DRAFT OPINION

of the Committee on Foreign Affairs

for the Committee on Civil Liberties, Justice and Home Affairs


Rapporteur: Arnaud Danjean
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SHORT JUSTIFICATION

Passenger Name Record (PNR) data is information provided by passenger and collected by air carriers for commercial purposes. It contains different types of information ranging from travel dates and itineraries to information on the means of payment and contact details.

PNR data is of considerable use for law enforcement agencies. It can be used reactively, i.e., in investigations or prosecutions, in real-time (prior to arrival or departure), to prevent crimes or arrest persons before a crime is committed, or proactively, for the creation of assessment criteria to facilitate the pre-arrival and pre-departure assessment of passengers.

While several member states are already developing their own PNR systems, the directive would regulate the use of such PNR data at the EU level and attempts to harmonise member states' policies. Such a harmonisation is vital to avoid each member state imposing different obligations on air carriers and thus considerable increasing the bureaucratic and financial burden of PNR data provision. It would also ensure that the whole of the EU is comprehensively covered by a PNR system.

The introduction of an EU PNR system is vital for allowing the EU to deal with the challenges it is currently facing. Beyond the fight against organised crime and domestic terrorism, the PNR directive is an important contribution to the maintenance of international security. Terrorism has become a global threat and needs to be tackled as such. Air transport plays a vital role in the maintenance of terrorist networks and the departure and return of so-called "foreign fighters". Both for the preservation of domestic security and the achievement of the EU’s foreign policy goals, proper access to PNR data for law enforcement agencies needs to be ensured.

It is also necessary to ensure that PNR data collected by non-carrier economic operators such as travel agencies and tour operators making use of charter flights is included in the EU PNR system to avoid any exploitable loopholes. As the operating airlines often do not have access to reservation data for such chartered flights, it is vital to obligate travel agencies and tour operators to provide such information.

This access has to be necessarily balanced with EU citizens' right to privacy and it has to be ensured that the PNR directive is aligned with the European Court of Justice ruling on the data retention directive. In the rapporteur's opinion, if these issues are addressed, the directive will make an important contribution to national and international security.

AMENDMENTS

The Committee on Foreign Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to take into account the following amendments:
Amendment 1
Proposal for a directive
Recital 3 a (new)

Text proposed by the Commission

(3a) In its resolution 2178 (2014), the United Nations Security Council expresses its grave concern over the acute and growing threat posed by foreign terrorist fighters, namely individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training and resolves to address this threat. The United Nations Security Council acknowledges the importance of addressing the threat posed by foreign terrorist fighters and encourages Member States to employ evidence-based traveller risk assessment and screening procedures including collection and analysis of travel data, without resorting to profiling based on stereotypes founded on discriminatory grounds.

Or. en

Amendment 2
Proposal for a directive
Recital 5

Text proposed by the Commission

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

Amendment

(5) PNR data are necessary to effectively prevent, detect, investigate and prosecute terrorist offences and serious crime and thus enhance internal and international security.
Amendment 3
Proposal for a directive
Recital 10

Text proposed by the Commission

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

Amendment

(10) To prevent, detect, investigate and prosecute terrorist offences and serious crime, it is therefore essential that all Member States introduce provisions laying down obligations on air carriers operating international flights to or from the territory of the Member States of the European Union. Non-carrier economic operators should also be concerned by those obligations when involved in booking such flights.

Amendment 4
Proposal for a directive
Recital 11

Text proposed by the Commission

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

Amendment

(11) Air carriers already collect and process PNR data from their passengers for their own commercial purposes. This Directive should not impose any obligation on air carriers and non-carrier economic operators to collect or retain any additional data from passengers or to impose any obligation on passengers to provide any data in addition to that already being provided to air carriers and non-carrier economic operators.
Amendment 5

Proposal for a directive
Recital 11 a (new)

Text proposed by the Commission

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

Amendment

Or. en

Amendment 6

Proposal for a directive
Recital 14

Text proposed by the Commission

(14) The contents of any lists of required PNR data to be obtained by the Passenger Information Unit should be drawn up with the objective of reflecting the legitimate requirements of public authorities to prevent, detect, investigate and prosecute terrorist offences or serious crime, thereby improving internal security within the Union as well as protecting the fundamental rights of citizens, notably privacy and the protection of personal data. Such lists should not contain any personal data that could reveal racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership or data concerning health or
Amendment 7
Proposal for a directive
Recital 15

Text proposed by the Commission

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

Amendment

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

Amendment 8
Proposal for a directive
Recital 17
(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 and non-carrier economic operators to fulfil their obligations under this Directive. Dissuasive, effective and proportionate penalties, including financial ones, should be provided for by Member States against those air carriers and non-carrier economic operators 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.

Or. en

Amendment 9
Proposal for a directive
Recital 29

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

Amendment 10
Proposal for a directive
Recital 32

Text proposed by the Commission

(32) In particular, the scope of the Directive is as limited as possible, it allows retention of PNR data for period of time not exceeding 5 years, after which the data must be anonymised after a very short period, the collection and use of sensitive data is prohibited. In order to ensure efficiency and a high level of data protection, Member States are required to ensure that an independent national supervisory authority is responsible for advising and monitoring how PNR data are processed. All processing of PNR data must be logged or documented for the purpose of verification of the lawfulness of the data processing, self-monitoring and ensuring proper data integrity and security of the data processing. Member States must also ensure that passengers are clearly and precisely informed about the collection of PNR data and their rights.

Amendment

(32) In particular, the scope of the Directive is as limited as possible, it allows retention of PNR data for period of time not exceeding 5 years, after which the data must be masked out after a very short period, the collection and use of sensitive data is prohibited. In order to ensure efficiency and a high level of data protection, Member States are required to ensure that an independent national supervisory authority is responsible for advising and monitoring how PNR data are processed. All processing of PNR data must be logged or documented for the purpose of verification of the lawfulness of the data processing, self-monitoring and ensuring proper data integrity and security of the data processing. Member States must also ensure that passengers are clearly and precisely informed about the collection of PNR data and their rights.

Amendment 11
Proposal for a directive
Article 1 – paragraph 1 a (new)
1a. This Directive shall also apply to non-carrier economic operators that gather or store PNR data on passenger flights to or from third countries, the point of departure or destination of which is located within the Union.

Amendment 12
Proposal for a directive
Article 1 – paragraph 2 – point a (a) (new)

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

Amendment 13
Proposal for a directive
Article 2 – point c

(c) ‘Passenger Name Record’ or 'PNR data' means a record of each passenger’s travel requirements which contains information necessary to enable reservations to be processed and controlled by the booking and participating air carriers for each
journey booked by or on behalf of any person, whether it is contained in reservation systems, Departure Control Systems (DCS) or equivalent systems providing the same functionalities;

non-carrier economic operators when the air carriers have not done the booking themselves, 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;

Or. en

Amendment 14
Proposal for a directive
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 for the handling of reservations;

Amendment

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

Or. en

Amendment 15
Proposal for a directive
Article 4 – paragraph 1

Text proposed by the Commission

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

Amendment

1. The PNR data transferred by the air carriers and non-carrier economic operators, 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 and non-carrier economic
Unit shall delete such data immediately upon receipt. **operators** include data beyond those listed in the Annex, the Passenger Information Unit shall delete such data immediately upon receipt.

**Amendment 16**

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

*(Text proposed by the Commission)*

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

*(Amendment)*

(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, **including individuals who may be travelling for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts, or the providing or receiving of terrorist training**, and who require further examination by the competent authorities referred to in Article 5. In carrying out such an assessment, the Passenger Information Unit may process PNR data against pre-determined criteria. Member States shall ensure that any positive match resulting from such automated processing is individually reviewed by non-automated means in order to verify whether the competent authority referred to in Article 5 needs to take action;

Or. en
Amendment 17
Proposal for a directive
Article 4 – paragraph 2 – point b

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

Amendment

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

Or. en

Amendment 18
Proposal for a directive
Article 6 – title
Amendment 19

Proposal for a directive
Article 6 – paragraph 1

Text proposed by the Commission

1. Member States shall adopt the necessary measures to ensure that air carriers transfer ('push') the PNR data as defined in Article 2(c) and specified in the Annex, to the database of the national Passenger Information Unit of the Member State on the territory of which the international flight will land or from the territory of which the flight will depart. Where the flight is code-shared between one or more air carriers, the obligation to transfer the PNR data of all passengers on the flight shall be on the air carrier that operates the flight. Where the flight has one or more stop-overs at the airports of the Member States, air carriers shall transfer the PNR data to the Passenger Information Units of all the Member States concerned.

Amendment

1. Member States shall adopt the necessary measures to ensure that air carriers and non-carrier economic operators transfer ('push') the PNR data as defined in Article 2(c) and specified in the Annex, to the database of the national Passenger Information Unit of the Member State on the territory of which the international flight will land or from the territory of which the flight will depart. Where the flight is code-shared between one or more air carriers, the obligation to transfer the PNR data of all passengers on the flight shall be on the air carrier that operates the flight. Where the flight has one or more stop-overs at the airports of the Member States, air carriers shall transfer the PNR data to the Passenger Information Units of all the Member States concerned.

Or. en
Amendment 20

Proposal for a directive
Article 6 – paragraph 1 a (new)

Text proposed by the Commission

1a. In cases where the air carriers and non-carrier economic operators have collected any advance passenger information (API) data listed under item (18) of Annex 1 to this Directive but do not retain those data as part of the PNR data, Member States shall adopt the necessary measures to ensure that air carriers and non-carrier economic operators also transfer ('push') those data to the Passenger Information Unit of the Member State referred to in paragraph 1. In the event of such a transfer, all the provisions of this Directive shall apply in relation to those API data as if they were part of the PNR data.

Or. en

Amendment 21

Proposal for a directive
Article 6 – paragraph 2 – introductory part

Text proposed by the Commission

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

Or. en
Amendment 22
Proposal for a directive
Article 6 – paragraph 3

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 23
Proposal for a directive
Article 6 – paragraph 4

Text proposed by the Commission

4. On a case-by-case basis, upon request from a Passenger Information Unit in accordance with national law, air carriers shall transfer PNR data where access earlier than that mentioned in point (a) of paragraph 2 is necessary to assist in responding to a specific and actual threat related to terrorist offences or serious crime.

Amendment

4. On a case-by-case basis, upon request from a Passenger Information Unit in accordance with national law, air carriers and non-carrier economic operators shall transfer PNR data where access earlier than that mentioned in point (a) of paragraph 2 is necessary to assist in responding to a specific and actual threat related to terrorist offences or serious crime.

Or. en

Amendment 24
Proposal for a directive
Article 8 – introductory part
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:

In view of the importance of coherence between the internal and the external aspects of security, and in order to improve international cooperation, a Member State may transfer PNR data and the results of the processing of PNR data to a third country, only on a case-by-case basis and if:

Amendment 25
Proposal for a directive
Article 9 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 26
Proposal for a directive
Article 9 – paragraph 2 - subparagraph 1

Text proposed by the Commission

2. Upon expiry of the period of 30 days

Amendment

2. Upon expiry of the period of six months
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 or to authorised Passenger Information Unit personnel 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.

**Amendment 27**

Proposal for a directive
Article 10 – title

*Text proposed by the Commission*

Penalties against air carriers

*Amendment*

Penalties against air carriers and non-carrier economic operators

**Amendment 28**

Proposal for a directive
Article 10 – paragraph 1
Member States shall ensure, in conformity with their national law, that dissuasive, effective and proportionate penalties, including financial penalties, are provided for against air carriers 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.

Proposal for a directive
Article 11 – paragraph 4

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.
underlying data are deleted.

Amendment 30
Proposal for a directive
Article 13 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 31
Proposal for a directive
Article 13 – paragraph 2

Text proposed by the Commission

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

Amendment

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

in a supported data format to ensure their readability by all parties involved. All air carriers and non-carrier economic operators shall be required to select and identify to the Passenger Information Unit the common protocol and data format that they intend to use for their transfers.

Amendment 32
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 the statistical information gathered pursuant to Article 18.

Amendment 33
Proposal for a directive
Annex – title

Text proposed by the Commission
Passenger Name Record data as far as

Amendment
Passenger Name Record data as far as
collected by air carriers and non-carrier economic operators