable by a custodial sentence or a detention order for a maximum period of at least three years under the national law of a Member State, ***and if:***

***(i) They are committed in more than one state;***

***(ii) They are committed in one state but a substantial part of their preparation, planning, direction or control takes place***

Systems (DCS) or equivalent systems providing the same functionalities;

(d) ‘passenger’ means any person, except members of the crew, carried or to be carried in an aircraft with the consent of the carrier;

(e) ‘reservation systems’ means the air carrier’s ***or non-carrier economic operator’s*** internal inventory system, in which PNR data are collected for the handling of reservations;

(f) ‘push method’ means the method whereby air carriers ***or non-carrier economic operators*** transfer the required PNR data ***listed in the Annex*** into the database of the authority requesting them;

(g) ‘terrorist offences’ means the offences under national law referred to in Articles 1 to 4 of Framework Decision 2002/475/JHA;

(i) ‘serious transnational crime’ means the following offences, ***where*** they are punishable by a custodial sentence or a detention order for a maximum period of at least three years under the national law of a Member State, ***as referred to in Article 2(2) of Council Framework Decision 2002/584/JHA:***

*in another state;*

*(iii) They are committed in one state but involve an organised criminal group that engages in criminal activities in more than one state; or*

*(iv) They are committed in one state but have substantial effects in another state.*

- *participation in a criminal organisation,*
- *trafficking in human beings, facilitation of unauthorised entry and residence, illicit trade in human organs and tissue,*
- *sexual exploitation of children and child pornography, rape, female genital mutilation,*
- *illicit trafficking in narcotic drugs and psychotropic substances,*
- *illicit trafficking in weapons, munitions and explosives,*
- *serious fraud, fraud against the financial interests of the EU, laundering of the proceeds of crime, money laundering and counterfeiting currency,*
- *murder, grievous bodily injured, kidnapping, illegal restraint and hostage-taking, armed robbery,*
- *serious computer-related crime and cybercrime,*
- *environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties,*
- *forgery of administrative documents and trafficking therein, illicit trafficking in cultural goods, including antiques and works of art, counterfeiting and piracy of products,*
- *unlawful seizure of aircraft/ships,*
- *espionage and treason,*
- *illicit trade and trafficking in nuclear or radioactive materials and their precursor and in this regard non-proliferation related crimes,*

## Amendment 34

### Proposal for a directive Article 3

#### *Text proposed by the Commission*

1. Each Member State shall set up or designate an authority competent for the prevention, detection, investigation or prosecution of terrorist offences and serious crime or a branch of such an authority to act as its 'Passenger Information Unit' responsible for collecting PNR data from **the** air carriers, storing **them**, analysing **them** and transmitting the result of the analysis to the competent authorities referred to in Article 5. Its staff members may be seconded from competent public authorities.

2. Two or more Member States may establish or designate a single 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 States. The participating Member States shall agree on the detailed rules for the operation of the Passenger Information Unit and shall

#### *Amendment*

1. Each Member State shall set up or designate an authority competent for the prevention, detection, investigation or prosecution of terrorist offences and **of serious transnational crime and for the prevention of immediate and serious threats to public security**, or a branch of such an authority, to act as its 'Passenger Information Unit'. **The Passenger Information Unit shall be** responsible for collecting PNR data from air carriers **and non-carrier economic operators**, storing, **processing and** analysing **those data** and transmitting the result of the analysis to the competent authorities referred to in Article 5. **The Passenger Information Unit shall also be responsible for the exchange of PNR data and of the result of the processing thereof with the Passenger Information Units of other Member States and with Europol in accordance with Articles 7 and 7a, and for conducting the assessments referred to in Article 4.** Its staff members may be seconded from competent public authorities. **Member States shall provide the Passenger Information Unit with adequate resources in order to fulfil its tasks.**

2. Two or more Member States may establish or designate a single 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 States. The participating Member States shall agree **jointly** on the detailed rules for the operation of the Passenger Information

respect the requirements laid down in this Directive.

3. Each Member State shall notify the Commission thereof within one month of the establishment of the Passenger Information Unit and *may* at any time update its declaration. The Commission shall publish this information, including any updates, in the Official Journal of the European Union.

## **Amendment 35**

### **Proposal for a directive**

#### **Article 3 a (new)**

*Text proposed by the Commission*

Unit and shall respect the requirements laid down in this Directive.

3. Each Member State shall notify the Commission thereof within one month of the establishment of the Passenger Information Unit and *shall* at any time update its declaration. The Commission shall publish this information, including any updates, in the Official Journal of the European Union.

*Amendment*

#### **Article 3a**

##### ***Data protection officer in the Passenger Information Unit***

***1. All staff members of the Passenger Information Unit who have access to PNR data shall receive specifically tailored training on processing of PNR data in full compliance with data protection principles and fundamental rights.***

***2. The Passenger Information Unit shall appoint a data protection officer responsible for monitoring the processing of PNR data and implementing the related safeguards.***

***3. Member States shall ensure that the data protection officer is designated on the basis of professional qualities and, in particular, expert knowledge of data protection law and practices and ability to fulfil the tasks referred to in this Directive. Member States shall provide that any other professional duties of the data protection officer are compatible with that person's tasks and duties as data protection officer and do not result in a conflict of interest. The data protection officer shall:***

***(a) raise awareness and advise staff members of the Passenger Information***

*Unit regarding their obligations concerning the protection of personal data, including the training of staff members and the assignment of responsibilities;*

*(b) monitor the implementation and application of data protection requirements laid down in this Directive, in particular through conducting random sampling of data processing operations;*

*(c) ensure that all documentation is maintained and records kept in accordance with this Directive, and monitor documentation, notification and communication of personal data breaches and report wrongful conduct as regards the data protection requirements laid down in this Directive to the appropriate authorities;*

*(d) monitor responses to requests from the national supervisory authority and cooperate with the national supervisory authority, especially on matters relating to data transfers to other Member States or to third countries, and act as contact point for the national supervisory authority on issues related to the processing of PNR data, where appropriate, contacting the national supervisory authority on his or her own initiative.*

*Member States shall provide data protection officers with the means to perform their duties and tasks in accordance with this Article effectively and independently.*

*4. Member States shall ensure that the data subject has the right to contact the data protection officer, as a single point of contact, on all issues relating to the processing of the data subject's PNR data. Member States shall ensure that the name and contact details of the data protection officer are communicated to the national supervisory authority and to the public.*

## Amendment 36

### Proposal for a directive Article 4

*Text proposed by the Commission*

#### Article 4

##### Processing of PNR data

1. The PNR data transferred by the air carriers, pursuant to Article 6, in relation to international flights which land on or depart from the territory of *each* Member State shall be collected by the Passenger Information Unit of *the relevant* Member State. Should the PNR data transferred by air carriers include data beyond those listed in the Annex, the Passenger Information Unit shall delete such data immediately upon receipt.

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

(a) carrying out an assessment of the passengers prior to their scheduled arrival or departure from the Member State in order to identify any persons who may be involved in a terrorist offence or serious transnational crime and who require further examination by the competent authorities referred to in Article 5. In carrying out such an assessment, the Passenger Information Unit may process PNR data against pre-determined criteria. Member States shall ensure that any positive match resulting from such automated processing is individually reviewed by non-automated means in order to verify whether the competent authority referred to in Article 5 needs to take action;

*Amendment*

#### Article 4

##### Processing of PNR data

1. The PNR data transferred by the air carriers *and the non-carrier economic operators*, pursuant to Article 6, in relation to international flights which land on or depart from the territory of *a* Member State shall be collected by the Passenger Information Unit of *that* Member State. Should the PNR data transferred by air carriers *and non-carrier economic operators* include data beyond those listed in the Annex, the Passenger Information Unit shall delete such data immediately *and permanently* upon receipt.

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

(a) carrying out an assessment of the passengers prior to their scheduled arrival *to*, or departure from, the Member State in order to identify any persons who may be involved in a terrorist offence or serious transnational crime and who require further examination by the competent authorities referred to in Article 5 *and, where relevant, by Europol, in accordance with Article 7a*. In carrying out such an assessment, the Passenger Information Unit may process PNR data against pre-determined criteria *in accordance with this Directive, and may compare PNR data against relevant databases, including international or national databases or national mirrors of Union databases, where they are established in compliance with Union law, on persons or objects sought or under alert, in accordance with Union, international and national rules applicable to such files, in accordance with the requirements set out in*

(b) carrying out an assessment of the passengers prior to their scheduled arrival or departure from the Member State in order to identify any persons who may be involved in a terrorist offence or serious crime and who require further examination by the competent authorities referred to in Article 5. In carrying out such an assessment the Passenger Information Unit may compare PNR data against relevant databases, including *international or national databases or national mirrors of Union databases, where they are established on the basis of Union law*, on persons or objects sought or under alert, in accordance with Union, *international* and national rules applicable to such *files*. Member States shall ensure that any positive match resulting from such automated processing is individually reviewed by non-automated means in order to verify whether the competent authority referred to in Article 5 needs to take action;

(c) responding, on a case-by-case basis, to duly reasoned requests from competent authorities to provide PNR data and process PNR data in specific cases for the purpose of prevention, detection, investigation and prosecution of a terrorist offence or serious crime, and to provide the competent authorities with the results of such processing; and

**paragraph 3.** Member States shall ensure that any positive match resulting from such automated processing is individually reviewed by non-automated means in order to verify whether the competent authority referred to in Article 5 needs to take action;

(b) carrying out an assessment of the passengers prior to their scheduled arrival or departure from the Member State in order to identify any persons who may be involved in a terrorist offence or serious *transnational* crime and who require further examination by the competent authorities referred to in Article 5. In carrying out such an assessment the Passenger Information Unit may compare PNR data against relevant databases, including national databases or national mirrors of Union databases, on persons or objects sought or under alert, in accordance with Union and national rules applicable to such *databases for the purpose of preventing, detecting, investigating and prosecuting terrorist offences and serious transnational crime*. *In carrying out such an assessment, the Passenger Information Unit may compare PNR data against the Schengen Information System and the Visa Information System*. Member States shall ensure that any positive match resulting from such automated processing is individually reviewed by non-automated means in order to verify whether the competent authority referred to in Article 5 needs to take action;

(c) responding, on a case-by-case basis *based on sufficient evidence*, to duly reasoned requests from competent authorities to provide PNR data and process PNR data in specific cases for the purpose of prevention, detection, investigation and prosecution of a terrorist offence or *of serious transnational crime listed in point (i) of Article 2 or for the prevention of an immediate and serious threat to public security*, and to provide the competent authorities *or, where appropriate, Europol* with the results of



(d) analysing PNR data for the purpose of updating or creating new criteria for carrying out assessments in order to identify any persons who may be involved in a terrorist offence or serious transnational crime pursuant to point (a).

3. The assessment of the passengers prior to their scheduled arrival or departure from the Member State referred to in point (a) of paragraph 2 shall be carried out in a non-discriminatory manner on the basis of assessment criteria established by its Passenger Information Unit. Member States shall ensure that the assessment criteria are set by the Passenger Information Units, in cooperation with the competent authorities referred to in Article 5. The assessment criteria 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 life.

4. The Passenger Information Unit of a Member State shall transfer the PNR data or the results of the processing of PNR data of the persons identified in accordance with points (a) and (b) of paragraph 2 for further examination to the relevant competent authorities of the same Member State. Such transfers shall only be made on a case-by-case basis.

such processing; and

(d) analysing PNR data for the purpose of updating or creating new criteria for carrying out assessments in order to identify any persons who may be involved in a terrorist offence or serious transnational crime pursuant to point (a).

3. The assessment of the passengers prior to their scheduled arrival or departure from the Member State referred to in point (a) of paragraph 2 shall be carried out in a non-discriminatory manner on the basis of assessment criteria established by its Passenger Information Unit. ***Those assessment criteria must be targeted, specific, justified, proportionate and fact-based. A regular review shall involve the data protection officer;*** Member States shall ensure that the assessment criteria are set by the Passenger Information Units, in cooperation with the competent authorities referred to in Article 5 ***and regularly reviewed***. The assessment criteria shall in no circumstances be based on person's race or ethnic origin, political opinions, religion or philosophical beliefs, ***sexual orientation or gender identity, trade-union membership or activities, and the processing of data concerning*** health or sexual life;

4. The Passenger Information Unit of a Member State shall transfer the PNR data or the results of the processing of PNR data of the persons identified in accordance with points (a) and (b) of paragraph 2 for further examination to the relevant competent authorities of the same Member State. Such transfers shall only be made on a case by-case basis ***by human action***.

***4a. Member States shall ensure that the data protection officer has access to all data transmitted to the Passenger Information Unit and from the Passenger Information Unit to a competent authority pursuant to Article 5. If the data protection officer considers that transmission of any data was not lawful, he or she shall refer the matter to the***

*national supervisory authority, which shall have power to order the receiving competent authority to delete that data.*

*4b. The storage, processing and analysis of PNR data shall be carried out exclusively within a secure location within the territory of the Member States of the European Economic Area.*

*4c. Member States shall bear the costs of use, retention and exchange of PNR data.*

## Amendment 37

### Proposal for a directive Article 5

*Text proposed by the Commission*

#### Article 5

##### Competent authorities

1. Each Member State shall adopt a list of the competent authorities entitled to request or receive PNR data or the result of the processing of PNR data from the Passenger Information Units in order to examine that information further or take appropriate action for the purpose of preventing, detecting, investigating and prosecuting terrorist offences and serious crime.

2. Competent authorities shall consist of authorities competent for the prevention, detection, investigation or prosecution of terrorist offences and serious crime.

3. Each Member State shall notify the list of its competent authorities to the Commission *twelve months after entry*

*Amendment*

#### Article 5

##### Competent authorities

1. Each Member State shall adopt a list of the competent authorities entitled to request or receive *masked out* PNR data or the result of the *systematic* processing of PNR data from the Passenger Information Units in order to examine that information further or take appropriate action for the specific purpose of preventing, detecting, investigating and prosecuting terrorist offences and serious *transnational* crime, *or the prevention of an immediate and serious threat to public security. Europol shall be entitled to receive PNR data or the result of the processing of PNR data from the Passenger Information Units of the Member States within the limits of its mandate and, where necessary, for the performance of its tasks.*

2. Competent authorities shall consist of authorities competent for the prevention, detection, investigation or prosecution of terrorist offences and serious *transnational* crime *or the prevention of immediate and serious threats to public security.*

3. *By ...\* [12 months after the date of entry into force of this Directive],* each Member State shall notify the list of its

*into force of this Directive at the latest*, and *may* at any time update its declaration. The Commission shall publish this information, as well as any updates, in the Official Journal of the European Union.

4. The PNR data of passengers and the result of the processing of PNR data received by the Passenger Information Unit may be further processed by the competent authorities of the Member States only for the purpose of *preventing, detecting, investigating or prosecuting terrorist offences or serious crime*.

5. Paragraph 4 shall be without prejudice to national law enforcement or judicial powers where other offences, or indications thereof, are detected in the course of enforcement action further to such processing.

6. The competent authorities shall not take any decision that produces an adverse legal effect on a person or significantly affects a person only by reason of the automated processing of PNR data. Such decisions shall not be taken on the basis of a person's race or ethnic origin, religious or philosophical belief, political opinion, trade union membership, health or sexual life.

## Amendment 38

### Proposal for a directive Article 6

*Text proposed by the Commission*

Article 6

Obligations on air carriers

competent authorities to the Commission and *shall* at any time update its declaration. The Commission shall publish this information, as well as any updates, in the Official Journal of the European Union.

4. The PNR data of passengers and the result of the processing of PNR data received by the Passenger Information Unit may be further processed by the competent authorities of the Member States only for the *specific* purpose of *prevention, detection, investigation or prosecution of terrorist offences and of serious transnational crime, upon request, in accordance with Article 4(2) or for the prevention of an immediate and serious threat to public security*.

5. Paragraph 4 shall be without prejudice to national law enforcement or judicial powers where other offences, or indications thereof, are detected in the course of enforcement action further to processing *for which it was originally intended*.

6. The competent authorities shall not take any decision that produces an adverse legal effect on a person or significantly affects a person only by reason of the automated processing of PNR data. Such decisions shall not be taken on the basis of *data revealing* a person's race or ethnic origin, *political opinions*, religion or philosophical beliefs, *sexual orientation or gender identity*, trade-union membership *or activities, and the processing of data concerning* health or sexual life.

*Amendment*

Article 6

Obligations on air carriers *and non-carrier economic operators*

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. 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 transfer the PNR data to the Passenger Information Units of all the Member States concerned.

2. Air carriers shall transfer PNR data by electronic means using the common protocols and supported data formats to be adopted in accordance with *the procedure of* Articles 13 and 14 or, in the event of technical failure, by any other appropriate means ensuring an appropriate level of data security:

(a) 24 to 48 hours before the scheduled time for flight departure;

and

(b) immediately after flight closure, that is once the passengers have boarded the aircraft in preparation for departure and it is no longer possible for further passengers to board.

3. Member States may permit air carriers to limit the transfer referred to in point (b) of paragraph 2 to updates of the transfer referred to in point (a) of paragraph 2.

4. On a case-by-case basis, upon request from a Passenger Information Unit in accordance with national law, air carriers

1. Member States shall adopt the necessary measures to ensure that air carriers *and non-carrier economic operators* transfer *all pushed* PNR data as defined *in point (c) of* Article 2 and specified in the Annex, to the extent that such data are already collected by them *in the normal course of their business*, 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. 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 *and the non-carrier economic operator* that operates the flight. Where the flight has one or more stop-overs at the airports of the Member States, air carriers *and non-carrier economic operators* shall transfer the PNR data to the Passenger Information Units of all the Member States concerned.

2. Air carriers *and non-carrier economic operators* shall transfer PNR data by electronic means using the common protocols and supported data formats to be adopted in accordance with Articles 13 and 14 or, in the event of technical failure, by any other appropriate means ensuring an appropriate level of data security:

(a) *once*, 24 to 48 hours before the scheduled time for flight departure;

and

(b) *once*, immediately after flight closure, that is once the passengers have boarded the aircraft in preparation for departure and it is no longer possible for further passengers to board.

3. Member States shall permit air carriers *and non-carrier economic operators* to limit the transfer referred to in point (b) of paragraph 2 to updates of the transfer referred to in point (a) of *that* paragraph.

4. On a case-by-case basis, upon request from a Passenger Information Unit in accordance with national law, air carriers

shall transfer PNR data where access earlier than that mentioned in point (a) of paragraph 2 is necessary to assist in responding to a specific and actual threat related to terrorist offences or serious crime.

*and non-carrier economic operators* shall transfer PNR data where access earlier than that mentioned in point (a) of paragraph 2 is necessary to assist in responding to a specific, ***imminent***, and actual threat related to terrorist offences or serious ***transnational*** crime.

***4a. Air carriers and non-carrier economic operators shall duly inform passengers of the type of personal data being collected for law enforcement purposes, their rights regarding their data as a passenger. Such information shall be provided to passengers proactively, in an easily understandable format.***

## Amendment 39

### Proposal for a directive Article 7

*Text proposed by the Commission*

#### Article 7

Exchange of information between Member States

1. Member States shall ensure that, ***with regard to persons identified by a Passenger Information Unit in accordance with Article 4(2)(a) and (b)***, the result of the processing of PNR data is transmitted by ***that*** Passenger Information Unit to the Passenger Information Units of other Member States ***where the former Passenger Information Unit considers such transfer to be necessary for 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 the result*** of the processing of PNR data to their relevant competent authorities.

*Amendment*

#### Article 7

Exchange of information between Member States

1. ***Passenger Information Units shall automatically exchange data on the results of the processing of PNR data.*** Member States shall ensure that the results of the processing of PNR data, ***either analytical information obtained from PNR data or the results with regard to persons identified by a Passenger Information Unit in accordance with Article 4(2), which is transmitted for further examination to their relevant competent authorities in accordance with Article 4(4), is proactively*** transmitted by a Passenger Information Unit to the Passenger Information Units of the other Member States ***without delay***. The Passenger Information Unit of the receiving Member States shall transmit such ***results*** of the processing of PNR data to their relevant competent authorities, ***in accordance with Article 4(4). Where appropriate, an alert shall be entered in***

*accordance with Article 36 of Council Decision 2007/533/JHA<sup>1a</sup>.*

2. **The Passenger Information Unit of a Member State** shall have the right to request, if necessary, the Passenger Information Unit of any other Member State to provide it with PNR data that are kept in the latter's database in accordance with Article 9(1), and, if necessary, also the result of *the processing of PNR data*. The request for such data may be based on any one or a combination of data elements, as deemed necessary by the requesting Passenger Information Unit for a specific case of prevention, detection, investigation or prosecution of terrorist offences or serious crime. Passenger Information Units shall provide the requested data as soon as *practicable and shall provide also the result of the processing of PNR data, if it has already been prepared pursuant to Article 4(2)(a) and (b)*.

3. **The Passenger Information Unit of a Member State** shall have the right to request, if necessary, the Passenger Information Unit of any other Member State to provide it with PNR data that are kept in the latter's database in accordance with Article 9(2), and, if necessary, also the result of the processing of PNR data. The Passenger Information Unit may request access to specific PNR data kept by the Passenger Information Unit of another Member State in their full form without the masking out only in exceptional circumstances in response to a specific threat or a specific investigation or prosecution related to terrorist offences or serious crime.

2. Passenger Information *Units* shall have the right to request, if necessary, the Passenger Information Unit of any other Member State to provide it with PNR data that are kept in the latter's database in accordance with Article 9(1) and, if necessary, also the result of *processing thereof, if it has already been prepared pursuant to points (a) and (b) of Article 4(2)*. The *duly reasoned* request for such data *shall be strictly limited to the data necessary in the specific case and* may be based on any one or a combination of data elements, as deemed necessary by the requesting Passenger Information Unit for a specific case of prevention, detection, investigation or prosecution of terrorist offences or serious *transnational* crime *or for the prevention of an immediate and serious threat to public security*. Passenger Information Units shall provide the requested data as soon as *possible using the common protocols and supported data formats. Such a request shall be justified in writing*.

3. Passenger Information *Units* shall have the right to request, if necessary, the Passenger Information Unit of any other Member State to provide it with PNR data that *have been already masked out and that* are kept in the latter's database in accordance with Article 9(2), and, if necessary, also the result of the processing of PNR data. The Passenger Information Unit may request access to specific PNR data kept by the Passenger Information Unit of another Member State in their full form without the masking out only in *the most* exceptional circumstances in response to a specific *real-time* threat or *with regard to* a specific investigation or prosecution related to terrorist offences or serious *transnational* crime *or to the prevention of an immediate and serious threat to public security. Such access to the full PNR data shall be permitted only with the approval of the Head of the*

*requested Passenger Information Unit.*

**4. Only in those cases where it is necessary for the prevention of an immediate and serious threat to public security may the competent authorities of a Member State request directly the Passenger Information Unit of any other Member State to provide it with PNR data that are kept in the latter's database in accordance with Article 9(1) and (2). Such requests shall relate to a specific investigation or prosecution of terrorist offences or serious crime and shall be reasoned. Passenger Information Units shall respond to such requests as a matter of priority. In all other cases the competent authorities shall channel their requests through the Passenger Information Unit of their own Member State.**

5. Exceptionally, where early access is necessary to respond to a specific and actual threat related to 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 landing in or departing from the latter's territory at any time.

6. Exchange of information under this Article may take place using any existing channels for international law enforcement cooperation. The language used for the request and the exchange of information shall be the one applicable to the channel used. Member States shall, when making their notifications in accordance with Article 3(3), also inform the Commission with details of the contacts to which requests may be sent in cases of urgency.

5. Exceptionally, where early access is strictly necessary to respond to a specific and actual threat related to terrorist offences or serious **transnational** crime **or to prevent an immediate and serious threat to public security**, 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 landing in or departing from the latter's territory at any time, **where such data has been retained. That procedure shall cover only requests for the PNR data already collected and retained by the Passenger Information Unit which is requested to provide the data.**

6. Exchange of information under this Article shall take place using existing channels for **Union and** international law enforcement cooperation, **in particular Europol, its Secure Information Exchange Network Application (SIENA) and national units established in accordance with Article 8 of Decision 2009/371/JHA.** The language used for the request and the exchange of information shall be the one applicable to the channel

The Commission shall communicate to the Member States the notifications received.

used. Member States shall, when making their notifications in accordance with Article 3(3), also inform the Commission with details of the contacts to which requests may be sent in cases of urgency. The Commission shall communicate to the Member States the notifications received.

***6a. Where analytical information obtained from PNR is transferred pursuant to this Directive, the safeguards provided for in paragraph 1 shall be complied with.***

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*<sup>1a</sup> Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II) (OJ L 205, 7.8.2007, p. 63).*

## **Amendment 40**

### **Proposal for a directive Article 7 a (new)**

*Text proposed by the Commission*

*Amendment*

#### ***Article 7a***

##### ***Conditions for access to PNR data by Europol***

***1. Europol may submit, on a case-by-case basis, an electronic and duly reasoned request to the Passenger Information Unit of any Member State for the transmission of specific PNR data or the results of the processing of specific PNR data, when this is strictly necessary to support and strengthen action by Member States to prevent, detect or investigate a specific terrorist offence or serious transnational crime in so far as such an offence or crime is within Europol's competence pursuant to Decision 2009/371/JHA. The reasoned request shall set out reasonable grounds on the basis of which Europol considers that the transmission of PNR data or the results of the processing of PNR data will substantially contribute to***



*the prevention, detection, investigation or prosecution of the criminal offence concerned.*

*2. Upon receipt of a request by Europol, a court or an independent administrative body of the Member State shall verify, in a timely manner, whether all the conditions set out in paragraph 1 are met. The Passenger Information Unit shall provide the requested data to Europol as soon as practicable, provided that those conditions are met.*

*3. Europol shall inform the data protection officer appointed in accordance with Article 28 of Decision 2009/371/JHA of each exchange of information under this Article.*

*4. Exchange of information under this Article shall take place by way of SIENA and in accordance with Decision 2009/371/JHA. The language used for the request and the exchange of information shall be that applicable to SIENA.*

## Amendment 41

### Proposal for a directive Article 8

*Text proposed by the Commission*

#### Article 8

Transfer of data to third countries

A Member State may transfer PNR data and the results of the processing of PNR data to a third country, only on a case-by-case basis **and if:**

*Amendment*

#### Article 8

Transfer of data to third countries

***1.*** A Member State may transfer PNR data and the results of the processing of PNR data to a third country, only on a case-by-case basis, ***subject to a duly reasoned request based on sufficient evidence, where the transfer is necessary for the prevention, investigation, detection or prosecution of criminal offences, the prevention of an immediate and serious threat to public security or the execution of criminal penalties and the receiving competent authority in the third country is responsible for the prevention, investigation, detection or prosecution of***

*(a) the conditions laid down in Article 13 of Council Framework Decision 2008/977/JHA are fulfilled,*

*(b) the transfer is necessary for the purposes of this Directive specified in Article 1(2), and*

*(c) the third country agrees to transfer the data to another third country only where it is necessary for the purposes of this Directive specified in Article 1(2) and only with the express authorisation of the Member State.*

*criminal offences, the prevention of an immediate and serious threat to public security or the execution of criminal penalties, provided that:*

*(a) the third country concerned ensures an adequate level of protection as referred to in Directive 95/46/EC of the European Parliament and of the Council<sup>1a</sup> for the intended data processing, subject to meeting all the other conditions laid down in this Directive;*

*(b) the Member State from which the data were obtained has given its consent to the transfer in compliance with national law.*

*In exceptional circumstances, transfers of PNR data without prior consent in accordance with paragraph 1 shall be permitted only if such transfers are essential for the prevention of an immediate and serious threat to public security of a Member State or a third country or to protect the essential interests of a Member State and prior consent cannot be obtained in good time. The authority responsible for giving consent shall be informed without delay and the transfer shall be duly recorded and subject to an ex-post verification.*

*By way of derogation from the first subparagraph, transfers of data shall be permitted on a systematic basis following the conclusion of an international agreement between a third country and the Union.*

*2. Member States shall transfer PNR data to competent authorities of third countries only under terms consistent with this Directive and only upon ascertaining that the use that the recipients intend to make of the PNR is consistent with those terms and safeguards;*

*3. Onward transfers to other third countries shall be prohibited.*

*4. Where PNR data relating to a citizen or a resident of another Member State are transferred to a third country, the*

*competent authorities of that Member State shall be informed of the matter at the earliest appropriate opportunity.*

*5. The data protection officer shall be informed each time a Member State transfers PNR data pursuant to this Article. The data protection officer shall inform the national supervisory authority of the transmission of data pursuant to this Article on a regular basis.*

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*<sup>1a</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).*

## Amendment 42

### Proposal for a directive Article 9

*Text proposed by the Commission*

#### Article 9

##### Period of data retention

1. Member States shall ensure that the PNR data provided by the air carriers to the Passenger Information Unit are retained in a database at the Passenger Information Unit for a period of 30 days after their transfer to the Passenger Information Unit of the first Member State on whose territory the international flight is landing or departing.

2. Upon expiry of the period of 30 days after the transfer of the PNR data to the Passenger Information Unit referred to in paragraph 1, the data shall be retained at the Passenger Information Unit for a further period of five years. During this period, all data elements which could serve to identify the passenger to whom PNR data relate shall be masked out. Such

*Amendment*

#### Article 9

##### Period of data retention

1. Member States shall ensure that the PNR data provided by the air carriers *and non-carrier economic operators* to the Passenger Information Unit *pursuant to Article 4(2)* are retained in a database at the Passenger Information Unit for a period of 30 days after their transfer to the Passenger Information Unit of the first Member State on whose territory the international flight is landing or departing.

2. Upon expiry of the period of 30 days after the transfer of the PNR data to the Passenger Information Unit referred to in paragraph 1, the data shall be retained at the Passenger Information Unit for a further period of five years. During this period, all data elements which could serve to identify the passenger to whom PNR data relate shall be masked out. Such

anonymised PNR data shall be accessible only to a limited number of personnel of the Passenger Information Unit specifically authorised to carry out analysis of PNR data and develop assessment criteria according to Article 4(2)(d). ***Access to the full PNR data shall be permitted only by the Head of the Passenger Information Unit for the purposes of Article 4(2)(c) and where it could be reasonably believed that it is necessary to carry out an investigation and in response to a specific and actual threat or risk or a specific investigation or prosecution.***

masked out PNR data shall be accessible only to a limited number of personnel of the Passenger Information Unit specifically authorised to carry out analysis of PNR data and develop assessment criteria according to ***point (d) of Article 4(2).***

***2a. After consulting the data protection officer for the purposes of point (b) of Article 4(2), the national supervisory authority shall authorise re-identification of masked out PNR data and access to the full PNR data where it reasonably believes that such re-identification is necessary to carry out an investigation in response to a specific and actual threat or risk relating to terrorist offences, to carry out a specific investigation or prosecution relating to a serious transnational crime, or to prevent an immediate and serious threat to public security. Such access to the full data shall be allowed for a period of four years after the data has been masked out in cases concerning serious transnational crime and for the entire five-year period referred to in paragraph 2 in cases concerning terrorist offences.***

For the purposes of this Directive, the data elements which could serve to identify the passenger to whom PNR data relate and which should be filtered and masked out are:

- Name (s), including the names of other passengers on PNR and number of travellers on PNR travelling together;
- Address and contact information;
- General remarks to the extent that it contains any information which could serve to identify the passenger to whom PNR relate; and

For the purposes of this Directive, the data elements which could serve to identify the passenger to whom PNR data relate and which should be filtered and masked out are:

- Name(s), including the names of other passengers on PNR and number of travellers on PNR travelling together;
- Address and contact information;
- General remarks to the extent that it contains any information which could serve to identify the passenger to whom PNR relate; and

– Any collected Advance Passenger Information.

3. Member States shall ensure that the PNR data are deleted upon expiry of the period specified in paragraph 2. This obligation shall be without prejudice to cases where specific PNR data have been transferred to a competent authority and are used in the context of specific criminal investigations or prosecutions, in which case the retention of such data by the competent authority shall be regulated by the national law of the Member State.

4. The result of matching referred to in Article 4(2)(a) **and** (b) shall be kept by the Passenger Information Unit 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 individual review by non-automated means**, proven to be negative, it shall, however, be stored so as to avoid future ‘false’ positive matches for a maximum period of three years unless the underlying data have not yet been deleted in accordance with paragraph 3 at the expiry of the five years, in which case the log shall be kept until the underlying data are deleted.

### Amendment 43

#### Proposal for a directive Article 10

*Text proposed by the Commission*

#### Article 10

##### Penalties against air carriers

Member States shall ensure, in conformity with their national law, that dissuasive, effective and proportionate penalties, including financial penalties, are provided for against air carriers which, do not transmit the data required under this Directive, to the extent that they are

– Any collected Advance Passenger Information.

3. Member States shall ensure that the PNR data are deleted **permanently** upon expiry of the period specified in paragraph 2. This obligation shall be without prejudice to cases where specific PNR data have been transferred to a competent authority and are used in the context of specific criminal investigations or prosecutions, in which case the retention of such data by the competent authority shall be regulated by the national law of the Member State.

4. The result of matching referred to in **points (a) and (b) of** Article 4(2) shall be kept by the Passenger Information Unit only as long as necessary to inform the competent authorities of a positive match. Where the result of an automated matching operation has, **subject to human intervention by a member of the Passenger Information Unit**, proven to be negative, it shall, however, be stored so as to avoid future ‘false’ positive matches for a maximum period of three years unless the underlying data have not yet been deleted in accordance with paragraph 3 at the expiry of the five years, in which case the log shall be kept until the underlying data are deleted.

*Amendment*

#### Article 10

##### Penalties against air carriers **and non-carrier economic operators**

1. Member States shall ensure, in conformity with their national law, that dissuasive, effective and proportionate penalties, including financial penalties, are provided for against air carriers **and non-carrier economic operators** which do not transmit the data required under this

already collected by *the* them, *or* do not do so in the required format or otherwise infringe the national provisions adopted pursuant to this Directive.

Directive, to the extent that they are already collected by them, do not do so in the required format, ***do not process the data in accordance with the data protection rules laid down in this Directive***, or otherwise infringe the national provisions adopted pursuant to this Directive.

***1a. All data held by air carriers and non-carrier economic operators shall be held in a secure database on a security accredited computer system, that either meets or exceeds international industrial standards.***

## Amendment 44

### Proposal for a directive Article 11

*Text proposed by the Commission*

#### Article 11

##### Protection of personal data

1. Each Member State shall provide that, in respect of all processing of personal data pursuant to this Directive, every passenger shall have the same right to access, the right to rectification, erasure and blocking, the right to compensation and the right to judicial redress as ***those adopted under national law in implementation of Articles 17, 18, 19 and 20 of the Council Framework Decision 2008/977/JHA. The provisions of Articles 17, 18, 19 and 20 of the Council Framework Decision 2008/977/JHA*** shall therefore be applicable.

2. Each Member State shall provide that the provisions adopted under national law in implementation of Articles 21 and 22 of the ***Council Framework Decision 2008/977/JHA*** regarding confidentiality of processing and data security shall also apply to all processing of personal data pursuant to this Directive.

*Amendment*

#### Article 11

##### Protection of personal data

1. Each Member State shall provide that, in respect of all processing of personal data pursuant to this Directive, every passenger shall have the same ***right to protection of their personal data***, right to access, the right to rectification, erasure and blocking, the right to compensation and the right to judicial redress as ***laid out in national and Union law, and in the*** implementation of Articles 17, 18, 19 and 20 of the Framework Decision 2008/977/JHA. ***Those*** Articles shall therefore be applicable.

2. Each Member State shall provide that the provisions adopted under national law in implementation of Articles 21 and 22 of the Framework Decision 2008/977/JHA regarding confidentiality of processing and data security shall also apply to all processing of personal data pursuant to this Directive.

***2a. Where provisions adopted under***

3. Any processing of PNR data revealing a person's race or ethnic origin, religious or philosophical **belief, political opinion, trade union membership**, health or sexual life **shall be prohibited**. In the event that PNR data revealing such information are received by the Passenger Information Unit they shall be deleted immediately.

*national law in implementation of Directive 95/46/EC provide the passenger with greater rights related to the processing of their data than with this Directive, those provisions shall apply.*

3. **Member States shall prohibit the processing of PNR data from revealing a person's race or ethnic origin, political opinions, religion or philosophical beliefs, sexual orientation or gender identity, trade-union membership or activities, and the processing of data concerning health or sexual life.** In the event that PNR data revealing such information are received by the Passenger Information Unit they shall be deleted immediately.

**3a. Member States shall ensure that the Passenger Information Unit maintains documentation of all processing systems and procedures under their responsibility. That documentation shall contain at least:**

**(a) the name and contact details of the organisation and personnel in the Passenger Information Unit entrusted with the processing of the PNR data, the different levels of access authorisation and the personnel concerned;**

**(b) the requests by competent authorities and Passenger Information Units of other Member States and the recipients of the processed PNR data;**

**(c) all requests and transfers of data to a third country, the identification of that third country and the legal grounds on which the data are transferred;**

**(d) the time limits for retention and erasure of different categories of data.**

**The Passenger Information Unit shall make all documentation available, on request, to the national supervisory authority.**

**3b. Member States shall ensure that the Passenger Information Unit keeps records of at least the following processing operations: collection, alteration, consultation, disclosure, combination or**

*erasure. The records of consultation and disclosure shall show, in particular, the purpose, date and time of such operations and, as far as possible, the identification of the person who consulted or disclosed the PNR data, and the identity and recipients of that data. The records shall be used solely for the purposes of verification, self-monitoring and for ensuring data integrity and data security or for purposes of auditing. The Passenger Information Unit shall make the records available, on request, to the national supervisory authority.*

*The persons who operate security controls, access and analyse the PNR data, and operate the data logs, shall be security cleared and security trained. They shall have a profile which establishes and limits the records which they are authorised to access in accordance with the nature of their work, role, and legal entitlement.*

*The records shall be kept for a period of four years. However, where in accordance with Article 9(3), the underlying data have not been deleted at the end of that four-year period, the records shall be kept until the underlying data are deleted.*

*3c. Member States shall ensure that their Passenger Information Unit implements appropriate technical and organisational measures and procedures to ensure a high level of security appropriate to the risks represented by the processing and the nature of the PNR data to be protected.*

*3d. Member States shall ensure that where a personal data breach is likely to affect the protection of the personal data or the privacy of the data subject adversely, the Passenger Information Unit shall communicate that breach to the data subject and to the national data protection supervisor without undue delay.*

4. All processing of PNR data by air carriers, all transfers of PNR data by Passenger Information Units and all



requests by competent authorities or Passenger Information Units of other Member States and third countries, even if refused, shall be logged or documented by the Passenger Information Unit and the competent authorities for the purposes of verification of the lawfulness of the data processing, self-monitoring and ensuring proper data integrity and security of data processing, in particular by the national data protection supervisory authorities. These logs shall be kept for a period of five years unless the underlying data have not yet been deleted in accordance with Article 9(3) at the expiry of those five years, in which case the logs shall be kept until the underlying data are deleted.

5. Member States shall ensure that air carriers, *their agents or other ticket sellers for the carriage of passengers on air service* inform passengers of international flights at the time of booking a flight and at the time of purchase of a ticket in a clear and precise manner about the provision of PNR data to the Passenger Information Unit, the purposes of their processing, the period of data retention, their possible use to prevent, detect, investigate or prosecute terrorist offences and serious crime, the possibility of exchanging and sharing such data and their data protection rights, in particular the right to complain to a national *data protection* supervisory authority of their choice. *The same information shall be made available by the Member States to the public.*

**6. Any transfer of PNR data by Passenger Information Units and competent authorities to private parties in Member States or in third countries shall be prohibited**

7. Without prejudice to Article 10, Member

5. Member States shall ensure that air carriers *and non-carrier economic operators* inform passengers of international flights at the time of booking a flight and at the time of purchase of a ticket in a clear and precise manner about the provision of PNR data to the Passenger Information Unit, the purposes of their processing, the period of data retention, their possible use to prevent, detect, investigate or prosecute terrorist offences and serious *transnational* crime, the possibility of exchanging and sharing such data and their data protection rights, *such as the right to access, correction, erasure and blocking of data, and* in particular the right to *lodge a complaint* to a national supervisory authority of their choice.

**5a. Member States shall also ensure that their Passenger Information Unit provides the data subject with the information with regard to the rights referred to in paragraph 5 and how to exercise those rights.**

7. Without prejudice to Article 10, Member

States shall adopt suitable measures to ensure the full implementation of the provisions of this Directive and shall in particular lay down effective, proportionate and dissuasive penalties to be imposed in case of infringements of the provisions adopted pursuant to this Directive.

States shall adopt suitable measures to ensure the full implementation of **all** the provisions of this Directive and shall in particular lay down effective, proportionate and dissuasive penalties to be imposed in case of infringements of the provisions adopted pursuant to this Directive.

***National supervisory authorities shall take disciplinary action against persons responsible for any intentional breach of privacy, as appropriate, to include denial of system access, formal reprimands, suspension, demotion, or removal from duty.***

***7a. Any transfer of PNR data by competent authorities or Passenger Information Units to private parties in Member States or in third countries shall be prohibited. Any wrongful conduct shall be penalised.***

## **Amendment 45**

### **Proposal for a directive Article 12**

*Text proposed by the Commission*

#### Article 12

National supervisory authority

Each Member State shall provide that the national supervisory authority established in implementation of Article 25 of Framework Decision 2008/977/JHA shall **also** be responsible for advising on and monitoring the application within its territory of the provisions adopted by the Member States pursuant to the present Directive. The further provisions of Article 25 Framework Decision 2008/977/JHA shall be applicable.

## **Amendment 46**

### **Proposal for a directive Article 12 a (new)**

*Amendment*

#### Article 12

National supervisory authority

Each Member State shall provide that the national supervisory authority established in implementation of Article 25 of Framework Decision 2008/977/JHA **is** responsible for advising on and monitoring the application within its territory of the provisions adopted by the Member States pursuant to **this** Directive. The further provisions of Article 25 Framework Decision 2008/977/JHA shall be applicable.

***Article 12a***

***Duties and powers of the national supervisory authority***

***1. The national supervisory authority of each Member State shall be responsible for monitoring the application of the provisions adopted pursuant to this Directive and for contributing to its consistent application throughout the Union, in order to protect fundamental rights in relation to the processing of personal data. Each national supervisory authority shall:***

***(a) hear complaints lodged by any data subject, investigate the matter and inform the data subjects of the progress and the outcome of their complaints within a reasonable time period, in particular where further investigation or coordination with another national supervisory authority is necessary, such complaints having been brought by any individual, regardless of nationality, country of origin, or place of residence;***

***(b) exercise effective powers of oversight, investigation, intervention and review, and have the power to refer infringements of law related to this Directive for prosecution or disciplinary action, where appropriate;***

***(c) check the lawfulness of the data processing, conduct investigations, inspection and audits in accordance with national law, either on its own initiative or on the basis of a complaint, and inform the data subject concerned, if the data subject has addressed a complaint, of the outcome of the investigations within a reasonable time period;***

***(d) monitor relevant developments, insofar as they have an impact on the protection of person data, in particular the development of information and communication technologies.***

*Member States shall provide a redress process for individuals who believe they have been delayed or prohibited from boarding a commercial aircraft because they were wrongly identified as a threat.*

*2. Each national supervisory authority shall, upon request, advise any data subject in exercising the rights laid down in provisions adopted pursuant to this Directive and, where appropriate, cooperate with national supervisory authorities of other Member States to that end.*

*3. For complaints referred to in point (a) of paragraph 1 the national supervisory authority shall provide a complaint submission form, which can be completed electronically, without excluding other means of communication.*

*4. Member States shall ensure that the performance of the duties of their national supervisory authority is free of charge for the data subject. However, where requests are manifestly excessive, in particular due to their repetitive character, the national supervisory authority may charge a reasonable fee.*

*5. Each Member State shall ensure that their national supervisory authority is provided with the adequate human, technical and financial resources, premises and infrastructure necessary for the effective performance of its duties and powers.*

*6. Each Member States shall ensure that their national supervisory authority has its own staff which are appointed by, and subject to, the direction of the Head of the national supervisory authority.*

*7. In the performance of their duties, members of the national supervisory authority shall neither seek nor take instruction from anybody, and shall maintain complete independence and impartiality.*

## Amendment 47

### Proposal for a directive Article 13

#### *Text proposed by the Commission*

##### Article 13

#### Common protocols and supported data formats

1. All transfers of PNR data by air carriers to the Passenger Information Units for the purposes of this Directive shall be made by electronic means **or**, in the event of technical failure, by any other appropriate means, **for a period of one year following the adoption of the common protocols and supported data formats in accordance with Article 14.**

2. Once the period of one year from the date of adoption of the common protocols and supported data formats has elapsed, all transfers of PNR data by air carriers to the Passenger Information Units for the purposes of this Directive shall be made electronically using secure methods in the form of accepted common protocols which shall be common to all transfers to ensure the security of the data during transfer, and in a supported data format to ensure their readability by all parties involved. All air carriers shall be required to select and identify to the Passenger Information Unit the common protocol and data format that they intend to use for their transfers.

3. **The** list of accepted common protocols and supported data formats **shall be drawn up and, if need be, adjusted, by the Commission in accordance with the procedure referred to in Article 14(2).**

4. As long as the accepted common

#### *Amendment*

##### Article 13

#### Common protocols and supported data formats

1. All transfers of PNR data, by air carriers **and by non-carrier economic operators**, to the Passenger Information Units for the purposes of this Directive shall be made by electronic means **which provides sufficient guarantees in respect of the technical security measures and organisational measures governing the processing to be carried out.** In the event of technical failure, **the PNR data shall be transferred** by any other appropriate means **whilst maintaining the same level of security and in full compliance with Union data protection law.**

2. Once the period of one year from the date of adoption of the common protocols and supported data formats has elapsed, all transfers of PNR data by air carriers **and by non-carrier economic operators** to the Passenger Information Units for the purposes of this Directive shall be made electronically using secure methods in the form of accepted common protocols which shall be common to all transfers to ensure the security of the data during transfer, and in a supported data format to ensure their readability by all parties involved. All air carriers shall be required to select and identify to the Passenger Information Unit the common protocol and data format that they intend to use for their transfers.

3. **The Commission shall be empowered to adopt delegated acts in accordance with Article 14 concerning the adoption and, if necessary, adjustment of a** list of accepted common protocols and supported data formats.

4. As long as the accepted common

protocols and supported data formats referred to in paragraphs 2 and 3 are not available, paragraph 1 shall remain applicable.

5. Each Member State shall ensure that the necessary technical measures are adopted to be able to use the common protocols and data formats within one year from the date the common protocols and supported data formats are adopted.

## **Amendment 48**

### **Proposal for a directive Article 14**

*Text proposed by the Commission*

Article 14

#### ***Committee procedure***

***1. The Commission shall be assisted by a committee ('the Committee'). That Committee shall be a committee within the meaning of Regulation [.../2011/EU] of 16 February 2011.***

***2. Where reference is made to this paragraph, Article 4 of Regulation [.../2011/EU] of 16 February 2011 shall apply.***

protocols and supported data formats referred to in paragraphs 2 and 3 are not available, paragraph 1 shall remain applicable.

5. Each Member State shall ensure that the necessary technical measures are adopted to be able to use the common protocols and data formats within one year from the date the common protocols and supported data formats are adopted.

*Amendment*

Article 14

#### ***Delegated Acts***

***1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.***

***2. The power to adopt delegated acts referred to in Article 13(3) shall be conferred on the Commission for a period of [X] years from ...\* [the date of entry into force of this Directive]. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the [X] year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.***

***2a. The delegation of power referred to in Article 13(3) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of***

*the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.*

*2b. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.*

*2c. A delegated act adopted pursuant to Article 13(3) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.*

## Amendment 49

### Proposal for a directive Article 16

*Text proposed by the Commission*

*Amendment*

#### *Article 16*

*deleted*

#### *Transitional provisions*

*Upon the date referred to in Article 15(1), i.e. two years after the entry into force of this Directive, Member States shall ensure that the PNR data of at least 30% of all flights referred to in Article 6(1) are collected. Until two years after the date referred to in Article 15, Member States shall ensure that the PNR data from at least 60 % of all flights referred to in Article 6(1) are collected. Member States shall ensure that from four years after the date referred to in Article 15, the PNR data from all flights referred to in Article 6(1) are collected.*

## Amendment 50

### Proposal for a directive Article 17

*Text proposed by the Commission*

Article 17  
Review

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

*(a) review the feasibility and necessity of including internal flights in the scope of 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.*

*Amendment*

Article 17  
Review

On the basis of information provided by the Member States, the Commission shall, **by ...\*[four years after the date of transposition referred to in Article 15(1)], conduct a review of the operation of this Directive and** submit a report to the European Parliament and **to** the Council. **That review shall cover all the elements of this Directive.**

***In conducting its review, the Commission shall pay special attention to compliance with the standards of protection of personal data, the necessity and proportionality of the collection and processing of PNR data for each of the stated purposes, the length of the data retention period and the quality of the assessments and the effectiveness of the sharing of data between the Member States, and the quality of the assessment including with regard to the statistical information gathered pursuant to Article 18. It shall also contain the statistical information gathered pursuant to Article 18.***

***After consulting the relevant Union agencies, the Commission shall, by ...\*[two years after the date of transposition of this Directive referred to in Article 15(1)], submit an initial evaluation report***



## **Amendment 51**

### **Proposal for a directive Article 18**

*Text proposed by the Commission*

#### Article 18 Statistical data

1. Member States shall prepare a set of statistical information on PNR data provided to the Passenger Information Units. Such statistics shall as a minimum cover the number of identifications of any persons who may be involved in a terrorist offence or serious crime according to Article 4(2) and the number of subsequent law enforcement actions that were taken involving the use of PNR data per air carrier and destination.

2. These statistics shall not contain any personal data. They shall be transmitted to the Commission on a yearly basis.

*Amendment*

#### Article 18 Statistical data

1. Member States shall prepare a set of statistical information on PNR data provided to the Passenger Information Units. Such statistics shall as a minimum cover the number of identifications of any persons who may be involved in a terrorist offence or *transnational* serious crime according to Article 4(2) and the number of subsequent law enforcement actions that were taken involving the use of PNR data per air carrier and destination, ***including the number of investigation and convictions that have resulted from the collection of PNR data in each Member State.***

2. These statistics shall not contain any personal data. They shall be transmitted to ***the European Parliament, the Council and*** the Commission ***every two years.***

## **Amendment 52**

### **Proposal for a directive Article 19**

*Text proposed by the Commission*

#### Article 19 Relationship to other instruments

1. Member States may continue to apply bilateral or multilateral agreements or arrangements between themselves on exchange of information between competent authorities, in force when this Directive is adopted, in so far as such

*Amendment*

#### Article 19 Relationship to other instruments

1. Member States may continue to apply bilateral or multilateral agreements or arrangements between themselves on exchange of information between competent authorities, in force when this Directive is adopted, in so far as such

agreements or arrangements are compatible with this Directive.

2. This Directive is without prejudice to any obligations and commitments of the Union by virtue of bilateral and/or multilateral agreements with third countries.

agreements or arrangements are compatible with this Directive.

***1a. This Directive applies without prejudice to the Framework Decision 2008/977/JHA.***

2. This Directive is without prejudice to any obligations and commitments of the Union by virtue of bilateral and/or multilateral agreements with third countries.