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From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

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To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

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Subject: COMMISSION STAFF WORKING DOCUMENT Implementation Plan for
Directive (EU) 2016/681 of the European Parliament and of the Council of
27 April on the use of passenger name record (PNR) data for the
prevention, detection, investigation and prosecution of terrorist offences
and serious crime

Delegations will find attached document SWD(2016) 426 final.

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COMMISSION STAFF WORKING DOCUMENT

Implementation Plan for Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime

Implementation Plan¹

1. Title of the document concerned by the Implementation Plan

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 ("The Directive")²

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3. Deliverables and implementation challenges

3.1. Transposition of the Directive

The 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 experience of Member States and third countries that have a functional PNR system in place or are in advanced stages of its finalisation illustrates the challenges, in terms of resources, time and technical complexity, of setting up PNR systems compliant with the Directive. Indeed this process requires fully establishing and equipping the national Passenger Information Units (PIUs), testing the operation of their IT systems and making the necessary adjustments to eventually allow a proper functioning of the system. This is due to the significant challenges and possible unforeseen events that may occur in the implementation process, for instance linked to the timely development of the technical IT solution for processing PNR data that is fully compliant with the requirements set by the Member States.

¹ This Implementation Plan is provided for information purposes only. It does not legally bind the Commission on whether the identified actions will be pursued or on the form in which they will be pursued.

² OJ L 119, p. 132.

3.2. Implementation of the Directive

3.2.1. Purpose of the Directive

The Directive provides that Member States must set-up or designate specific entities (Passenger Information Units) responsible for the collection and storage of PNR data from air carriers and their processing for the purposes of preventing, detecting, investigating and prosecuting terrorist offences and serious crime. The PIUs shall also be responsible for exchanging both PNR data and the result of processing those data with the PIUs of other Member States and with Europol, as well as, under specific conditions, with third countries.

3.2.2. Measures required for the implementation of the Directive

The transposition and further implementation of the Directive therefore requires Member States to adopt a number of legislative, administrative and technical measures.

The most important measures identified by the Commission are:

(a) The national legislation transposing the Directive shall provide for the legal basis for the collection and processing of PNR data and shall include all the data protection safeguards provided for in the Directive and in the horizontal provisions applicable, in particular those of Directive (EU) 2016/680³ ("the Police Directive") which replaces Framework Decision 2008/977/JHA and which will need to be transposed, save exceptional circumstances, by 6 May 2018 i.e. before the deadline for transposition of the EU PNR Directive.

In drawing up their regulatory framework, Member States should consider providing for:

- A clear indication of the databases against which PNR data may be compared within the meaning of Article 6(3)(a);
- The main principles governing the creation, update and operation of the pre-determined criteria against which PNR data are processed within the meaning of Article 6(3)(b) and (4).

(b) Member States need to identify and designate the national authority or authorities that will host the PIU and how the latter will be incorporated in their administrative structure.

(c) The PIU needs to be equipped with adequate technical infrastructure allowing for the storage, processing and analysis of PNR data in accordance with the terms of the Directive.

(d) The PIU needs to be properly staffed and the PIU personnel must receive adequate training in order to be able to perform its duties of effectively analysing PNR data for law enforcement purposes.

³ OJ L 119, p. 89.

(e) Member States must identify and designate the competent authorities entitled to request and receive PNR data or the result of processing those data from the PIU.

(f) Air carriers must be informed of the technical specifications concerning the transfer of PNR data and the necessary tests must be conducted to ensure their connectivity with the technical infrastructure of the PIU.

(g) Appropriate solutions must be devised to ensure that the PIUs of various Member States are able to exchange PNR data effectively and in a timely manner.

3.2.3. Member States' progress towards the implementation of the Directive

The current state of implementation of the Directive varies greatly across Member States. A number of them already either have a functional PNR system in place or are in advanced stages of its finalisation. This situation can be ascribed to the fact that, prior to the adoption of the Directive, the EU had provided 14 Member States, through the 2007-2013 Prevention of and Fight against Crime (ISEC) Programme, co-funding for national projects aimed at setting up PNR systems based on national legislation. These projects had an initial duration of 24 months, but all recipient Member States asked for extensions of the duration of their projects up to 29 months.

Member States have taken different approaches towards the setting up of PNR systems.

Some of them started the implementation process by drafting and adopting the relevant legal basis for the collection and processing of PNR data. Others first started to build the technical infrastructure needed for the processing of PNR data and only later engaged in the legislative process. Concerning the technical IT solution for the processing of PNR data, some Member States have built it in-house, while others have opted for external contractors to develop it.

However, a number of other Member States had not started to take concrete steps towards the setting up of a PNR system before the adoption of the Directive and are currently at an early stage of the implementation process. These Member States are strongly encouraged to take full advantage of the experience already acquired by those Member States which find themselves in more advanced stages of the implementation process.

Based on its assessment of the implementation process as set out in the First progress report towards an effective and genuine Security Union, presented on 12 October 2016⁴, the Commission committed itself to provide further legal assistance, expertise and financial support to Member States to achieve the transposition of the Directive and help to ensure operational implementation within the set deadlines.

⁴ COM(2016) 670 final.

Along this line, the Commission wrote on 12 October 2016 to the Ministers of eleven Member States that, according to information available to the Commission, were at the beginning of the transposition process and offered them the Commission's support.

Information received by the Commission since October 2016 from these Member States suggests that some of them have already engaged in a thorough assessment of the actions to be conducted and/or have devised implementation plans aimed to allow the timely transposition of the Directive. However, it seems that concrete steps would still need to be taken, especially concerning the acquisition of the technical infrastructure needed for the proper functioning of the PIUs.

As things stand today, the situation is as follows:

- a. four Member States have both functional or almost functional PNR systems in place and a dedicated legal basis providing for the collection or processing of PNR data; amendments are however still needed to fully adjust the legislative framework to the requirements of the Directive; the experience of these four Member States provides best practice examples that should be used by other Member States;
- b. twelve Member States are in various stages of completion of the technical infrastructure and of the adoption of a dedicated PNR legislation;
- c. eleven Member States are still at a relatively early stage of the implementation process, with the concrete acquisition and development of the technical infrastructure yet to start. However, some of these Member States have already devised detailed implementation plans with concrete deadlines.

In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, Denmark is not bound by the Directive or subject to its application. Consequently, references made to 'Member States' in this document do not include Denmark.

4. Support Actions

4.1. Possible Commission Actions

In order to continue actively to support and follow Member States' progress in implementing the provision of the PNR Directive, the Commission is taking the following actions:

4.1.1. Regular meetings with Member States and Europol

These meetings, held approximately every three months, are designed to provide a forum for Member States to discuss legal questions linked to the interpretation and implementation of the Directive and to share queries, lessons learnt, and best practices. The meetings also provide a venue to increase the peer-to-peer support between Member States, for instance as regards technical expertise and the use of existing IT solutions for PNR data processing. For example, there is a Netherlands-led pilot project that aims at real-time matching and sharing of PNR-related information with high data protection standards and that is open to other Member States. The meetings seek inter alia to allow Member States to reach a uniform understanding of the provisions of Article 6 and Article 9 of the Directive concerning, respectively, the processing and the exchange among PIUs of all relevant and necessary PNR data or the result of processing those data. In line with the Directive, Member States will have to make sure that all relevant and necessary PNR data or the result of processing those data is transmitted by that PIU to the corresponding PIUs of the other Member States. The PIUs of the receiving Member States will need to transmit the received information to their competent authorities.

The meetings also represent an opportunity for Member States to update each other and the Commission on their progress in the implementation process. This will enable the Commission to identify the instances in which Member States may be facing particular challenges in the implementation process and therefore provide additional assistance and guidance where necessary.

4.1.2. Financial assistance to Member States

As indicated in the First progress report towards an effective and genuine Security Union⁵, the Commission has proposed to the budgetary authority to provide an additional amount of EUR 70 million of funding to assist Member States in setting up their PIUs. This additional funding would be allocated to the Member States mainly through Internal Security Fund national programmes and possibly also using Union Actions. Discussions with Member States on the practical modalities for benefiting from this funding will be held in due course. The Commission stands ready to provide further financial support if necessary. Expenditures eligible relate for example to the purchase of the technical equipment needed for the storage, processing and analysis of PNR data in accordance with the terms of the Directive, the training of concerned staff or to study visits to other Member States which are at a more advanced stage of implementation.

⁵ COM(2016) 670 final.

It is important that Member States exchange the PNR data that they receive among each other and with Europol where this is deemed necessary for the prevention, detection, investigation or prosecution of terrorist offences or serious crime. This is why the Commission also launched, on 27 October 2016, a new call for proposals (allocation of EUR 3.8 million) aimed at improving law enforcement information exchange by interconnecting PIUs to facilitate the exchange of PNR data. The deadline for Member States to submit applications is 12 January 2017.

These funding measures come on top of a total amount of EUR 51,837,205.30 already provided by the Commission for the setting up of PIUs and for the exchange of PNR data between PIUs (see annex).

4.1.3. Commission Implementing Decision on data formats and transmission protocols

As provided by Article 16(3) of the Directive, the Commission shall adopt an Implementing Decision establishing a list of common protocols and supported data formats to be used by air carriers when transferring PNR data to the PIUs. In this process, the Commission will be assisted by a committee within the meaning of Regulation (EU) No 182/2011 (examination procedure). As indicated in the First Progress Report towards an effective and genuine Security Union, the Commission stands ready to adopt the Implementing Decision before the end of 2016.

4.2. Possible Member State actions

In line with the First progress report towards an effective and genuine Security Union, the Commission has identified a number of *indicative milestones* that Member States should meet in order to have their PIUs up and running by May 2018.

These milestones build on the experience of those Member States which are in advanced stages of setting up PNR systems. They are to be seen as a guidance tool setting out the key elements required to transpose the PNR Directive in the Commission's view. The milestones will also enable the Commission to follow Member States' progress in implementing the provision of the PNR Directive and, where necessary, identify areas for additional support.

Given that the situation across Member States varies significantly as indicated above, the deadlines envisaged for completion of the milestones are only indicative. For the same reason, the sequential order reported below is also only indicative. For example, while some Member States might decide to start the administrative and technical actions needed to set-up a PIU *before* the adoption of dedicated PNR legislation, others might wait for the enactment of specific legislation before proceeding with the other actions.

- I. **Enacting legislation compliant with the Directive.** This legislation should: (a) provide a legal basis in national law for the collection and processing of PNR data, (b) establish the relevant procedures and safeguards provided for by the Directive.

The relevant legislation should enter into force *by the date of transposition at the latest.*

- II. **Setting up a PIU.** This includes actions such as: (a) the identification of the authority that will act as the PIU, (b) the establishment of the administrative structure of the PIU and its location, as well as (c) practicalities of procurement of buildings

In view of the implementation deadline it would appear appropriate that the setting up of the PIU should be finalised *at the latest 12 months* prior to the implementation deadline to allow sufficient time for the installation of the technical equipment and the testing stages.

- III. **Establishment of the technical solution for the processing of PNR data.** This includes actions such as: (a) the conclusion of procurement procedures for the acquisition of the IT equipment, (b) the finalisation of the development and installation of the IT solution, (c) the establishment of procedures and communication channels allowing for the exchange of PNR data between PIUs

In view of the implementation deadline it would appear appropriate that the procurement procedure for hardware and software should be finalised *at the latest 9 months* prior to the implementation deadline to allow sufficient time for the testing.

Along the same line, it would appear appropriate that the installation of the IT solution should be finalised *at the latest 6 months* prior to the implementation deadline.

The testing of the system with test data should be finalised *at the latest 4 months* prior to the implementation deadline in order to allow sufficient time for testing with real data.

- IV. **Staffing of the PIU.** This includes actions such as: (a) the conclusion of staff recruitment procedures, (b) training of staff in PNR processing and data protection, (c) background and security checks completed on proposed staff, (d) establishing the criteria that would determine the number of staff who should have access to PNR data, (e) appointment of a data protection officer

In view of the implementation deadline it would appear appropriate that the recruiting or seconding staff within the PIU should be completed *at the latest 3 months* prior to the implementation deadline to allow sufficient time for training and testing real PNR data by the PIU staff.

- V. **Involvement of competent authorities.** This includes actions such as: (a) identification of the competent authorities that will be entitled to request or receive PNR data, (b) establishing the operational processes and relationships between the PIU and these authorities

In view of the implementation deadline it would appear appropriate that the identification of competent authorities and establishment of processes for communication of alerts and feedback mechanisms should be completed *at the latest 6 months* prior to the implementation deadline, in order to allow the testing of the communication mechanisms.

- VI. **Ensuring carrier connectivity.** This includes actions such as: (a) engagement with air carriers, (b) establishing IT connections, (c) testing the provision of PNR data, (d) data quality considerations

In view of the implementation deadline it would appear appropriate that the technical specifications should be provided to the relevant air carriers *at the latest 6 months* prior to the implementation deadline.

Along the same line, it would appear appropriate that testing carrier connectivity should be initiated as soon as the IT infrastructure has been installed, tested and certified. This process should be finalised *at the latest 2 months* prior to the implementation deadline, in order to start requesting carriers to provide real-time data in a phased approach.

ANNEX

List of PNR related ISEC and ISF-Police funded projects

Project number	MS	Title project	Maximum Grant amount ⁶
HOME/2011/ISEC/AG/2586	IT	Carrier-Data Retrieval Tool for Analysis	€732,845.84
HOME/2012/ISEC/AG/PNR/4000004452	BG	Development of National Passenger Information Unit (PIU) for collection and processing of Passenger Name Record data in Republic of Bulgaria	€ 2,381,578.24
HOME/2012/ISEC/AG/PNR/4000004440	EE	Development and implementation of the Estonian passenger name record system	€ 4,958,102.54
HOME/2012/ISEC/AG/PNR/4000004449	ES	Establishment of the Spanish Passenger Information Unit	€ 3,954,049.39
HOME/2012/ISEC/AG/PNR/4000004439	FR	PNR PIU France	€17,815,926.00
HOME/2012/ISEC/AG/PNR/4000004443	LV	Development of the Passenger Name Record (PNR) System in Latvia	€ 3,671,698.50
HOME/2012/ISEC/AG/PNR/4000004453	LT	Development of the Passenger Name Record System in Lithuania	€ 949,367.33
HOME/2012/ISEC/AG/PNR/4000004451	HU	Establishment of the Hungarian Passenger Information Unit	€ 5,024,673.00
HOME/2012/ISEC/AG/PNR/4000004446	NL	Travel Information Processing System	€ 5,704,020.92
HOME/2012/ISEC/AG/PNR/4000004441	AT	Data Protection compliant connection of relevant National Databases to a AT-PIU	€ 308,779.99
HOME/2012/ISEC/AG/PNR/4000004448	PT	PIU PT - Passenger Information Unit Portugal	€ 976,290.89
HOME/2012/ISEC/AG/PNR/4000004447	RO	Setting up a national PIU and contributing to European exchange of PNR data between national PIUs	€ 134,071.17
HOME/2012/ISEC/AG/PNR/4000004450	SI	Establishing conditions for transfer and use of Passenger Name Record data (PNR)	€ 752,062.41
HOME/2012/ISEC/AG/PNR/4000004438	FI	Development of National PNR-database and Establishment of PNR-process (PIU)	€ 2,235,600.00
HOME/2012/ISEC/AG/PNR/4000004444	SE	Swedish Competent Authorities Passenger Information Unit	€ 1,084,820.40
HOME/2014/ISFP/AG/LAWX/7150	HU (co-beneficiaries BG/ES/LT/PT/RO)	Pilot programme for data exchange of the Passenger Information Units	€1,153,318.68
TOTAL			€51,837,205.30

⁶ Maximum amount foreseen in the Grant Agreements, to reimburse actual costs incurred by the recipient Member State.