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LIMITE

**COSI 71
DAPIX 124
ENFOCUSTOM 91
ENFOPOL 162
AVIATION 46
GENVAL 37
JAI 299**

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

Directive (EU) 2016/681 (the "PNR Directive") was adopted on 27 April 2016 and entered into force on 24 May 2016. According to Article 18(1), Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with the Directive by 25 May 2018. The transposition and further implementation of the Directive requires Member States to adopt a number of legislative, administrative and technical measures.

The Council, at its meeting of 18 November 2016, decided to deal on a regular basis with the PNR implementation. As a follow-up, COREPER, at its meeting of 23 November, tasked DAPIX to monitor the implementation of the PNR Directive. DAPIX started this work at its meeting on 1 December 2016 and will continue its work in close cooperation with COSI in order to ensure a regular update on the state of play and to define the issues which require a coordinated approach among Member States.

Regarding the implementation process, it is well known that an imbalanced situation has to be faced since several Member States have already dedicated PNR legislation in place or are technically able to collect PNR data but within a different legal framework. Some Member States are still drafting the national PNR legislation or are waiting to submit to Parliament whilst other Member States are waiting for the Parliament to adopt the legislation. With this in mind, an overall horizontal coordination was asked for to avoid fragmentation and to define issues where enhanced cooperation is needed.

The Presidency would DAPIX like to address the following questions:

Question 1: Should DAPIX regularly note the state of play by means of a table at all?

In order to launch a discussion on how to report on the PNR implementation in the most effective way, the Presidency submitted a draft table at the DAPIX meeting on 6 February 2017. The aim of this monitoring table (5174/17) is to make available a reliable overview on the state of play, similar to the one DAPIX established for the implementation of the Prüm Decisions. The draft monitoring table which is modelled on the Commission's indicative PNR implementation plan, sets out six different implementation steps on which Member States should regularly report. Member States were invited to discuss the structure of the table.

Most delegations warned against a duplication of efforts because Member States already inform about the state of play and the specific challenges they have to cope with in the informal meetings organised by the Commission to support the implementation.

However, if the Council formally tasks one of its preparatory groups to report on Member States' implementation efforts and several ongoing initiatives in this regard, Member States cannot expect the Presidency to request the information from the Commission. Sticking as close as possible to the above implementation plan enables the Council to reach the same level playing field and it also avoids confusion and, in the worst case, the idea of an institutional competition.

How do Member States think the submission of information could be done in the most effective way?

Question 2: If there is agreement on a regular reporting, which content should be set out in the table ?

Several delegations sent back the draft table with detailed information whilst others just indicated a "yes" or "no" as to the completion of specific implementation steps. Connected to the content filled in, another remark was that the table should not be public in order to avoid security risks.

Question 3: Should DAPIX address issues going beyond the implementation plan?

In the meantime, a number of specific issues were identified such as the implication of customs in the processing of PNR, the links with SIS information exchange or with the ETIAS proposal.

Should it be the role of DAPIX to draft an inventory of horizontal problems as well?
