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Committee on Foreign Affairs

2011/0023(COD)

25.4.2012

OPINION

of the Committee on Foreign Affairs

for the Committee on Civil Liberties, Justice and Home Affairs

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))

Rapporteur: Sarah Ludford

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SHORT JUSTIFICATION

Passenger Name Record (PNR) data is provided by passengers, collected by air carriers and used for their ticketing, reservation, and check-in systems. Given its commercial nature, PNR contain several kinds of information, ranging from names, addresses, passport numbers, and credit card information to information on other passengers, travel routes, and travel agents.

While Parliament has recalled its determination to fight terrorism as a key component of European external action and to pursue a pro-active policy of prevention, it also expressed the need to protect fundamental rights and to ensure respect for the privacy of EU citizens in compliance with relevant EU standards and norms of data protection.

The conclusion of agreements with the USA, Canada and Australia relating to the exchange of PNR data has given rise to concerns about purpose limitation, profiling, data retention periods and necessity and proportionality, although these concerns have been resolved satisfactorily in the case of Australia.

In several resolutions the European Parliament has highlighted the necessity of ensuring the consistency of third-country agreements with a specific framework for the protection of this kind of personal data and their processing by the agencies in charge of prevention of terrorist attacks and organised crime so as to ensure that the fundamental rights of citizens to privacy are not infringed upon and that *PNR data is used* only for law enforcement and security purposes in cases of terrorist offences and transnational crime as well as to prohibit in all circumstances the use of PNR for data mining and profiling.

While a number of shortcomings are recognized in the draft directive with respect to these fundamental objectives demanded by the European Parliament, your rapporteur has preferred to focus her amendments to those aspects directly relating to the competences of AFET as a contribution to the work of the lead Committee, not duplication thereof.

In particular, she has tried to ensure that the objectives of the Directive are not undermined by international agreements that would tolerate lower standards.

AMENDMENTS

The Committee on Foreign Affairs 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 directive Citation 6 a (new)

Text proposed by the Commission

Amendment

(6a) Having regard to the opinion of the Data Protection Supervisor of 25 March 2011 and the opinion 10/2011 of the Article 29 Working Party adopted on 5 April 2011, in particular where they question the necessity, proportionality and scope of the Commission proposal;

Amendment 2

Proposal for a directive Recital 17

Text proposed by the Commission

Amendment

(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.

(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. ***However, in cases of deficient technical architecture, the Commission should consider options that ensure the smooth operation of international air traffic and avoid individual Member States imposing disparate sanctions.*** 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 3

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

(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. ***Such rights should apply equally to Union citizens and to third-country nationals.***

Amendment 4

Proposal for a directive Recital 28 a (new)

Text proposed by the Commission

Amendment

(28a) In the interests of ensuring legal certainty and the smooth implementation of this Directive and to avoid damage to the Union's relations with third-country carriers and their flag states, it is essential that the Union adopt workable transitional provisions for the provision of PNR data. In that context, the inclusion of internal flights at this first stage might result in an operational overload resulting in ineffective implementation of the PNR scheme.

Amendment 5

Proposal for a directive Recital 32 a (new)

Text proposed by the Commission

Amendment

(32a) International agreements to be concluded by the Union should provide for safeguards compatible with the requirements of this Directive.

Amendment 6

Proposal for a directive Article 2 - paragraph 1 - point h

Text proposed by the Commission

Amendment

(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;

(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 **five** years under the national law of a Member State; however, Member States **shall** exclude those 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;

Amendment 7

Proposal for a directive Article 2 - paragraph 1 point i (header)

Text proposed by the Commission

Amendment

(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

(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

least *five* years under the national law of a Member State, and if

Amendment 8

Proposal for a directive Article 4 - paragraph 4

Text proposed by the Commission

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.

Amendment 9

Proposal for a directive Article 7- paragraph 3

Text proposed by the Commission

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.

Amendment

4. The Passenger Information Unit of a Member State **or a group of Member States** 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.

Amendment

3. The Passenger Information Unit of a Member State **or a group of Member States** 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.

Amendment 10

Proposal for a directive Article 8

Text proposed by the Commission

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,

(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.

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:

(-a) the Union has concluded an international agreement with that third country or is party, together with that third country, to an international convention which provides for safeguards compatible with the requirements of this Directive,

(-b) such an international agreement provides for, or the third country specifically agrees to, the transfer of data to another third country where:

(i) the third country has justified the necessity of such transfer for the purposes of this Directive as specified in Article 1(2),

(ii) the safeguards provided by the destination country are compatible with the requirements of this Directive

(iii) the Member State has given prior express authorisation;

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

Amendment 11

Proposal for a directive Article 17 – point b

Text proposed by the Commission

(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

(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, ***including in cases of transfers of data to third countries***, the length of the data retention period and the quality of the assessments. It shall also contain ***a review of the transitional provisions in Article 16 and advice on any problems regarding air carriers' provision of PNR data according to the push method, including the impact on third-country carriers and their flag States, and*** the statistical information gathered pursuant to Article 18.

Amendment 12

Proposal for a directive Article 18 – paragraph 1

Text proposed by the Commission

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.

Amendment

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), the number of subsequent law enforcement actions that were taken involving the use of PNR data per air carrier and destination ***and the number of cases by country and by purpose, as specified in Article 1(2), of data***

transferred to third countries in accordance with Article 8.

Amendment 13

**Proposal for a directive
Article 19 – paragraph -1 (new)**

Text proposed by the Commission

Amendment

-1. When concluding bilateral agreements with third countries or multilateral conventions imposing obligations and commitments, the Union shall ensure that those agreements provide safeguards compatible with the requirements of this Directive.

PROCEDURE

Title	Use of Passenger Name Record data (EU PNR)
References	COM(2011)0032 – C7-0039/2011 – 2011/0023(COD)
Committee responsible Date announced in plenary	LIBE 14.2.2011
Committee(s) asked for opinion(s) Date announced in plenary	AFET 14.2.2011
Rapporteur(s) Date appointed	Baroness Sarah Ludford 11.1.2012
Date adopted	24.4.2012
Result of final vote	+: 46 –: 2 0: 1
Members present for the final vote	Elmar Brok, Mário David, Michael Gahler, Marietta Giannakou, Ana Gomes, Takis Hadjigeorgiou, Richard Howitt, Anna Ibrisagic, Liisa Jaakonsaari, Anneli Jäätteenmäki, Jelko Kacin, Tunne Kelam, Evgeni Kirilov, Maria Eleni Koppa, Andrey Kovatchev, Wolfgang Kreissl-Dörfler, Eduard Kukan, Alexander Graf Lambsdorff, Vytautas Landsbergis, Krzysztof Lisek, Sabine Lösing, Mario Mauro, Francisco José Millán Mon, Alexander Mirsky, María Muñoz De Urquiza, Annemie Neyts-Uyttebroeck, Kristiina Ojuland, Justas Vincas Paleckis, Ioan Mircea Pașcu, Alojz Peterle, Cristian Dan Preda, Libor Rouček, José Ignacio Salafranca Sánchez-Neyra, Nikolaos Salavrakos, Marek Siwiec, Charles Tannock, Inese Vaidere, Kristian Vigenin
Substitute(s) present for the final vote	Laima Liucija Andrikiienė, Andrew Duff, Tanja Fajon, Kinga Gál, Elisabeth Jeggle, Antonio López-Istúriz White, Carmen Romero López, Marietje Schaake, Indrek Tarand, Alejo Vidal-Quadras, Renate Weber