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Committee on Civil Liberties, Justice and Home Affairs

2011/0023(COD)

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***I
DRAFT REPORT

on the proposal for a directive of the European Parliament and of the Council on the use of Passenger Name Record data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime (COM(2011)0032 – C7-0039/2011 – 2011/0023(COD))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Timothy Kirkhope

Symbols for procedures

*	Consultation procedure
***	Consent procedure
***I	Ordinary legislative procedure (first reading)
***II	Ordinary legislative procedure (second reading)
***III	Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: **[...]**.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a directive of the European Parliament and of the Council on the use of Passenger Name Record data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime (COM(2011)0032 – C7-0039/2011 – 2011/0023(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

– having regard to the Commission proposal to Parliament and the Council (COM(2011)0032),

– having regard to Article 294(2) and point (d) of the second subparagraph of Article 82(1) and point (a) of Article 87(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0039/2011),

– having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

– having regard to the contributions submitted by the Bulgarian Parliament, the Czech Senate, the German Bundesrat, the Italian Senate, the Romanian Senate, the Austrian National Council, the Portuguese Parliament and the Dutch Senate on the draft legislative act,

– having regard to the opinion of the European Economic and Social Committee of 5 May 2011[1],

– having regard to the opinion of the European Data Protection Supervisor of 25 March 2011[2],

– having regard to Rule 55 of its Rules of Procedure,

– having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinions of the Committee on Foreign Affairs and the Committee on Transport and Tourism (A7-0000/2012),

1. Adopts its position at first reading hereinafter set out;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

[1] OJ C 218, 23.7.2011, p. 107.
[2] OJ C 181, 22.6.2011, p. 24.

Amendment 1

Proposal for a directive
Recital 10 a (new)

Text proposed by the Commission	*Amendment*
	(10a) The purpose of this Directive is to ensure security and to protect the life and safety of the public.

Or. en

Amendment 2

Proposal for a directive
Recital 13 a (new)

Text proposed by the Commission	*Amendment*
	(13a) Each Member State should be responsible for the costs of establishing, running and maintaining its own PNR system, including the costs of appointing and running a competent authority and appointing and running a national supervisory authority, as well as the costs of altering the Member States current system in order to reflect requirements and changes as laid down in this Directive. 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. The general budget of the European Union should provide for the administrative and advisory assistance of the Commission to Member States when establishing their PNR systems.

Or. en

Amendment 3

Proposal for a directive
Recital 19

Text proposed by the Commission	*Amendment*
(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***.	(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 of Fundamental Rights of the European Union***, 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 ***on grounds*** of a person's ***sex,*** race***, colour,*** ethnic ***or social*** origin, ***genetic features, language,*** religious or philosophical belief, political opinion, trade union membership, ***membership of a national minority, property, birth, disability, age,*** health or sexual ***orientation***.

Or. en

Amendment 4

Proposal for a directive
Article 1 – paragraph -1 (new)

Text proposed by the Commission	*Amendment*
	-1. This Directive sets out the responsibilities as regards the conditions under which PNR may be transferred, processed, used, and protected.

Or. en

Amendment 5

Proposal for a directive
Article 1 – paragraph 2 a (new)

Text proposed by the Commission	*Amendment*
	2a. This Directive shall apply to carriers operating passenger flights between the Union and third countries, and passenger flights within the territory of the Union.

Or. en

Amendment 6

Proposal for a directive
Article 1 – paragraph 2 b (new)

Text proposed by the Commission	*Amendment*
	2b. This Directive shall also apply to carriers incorporated or storing data in the Union and operating passenger flights to or from third countries whose departure or destination is within the Union.

Or. en

Amendment 7

Proposal for a directive
Article 2 – point c

Text proposed by the Commission	*Amendment*
(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	(c) ‘Passenger Name Record’ or 'PNR data' means a record of each passenger’s travel requirements ***captured and retained electronically by the air carrier in its normal course of business*** which contains information necessary to enable reservations to be processed and controlled by the booking and participating air

reservation systems, Departure Control Systems (DCS) or equivalent systems providing the same functionalities;	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***. Passenger data includes data created by air carriers or their authorized agents for each journey booked by or on behalf of any passenger and contained in carriers' reservation systems, departure control systems, or equivalent systems providing similar functionality. PNR data consists of the data fields as set out in the Annex;***

Or. en

Amendment 8

Proposal for a directive
Article 2 – point f a (new)

Text proposed by the Commission	*Amendment*
	(fa) 'masking out data' means rendering certain data elements of PNR data invaluable to a user without deleting them;

Or. en

Amendment 9

Proposal for a directive
Article 3 – paragraph 2

Text proposed by the Commission	*Amendment*
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	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 ***only*** 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 respect the requirements laid down in this Directive.

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

Or. en

Amendment 10

Proposal for a directive
Article 4 – paragraph 1

Text proposed by the Commission	*Amendment*
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.	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 ***and permanently*** upon receipt.

Or. en

Amendment 11

Proposal for a directive
Article 4 – paragraph 2 – point a

Text proposed by the Commission	*Amendment*
(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	(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 crime and who require further examination

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;	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 ***in accordance with this Directive***. 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;

Or. en

Amendment 12

Proposal for a directive
Article 4 – paragraph 3

Text proposed by the Commission	*Amendment*
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.	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***, as laid down in Article 21 of the Charter of Fundamental Rights of the European Union***.

Or. en

Amendment 13

Proposal for a directive
Article 4 – paragraph 4

Text proposed by the Commission	*Amendment*
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.	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***.

Or. en

Amendment 14

Proposal for a directive
Article 5 – paragraph 6

Text proposed by the Commission	*Amendment*
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***.	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 ***sex,*** race, ***colour,*** ethnic ***or social*** origin, ***genetic features, language, religion*** or belief, political ***or any other*** opinion, membership ***of a national minority, property, birth, disability, age*** or sexual ***orientation***. ***Such sensitive data shall be permanently deleted not later than 30 days from the last receipt of PNR containing such data by competent authorities.***

Or. en

Amendment 15

Proposal for a directive
Article 6 – paragraph 2 – point a

Text proposed by the Commission	*Amendment*
(a) 24 to 48 hours before the scheduled time for flight departure;	(a) ***once,*** 24 to 48 hours before the scheduled time for flight departure;

Or. en

Amendment 16

Proposal for a directive
Article 6 – paragraph 2 – point b

Text proposed by the Commission	*Amendment*
(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.	(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.

Or. en

Amendment 17

Proposal for a directive
Article 7 – paragraph 3

Text proposed by the Commission	*Amendment*
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	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.	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 a specific investigation or prosecution related to terrorist offences or serious crime.

Or. en

Amendment 18

Proposal for a directive
Article 7 – paragraph 6 a (new)

Text proposed by the Commission	*Amendment*
	6a. Member States may share PNR only pursuant to a careful assessment of the following safeguards:
	(a) such sharing must take place only in accordance with Article 4;
	(b) such sharing must only take place with domestic government authorities when acting in furtherance of the uses outlined in Article 4;
	(c) receiving authorities must afford to PNR equivalent or comparable safeguards as set out in this Directive; and
	(d) PNR must be shared only in support of those cases under examination or investigation and pursuant to written understandings and Union and national law on the exchange of information between domestic government authorities.

Or. en

Amendment 19

Proposal for a directive
Article 7 – paragraph 6 b (new)

Text proposed by the Commission	*Amendment*
	6b. When transferring analytical information obtained from PNR under this Directive, the safeguards set forth in paragraph 1 of this Article shall be respected.

Or. en

Amendment 20

Proposal for a directive
Article 7 – paragraph 6 c (new)

Text proposed by the Commission	*Amendment*
	6c. Member States shall advise each other regarding the enactment of any legislation that materially affects the implementation of this Directive.

Or. en

Amendment 21

Proposal for a directive
Article 8

Text proposed by the Commission	*Amendment*
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:	***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 and if:
(a) the conditions laid down in Article 13 of Council Framework Decision 2008/977/JHA are fulfilled,	***(a) the transfer is necessary for the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties;***

	(aa) the receiving authority in the third country or receiving international body is responsible for the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties;
	(ab) the Member State from which the data were obtained has given its consent to transfer in compliance with its national law;
	(ac) the third country or international body concerned ensures an adequate level of protection for the intended data processing;
(b) the transfer is necessary for the purposes of this Directive specified in Article 1(2), and	(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.	(c) the third country ***receiving the data*** 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.
	1a. Transfer without prior consent in accordance with point (ab) of paragraph 1 shall be permitted only if transfer of the data is essential for the prevention of an immediate and serious threat to public security of a Member State or a third country or to essential interests of a Member State and the prior consent cannot be obtained in good time. The authority responsible for giving consent shall be informed without delay.
	1b. By way of derogation from point (ac) of paragraph 1, personal data may be transferred if:
	(a) the national law of the Member State transferring the data so provides because of:
	(i) the legitimate specific interests of the data subject; or
	(ii) legitimate prevailing interests, in

particular important public interests; or

(b) the third country or receiving international body provides safeguards which are deemed adequate by the Member State concerned according to its national law.

1c. The adequacy of the level of protection referred to in point (ac) of paragraph 1 shall be assessed in the light of all the circumstances surrounding a data transfer operation or a set of data transfer operations. Particular consideration shall be given to the nature of the data, the purpose and duration of the proposed processing operation or operations, the Member State transferring the data and the country or international body of final destination of the data, the rules of law, both general and sectoral, in force in the third country or international body in question and the professional rules and security measures which apply.

1d. Member States shall transfer PNR to competent government authorities of third countries only under terms consistent with this Directive and only upon ascertaining that the recipient's intended use is consistent with these terms.

1e. Apart from emergency circumstances, any such transfer of data from one third country to another shall occur pursuant to an express understanding that incorporate data privacy protections comparable to those applied to PNR by Member States as set out in this Directive.

1f. Where Member States are aware that PNR of a citizen or a resident of a Member State is transferred to a third country, the competent authorities of the concerned Member State shall be informed of the matter at the earliest appropriate opportunity.

1g. When transferring PNR data to third countries under this Directive, the safeguards set out in paragraphs 1 to 1c

shall be complied with.

Or. en

Amendment 22

Proposal for a directive
Article 9 – paragraph 2

Text proposed by the Commission	*Amendment*
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.	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 ***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 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.

Or. en

Justification

Data masking is the process of obscuring (masking) specific data elements within data stores so that the information is not available outside of the specific environment where it is handled, therefore decreasing the chances of exposing sensitive information and avoiding risks of leaking.

Amendment 23

Proposal for a directive
Article 10

Text proposed by the Commission	*Amendment*
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 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.	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 already collected by them, or do not do so in the required format***,*** or ***are not handled and processed under the stated data protection rules as laid down in this Directive,*** or otherwise infringe the national provisions adopted pursuant to this Directive.

Or. en

Justification

It is important that this Article covers both the way in which the data is handled and processed, as well as making clear that such a system would operate under existing legal data protection rules.

Amendment 24

Proposal for a directive
Article 10 a (new)

Text proposed by the Commission	*Amendment*
	Article 10a
	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. In the event of a privacy incident (including unauthorized access or disclosure), national supervisory authorities shall take the necessary measures to notify affected individuals as appropriate, to limit the risk of harm of unauthorized disclosures of personal data and information, and to institute remedial measures that are technically practicable.

3. Within the scope of this Directive, the national supervisory authority shall inform without undue delay the relevant Member State authorities about cases of significant privacy incidents involving PNR of Union citizens or residents resulting from accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, or any unlawful forms of processing or use.

4. The national supervisory authorities of Member States shall confirm that effective administrative, civil, and criminal enforcement measures are available under Member State law for privacy incidents by the airlines. Member States may also take disciplinary action against persons responsible for any such privacy incident, as appropriate, to include denial of system access, formal reprimands, suspension, demotion, or removal from duty.

5. All data shall be held in a secure location, in a secure database, on a security accredited computer system, that either meets or exceeds international industrial standards.

6. PNR data must be monitored, sampled and audited in line with a statutory code of practice which must be developed by each Member State's supervisory

authority, such a code of practice will ensure tight controls of the work of operators and the practical implementation of this Directive, and will form part of each Member States review process.

Or. en

Justification

It is essentials that passengers have the rights to redress, rectification, access, erasure and blocking, and the right to compensation and the right to judicial redress. Having clear rules on how Supervisory authorities, airlines, and Member States should operate regarding data handling, should ensure an effective operation which passengers can have confidence in.

Amendment 25

Proposal for a directive
Article 11 – title

Text proposed by the Commission	*Amendment*
Protection of personal data	Data ***Security***

Or. en

Amendment 26

Proposal for a directive
Article 11 – paragraph 1

Text proposed by the Commission	*Amendment*
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	***deleted***

17, 18, 19 and 20 of the Council Framework Decision 2008/977/JHA shall therefore be applicable.

Or. en

Justification

This Article has been further defined and expanded upon elsewhere, in order to offer more protection for passengers.

Amendment 27

Proposal for a directive
Article 11 – paragraph 3

Text proposed by the Commission	*Amendment*
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.	3. Any processing of PNR data revealing a person's ***sex,*** race***, colour,*** ethnic ***or social*** origin, ***genetic features, language, religion*** or belief, political ***or any other*** opinion, membership ***of a national minority, property, birth, disability, age*** or sexual ***orientation*** shall be prohibited. In the event that PNR data revealing such information are received by the Passenger Information Unit they shall be deleted immediately. ***Access to, as well as processing and use of, sensitive data shall be permitted in only the most exceptional circumstances where the life of an individual could be imperilled or seriously impaired. Such data must be exclusively accessed using restrictive processes on a case-by-case real-time basis with the approval of a competent authority senior manager.***

Or. en

Justification

This provision will provide for the most exceptional of circumstance where real time information is needed, where the existing provisions of this Directive are unable to provide the necessary information.

Amendment 28

Proposal for a directive
Article 11 – paragraph 4

Text proposed by the Commission	*Amendment*
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.	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. ***Those persons who operate security controls, who access and analyse the PNR data, and operate the data logs, must be security cleared, and security trained. Each person shall have a profile which defines and limits what they can see according to the nature of their work, role, and legal entitlement.***

Or. en

Justification

Such training and operational structures allow for another layer of security to be included, and increases confidence in the system, whilst ensuring greater uniformity across Member States systems, and the handling of personal data.

Amendment 29

Proposal for a directive
Article 11 – paragraph 7

Text proposed by the Commission	*Amendment*
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.	7. Without prejudice to Article 10, Member 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.

Or. en

Amendment 30

Proposal for a directive
Article 11 – paragraph 7 a (new)

Text proposed by the Commission	*Amendment*
	7a. National supervisory authorities may take disciplinary action against persons responsible for any such privacy incident, as appropriate, to include denial of system access, formal reprimands, suspension, demotion, or removal from duty.

Or. en

Justification

National supervisory authorities having in place a disciplinary system for persons who operate the system is essential for passenger confidence in the PNR system.

Amendment 31

Proposal for a directive
Article 12

Text proposed by the Commission	*Amendment*
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.	***1.*** 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. ***1a. Compliance with the privacy safeguards in this Directive shall be subject to independent review and oversight by national supervisory authority officers, who:*** ***(a) have a proven record of autonomy;*** ***(b) exercise effective powers of oversight, investigation, intervention, and review; and*** ***(c) have the power to refer violations of law related to this Directive for prosecution or disciplinary action, when appropriate.*** ***They shall, in particular, ensure that complaints relating to non-compliance with this Directive are received, investigated, responded to, and appropriately redressed. Those complaints may be brought by any individual, regardless of nationality, country of origin, or place of residence.*** ***1b. In particular, national supervisory authorities provide all individuals an administrative means to resolve travel-related inquiries including those related to the use of PNR. National supervisory authorities 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.

Or. en

Justification

It is necessary for those that carry out the oversight and review of national supervisory authorities and for the authorities themselves to have the necessary powers in order to make sure that there are no breeches in the system, and that passengers remain fully informed of their rights, and that they are fully observed and applied.

Amendment 32

Proposal for a directive
Article 12 a (new)

Text proposed by the Commission	*Amendment*
	Article 12a
	Independent Review
	In addition, application of this Directive shall be subject to independent review, evaluation, and oversight by one or more of the following entities:
	(a) the European Parliament;
	(b) the Commission;
	(c) the Committee referred to in Article 14 of this Directive.
	Such oversight may be manifested in the findings and recommendations of public reports, public hearings, code of practice and analyses.

Or. en

Justification

It is important that there is scrutiny, from both the European Parliament and the European Commission, both of whom carry out different and complimentary functions. The establishment of an EU-PNR Data Protection Committee will bring specialist knowledge to

the system's ongoing review and evaluation.

Amendment 33

Proposal for a directive
Article 15 – paragraph 1

Text proposed by the Commission	*Amendment*
1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive at the latest ***two years*** after the entry into force of this Directive. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.	1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive at the latest ***three years*** after the entry into force of this Directive. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

Or. en

Justification

Given the specific technological and structural demands of setting up an EU-PNR system for each Member States, it is necessary to extend the time period to 3 years.

Amendment 34

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.

Or. en

Justification

Given the importance of the purpose for which the PNR data is collected and processed, as well as the varied, sophisticated and international nature of the threat posed, it is necessary to have a system which operates on a 100% collection basis both within the EU, and with third countries in order for the system to be fully effective.

Amendment 35

Proposal for a directive
Article 17

Text proposed by the Commission	*Amendment*
On the basis of information provided by the Member States, the Commission shall***:***	On the basis of information provided by the Member States, the Commission shall undertake a review of the operation of this Directive and submit a report to the European Parliament and the Council within ***five 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.
(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.

Or. en

Justification

5 years is a more suitable time period for assessment, given the period for Member States establishing a PNR system was set at 3 rather than 2 years.

EXPLANATORY STATEMENT

I. Backgound

The nature of criminal and terrorist activity has been constantly evolving in recent years. It has become more daring, more sophisticated and increasingly trans-national in nature. Given the vast cost of crime, evidence shows that citizens increasingly wish to see stronger action at EU level to tackle organised crime and terrorism.[1]

In response to this, the Stockholm Programme called on the Commission to present a proposal for the use of PNR data to prevent, detect, investigate and prosecute terrorism and serious crime. On 6 November 2007 the Commission adopted a proposal for a Council Framework Decision on the use of Passenger Name Record (PNR) data for law enforcement purposes. The proposal was discussed in Council working groups and consensus was reached on a majority of the provisions in the text. However upon entry into force of the Lisbon Treaty on 1 December 2009, the Commission proposal, not yet adopted by the Council, became obsolete.

PNR data is information provided by air passengers in the course of ticket reservation which is held by air carriers. Its primary use by air carriers is for operational purposes (it contains information in 19 fields such as travel dates, travel itinerary, ticket information, contact details, travel agency details, means of payment used, seat number and baggage information) but it also has commercial and statistical value for the airlines.

PNR data can also be used by law enforcement bodies and the proposed Directive lays down harmonised rules for such measures. PNR data, when analysed carefully, can be an effective tool to identify and track criminal and terrorist activity. Furthermore, it can be used in a reactive, real time or pro-active way to intercept, monitor, investigate and prosecute criminals. Currently, of the 27 Member States of the European Union, only the United Kingdom has a fully fledged PNR system[2], whilst 5 others (France, Denmark, Sweden, Belgium and The Netherlands) use it in limited ways or are testing its use.

PNR should not be confused with Advanced Passenger Information (API) which is biographical information taken from the machine-readable part of a passport. This is more limited in scope and its use is regulated under the API Directive[3].

II. Commission Proposal

The Commission proposal (henceforth "the text") takes into account the recommendations of the European Parliament as stated in its Resolution of November 2008[4] and it reflects the state of discussions in the Council working groups in 2009. It also takes into account the opinions

[1] Standard Eurobarometer 71, p. 149 of the Annex.
[2] UK e-borders sections 32 to 38 of the Immigration, Asylum and Nationality Act 2006.
[3] Directive 2004/82/EC of 29 August 2004 on the obligation of carriers to communicate passenger data (OJ L 261, 6.8.2004, p. 24).
[4] Texts Adopted, P6_TA(2008)0561.

of the European Data Protection Supervisor (EDPS), the Article 29 Working Party on Data Protection and the Fundamental Rights Agency. Both a full impact assessment and a consultation process were carried out.

Principally, the text does two things: i) it harmonises the obligation for air carriers operating flights to and from third country and the territory of at least one Member State in the transmission of PNR data to law enforcement bodies, and ii) sets out the criteria for which law enforcement bodies may use such information, namely for the purpose of preventing, detecting, investigating and prosecuting terrorist offences and serious crime. The text complies with the rules laid down in Framework Decision 2008/977/JHA (or any other future Framework decision in this area) for the protection of personal data. The proposed system is mandatory giving each Member State two years in which to set up an operational system. However, Member States would be allowed to run joint systems for cost-sharing purposes.

Apart from the purpose limitation, which is mentioned above, there are several areas in which parliamentarians have traditionally focussed their interest:

I. Retention of data

The text sets out a two-stage approach to the retention of PNR data by the Member State's competent authority: namely a 30-day period, followed by a 5-year period where the data is masked out.

II. Centralised v. de-centralised system

The text sets out rules for a de-centralised system. The arguments for this are mainly to do with cost, but also the sensitive nature of a single location of a centralised system.

III. Inclusion of intra-EU flights

Intra-EU flights are not included in the scope of the text.

IV. Targeted v. 100% collection

The Commission proposes reaching 100% coverage of international flights in gradual steps.

V. Definition of terrorist offences and serious crimes

Under the text, "terrorist offences" refer to those in Articles 1 to 4 of Council Framework Decision 2002/475/JHA; and "serious crimes" are also defined with reference to "Article 2(2) of Council Framework Decision 2002/584/JHA, but only those 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", although some flexibility is allowed here.

III. Rapporteur's Position

Your Rapporteur agrees with the vast majority of the Commission's approach to the transmission and use of PNR data. The Commission and various member State law

enforcement bodies have presented evidence to Members as to the effectiveness of such a tool and your Rapporteur contends the necessity, proportionality, and added value of such a measure has been shown: the measures do not impede free movement and should not jeopardise right of entry of citizens whilst at the same time helping to protect their safety. Furthermore, given that the Commission proposal has taken account of the recommendations made by the European Parliament in November 2008, and given that it sets minimum standards that have already been approved by the LIBE Committee with respect to other PNR Agreements the text provides a sound platform for discussion in this house.

I. Retention of data

Your Rapporteur does not believe that any changes need to be made to the text but his draft Report adds a definition of "masking out data" which clarifies the precise meaning of this provision.

II. Centralised v. de-centralised system

The draft Report sets out rules for a de-centralised system.

III. Inclusion of intra-EU flights

Your Rapporteur is convinced that the inclusion of intra-EU flights would bring clear added value to any EU PNR scheme. Although this would add to initial costs there are clear benefits to their inclusion: uniform set up and strong security advantages. Because of the increased scope of the scheme, your Rapporteur has also extended the lead in time for the proposal from 2 to 3 years.

IV. Targeted v. 100% collection

The Rapporteur supports 100% coverage of flights for the obvious efficiency and security benefits. There is also evidence to suggest that criminals could avoid particular flights under a targeted system.

V. Definition of terrorist offences and serious crimes

The draft Report has not changed the definitions of "terrorist offence" and "serious crime"

Your Rapporteur has also inserted provisions which will clarify the issue of cost, redress and has strengthened the legal certainty of the text by referring more explicitly to other legislation already in force in this area.