



***Proposal for a Directive on an EU Passenger Name Record
No freedoms, no security***

This brief looks at the negotiation process and the content of the proposed PNR Directive. This controversial proposal aims to formalise the collection and retention of data from all passenger flying from and to the EU for up to 5 years in order to fight “terrorism” and “serious crimes”.

Negotiation process

In 2011, the Commission put forward a proposal on the EU PNR Directive. This was subsequently rejected by the LIBE Committee in April 2013 due to concerns over the interference with fundamental rights to privacy and data protection. At that time, civil society groups and airline companies opposed this proposal for its lack of necessity, its cost and its impact on fundamental rights. Despite this, the European Parliament voted in plenary session for a referral back to the Committee for re-examination of the proposed Directive. Two weeks ago Timothy Kirkhope, standing Rapporteur, introduced a revised proposal.

Following the rejection of the proposal in the LIBE Committee, the European Commission [allocated €50 million to EU member states for the establishment of national PNR systems](#). As a result, the Commission created a situation where airlines now have to face the cost of complying with different PNR regimes. In short, while the EU was facing a severe economic recession, the Commission spent millions of euros from EU taxpayers to bypass a democratic decision taken by the European Parliament and push its own agenda.

Lawfulness of the proposal

■ *Necessity and proportionality*

In the proposed EU PNR Directive, both the European Commission and the LIBE Rapporteur are asking for a maximum five year retention period of all travel data. In the aftermath of the EU Court of Justice ruling invalidating the Data Retention Directive, it is hard to imagine how this arbitrary period of five year retention for every citizen travel data could be considered necessary and proportionate.

The Court stated that, in relation to the Data Retention Directive, the indiscriminate blanket retention of citizens’ communication data for a maximum two year retention period failed to

comply with the Charter's standards of necessity and proportionality. As the European Parliament legal service noted in their opinion of the Data Retention ruling, the mere fact that the objective of a legislation, such as the EU PNR directive, is to fight against serious crime and terrorism, "does not, in itself justify a retention measure [...] being considered to be necessary for the purpose of that fight".

- *Fundamental rights to privacy and data protection¹*

Following the tabling of the Commission proposal in 2011, the Article 29 Working Group, the European Data Protection Supervisor and the European Union Agency for Fundamental Rights have criticised this proposal, due to its lack of proportionality, as well as the severe risks it poses for the fundamental rights to privacy and data protection.

In addition to the blanket mass collection and retention of personal data, the LIBE Rapporteur introduces the possibility for this information to be compared with unspecified other existing databases in order to identify patterns. This means expanding law enforcement mass surveillance capabilities at the expense of citizens' fundamental rights as individuals will be indiscriminately monitored and profiled. It also means that it is impossible to guess how invasive this measure will become in the medium- to long-term.

- *Freedom of movement*

The text introduced by the LIBE Rapporteur raises serious concerns for freedom of movement, a fundamental freedom of the EU internal market. Timothy Kirkhope proposes expanding the scope of the Directive to not only flights from and to the EU to flight but also within the EU. Article 21.1 of the Treaty of the Functioning of the EU guarantees all citizens of the EU the freedom to move within its territory. Limitation to this freedom is only be possible when required by a measure which is necessary and proportionate; a requirement that the proposed Directive most probably does not meet.

- *Security*

There is no evidence suggesting that the proposed EU PNR Directive would bring more security. In the cases of the recent attacks in Paris and Copenhagen, the perpetrators were known by the intelligence authorities. It is unclear how more data about those persons would have enabled law enforcement authorities would have made a meaningful difference. More data does not mean more security, and a proposal such as the EU PNR Directive will only bring an illusion of security to EU citizens.

At a time when the European Union is looking for solution to provide greater security to its citizens, the response must not undermine our fundamental rights and freedoms. Instead, the EU should aim at long-term reforms for better and more targeted investigations carried on the basis of suspicion, as well as to facilitate law enforcement cooperation in the EU.

1 For a thorough analysis on this aspect, see the opinion of the EU Fundamental Rights Agency (FRA) opinion on PNR: <http://fra.europa.eu/sites/default/files/fra-2014-fundamental-rights-considerations-pnr-data-en.pdf>.