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NOTE

From: The Netherlands delegation
To: Working Party on Information Exchange and Data Protection (DAPIX)
Subject: Directive (EU) 2016/681 on the use of Passenger Name Record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime
- State of affairs regarding the implementation of the PNR Directive and setting up of the passenger information units: Informal Working Group on PNR

Delegations will find annexed a document on the "State of affairs regarding the implementation of the PNR Directive and setting up of the passenger information units: Informal Working Group on PNR" prepared by Informal Working Group on PNR (IWG-PNR).

1. After the publication of the PNR Directive on 4 May 2016¹, Member States started discussions on the coordination of its implementation in the Council of the European Union and with the European Commission. The PNR Directive is considered as one of the most important new instruments in the identification, detection and countering of criminals, terrorists and their travel movements.
2. The PNR Directive obliges Member States to collect and process passenger information from air carriers that the carriers are already collecting for their business purposes. It puts the exclusive task for the collection, processing and analysis with a Passenger Information Unit (PIU). This PIU will also be tasked exclusively with the exchange of PNR data or the result of their processing with national competent authorities, other Member States' PIUs, or with Europol and with third countries.
3. The responsibility for a harmonised and sound implementation of the PNR Directive lies with the Member States and the Commission. The implementation covers all relevant elements such as the legal interpretation, connectivity to carriers (including adoption of common data formats and transmission protocols), and information exchange between the PIUs, between the PIUs and Europol, and between PIUs and third countries. All Member States join the Commission in regular implementation meetings which are attended by the authorities responsible for the implementation of the PNR Directive and the establishment of PIUs within the Member States.

¹ Directive (EU) 2016/681/EU of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime, *Official Journal of the European Union*, L 119/132, 4 May 2016

Building on strong cooperation over the course of several years - both within the context of the negotiations on the PNR Directive and within the ISEC 2013 funded PNR projects in 14 Member States – the Member States decided to continue their cooperation for the establishment of the PIUs and the implementation of the PNR Directive. Considering that the PNR Directive entrusts the PIU's exclusively with the collection and processing of PNR, that PIUs play an important role in the investigation and prevention on terrorism and serious crime in cooperation with other services, and that fostering the widest possible cooperation and exchange of information between PIUs must be based on mutual trust, reciprocity and common agreement, it was decided this all should be done in a dedicated informal working group and in close cooperation with the European Commission.

4. The responsibility of Member States for the implementation of the PNR Directive, and the setting up of the Informal Working Group on PNR (IWG-PNR)² was specifically included in the EU Roadmap on information exchange and information management³, which was endorsed by the Council(JHA) on 10 June 2016.
5. The IWG PNR had its first official meeting on 14 September 2016 in Budapest. All Member States now take part in the IWG-PNR. Alongside the Member States, the European Commission, Europol, Frontex and the EU CTC are members of the IWG-PNR. Third countries, such as the United States of America and Australia have an observer status. At its first meeting, the IWG-PNR agreed on its 'Rules of Procedure' (annex to this note) and its subgroups. The secretariat for the working group lies with Europol, the role of chair is currently fulfilled by the Netherlands. The progress of the Member States with the implementation and the setting up of the PIUs is discussed in the Commission meetings and the IWG-PNR meetings. As agreed in the Roadmap, the IWG-PNR will report on its progress to COSI in view of its central monitoring role for the implementation of the Roadmap.

² The responsible author of this note is the Informal Working Group on PNR (IWG-PNR) which addressed the note to DAPIX.

³ 9368/1/16 REV 1, Roadmap to enhance information exchange and information management including interoperability solutions in the Justice and Home Affairs area

6. The IWG-PNR and the Commission will continue this partnership to ensure a level playing field is achieved and Member States are up and running as quickly as possible. To that end, Member States are sharing their technical solutions, project support and expertise, and providing project support. The Commission in its first progress report on the Security Union⁴, has proposed to the budgetary authorities to provide an additional amount of EUR 70 million of funding for the period 2017-2020 to further support the Member States in setting up their PIUs. In addition, the Commission will provide EUR 3.8 million to facilitate the exchange of PNR data between Member States and Europol.
7. The relevant cooperation with all other relevant Council working groups, such as DAPIX or SIS/SIRENE, will be discussed within the IWG-PNR as well. Information will be provided to Council working groups when relevant or requested. For example, DAPIX discusses and advises on a great variety of issues related to police information exchange and data protection in the area of law enforcement, including IMS projects.
8. On 1 December 2016, DAPIX will receive a presentation from the chair of the IWG-PNR. The European Commission, given its responsibility for the implementation of the PNR Directive, will provide updates as well. For example, as stated in its first progress report on the Security Union, the Commission's implementing rules on data formats and transmission protocols for the transfer of PNR data are expected before the end of this year.
9. The Member States are taking full responsibility for this important task at all levels. Through the IWG-PNR, multilateral and bilateral means, they are fully supportive of their respective national processes to ensure that the PIUs will be up and running as soon as possible and a common approach to the implementation of the Directive is defined.

⁴ COM(2016) 670 final

Informal working group on PNR

Rules of Procedure

These rules of procedure are not legally binding, though for the purpose of strengthening security through consistency in the functioning of PIUs, members commit to the following considerations:

- the importance and specific role PIUs have in the investigation and prevention on terrorism and serious crime, both individually and in cooperation
- cooperation between and among PIUs across national borders both increases the effectiveness of individual PIUs and contributes to the success of the fight against terrorism and serious crime
- that effective international co-operation between and among PIUs must be based on a foundation of mutual trust and clear expectations
- the need for the development of a network and practice of information exchange between PIUs on the basis of commonly agreed principles

Introduction

With its adoption in April 2016 and its entry into force in May, the national implementation process for the directive regulating the use of Passenger Name Record (PNR) data in the EU for the prevention, detection, investigation and prosecution of terrorist offences and serious crime, has begun. To ensure compatible implementation of the PNR-directive in the Member States, the initiation of an operational working group, was included in the ‘Roadmap to enhance information exchange and information management including interoperability solutions in the Justice and Home Affairs area’. This Roadmap and all of the actions were endorsed by the Justice and Home Affairs (JHA) Council of June 9-10 2016.

Member States are expected to have implemented the PNR directive before May 25 2018. The functioning of the PNR working group will be evaluated before May 25 2018 with a view to the continued work of the working group and the PIUs.

Goal

The goal of the PNR working group is to provide a forum for PIUs to support implementation of the PNR directive and coherence between them. The working group will foster the widest possible cooperation, and exchange of information between PIUs on the basis of reciprocity or mutual agreement and following commonly agreed principles and rules. The ambition is to share a common language, best practices and support each other. The working group has an informal structure in which we strive for common agreement. The working group furthermore lays the foundation for a PIU network which provides for essential co-operation between PIUs.

Members of the PNR working group will share knowledge and expertise to stimulate consistent implementation, including where possible the development of training opportunities regional/operational workshops, and personnel exchanges. Special attention will be given to existing related initiatives as to avoid overlap. The Commission oversees and facilitates the implementation of the directive and treats legal and general issues whereas the working group has a more practical and operational focus. Preparation of related formal expert groups and working groups can be a subject treated by the PNR working group. Belgium treats the subject 'interpretation of the directive' and is the first contact point for the Commission supporting the coordination between the Commission and the subgroups.

Structure

The working group consists of a committee, chair, secretariat and sub-groups.

The committee – general

The committee represents all members. Representatives are project leaders or other officials designated to setting up or running a PIU in their Member State. The committee meets twice a year or more often when needed and the content for these meetings are prepared for by several sub-groups.

The committee – roles and functions

- 1) To request, refer or delegate (urgent) issues to be treated by the sub-groups.
- 2) To determine the operating procedures of the sub-groups.
- 3) To assess and decide upon proposals submitted by the sub-groups and make additional proposals.
- 4) To examine ways to illustrate and enhance efficiency and monitor progress of the working group activities.

The chair – general

The chair rotates annually between MS. The chair thus chairs (a minimum of) two working group meetings each turn.

The chair - Roles and functions

- 1) To chair the PNR working group .
- 2) To set any additional or intersessional meetings when necessary and invite international partners (observers or experts) to meetings.
- 3) To ensure members are informed in a timely way of key developments affecting the working group.

Secretariat – roles and functions

- 1) Provide planning services.
- 2) Provide administrative services to support meetings.

Sub-groups – general

Members may participate or lead the sub-groups that meet periodically. The sub-groups develop annual action plans on key issues identified by the committee. The action plans outline the projects, products and activities of the sub-groups. Sub-groups co-ordinate their action plans with each other and the chair. In order to accomplish the goal of development, cooperation, and sharing the following sub-groups (not limited to) shape the working group's content:

- I. Carrier connection working group
- II. Operational working group
- III. Interoperability working group (between PIUs and between PIUs and third countries)

Sub-groups – roles and functions

- 1) To gather experiences and good practices of the implementation process.
- 2) To make action plans that outline the projects, products and activities.
- 3) To present outcomes of their work to the committee.
- 4) To coordinate the preparation of the meetings with the PNR working group chair and chairs of other sub-groups.
- 5) Make proposals to the committee for new products and activities.

Funding

All activities will be self funded but to avoid disproportionate travel expenses meetings will be hosted in coordination with already planned meetings if possible.