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NOTE

From:	Presidency
To:	Working Party on Information Exchange and Data Protection (DAPIX)
No. prev. doc.:	14785/4/16 REV 4
Subject:	Directive (EU) 2016/681 on the use of passenger name record (PNR) data - The added value of customs for Passenger Information Units (PIU)

1. The Customs Cooperation Working Party (CCWP) highlighted in 14785/4/16 the added value of an involvement of customs authorities in Passenger Information Units (PIUs), especially in view of the already established best practices regarding passenger related information analysis by customs administrations.

The customs authorities are the leading authorities responsible for controlling the movement of goods, including goods carried by persons, within the Justice and Home Affairs area. In order to be able to supervise and carry out the necessary controls of goods, customs authorities need timely and high quality data on passenger traffic. This enables customs authorities to carry out a risk management¹ of passengers and develop the best possible intelligence picture. Such task could be facilitated by access of customs administrations to the Advance Passenger Information (API) and the Passenger Name Record (PNR) data.

¹ Article 46(4) of the Union Customs Code: the risk management includes activities such as collecting data and information, analysing and assessing risk, prescribing and taking action and regularly monitoring and reviewing that process and its outcomes.

In 14785/4/16, CCWP presented a number of cases where the use of PNR data by customs proved essential for law enforcement. Such data enabled customs authorities to carry out targeted and risk-based control, which led to the detection and identification of previously ‘unknown’ perpetrators. It was reported that PNR data proved crucial for investigations and led to an increase in the number of arrests of perpetrators as well as an increase in seizures of cocaine, heroin, cash and cigarettes.

2. Article 7 of the PNR-Directive requests Member States to ‘adopt a list of competent authorities to request or receive PNR data or the result of processing those data from the PIU in order to examine that information further or to take appropriate action for the purposes of preventing, detecting, investigating and prosecuting terrorist offences or serious crime’.

The customs authorities fulfil the requirements mentioned in Article 7 because, in accordance with EU legislation, they are involved in the prevention, detection and investigation of various offences listed in Annex II of the Directive. Moreover, the legal basis of the PNR Directive is Article 87 TFEU, which states that police cooperation should involve all national competent authorities, including police customs, and other specialised law enforcement services.

3. The Presidency considers it necessary for the customs authorities to be recognised as a competent authority for requesting or receiving PNR data or to receive information from the PIUs. This could also include the involvement of customs authorities in the setting up of the PIUs.

As a designated competent authority, the customs authorities would be able to cooperate with other authorities from within a PIU and contribute directly to its vital work. That cooperation could include:

- Contribute to the design, development and testing of ‘pre-determined criteria’ (Article 6(3)(b) of the Directive);
- Incorporate databases in the electronic comparison processes if appropriate and where legally possible;

- Help with the continuous improvement of criteria and screening processes (for example, by analysing PNR data ‘*for the purpose of updating or creating new criteria to be used in the assessments*’).
4. Provided that the customs representatives are included in the national PIU structures, that is through secondment, they could also:
- Participate in the analysis of results of the electronic processes and the decision-making on which competent authority acts next, and which other Member States should also see the data and results (Article 6(4) of the Directive).
 - Provide the operational data and results where appropriate (and on behalf of the PIU) to national customs or to another Member State's PIU for attention of its customs as per Article 9(1) or Article 9(4).
5. *In view of the above, the Presidency invites Member States to discuss and agree that:*
- *customs authorities are recognised as competent authorities for the purposes of Article 7 of the PNR Directive;*
 - *customs authorities collaborate and cooperate with other authorities through their direct involvement in the PIU*
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