



EDRi, Panoptykon Foundation and Access would like to express their serious concerns regarding the lawfulness of the proposed interferences with the fundamental rights to privacy and data protection raised by the proposed Directive on EU Passenger Name Records.

Please find below an analysis of the LIBE draft report proposal introduced by the Rapporteur, Timothy Kirkhope. This analysis goes together with a joint letter signed by XX organisations detailing our concerns and urging the LIBE Committee to reject this proposal.

How to read the analysis?

The left column repeats the Commission proposal; the right column contains the amendments proposed by the Rapporteurs.

Our comments can be found below. For ease of reading, the headings are highlighted and marked with arrows:

- **green "++"**: amendments we welcome;
- **yellow "+"**: amendments pursuing good aims, but could benefit from further suggested improvements;
- **red "-"**: amendments which in our view should be reconsidered;
- **grey**: amendment on which we do not have a position.

In each case, a short justification is given.

For more information, please contact
Diego Naranjo diego.naranjo@edri.org
Estelle Massé estelle@accessnow.org
Jędrzej Niklas jedrzej.niklas@panoptykon.org

Amendment 1
Recital 10 a (new)

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Text proposed by the Commission

Amendment

(10a) The purpose of this Directive is to ensure security and protect the life and safety of the public, and to create a legal framework for the protection and exchange of PNR data between Member States and law enforcement authorities.

Comments: Ever since the proposal was tabled, no evidence has been shown that the PNR system would “ensure security and protect the life and safety of the public”.

Amendment 2
Recital 13 a (new)

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Text proposed by the Commission

Amendment

(13a) Each Member State should be responsible for the costs of running and maintaining its own PNR system, including the costs of appointing and running a competent authority and appointing and running a national supervisory authority. The costs incurred by transferring to national law enforcement agencies and competent authorities PNR data held by passenger airlines in their reservation systems should be borne by the airlines. The general budget of the European Union should provide for the giving by the Commission of administrative and advisory assistance to Member States when they are establishing their PNR systems.

Comments: The establishment of a PNR system will represent significant cost for EU member states while its necessity has not been yet demonstrated. In any case, even in the case of Member States who have already established PNR systems with public funding (see <http://www.statewatch.org/news/2014/oct/pnr-back-door.htm>) the necessity and proportionality of such invasion on the privacy of rights has not been proven.

Amendment 3

Recital 19

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Text proposed by the Commission

Amendment

(19) Taking fully into consideration the right to the protection of personal data and the right to non-discrimination, no decision that produces an adverse legal effect on a person or seriously affects him/her should be taken only by reason of the automated processing of PNR data. Moreover, no such decision should be taken **by reason** of a person's race **or** ethnic origin, religious or philosophical belief, political opinion, trade union membership, health or sexual **life**.

(19) Taking fully into consideration the right to the protection of personal data and the right to non-discrimination **in accordance with Directive 95/46/EC of the European Parliament and of the Council^{1a} and Articles 8 and 21 of the Charter of Fundamental Rights of the European Union**, no decision that produces an adverse legal effect on a person or seriously affects him/her should be taken only by reason of the automated processing of PNR data. Moreover, no such decision should be taken **on grounds** of a person's **sex, race, colour, ethnic or social origin, genetic features, language, religious or philosophical belief, political opinion, trade union membership, membership of a national minority, property, birth, disability, age, health or sexual orientation**.

^{1a} **Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).**

Comments: While this amendment aims at ensuring passengers' right to data protection it also acknowledges the risks that the processing of PNR data would create regarding this right. The mere fact that data from PNR (added to to other data or alone) may point at citizen's nationality, disabilities or religion may lead to discrimination and should not be accepted as part of the collected PNR data. In reality, it will be impossible to prove the influence of sensitive personal data in decisions taken against individuals as a result of PNR profiling.

Amendment 4

Article 1 – paragraph -1 (new)

Text proposed by the Commission

Amendment

-1. This Directive sets out the responsibilities as regards the conditions under which PNR may be transferred, processed, used, and protected.

Amendment 5
Article 1 – paragraph 2

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Text proposed by the Commission

Amendment

2. The PNR data collected in accordance with this Directive may be processed only for the **following** purposes:

2. The PNR data collected in accordance with this Directive may be processed only for the purposes **of** prevention, detection, investigation and prosecution of terrorist offences and serious transnational crime according to Article 4(2).

(a) The prevention, detection, investigation and prosecution of terrorist offences and serious crime according to Article 4(2)(b) and (c); and

(b) The prevention, detection, investigation and prosecution of terrorist offences and serious transnational crime according to Article 4(2)(a) and (d).

Comments: Both the Commission proposal and the amendment proposed by the Rapporteur would establish the systematic mass collection and processing of all passenger data. This means that every passenger will be monitored and put under surveillance. These proposal fails to comply with the principle of purpose limitation as the collection of information is not made on the basis of suspicion. Therefore both the original text and the amendment are not acceptable.

Amendment 6
Article 1 – paragraph 2 a (new)

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Text proposed by the Commission

Amendment

2a. This Directive shall apply to carriers operating passenger flights between the Union and third countries, and passenger flights within the territory of the Union.

Comments: While the sole establishment of a PNR Directive raises serious concerns for the rights to privacy and data protection, extending the scope of the PNR Directive to flights within the territory of the Union would lead to still further infringement of the citizens' freedom of movement, a fundamental freedom of the EU and the main pillar of the Schengen area.

Amendment 7
Article 1 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. This Directive shall also apply to carriers incorporated or storing data in the Union and operating passenger flights to or from third countries, the point of

departure or destination of which is located within the Union.

Amendment 8
Article 2 – point c

Text proposed by the Commission

(c) 'Passenger Name Record' or 'PNR data' means a record of each passenger's travel requirements which contains information necessary to enable reservations to be processed and controlled by the booking and participating air carriers for each journey booked by or on behalf of any person, whether it is contained in reservation systems, Departure Control Systems (DCS) or equivalent systems providing the same functionalities;

Amendment

(c) 'Passenger Name Record' or 'PNR data' means a record of each passenger's travel requirements ***captured and retained electronically by the air carrier in its normal course of business*** which contains information necessary to enable reservations to be processed and controlled by the booking and participating air carriers for each journey booked by or on behalf of any person, whether it is contained in reservation systems, Departure Control Systems (DCS) or equivalent systems providing the same functionalities. ***Passenger data includes data created by air carriers or their authorised agents for each journey booked by or on behalf of any passenger and contained in carriers' reservation systems, DCS, or equivalent systems providing similar functionality. PNR data consists of the data fields set out in the Annex;***

Comments: The wording chosen in the amendment is inaccurate. The amendment proposed by the Rapporteur adds confusion and extends the scope of the data collection. It is unclear what "equivalent systems providing similar functionality" refers to and if this additional data should now be added to PNR records.

Amendment 9
Article 2 – point f a (new)

Text proposed by the Commission

(fa) 'masking out data' means rendering certain data elements of PNR data invaluable to a user, without deleting them;

Comments: This definition is unclear. Who is the "user"? "masking out" data also does not make invaluable and if it did what would be the purpose of retaining it? Furthermore, the fact that masked data can be easily tracked back to identify the traveller makes this amendment irrelevant. As Article 29 Working Party has noted, sensitive data needs to be deleted, not only "masked": http://ec.europa.eu/justice/data-protection/article-29/documentation/other-document/files/2012/20120106_letter_libe_pnr_en.pdf. We assume that "invaluable" is a mistake, as this would make no sense. We are not sure, however, what the rapporteur meant to say.

Amendment 10
Article 2 – point h

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Text proposed by the Commission

Amendment

‘serious crime’ means the offences under national law referred to in Article 2(2) of Council Framework Decision 2002/584/JHA if they are punishable by a custodial sentence or a detention order for a maximum period of at least three years under the national law of a Member State, however, Member States may exclude those minor offences for which, taking into account their respective criminal justice system, the processing of PNR data pursuant to this directive would not be in line with the principle of proportionality;

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(This amendment applies throughout the text. Adopting it will necessitate corresponding changes throughout.)

Comments: This amendment reflects the change from “serious crime” to “serious transnational crime”, removing an unclear term for another which is a bit narrower, which is desirable.

Amendment 11
Article 2 – point I

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Text proposed by the Commission

Amendment

(i) ‘serious transnational crime’ means the offences under national law referred to in Article 2(2) of **Council** Framework Decision 2002/584/JHA if they are punishable by a custodial sentence or a detention order for a maximum period of at least three years under the national law of a Member State, and if:

(i) ‘serious transnational crime’ means the **following** offences under national law referred to in Article 2(2) of Framework Decision 2002/584/JHA:

- **participation in a criminal organisation,**
- **terrorism,**
- **trafficking in human beings,**
- **sexual exploitation of children and child pornography,**
- **illicit trafficking in narcotic drugs and psychotropic substances,**

- *illicit trafficking in weapons, munitions and explosives,*
- *laundering of the proceeds of crime,*
- *counterfeiting currency, including of the euro,*
- *computer-related crime,*
- *murder, grievous bodily injury,*
- *illicit trade in human organs and tissue,*
- *kidnapping, illegal restraint and hostage-taking,*
- *organised or armed robbery,*
- *forgery of means of payment,*
- *illicit trafficking in hormonal substances and other growth promoters,*
- *illicit trafficking in nuclear or radioactive materials,*
- *rape,*
- *arson,*
- *crimes within the jurisdiction of the International Criminal Court,*
- *unlawful seizure of aircraft/ships,*
- *sabotage,*

if they are punishable by a custodial sentence or a detention order for a maximum period of at least three years under the national law of a Member State, and if:

- (i) They are committed in more than one state;
- (ii) They are committed in one state but a substantial part of their preparation, planning, direction or control takes place in another state;
- (iii) They are committed in one state but involve an organised criminal group that engages in criminal activities in more than one state; or
- (iv) They are committed in one state but have substantial effects in another state.

- (i) they are committed in more than one state;
- (ii) they are committed in one state but a substantial part of their preparation, planning, direction or control takes place in another state;
- (iii) they are committed in one state but involve an organised criminal group that engages in criminal activities in more than one state; or
- (iv) they are committed in one state but have substantial effects in another state.

Member States may exclude those minor offences for which, taking into account their respective criminal justice system, the processing of PNR data pursuant to this Directive would not be in line with the principle of proportionality.

Comments: The qualifier at the end of the amendment suggests that some EU countries have punishments for minor offences which would make such activities fall under the scope of the Directive. This seems like a valid concern as sharing music or film online is a “computer-related crime” and has a three-year maximum prison term, in France, for example. This means that trivial offences would, under both the Commission's proposal and the amendment, fall under the Directive, albeit the Member States would have the “option” not to enforce the Directive in a disproportionate way under the proposed amendment.

Amendment 12
Article 3 – paragraph 2

Text proposed by the Commission

Amendment

2. Two or more Member States may establish or designate a single authority to serve as their Passenger Information Unit. Such Passenger Information Unit shall be established in one of the participating Member States and shall be considered the national Passenger Information Unit of all such participating Member States. The participating Member States shall agree on the detailed rules for the operation of the Passenger Information Unit and shall respect the requirements laid down in this Directive.

2. Two or more Member States may establish or designate a single authority to serve as their Passenger Information Unit. Such Passenger Information Unit shall be established in **only** one of the participating Member States and shall be considered the national Passenger Information Unit of all such participating Member States. The participating Member States shall agree **jointly** on the detailed rules for the operation of the Passenger Information Unit and shall respect the requirements laid down in this Directive.

Amendment 13
Article 4 – paragraph 1

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Text proposed by the Commission

Amendment

1. The PNR data transferred by the air carriers, pursuant to Article 6, in relation to international flights which land on or depart from the territory of each Member State shall be collected by the Passenger Information Unit of the relevant Member State. Should the PNR data transferred by air carriers include data beyond those listed in the Annex, the Passenger Information Unit shall delete such data immediately upon receipt.

1. The PNR data transferred by the air carriers, pursuant to Article 6, in relation to international flights which land on or depart from the territory of each Member State shall be collected by the Passenger Information Unit of the relevant Member State. Should the PNR data transferred by air carriers include data beyond those listed in the Annex, the Passenger Information Unit shall delete such data immediately **and permanently** upon receipt.

Comments: We welcome the addition proposed in the amendment.

Amendment 14
Article 4 – paragraph 2 – point a

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Text proposed by the Commission

Amendment

(a) carrying out an assessment of the passengers prior to their scheduled arrival or departure from the Member State in order to identify any persons who may be involved in a terrorist offence or serious transnational crime and who require further examination by the competent authorities referred to in Article 5. In carrying out such an assessment, the Passenger Information Unit may process PNR data against pre-determined criteria. Member States shall ensure that any positive match resulting from such automated processing is individually reviewed by non-automated means in order to verify whether the competent authority referred to in Article 5 needs to take action;

(a) carrying out an assessment of the passengers prior to their scheduled arrival or departure from the Member State in order to identify any persons who may be involved in a terrorist offence or serious transnational crime and who require further examination by the competent authorities referred to in Article 5. In carrying out such an assessment, the Passenger Information Unit may process PNR data against pre-determined criteria ***in accordance with this Directive, and may compare PNR data against relevant databases, including international or national databases or national mirrors of Union databases, where they are established on the basis of Union law, on persons or objects sought or under alert, in accordance with Union, international and national rules applicable to such files.*** Member States shall ensure that any positive match resulting from such automated processing is individually reviewed by non-automated means in order to verify whether the competent authority referred to in Article 5 needs to take action;

Comments: The amendment suggested by the Rapporteur would enable profiling of all passengers through the comparison of their travel data with unspecified “other” “relevant” databases. This creates a serious degree of unpredictability into the Directive, which is therefore it is a violation of individuals' rights to data protection and privacy.

Amendment 15
Article 4 – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) carrying out an assessment of the passengers prior to their scheduled arrival or departure from the Member State in order to identify any persons who may be involved in a terrorist offence or serious crime and who require further examination by the competent authorities referred to in Article 5. In carrying out such an assessment the Passenger Information Unit may compare PNR data against relevant databases, including

deleted

international or national databases or national mirrors of Union databases, where they are established on the basis of Union law, on persons or objects sought or under alert, in accordance with Union, international and national rules applicable to such files. Member States shall ensure that any positive match resulting from such automated processing is individually reviewed by non-automated means in order to verify whether the competent authority referred to in Article 5 needs to take action;

Comments: This proposal from the Commission, leading to the profiling of passengers, was added by the Rapporteur in the previous amendment. Therefore, the proposed deletion of this paragraph does not erase these problematic provisions.

Amendment 16
Article 4 – paragraph 2 – point c

Text proposed by the Commission

Amendment

(c) responding, on a case-by-case basis, to duly reasoned requests from competent authorities to provide PNR data and process PNR data in specific cases for the purpose of prevention, detection, investigation and prosecution of a terrorist offence or serious crime, and to provide the competent authorities with the results of such processing; and

(c) responding, on a case-by-case basis, to duly reasoned requests from competent authorities to provide PNR data and process PNR data in specific cases for the purpose of prevention, detection, investigation and prosecution of a terrorist offence or serious ***transnational*** crime, and to provide the competent authorities with the results of such processing; and

Amendment 17
Article 4 – paragraph 3

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Text proposed by the Commission

Amendment

3. The assessment of the passengers prior to their scheduled arrival or departure from the Member State referred to in point (a) of paragraph 2 shall be carried out in a non-discriminatory manner on the basis of assessment criteria established by its Passenger Information Unit. Member States shall ensure that the assessment criteria are set by the Passenger Information Units, in cooperation with the competent authorities referred to in Article 5. The assessment criteria shall in no circumstances be based on a person's race ***or*** ethnic origin, ***religious*** or ***philosophical***

3. The assessment of the passengers prior to their scheduled arrival or departure from the Member State referred to in point (a) of paragraph 2 shall be carried out in a non-discriminatory manner on the basis of assessment criteria established by its Passenger Information Unit. Member States shall ensure that the assessment criteria are set by the Passenger Information Units, in cooperation with the competent authorities referred to in Article 5. The assessment criteria shall in no circumstances be based on a person's ***sex***, race, ***colour***, ethnic ***or social*** origin,

belief, political opinion, **trade union** membership, **health** or sexual **life**.

genetic features, language, religion or belief, political **or any other** opinion, membership **of a national minority, property, birth, disability, age** or sexual **orientation, as laid down in Article 21 of the Charter of Fundamental Rights of the European Union.**

Comments: While we welcome the intention behind this amendment, it is difficult to understand how individuals' rights laid down in this paragraph would be guaranteed with the proposal enabling profiling tabled earlier in the text. Ultimately, it will be impossible to prove that, for example, racial profiling, was a key part of an assessment. The legislation creates this possibility and has no way of controlling it.

Amendment 18
Article 4 – paragraph 4

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Text proposed by the Commission

Amendment

4. The Passenger Information Unit of a Member State shall transfer the PNR data or the results of the processing of PNR data of the persons identified in accordance with points (a) and (b) of paragraph 2 for further examination to the relevant competent authorities of the same Member State. Such transfers shall only be made on a case-by-case basis.

4. The Passenger Information Unit of a Member State shall transfer the PNR data or the results of the processing of PNR data of the persons identified in accordance with points (a) and (b) of paragraph 2 for further examination to the relevant competent authorities of the same Member State. Such transfers shall only be made on a case-by-case basis **by human action**.

Comments: This amendment improves the proposal from the Commission but the text remains problematic given the risk to the fundamental rights to data protection and privacy. Human action does not ensure actual human consideration, particularly to overturn decisions taken by untransparent algorithms.

Amendment 19
Article 5 – paragraph 1

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Text proposed by the Commission

Amendment

1. Each Member State shall adopt a list of the competent authorities entitled to request or receive PNR data or the result of the processing of PNR data from the Passenger Information Units in order to examine that information further or take appropriate action for the purpose of preventing, detecting, investigating and prosecuting terrorist offences and serious crime.

1. Each Member State shall adopt a list of the competent authorities entitled to request or receive PNR data or the result of the processing of PNR data from the Passenger Information Units in order to examine that information further or take appropriate action for the **specific** purpose of preventing, detecting, investigating and prosecuting terrorist offences and serious **transnational** crime.

Comments: This amendment improves slightly the Commission's proposal.

Amendment 20
Article 5 – paragraph 2

Text proposed by the Commission

Amendment

2. Competent authorities shall consist of authorities competent for the prevention, detection, investigation or prosecution of terrorist offences and serious crime.

2. Competent authorities shall consist of authorities competent for the prevention, detection, investigation or prosecution of terrorist offences and serious **transnational** crime.

Amendment 21
Article 5 – paragraph 4

Text proposed by the Commission

Amendment

4. The PNR data of passengers and the result of the processing of PNR data received by the Passenger Information Unit may be further processed by the competent authorities of the Member States only for the purpose of preventing, detecting, investigating or prosecuting terrorist offences or serious crime.

4. The PNR data of passengers and the result of the processing of PNR data received by the Passenger Information Unit may be further processed by the competent authorities of the Member States only for the **specific** purpose of preventing, detecting, investigating or prosecuting terrorist offences or serious **transnational** crime.

Amendment 22
Article 5 – paragraph 6

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Text proposed by the Commission

Amendment

6. The competent authorities shall not take any decision that produces an adverse legal effect on a person or significantly affects a person only by reason of the automated processing of PNR data. Such decisions shall not be taken on the basis of a person's race **or** ethnic origin, **religious** or **philosophical** belief, political opinion, **trade union** membership, **health** or sexual **life**.

6. The competent authorities shall not take any decision that produces an adverse legal effect on a person or significantly affects a person only by reason of the automated processing of PNR data. Such decisions shall not be taken on the basis of a person's **sex**, race, **colour**, ethnic **or social** origin, **genetic features, language, religion** or belief, political **or any other** opinion, membership **of a national minority, property, birth, disability, age** or sexual **orientation. Such sensitive data shall be permanently deleted not later than 30 days from the last receipt of PNR containing such data by competent authorities.**

Comments: While we welcome the intention behind this amendment, it is difficult to understand how individuals' rights laid down in this paragraph would be guaranteed with the proposal enabling profiling tabled earlier in the text. It is not clear why sensitive data should be stored at all, if it is going to be used.

Amendment 23
Article 6 – paragraph 2 – point a

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Text proposed by the Commission

Amendment

(a) 24 to 48 hours before the scheduled time for flight departure;

(a) **once**, 24 to 48 hours before the scheduled time for flight departure;

Amendment 24
Article 6 – paragraph 2 – point b

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Text proposed by the Commission

Amendment

(b) immediately after flight closure, that is once the passengers have boarded the aircraft in preparation for departure and it is no longer possible for further passengers to board.

(b) **once**, immediately after flight closure, that is once the passengers have boarded the aircraft in preparation for departure and it is no longer possible for further passengers to board.

Amendment 25
Article 7 – paragraph 1

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Text proposed by the Commission

Amendment

1. Member States shall ensure that, with regard to persons identified by a Passenger Information Unit in accordance with Article 4(2)(a) and (b), the result of the processing of PNR data is transmitted by that Passenger Information Unit to the Passenger Information Units of other Member States where the former Passenger Information Unit considers such transfer to be necessary for the prevention, detection, investigation or prosecution of terrorist offences or serious crime. The Passenger Information Units of the receiving Member States shall transmit such PNR data or the result of the processing of PNR data to their relevant competent authorities.

1. Member States shall ensure that, with regard to persons identified by a Passenger Information Unit in accordance with Article 4(2)(a) and (b), the result of the processing of PNR data is transmitted by that Passenger Information Unit to the Passenger Information Units of other Member States where the former Passenger Information Unit considers such transfer to be necessary for the prevention, detection, investigation or prosecution of terrorist offences or serious **transnational** crime. The Passenger Information Units of the receiving Member States shall transmit such PNR data or the result of the processing of PNR data to their relevant competent authorities.

Comments: Narrowing the scope of the directive to terrorist offences and serious transnational crimes is a step to good direction, but also it's not enough and not as significant as it could be.

Amendment 26
Article 7 – paragraph 2

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Text proposed by the Commission

Amendment

2. The Passenger Information Unit of a Member State shall have the right to request, if necessary, the Passenger Information Unit of any other Member

2. The Passenger Information Unit of a Member State shall have the right to request, if necessary, the Passenger Information Unit of any other Member

State to provide it with PNR data that are kept in the latter's database in accordance with Article 9(1), and, if necessary, also the result of the processing of PNR data. The request for such data may be based on any one or a combination of data elements, as deemed necessary by the requesting Passenger Information Unit for a specific case of prevention, detection, investigation or prosecution of terrorist offences or serious crime. Passenger Information Units shall provide the requested data as soon as practicable and shall provide also the result of the processing of PNR data, if it has already been prepared pursuant to Article 4(2)(a) and (b).

State to provide it with PNR data that are kept in the latter's database in accordance with Article 9(1), and, if necessary, also the result of the processing of PNR data. The request for such data may be based on any one or a combination of data elements, as deemed necessary by the requesting Passenger Information Unit for a specific case of prevention, detection, investigation or prosecution of terrorist offences or serious **transnational** crime. Passenger Information Units shall provide the requested data as soon as practicable and shall provide also the result of the processing of PNR data, if it has already been prepared pursuant to Article 4(2)(a) and (b).

Amendment 27
Article 7 – paragraph 3

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Text proposed by the Commission

Amendment

3. The Passenger Information Unit of a Member State shall have the right to request, if necessary, the Passenger Information Unit of any other Member State to provide it with PNR data that are kept in the latter's database in accordance with Article 9(2), and, if necessary, also the result of the processing of PNR data. The Passenger Information Unit may request access to specific PNR data kept by the Passenger Information Unit of another Member State in their full form without the masking out only in exceptional circumstances in response to a specific threat or a specific investigation or prosecution related to terrorist offences or serious crime.

3. The Passenger Information Unit of a Member State shall have the right to request, if necessary, the Passenger Information Unit of any other Member State to provide it with PNR data that are kept in the latter's database in accordance with Article 9(2), and, if necessary, also the result of the processing of PNR data. The Passenger Information Unit may request access to specific PNR data kept by the Passenger Information Unit of another Member State in their full form without the masking out only in **the most** exceptional circumstances in response to a specific **real-time** threat or a specific investigation or prosecution related to terrorist offences or serious **transnational** crime.

Comments: This amendment clarifying, but of no great importance.

Amendment 28
Article 7 – paragraph 4

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Text proposed by the Commission

Amendment

4. Only in those cases where it is necessary for the prevention of an immediate and serious threat to public security may the competent authorities of a Member State request directly the Passenger Information Unit of any other Member State to provide it with PNR data that are kept in the latter's database in accordance with Article 9(1) and (2). Such requests shall relate to a specific investigation or prosecution of terrorist offences or serious crime and shall be reasoned. Passenger Information Units shall respond to such requests as a matter of priority. In all other cases the competent authorities shall channel their requests through the Passenger Information Unit of their own Member State.

4. Only in those cases where it is **strictly** necessary for the prevention of an immediate and serious threat to public security may the competent authorities of a Member State request directly the Passenger Information Unit of any other Member State to provide it with PNR data that are kept in the latter's database in accordance with Article 9(1) and (2). Such requests shall relate to a specific investigation or prosecution of terrorist offences or serious **transnational** crime and shall be reasoned. Passenger Information Units shall respond to such requests as a matter of priority. In all other cases the competent authorities shall channel their requests through the Passenger Information Unit of their own Member State.

Comments: This amendment provides some clarification, but of no great importance.

Amendment 29
Article 7 – paragraph 5

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Text proposed by the Commission

Amendment

5. Exceptionally, where early access is necessary to respond to a specific and actual threat related to terrorist offences or serious crime, the Passenger Information Unit of a Member State shall have the right to request the Passenger Information Unit of another Member State to provide it with PNR data of flights landing in or departing from the latter's territory at any time.

5. Exceptionally, where early access is necessary to respond to a specific and actual threat related to terrorist offences or serious **transnational** crime, the Passenger Information Unit of a Member State shall have the right to request the Passenger Information Unit of another Member State to provide it with PNR data of flights landing in or departing from the latter's territory at any time.

Amendment 30
Article 7 – paragraph 6 a (new)

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Text proposed by the Commission

Amendment

6a. Member States may share PNR only pursuant to a careful assessment of the following safeguards:

(a) such sharing must take place only in accordance with Article 4;

(b) such sharing must only take place with domestic government authorities when acting in furtherance of the uses outlined in Article 4;

(c) receiving authorities must afford to PNR equivalent safeguards as set out in this Directive; and

(d) PNR must be shared only in support of those cases under examination or investigation and pursuant to written understandings and Union and national law on the exchange of information between domestic government authorities.

Comments: Amendment is clarifying the sharing of PNR data procedure, but the proposed safeguards are not sufficient.

Amendment 31
Article 7 – paragraph 6 b (new)

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Text proposed by the Commission

Amendment

6b. When analytical information obtained from PNR is being transferred pursuant to this Directive, the safeguards provided for in paragraph 1 shall be respected.

Comments: Amendment is clarifying the sharing of PNR data procedure, but the proposed safeguards are not sufficient.

Amendment 32
Article 7 – paragraph 6 c (new)

Text proposed by the Commission

Amendment

6c. Member States shall advise each other regarding the enactment of any legislation that materially affects the implementation of this Directive.

Amendment 33
Article 8

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Text proposed by the Commission

Amendment

A Member State may transfer PNR data and the results of the processing of PNR data to a third country, only on a case-by-case basis and if:

(a) the ***conditions laid down in Article 13 of Council Framework Decision***

1. A Member State may transfer PNR data and the results of the processing of PNR data to a third country, only on a case-by-case basis and if:

(a) the ***transfer is necessary for the prevention, investigation, detection or***

2008/977/JHA are fulfilled,

(b) the transfer is necessary for the purposes of this Directive specified in Article 1(2), and

(c) the third country agrees to transfer the data to another third country only where it is necessary for the purposes of this Directive specified in Article 1(2) and only with the express authorisation of the Member State.

prosecution of criminal offences or the execution of criminal penalties;

(aa) the receiving authority in the third country or receiving international body is responsible for the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties;

(ab) the Member State from which the data were obtained has given its consent to transfer in compliance with its national law;

(ac) the third country or international body concerned ensures an adequate level of protection for the intended data processing;

(b) the transfer is necessary for the purposes of this Directive specified in Article 1(2); and

(c) the third country **receiving the data** agrees to transfer the data to another third country only where it is necessary for the purposes of this Directive specified in Article 1(2) and only with the express authorisation of the Member State.

1a. Transfer of PNR data without prior consent in accordance with point (ab) of paragraph 1 shall be permitted only if such transfer is essential for the prevention of an immediate and serious threat to public security of a Member State or a third country or to essential interests of a Member State and the prior consent cannot be obtained in good time. The authority responsible for giving consent shall be informed without delay.

1b. By way of derogation from point (ac) of paragraph 1, personal data may be transferred if:

(a) the national law of the Member State transferring the data so provides because of:

(i) the legitimate specific interests of the data subject; or

(ii) legitimate prevailing interests, in particular important public interests; or

(b) the third country or receiving international body provides safeguards which are deemed adequate by the Member State concerned according to its

national law.

1c. The adequacy of the level of protection referred to in point (ac) of paragraph 1 shall be assessed in the light of all the circumstances surrounding a data transfer operation or a set of data transfer operations. Particular consideration shall be given to the nature of the data, the purpose and duration of the proposed processing operation or operations, the Member State transferring the data and the country or international body of final destination of the data, the rules of law, both general and sectoral, in force in the third country or international body in question and the professional rules and security measures which apply.

1d. Member States shall transfer PNR to competent government authorities of third countries only under terms consistent with this Directive and only upon ascertaining that the use that the recipient intends to make of the PNR is consistent with those terms.

1e. Save in emergency circumstances, any such transfer of data from one third country to another shall take place pursuant to an express understanding incorporating data privacy protections comparable to those applied to PNR by Member States as provided for in this Directive.

1f. Where a Member State is aware that PNR data relating to a citizen or a resident of a Member State are being transferred to a third country, the competent authorities of the Member State concerned shall be informed of the matter at the earliest appropriate opportunity.

1g. When PNR data is being transferred to a third country pursuant to this Directive, the safeguards set out in paragraphs 1 to 1c shall be complied with.

Comments: This amendment is setting up more precise principles for transferring PNR data to third countries. This is a step in good direction although provisions regarding possible derogations pose a great threat to the consistency of a whole procedure.

Amendment 34
Article 9 – paragraph 2

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Text proposed by the Commission

Amendment

2. Upon expiry of the period of 30 days after the transfer of the PNR data to the Passenger Information Unit referred to in paragraph 1, the data shall be retained at the Passenger Information Unit for a further period of five years. During this period, all data elements which could serve to identify the passenger to whom PNR data relate shall be masked out. Such **anonymised** PNR data shall be accessible only to a limited number of personnel of the Passenger Information Unit specifically authorised to carry out analysis of PNR data and develop assessment criteria according to Article 4(2)(d). Access to the full PNR data shall be permitted only by the Head of the Passenger Information Unit for the purposes of Article 4(2)(c) and where it could be reasonably believed that it is necessary to carry out an investigation and in response to a specific and actual threat or risk or a specific investigation or prosecution.

2. Upon expiry of the period of 30 days after the transfer of the PNR data to the Passenger Information Unit referred to in paragraph 1, the data shall be retained at the Passenger Information Unit for a further period of five years. During this period, all data elements which could serve to identify the passenger to whom PNR data relate shall be masked out. Such **masked out** PNR data shall be accessible only to a limited number of personnel of the Passenger Information Unit specifically authorised to carry out analysis of PNR data and develop assessment criteria according to Article 4(2)(d). Access to the full PNR data shall be permitted only by the Head of the Passenger Information Unit for the purposes of Article 4(2)(c) and where it could be reasonably believed that it is necessary to carry out an investigation and in response to a specific and actual threat or risk or a specific investigation or prosecution. **Such access to the full data shall be allowed for a period of four years after the data has been masked out in cases concerning serious transnational crime and for the entire period of five years in cases concerning terrorist offences.**

Comments: Shortening the full-access period to 4 years is merely a cosmetic change. Furthermore, the change of anonymised data to masked out waters down the protections put in place in the original text, since masked out data can be used to trace back the individual. If PNR data retention were actually useful, this amendment would mean that data of between four and five years of age *could* be used for fighting serious crime and, as a result of this amendment, would not be used.

Amendment 35
Article 9 – paragraph 3

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Text proposed by the Commission

Amendment

3. Member States shall ensure that the PNR data are deleted upon expiry of the period specified in paragraph 2. This obligation shall be without prejudice to cases where specific PNR data have been transferred to a competent authority and are used in the

3. Member States shall ensure that the PNR data are **permanently** deleted upon expiry of the period specified in paragraph 2. This obligation shall be without prejudice to cases where specific PNR data have been transferred to a competent authority and

context of specific criminal investigations or prosecutions, in which case the retention of such data by the competent authority shall be regulated by the national law of the Member State.

are used in the context of specific criminal investigations or prosecutions, in which case the retention of such data by the competent authority shall be regulated by the national law of the Member State.

Amendment 36

Article 10

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Text proposed by the Commission

Member States shall ensure, in conformity with their national law, that dissuasive, effective and proportionate penalties, including financial penalties, are provided for against air carriers which, do not transmit the data required under this Directive, to the extent that they are already collected by the them, or do not do so in the required format or otherwise infringe the national provisions adopted pursuant to this Directive.

Amendment

Member States shall ensure, in conformity with their national law, that dissuasive, effective and proportionate penalties, including financial penalties, are provided for against air carriers which do not transmit the data required under this Directive, to the extent that they are already collected by them, or do not do so in the required format, ***or do not handle and process the data in accordance with the data protection rules laid down in this Directive and in Directive 95/46/EC***, or otherwise infringe the national provisions adopted pursuant to this Directive.

Amendment 37

Article 10 a (new)

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Text proposed by the Commission

Amendment

Article 10a

Protection of personal data

1. Each Member State shall provide that, in respect of all processing of personal data pursuant to this Directive, every passenger shall have the same right to access, right to rectification, erasure and blocking, right to compensation and right to judicial redress as those provided for under national law in implementation of Articles 17, 18, 19 and 20 of Framework Decision 2008/977/JHA. Those Articles shall therefore be applicable.

2. In the event of a privacy incident or breach (including unauthorised access or disclosure), national supervisory authorities shall take the necessary measures to notify affected individuals as

appropriate, to limit the risk of harm resulting from unauthorised disclosure of personal data and information, and to put in place such remedial measures as are technically practicable.

3. Within the scope of this Directive, the national supervisory authority shall without undue delay inform the relevant Member State authorities about significant privacy incidents and breaches involving PNR data relating to Union citizens or residents resulting from accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, or any unlawful forms of processing or use.

4. The national supervisory authorities of Member States shall confirm that effective administrative, civil, and criminal enforcement measures are available under Member State law for privacy incidents by the airlines, and shall make available information concerning such measures. Member States may also take disciplinary action against persons responsible for any such privacy incident or breach, as appropriate, such action to include denial of system access, formal reprimands, suspension, demotion, or removal from duty.

5. All data shall be held in a secure location, in a secure database, on a security accredited computer system, that either meets or exceeds international industrial standards.

6. PNR data must be monitored, sampled and audited in line with a statutory code of practice which must be developed by each Member State's supervisory authority, ensuring tight controls of the work of operators and the practical implementation of this Directive, and will form part of each Member State's review process.

7. Each Member State and each national authority shall appoint a data protection supervisory officer in order to ensure compliance with existing national and Union data protection law and fundamental rights; that person shall be trained and qualified to a high standard in data protection law.

Comments: While we welcome the objective of this amendment, this provision does not establish enough safeguards to ensure the protection of individuals' fundamental rights as the proposed Directive enable the mass collection, retention and profiling of personal data.

Amendment 38
Article 11 – title

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Text proposed by the Commission

Amendment

Protection of personal data

Data security

Amendment 39
Article 11 – paragraph 3

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Text proposed by the Commission

Amendment

3. Any processing of PNR data revealing a person's race **or** ethnic origin, **religious** or **philosophical** belief, political opinion, **trade union** membership, **health** or sexual **life** shall be prohibited. In the event that PNR data revealing such information are received by the Passenger Information Unit they shall be deleted immediately.

3. Any processing of PNR data revealing a person's **sex**, race, **colour**, ethnic **or social** origin, **genetic features, language, religion** or belief, political **or any other** opinion, membership **of a national minority, property, birth, disability, age** or sexual **orientation** shall be prohibited. In the event that PNR data revealing such information are received by the Passenger Information Unit they shall be deleted immediately. **Access to, as well as processing and use of, sensitive data shall be permitted in only the most exceptional circumstances where the life of an individual could be imperilled or seriously impaired. Such data must be exclusively accessed using restrictive processes on a case-by-case real-time basis with the approval of a senior manager of the competent authority concerned.**

Comments: This amendment expands the scope of sensitive data, the processing of which is generally prohibited. Unfortunately it also allows to use sensitive data in specific situations, which may be dangerous for data subject.

Amendment 40
Article 11 – paragraph 4

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Text proposed by the Commission

Amendment

4. All processing of PNR data by air carriers, all transfers of PNR data by Passenger Information Units and all

4. All processing of PNR data by air carriers, all transfers of PNR data by Passenger Information Units and all

requests by competent authorities or Passenger Information Units of other Member States and third countries, even if refused, shall be logged or documented by the Passenger Information Unit and the competent authorities for the purposes of verification of the lawfulness of the data processing, self-monitoring and ensuring proper data integrity and security of data processing, in particular by the national data protection supervisory authorities. These logs shall be kept for a period of five years unless the underlying data have not yet been deleted in accordance with Article 9(3) at the expiry of those five years, in which case the logs shall be kept until the underlying data are deleted.

requests by competent authorities or Passenger Information Units of other Member States and third countries, even if refused, shall be logged or documented by the Passenger Information Unit and the competent authorities for the purposes of verification of the lawfulness of the data processing, self-monitoring and ensuring proper data integrity and security of data processing, in particular by the national data protection supervisory authorities. These logs shall be kept for a period of five years unless the underlying data have not yet been deleted in accordance with Article 9(3) at the expiry of those five years, in which case the logs shall be kept until the underlying data are deleted. ***Those persons who operate security controls, who access and analyse the PNR data, and who operate the data logs, must be security cleared and security trained. Each such person shall have a profile which defines and limits what he or she is authorised to see according to the nature of his or her work, role, and legal entitlement.***

Amendment 41
Article 11 – paragraph 7

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Text proposed by the Commission

Amendment

7. Without prejudice to Article 10, Member States shall adopt suitable measures to ensure the full implementation of the provisions of this Directive and shall in particular lay down effective, proportionate and dissuasive penalties to be imposed in case of infringements of the provisions adopted pursuant to this Directive.

7. Without prejudice to Article 10, Member States shall adopt suitable measures to ensure the full implementation of ***all*** the provisions of this Directive and shall in particular lay down effective, proportionate and dissuasive penalties to be imposed in case of infringements of the provisions adopted pursuant to this Directive.

Amendment 42
Article 11 – paragraph 7 a (new)

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Text proposed by the Commission

Amendment

7a. National supervisory authorities may take disciplinary action against persons responsible for any such privacy incident or breach, as appropriate, to include denial of system access, formal reprimands, suspension, demotion, or removal from duty.

Amendment 43

Article 12

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Text proposed by the Commission

Each Member State shall provide that the national supervisory authority established in implementation of Article 25 of Framework Decision 2008/977/JHA shall also be responsible for advising on and monitoring the application within its territory of the provisions adopted by the Member States pursuant to the present Directive. The further provisions of Article 25 Framework Decision 2008/977/JHA shall be applicable.

Amendment

1. Each Member State shall provide that the national supervisory authority established in implementation of Article 25 of Framework Decision 2008/977/JHA shall also be responsible for advising on and monitoring the application within its territory of the provisions adopted by the Member States pursuant to the present Directive. The further provisions of Article 25 Framework Decision 2008/977/JHA shall be applicable.

1a. *Compliance with the privacy safeguards contained in this Directive shall be subject to independent review and oversight by national supervisory authority officers who:*

(a) *have a proven record of autonomy;*

(b) *exercise effective powers of oversight, investigation, intervention, and review; and*

(c) *have the power to refer infringements of law related to this Directive for prosecution or disciplinary action, when appropriate.*

The national supervisory authority officers shall, in particular, ensure that complaints relating to non-compliance with this Directive are received, investigated, responded to and appropriately redressed. Those complaints may be brought by any individual, regardless of nationality, country of origin, or place of residence.

1b. *In particular, national supervisory authorities shall provide all individuals with an administrative means to resolve travel-related inquiries including those related to the use of PNR data. National supervisory authorities shall provide a redress process for individuals who believe they have been delayed or prohibited from boarding a commercial aircraft because they were wrongly identified as a threat.*

Amendment 44
Article 12 a (new)

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Text proposed by the Commission

Amendment

Article 12a

Independent review

In addition, application of this Directive shall be subject to independent review, evaluation and oversight by one or more of the following entities:

(a) the European Parliament;

(b) the Commission;

(c) the Committee referred to in Article 14 of this Directive.

Such oversight may be manifested in the findings and recommendations of public reports, public hearings, codes of practice and analyses.

Amendment 45
Article 15 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive at the latest ***two years*** after the entry into force of this Directive. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive at the latest ***three years*** after the entry into force of this Directive. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

Amendment 46
Article 16

Text proposed by the Commission

Amendment

Article 16

deleted

Transitional provisions

Upon the date referred to in Article 15(1), i.e. two years after the entry into force of this Directive, Member States shall ensure that the PNR data of at least 30% of all flights referred to in Article 6(1) are

collected. Until two years after the date referred to in Article 15, Member States shall ensure that the PNR data from at least 60 % of all flights referred to in Article 6(1) are collected. Member States shall ensure that from four years after the date referred to in Article 15, the PNR data from all flights referred to in Article 6(1) are collected.

Amendment 47
Article 17

Text proposed by the Commission

Amendment

On the basis of information provided by the Member States, the Commission shall:

On the basis of information provided by the Member States, the Commission shall undertake a review of the operation of this Directive and submit a report to the European Parliament and the Council within **two years** after the date mentioned in Article 15(1). Such review shall cover all the elements of this Directive, with special attention to compliance with **the** standard of protection of personal data, the length of the data retention period and the quality of the assessments. It shall also contain the statistical information gathered pursuant to Article 18.

(a) review the feasibility and necessity of including internal flights in the scope of this Directive, in the light of the experience gained by those Member States that collect PNR data with regard to internal flights. The Commission shall submit a report to the European Parliament and the Council within two years after the date mentioned in Article 15(1);

(b) undertake a review of the operation of this Directive and submit a report to the European Parliament and the Council within four years after the date mentioned in Article 15(1). Such review shall cover all the elements of this Directive, with special attention to the compliance with standard of protection of personal data, the length of the data retention period and the quality of the assessments. It shall also contain the statistical information gathered pursuant to Article 18.

Comments: The deletion of paragraph “a” undermines the capacity of analysing the necessity

and proportionality of such a measures against the free movement of citizens in the EU. It is also worth remembering that a similar provision was not respected in the Data Retention Directive. The Commission first delayed for 9 months and then failed to produce a report that was adequate to fulfil its obligations.