



Proposal for a Directive on the use of Passenger Name Record data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime

European Digital Rights has many serious concerns regarding the European Commission's proposal for the use of PNR in Europe. The proposed system risks limiting fundamental rights, such as non-discrimination, the right to privacy and the protection of personal data (Article 8 of the Charter and Article 8 of the ECHR). To date, the Commission has not been able to show that an EU PNR scheme would meet the standards established by the Charter of Fundamental Rights - namely that it is proportionate, necessary, genuinely needed to meet the objectives of general interest and needed to protect the right and freedoms of others. Therefore, EDRI supports **Amendments 36, 37, 38 and 39** in the LIBE committee and **recommends the rejection of the proposed Directive**.

The proposed retention period (thirty days plus a further, apparently arbitrary, five years) is far longer than could credibly be argued to be either necessary or proportionate, based on the limited evidence of usefulness thus far provided. It is particularly worrying that the Commission states in its proposal that “PNR data is unverified information provided by passengers”¹ but seems to be convinced that these unverified data provided by the traveller can be used in real time “to prevent a crime, watch or arrest persons before a crime has been committed” and to identify previously “unknown” suspects. This means that innocent individuals will be monitored and profiled without any guarantee for effective oversight.

As the necessity and proportionality of the PNR system has still not been demonstrated, EDRI questions the justification for the introduction of such a system. This concern is shared by the following European entities:

- x The Article 29 Working Group points out that the Commission’s “impact assessment on ‘Respect for fundamental rights’ merely states that the Fundamental Rights Check List has been used for the current proposal, but there is no further information about this assessment to justify its conclusions”². Even if the proposal were fully acceptable, this represents bad practice that, if accepted, will serve as a precedent for the European Parliament, and citizens in general, to be given inadequate justifications for similar legislation in the future.
- x The EDPS considers that the content of the proposal “does not meet the requirements of necessity and proportionality”³.
- x The European Union Agency for Fundamental Rights (FRA) shares⁴ the concerns of the EDPS and the Article 29 Working Group, due to data protection concerns, the non-respect of the ban of profiling, the lack of purpose limitation, the lack of proof of necessity and unclear effective oversight.

EDRI regrets that the PNR Directive is discussed before the revision of the Data Protection framework and the Data Retention Directive is completed. Given the above-mentioned concerns, EDRI recommends the rejection of the proposed Directive.

¹ Commission proposal for a Directive on the use of Passenger Name records, Page 3 : http://ec.europa.eu/home-affairs/news/intro/docs/com_2011_32_en.pdf

² Article 29 WG Opinion, 5 April 2011: http://ec.europa.eu/justice/policies/privacy/docs/wpdocs/2011/wp181_en.pdf

³ EDPS Opinion, 25 March 2011:

http://www.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Consultation/Opinions/2011/11-03-25_PNR_EN.pdf

⁴ FRA opinion on the proposal for a Directive on the use of PNR http://fra.europa.eu/fraWebsite/attachments/FRA-PNR-Opinion-2011_EN.pdf