

EUROPEAN PARLIAMENT

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Committee on Transport and Tourism

2007/0237(CNS)

11.11.2008

OPINION

of the Committee on Transport and Tourism

for the Committee on Civil Liberties, Justice and Home Affairs

on the proposal for a Council framework decision on the use of Passenger Name Record (PNR) for law enforcement purposes
(COM(2007)0654 – C6-0465/2007 – 2007/0237(CNS))

Rapporteur: Eva Lichtenberger

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SHORT JUSTIFICATION

The retention of PNR data by law enforcement authorities raises questions of data protection, individual liberty and the right to privacy. These must be balanced with the need for Member States' law enforcement authorities to do all they can, within reason, to protect citizens from the terrorist threats they face and to combat criminal activities more generally.

Law enforcement authorities already receive APIS (Advance Passenger Information System) information. The main source for this information is the machine-readable section of a passport. PNR data, which is collected via computerised reservation and ticketing systems, provides further information to authorities. The Commission argue that a number of Member States have begun to develop their own PNR systems and the Union should therefore act before airlines are faced with various different demands and requirements.

The proposal applies only to flights to and from the EU and not to internal flights, unless they form part of an international flight. The 19 pieces of PNR data to be provided are detailed in Annex II of the proposal. These include address, payment, baggage, travel agency and contact information as well as the seat number. PNR data allows for a more detailed picture of a passenger's movements to be formed. The collection and analysis of this data allows European law enforcement bodies to identify passengers by matching their actions to known profiles, for example of drugs/people smugglers or terrorists, and then consider action when they pass through customs.

Member States' authorities may currently obtain PNR information by looking a passenger's ticket and the border control card they fill in when arriving from a third country. In their impact assessment the Commission states that it is only in "very rare cases that the PNR data of a passenger, as processed in the reservation system of the carrier, will contain some additional information". The Commission argues that the added value of their proposal would be that the competent authorities of the Member States receive the data in an electronic form in advance of a flight's arrival.

Rather than ask airlines to transmit data to a single European Passenger Information Unit (PIU) the Commission argues that each Member State should have their own, though Member States may come together to create a single PIU under joint ownership. Their reasoning is that a centralised PIU would have a high risk of failure owing to the vast amount of data it would have to process and the fact it would have to be able to access the national databases of Member States, a particularly sensitive act.

The Commission proposes that data may be stored for a considerable time: up to 13 years in total. It is the position of the rapporteur that the act should contain very strong measures to safeguard the privacy of European citizens. Citizens should have a right of redress in order to access and correct any data held concerning them. No person should face a situation in which they are judged because of incorrect data, especially incorrect data they have no way of challenging.

This becomes more important when one considers that PNR data may eventually be shared with an increasing number of third countries. Some third countries outlaw practises that are legal and accepted in Europe. Personal data that indicates religion or race or may indicate

sexuality must not be stored or communicated with third countries, and should not be stored by Member States.

If a third country is to have access to data pertaining to European citizens then citizens must have an effective mechanism to access and challenge this data if required. The extent to which this is possible is a fundamental issue when considering the dossier.

Members will also wish to consider whether the proposal is a proportional response to the threat faced. Do the law enforcement benefits of the use of PNR data, as stated by the Commission and argued for by those in favour of the system, justifying the cost and the impositions on the rights of citizens? The Commission estimates the setting up cost (not including annual costs) for all Member States would be €614,833,187 and that the total cost to airlines of setting up a "push" system would be €11,647,116 with a yearly transmission cost for EU carriers equal to €1,125,040 ("pushing" once per passenger). These are substantial costs for governments and airlines alike.

AMENDMENTS

The Committee on Transport and Tourism calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a decision

Recital 5

Text proposed by the Commission

(5) Because of the information they contain, PNR data **are** appropriate to effectively prevent and fight terrorist offences and organised crime and thus to enhance internal security; the obligations imposed on air carriers by virtue of this Framework Decision should be separate from those established by Directive 2004/82/EC.

Amendment

(5) Because of the information they contain, PNR data **may be** appropriate to effectively prevent and fight terrorist offences and organised crime and thus to enhance internal security; ***as the need to use PNR data has not been proven beyond all doubt, the Commission should assess this Framework Decision within two years of its entry into force;*** the obligations imposed on air carriers by virtue of this Framework Decision should be separate from those established by Directive 2004/82/EC.

Justification

The Commission indicates in its impact assessment that the PNR data processed concerning a passenger would probably only very rarely include additional data going beyond those received from the APIS system, and it would therefore make sense to make this concern

apparent to the Council. An early evaluation of this legislation is therefore needed in order to be able to examine the possible utility of the Framework Decision without delay.

Amendment 2

Proposal for a decision

Recital 6

Text proposed by the Commission

(6) Air carriers already collect PNR data for their own commercial purpose and this Framework Decision does not impose any obligation on them to collect any additional information or to retain any data.

Amendment

(6) Air carriers already collect PNR data for their own commercial purpose and this Framework Decision does not impose any obligation on them to collect any additional information or to retain any data. ***Their role in accordance with the provisions of this Framework Decision is to make the requested PNR data available to Member States' competent national authorities.***

Amendment 3

Proposal for a decision

Recital 6 a (new)

Text proposed by the Commission

Amendment

(6a) The information collected by online booking systems can be more extensive than that contained in air carriers' computerised reservation systems.

Amendment 4

Proposal for a decision

Recital 10 a (new)

Text proposed by the Commission

Amendment

(10a) The safeguarding of personal information with regard to the processing of PNR or other data in relation to all transport modes is of paramount importance. Member States should ensure

that passengers are always informed about their rights of access, rectification, erasure and compensation with regard to the retention of PNR data.

Amendment 5

Proposal for a decision Recital 10 b (new)

Text proposed by the Commission

Amendment

(10b) It is of great importance that a citizen should have an effective means of redress against the storing of incorrect information with regard to their person. For this reason, any transfer of PNR data to third countries should only be undertaken if this can be guaranteed.

Amendment 6

Proposal for a decision Recital 16

Text proposed by the Commission

Amendment

(16) There are two possible methods of data transfer currently available: the 'pull' method, under which the competent authorities from the 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 transmit ("push") the required PNR data to the authority requesting them. The 'push' method is considered to offer a higher degree of data protection and should be mandatory for all carriers ***established in the Union. As regards third country carriers, "push" should be the preferred method whenever it is technically, economically and operational possible for third country carriers.***

(16) There are two possible methods of data transfer currently available: the 'pull' method, under which the competent authorities from the 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 transmit ("push") the required PNR data to the authority requesting them. The 'push' method is considered to offer a higher degree of data protection and should be mandatory for all carriers.

Justification

In the interests of data protection, only the push method should be prescribed for all airlines.

Amendment 7

Proposal for a decision

Recital 18

Text proposed by the Commission

(18) The contents of any lists of required PNR data to be obtained by the competent national authorities should reflect an appropriate balance between the legitimate requirements of public authorities to prevent and fight terrorist offences and organised crime, thereby improving the internal security within the EU and the protection of fundamental rights of citizens, notably privacy; such list 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 sex life of the individual concerned; the PNR data contain details on the passenger's reservation and travel itinerary which enable competent authorities to identify air passengers representing a risk for internal security.

Amendment

(18) The contents of any lists of required PNR data to be obtained by the competent national authorities should reflect an appropriate balance between the legitimate requirements of public authorities to prevent and fight terrorist offences and organised crime, thereby improving the internal security within the EU and the protection of fundamental rights of citizens, notably privacy; such list 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 sex life of the individual concerned; the PNR data ***should only*** contain details on the passenger's reservation and travel itinerary which enable competent authorities to identify air passengers representing a risk for internal security. ***The list of details contained in the PNR data should be made available to passengers.***

Justification

As part of the necessary compromise between individual rights and security needs, and in addition to the rules listed in this paragraph, it is crucial to grant passengers access to the PNR data that are to be made available, since this will in no way be prejudicial to security but will strengthen the protection of individual rights, as well as being a general principle of data protection rules.

Amendment 8

Proposal for a decision Recital 20

Text proposed by the Commission

(20) ***As a fundamental principle of data protection, it is important to ensure that no*** enforcement action ***shall*** be taken by the competent authorities of the Member States only by reason of the automated processing of PNR data or by reason of a person's race or ethnic origin, religious or philosophical belief, political opinion or sexual orientation.

Amendment

(20) ***No*** enforcement action ***should*** be taken by the competent authorities of the Member States only by reason of the automated processing of PNR data or by reason of a person's race or ethnic origin, religious or philosophical belief, ***trade-union membership***, political opinion, ***health, including occasional health problems, disability, reduced mobility*** or sexual orientation.

Amendment 9

Proposal for a decision Recital 21

Text proposed by the Commission

(21) Member States should share with other Member States the PNR data that they receive as necessary. Transfers of PNR data to third countries and adequacy findings should be governed by the Council Framework Decision (xx/xx) on the Protection of Personal Data Processed in the Framework of Police and Judicial Cooperation in Criminal Matters and should be further subject to additional requirements relating to the purpose of the transfer. Whenever the Union has concluded international agreements on such transfers, the provisions of such agreements should be duly taken into account.

Amendment

(21) Member States should share with other Member States the PNR data that they receive as necessary. Transfers of PNR data to third countries and adequacy findings ***are particularly sensitive and*** should be governed by the Council Framework Decision .../... *of* ... [on the Protection of Personal Data Processed in the Framework of Police and Judicial Cooperation in Criminal Matters]¹ and should be further subject to ***stringent*** additional requirements relating to the purpose of the transfer. Whenever the Union has concluded international agreements on such transfers, the provisions of such agreements should be duly taken into account.

¹ OJ L ...

Amendment 10

Proposal for a decision
Recital 22 a (new)

Text proposed by the Commission

Amendment

(22a) All essential information provided to air passengers under the terms of this Framework Decision should be provided in formats that are perfectly accessible for people with disabilities and people with reduced mobility, and should be available in all the official languages of the EU, or at least in the same languages as the information made available to other passengers.

Amendment 11

Proposal for a decision
Recital 22 b (new)

Text proposed by the Commission

Amendment

(22b) The practice of concluding bilateral agreements between EU Member States and third countries for the purpose of using passenger name records for prosecution purposes should be halted.

Justification

The practice of concluding bilateral agreements should be replaced with united action pursued solely at EU level.

Amendment 12

Proposal for a decision
Recital 23 a (new)

Text proposed by the Commission

Amendment

(23a) This Framework Decision should not affect the rights of air passengers afforded by existing Community legislation.

Amendment 13

Proposal for a decision Article 2 – point a

Text proposed by the Commission

(a) ‘air carrier’ means an undertaking with a valid operating licence or equivalent;

Amendment

(a) ‘air carrier’ means an ***air transport*** undertaking with a valid operating licence or equivalent ***which states that it is permitted to carry passengers by air***;

Amendment 14

Proposal for a decision Article 2 – point e

Text proposed by the Commission

(e) ‘reservation systems’ means the air carrier’s internal inventory system, in which PNR data are collected from reservations made via computerised reservation systems as defined in Regulation (EEC) No 2299/89 on a code of conduct for computerized reservation systems or via direct booking channels like the ***airlines***’ Internet websites, call centres or sales outlets;

Amendment

(e) ‘reservation systems’ means the air carrier’s internal ***computerised*** inventory system, in which PNR data are collected from reservations made via computerised reservation systems as defined in *the Council Regulation (EEC) No 2299/89 of 24 July 1989* on a code of conduct for computerized reservation systems¹ or via direct booking channels like the ***air carriers***’ Internet websites, call centres or sales outlets;

¹ OJ L 220, 29.7.1989, p. 1.

Amendment 15

Proposal for a decision Article 3 – paragraph 3

Text proposed by the Commission

3. The Passenger Information Unit shall further be responsible for analysing the PNR data and for carrying out a risk assessment of the passengers in order to

Amendment

3. The Passenger Information Unit shall further be responsible for analysing the PNR data and for carrying out a risk assessment of the passengers in order to

identify the persons requiring further examination for one of the purposes mentioned in paragraph 5. The criteria and guarantees in respect of this risk assessment will be provided for under national law. No enforcement action shall be taken by the Passenger Information Units and the competent authorities of the Member States only by reason of the automated processing of PNR data or by reason of a person's race or ethnic origin, religious or philosophical belief, political opinion or sexual orientation.

identify the persons requiring further examination for one of the purposes mentioned in paragraph 5. The criteria and guarantees in respect of this risk assessment will be provided for under national law. No enforcement action shall be taken by the Passenger Information Units and the competent authorities of the Member States only by reason of the automated processing of PNR data or by reason of a person's race or ethnic origin, religious or philosophical belief, ***trade-union membership***, political opinion, ***health, including occasional health problems, disability, reduced mobility*** or sexual orientation.

Amendment 16

Proposal for a decision Article 3 – paragraph 4

Text proposed by the Commission

4. The Passenger Information Unit of a Member State shall transmit the PNR data of individuals identified in accordance with paragraph 3 to the relevant competent authorities of the same Member State, referred to in Article 4, by electronic means or, in case of failure, by any other appropriate means.

Amendment

4. The Passenger Information Unit of a Member State shall transmit the PNR data of individuals identified in accordance with paragraph 3 to the relevant competent authorities of the same Member State, referred to in Article 4, by electronic means or, in case of failure, by any other appropriate means. ***Passenger Information Units shall ensure that only the information that is strictly necessary is transmitted.***

Amendment 17

Proposal for a decision Article 5 – paragraph 1

Text proposed by the Commission

1. Member States shall adopt the necessary measures to ensure that air carriers make available the PNR data of the passengers of international flights to the national

Amendment

1. Member States shall adopt the necessary measures to ensure that air carriers make available the PNR data of the passengers of international flights to the national

Passenger Information Unit of the Member State on whose territory the international flight referred to is entering, departing or transiting, in accordance with the conditions specified in this Framework Decision.

Passenger Information Unit of the Member State on whose territory the international flight referred to is entering, departing or transiting, in accordance with the conditions specified in this Framework Decision. ***Air carriers shall only be obliged to transmit this information to the first Passenger Information Unit concerned. This Passenger Information Unit should then transmit that information to other Units as required by the flight path.***

Amendment 18

Proposal for a decision

Article 5 – paragraph 3 – point a

Text proposed by the Commission

(a) in advance, 24 hours before the scheduled flight departure

Amendment

(a) in advance, ***up to*** 24 hours before the scheduled flight departure

Amendment 19

Proposal for a decision

Article 5 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Airlines shall not be held responsible for the accuracy of the data.

Justification

PNR data include data supplied by the passenger. There is no way in which airlines can check whether these data are accurate, and they cannot, therefore, be held responsible for incomplete or erroneous data.

Amendment 20

Proposal for a decision
Article 5 – paragraph 4

Text proposed by the Commission

4. Air carriers **whose** databases **are established in** a Member State of the European Union shall take the necessary technical measures to ensure that the PNR data are transferred to the Passenger Information Units or the designated intermediaries pursuant to Article 6, using the "push method".

Amendment

4. Air carriers **with** databases **inside or outside** a Member State of the European Union shall take the necessary technical measures to ensure that the PNR data are transferred to the Passenger Information Units or the designated intermediaries pursuant to Article 6, using the "push method".

Justification

Both for airlines whose passenger databases are located in a European Union Member State and for airlines whose databases are located outside a European Union Member State, only the push method must be prescribed, in the interests of data protection.

Amendment 21

Proposal for a decision
Article 5 – paragraph 5

Text proposed by the Commission

5. Air carriers whose databases are not established in a Member State of the European Union:

- shall be required to use the "push method" to transfer the data to the Passenger Information Units or the designated intermediaries pursuant to Article 6;

- where they do not possess the necessary technical architecture to use the "push method", shall be obliged to permit the Passenger Information Unit or the designated intermediary pursuant to Article 6, to extract the data from their databases using the "pull method".

In all cases, they must inform the Passenger Information Units and the relevant intermediaries of all the Member States whether they will use the "push" or the "pull" methods for making the data

Amendment

deleted

available.

Justification

Both for airlines whose passenger databases are located in a European Union Member State and for airlines whose databases are located outside a European Union Member State, only the push method must be prescribed, in the interests of data protection.

Amendment 22

Proposal for a decision Article 5 – paragraph 6

Text proposed by the Commission

6. Member States shall ensure that air carriers inform passengers of international flights about the provision of PNR data to the Passenger Information Unit and, where applicable, the intermediary, the purposes of their processing, the period of data retention and their possible use to prevent or combat terrorist offences and organised crime, and about the possibility of exchanging and sharing of such data.

Amendment

6. Member States shall ensure that air carriers inform passengers of international flights about the provision of PNR data to the Passenger Information Unit, ***the information collected***, and, where applicable, the intermediary, the purposes of their processing, the period of data retention and their possible use to prevent or combat terrorist offences and organised crime, and about the possibility of exchanging and sharing of such data.
Member States shall ensure that air carriers inform passengers about their rights of access, rectification, erasure and compensation with regard to the retention of PNR data.

Amendment 23

Proposal for a decision Article 5 – paragraph 6 a (new)

Text proposed by the Commission

Amendment

6a. Intermediaries shall be bound by the provisions on data protection contained in this Framework Decision.

Amendment 24

Proposal for a decision
Article 6 – paragraph 2

Text proposed by the Commission

2. Air carriers entering into contractual relationships with such intermediaries shall notify immediately the Passenger Information Units of all Member States of such an arrangement. The intermediaries shall act on behalf of the air carrier from which they have been designated, and they shall be considered as such air carrier's representative for the purposes of this Framework Decision.

Amendment

2. Air carriers entering into contractual relationships with such intermediaries shall notify immediately the Passenger Information Units of all Member States of such an arrangement. The intermediaries shall act on behalf of the air carrier from which they have been designated, and they shall be considered as such air carrier's representative for the purposes of this Framework Decision. ***Intermediaries shall be subject to the provisions of this Framework Decision.***

Justification

The provisions of Framework Decision should be applicable to the intermediaries too.

Amendment 25

Proposal for a decision
Article 8 – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(ba) the third country shall allow EU citizens, without constraint, excessive delay or expense, the same rights of access, rectification, erasure and compensation with regard to the retention of PNR data as are applied in the European Union; and

Amendment 26

Proposal for a decision
Article 8 – paragraph 1 – point b b (new)

Text proposed by the Commission

Amendment

(bb) the third country concerned shall fulfil the requirements of being a State where the rule of law prevails, which

respects human rights and citizens' rights and which has legislation in force to protect personal data.

Amendment 27

Proposal for a decision

Article 8 – paragraph 1 – point b c (new)

Text proposed by the Commission

Amendment

(bc) the third country shall ensure an adequate and comparable level of protection for PNR data.

Amendment 28

Proposal for a decision

Article 10

Text proposed by the Commission

Amendment

Member States shall ensure, in conformity with their national law, that dissuasive effective and proportionate sanctions, including financial penalties, are provided for against air carriers and intermediaries which do not transmit data or transmit ***incomplete or erroneous*** data or otherwise infringe the national provisions adopted pursuant to this Framework Decision. In case of repeated serious infringements, these sanctions shall include measures such as the immobilisation, seizure and confiscation of the means of transport, or the temporary suspension or withdrawal of the operating licence.

Member States shall ensure, in conformity with their national law, that dissuasive effective and proportionate sanctions, including financial penalties, are provided for against air carriers and intermediaries which do not transmit data or transmit data ***which they have deliberately altered*** or otherwise infringe the national provisions adopted pursuant to this Framework Decision. In case of repeated serious infringements, these sanctions shall include measures such as the immobilisation, seizure and confiscation of the means of transport, or the temporary suspension or withdrawal of the operating licence.

Justification

PNR data include data supplied by the passenger. There is no way in which airlines can check whether these data are accurate, and they cannot, therefore, be held responsible for incomplete or erroneous data.

Amendment 29

Proposal for a decision Article 10 a (new)

Text proposed by the Commission

Amendment

Article 10a

Costs arising from data transfer using the "push method", the twofold forwarding of data pursuant to Article 5(3) and from the intermediary shall be borne by Member States.

Justification

Airlines should not have to bear the costs arising from the transfer of data for purposes of prosecution.

Amendment 30

Proposal for a decision Article 11 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Air carriers shall ensure that personal data required for PNR, as defined by the 'mixed data notion', is separated from any other information about passengers available in the system. Such personal data must not be made available to other entities unless the person or organisation concerned agrees explicitly in writing.

Amendment 31

Proposal for a decision Article 12 – point c a (new)

Text proposed by the Commission

Amendment

ca) prevent any unauthorised disclosure of personal data;

Justification

The personal data collected under the provisions of this Framework Decision should be prevented from unauthorized disclosure.

Amendment 32

Proposal for a decision

Article 12 – point f

Text proposed by the Commission

f) ensure that persons authorised to access the data have access only to the data covered by their access authorisation, by means of individual and unique user identities **and** confidential access modes only (data access control);

Amendment

f) ensure that persons authorised to access the data have access only to the data covered by their access authorisation, by means of individual and unique user identities, confidential access modes **and smartcards or tokens** only (data access control);

Justification

Taking into consideration the need to protect the personal data which the subject of this Framework Decision, a higher security level for data access control is needed.

Amendment 33

Proposal for a decision

Article 17

Text proposed by the Commission

On the basis of information provided by the Member States, the Commission shall undertake a review of the operation of this Framework Decision and shall submit a report to the Council within **three** years after this Framework Decision enters into force. Such review shall comprise all the elements of this Framework Decision, with special attention *of* the implementation of the "push method", the level of adherence to the data protection safeguards, the evaluation of the length of the data retention period and the quality of the risk assessments.

Amendment

On the basis of information provided by the Member States, the Commission shall undertake a review of the operation of this Framework Decision and shall submit a report to the Council within **two** years after this Framework Decision enters into force. Such review shall comprise all the elements of this Framework Decision, with special attention **to the positive impact of this Framework Decision**, the implementation of the "push method", the level of adherence to the data protection safeguards, the evaluation of the length of the data retention period and the quality of the risk assessments.

Justification

The Commission indicates in its impact assessment that the PNR data processed concerning a passenger would probably only very rarely include additional data going beyond those received from the APIS system, and it would therefore make sense to make this concern apparent to the Council. An early evaluation of this legislation is therefore needed in order to be able to examine the possible utility of the Framework Decision without delay.

PROCEDURE

Title	Use of Passenger Name Record (PNR) for law enforcement purposes
References	COM(2007)0654 – C6-0465/2007 – 2007/0237(CNS)
Committee responsible	LIBE
Opinion by Date announced in plenary	TRAN 11.12.2007
Drafts(wo)man Date appointed	Eva Lichtenberger 20.11.2007
Discussed in committee	7.10.2008 3.11.2008
Date adopted	4.11.2008
Result of final vote	+ : 20 - : 1 0 : 13
Members present for the final vote	Gabriele Albertini, Etelka Barsi-Pataky, Michael Cramer, Luis de Grandes Pascual, Arūnas Degutis, Petr Duchoň, Saïd El Khadraoui, Emanuel Jardim Fernandes, Francesco Ferrari, Brigitte Fouré, Georg Jarzembowski, Stanisław Jałowiecki, Dieter-Lebrecht Koch, Sepp Kusstatscher, Jörg Leichtfried, Bogusław Liberadzki, Eva Lichtenberger, Seán Ó Neachtain, Luís Queiró, Reinhard Rack, Ulrike Rodust, Brian Simpson, Dirk Sterckx, Silvia-Adriana Țicău, Yannick Vaugrenard, Armando Veneto, Lars Wohlin, Roberts Zīle
Substitute(s) present for the final vote	Philip Bradbourn, Lily Jacobs, Anne E. Jensen, Antonio López-Istúriz White, Vural Öger, Willem Schuth