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NOTE

From:	Incoming Finnish Presidency
To:	Working Party on Information Exchange and Data Protection (DAPIX)
Subject:	Widening the scope of PNR to other forms of transportation in addition to air traffic – discussion paper

1. INTRODUCTION

Directive (EU) 2016/681 of the European Parliament and of the Council on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime came into force in May 2016 and the deadline for national transposition was 25th of May 2018. PNR data may contain different types of information, such as travel dates, travel itinerary, ticket information, contact details, travel agent through which the flight was booked, means of payment used, seat number and baggage information.

The Directive applies to PNR data on air traffic and does not currently cover other transportation forms. According to the Directive, air carriers are required to transfer the registered data for all passengers on extra-EU flights. However, Member States can decide to apply the same obligation also to intra-EU flights.

Member States are required to establish Passenger Information Units (PIU), which are in charge of the PNR database. PIUs compare PNR data against relevant law enforcement databases and process the data against pre-determined criteria, in order to identify persons that may be involved in a terrorist offence or serious crime. PIUs also disseminate relevant or specific PNR data to national competent authorities, Europol and PIUs of other Member States, either spontaneously or in response to duly reasoned requests.

2. PNR ON OTHER TRAVELLING FORMS

Traffic volumes from both within and outside the Schengen area are increasing. Increasing cross-border travelling entails cross-border crime such as migrant smuggling and irregular migration arrangements, which involves third-country nationals that are smuggled into the EU territories, or narcotic drugs smugglers, terrorists and other criminals. This poses a growing challenge to national law enforcement authorities in combating crime. DAPIX delegations have previously answered to a questionnaire on the PNR Directive, which included a question about gathering PNR data on other transportation forms. The feedback for the questionnaire was mostly positive, although some Member States felt, that it would be too soon to make changes to the PNR Directive. Moreover, in some Member States, the transposition of the PNR Directive into national legislation is still pending.

The Presidency suggests continuing the discussion about widening the scope of the PNR Directive to other forms of transportation than air traffic. These other forms of transportation could be for example sea traffic and international high speed trains. The Presidency aims to explore, whether the Member States expect an added value in broadening the scope of the PNR Directive and including other forms of transportation in the future.

In some Member States, PNR data is already collected from other transportation forms than air traffic. However, the handling and use of PNR data for these transportation forms is not regulated at EU level. The possibility of legally providing for establishing specific entities responsible for the collection, storage and processing of PNR data from also other travelling forms than air traffic should be discussed at DAPIX.

Gathering and analyzing PNR data is important for combating serious cross-border crime. Through handling and analyzing PNR data, law enforcement authorities' actions and resources could be directed more usefully. In Finland, the number of people travelling by sea traffic and air traffic are about the same; approximately 20 million travels are made with both transportation forms to and from Finland. Like air traffic, sea traffic can be used to facilitate illegal entry into the country, human trafficking and to transport for example illegal firearms and drugs.

If the scope of the PNR Directive would be widened, an impact assessment about the other travelling forms would be necessary. Changing the scope of the PNR directive to include other travelling forms would at least in the beginning cause costs for the transportation companies, but in the other hand it would simplify the process, when the companies would have to give the PNR information just once to one authority. Having common obligations and rules among EU Member States would help to clarify the obligations for traffic operators.

3. QUESTIONS FOR FACILITATING THE DISCUSSION

To facilitate the discussion, the Presidency invites delegations to discuss the following questions at the DAPIX meeting of 3rd of July.

1. Which kind of PNR data is collected from other travelling forms than air traffic in Member States?
2. Is PNR the best instrument to collect that data? If not, which other instruments are deemed more useful and why?
3. What would be the benefits of gathering PNR on other travelling forms?
4. What are the possible problems (legal, technical, operational) in widening the scope of the PNR directive?
