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NOTE

From:	Presidency
To:	Working Party on Information Exchange and Data Protection (DAPIX)
Subject:	Implementation of Directive (EU) 2016/681 on the use of PNR data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime - discussion note

Background

The collection and processing of PNR data, as well as the effective exchange of this information between the Member States is crucial in the fight against terrorism and other serious crime. Directive (EU) 2016/681 (PNR Directive) of 27 April 2016 on the use of passenger name record (PNR) data establishes at Union level a common legal framework for the transfer and processing of such data.¹

¹ Directive (EU) 2016/681 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, OJ L 119/132, 4.5.2016.

The implementation deadline of the Directive is 25 May 2018. In view of the tight implementation schedule, discussions on implementation issues started immediately after the adoption of the Directive. They took place in formal and informal settings, either within or outside of Council structures, or on initiative of the Commission and pursuant to certain provisions of the Directive. Notably, the Commission is holding regular meetings with Member States to discuss issues related to the implementation of the PNR Directive. Member States have also set up an Informal Working Group on PNR (IWG PNR), to address the implementation of the PNR Directive from a more technical and operational point of view.

Given the variety of initiatives, Member States voiced concerns at the DAPIX meeting of 18 October 2016 about a lack of concertation and widely supported the LT proposal² to assign DAPIX an oversight role in the implementation, aimed at reaching a structured approach. Member States have agreed in COREPER³ that DAPIX serve as a focal point centralising relevant information about the PNR implementation: while the Commission would report on the state of play of the implementation, the Member States were invited to inform the Council which challenges require coordination among Member States.

Subsequently, the Maltese Presidency proposed to fine-tune the role of DAPIX in line with the mandate given by COREPER. On 29 May 2017, DAPIX started to exchange views on specific implementation issues on the basis of presentations by different project leaders. It was suggested that the IWG PNR (Informal Working Group on PNR) deliver a list of well-defined problems to ensure informed discussions at Council level on issues which need policy decisions. Furthermore, several delegations invited the Estonian Presidency to provide a comprehensive overview and monitor the work done in all Council preparatory bodies involved in the PNR implementation, and to ensure an efficient repartition of tasks between Presidency, the Commission and the Council Secretariat.

Supportive coordinating role

Three major strands, on which work is in progress and in relation to which solutions are already offered, can be differentiated: (a) PNR data collection, (b) PNR data processing, and (c) exchange of information between the PIUs.

² 12290/16

³ 13836/1/16 REV 1

As to the monitoring of ongoing work, the Presidency suggests the following:

1. A comprehensive table should be drawn up setting out all existing working groups, their objectives, representatives and results, regularly updated and presented to DAPIX.
2. The implementation of the Directive should be discussed in two different compositions – one legal and one technical. Differentiation of these two strands would enable appropriate and to-the-point discussions during each meeting of national experts. Full complementarity with the work undertaken by the European Commission to assist Member States in the EU PNR implementation will need to be ensured.
3. The role of DAPIX in the oversight of different activities is undeniable. However, it has to be reflected how the composition and working methods of the group allow for a consistent and self-initiative approach if needed. In order to facilitate the work of DAPIX, the Presidency suggests that a single Member State or a group of Member States could be mandated with a supportive coordinating role, which is cost-effective to all sides.

The coordinator could submit an overview to DAPIX on a regular basis, starting with September 2017, so that further strategic guidance could be given by the Member States. This support should be continued throughout the Trio Presidency to ensure a comprehensive oversight until the implementation has been fully carried out.

The aim during the current Presidency would be the mapping of blocking issues at legal and technical level in order to alert the Council in due time. This mapping should provide an overview of main shortcomings in a traffic-light system and thus help to prioritize work in areas where effort is needed most urgently. To establish such an overview, the coordinator would need to rely on high-level contacts in the MSs and a good working relationship with the members of the IWG PNR. Furthermore, recommendations on how to solve the blocking issues should be developed so as to prevent belated adaptation and exuberant costs for uniform information exchange, both at the side of the carriers and the MS.

The Presidency has had preliminary discussions with some Member States to explore their interest and readiness to take the role of such coordinator.

Discussion points

In view of the above, the Presidency would like to discuss the project management suggested above at the DAPIX meeting on 25 July and on 19 September. Delegations are invited to discuss the following:

1. *Do delegations agree that two compositions (legal and technical) should be differentiated and, if yes, how could further work be organised without creating new formal structures?*
 2. *Do delegations agree to the outlined role of a coordinator?*
 3. *How could the reporting mechanism by the coordinator to DAPIX be organised? E.g. are written submissions needed between regular DAPIX meeting?*
 4. *Do Member States agree that a Member State could assume the role of the coordinator to support the Presidency in the efforts on ensuring smooth and timely implementation of the EU PNR Directive?*
 5. *Would Member States have additional ideas on speeding up and streamlining the implementation of the EU PNR Directive?*
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