

## ROADMAP

Title of the initiative: **Communication on Transfer of Passenger Name Record (PNR) data: A global EU approach - The next steps**

Type of initiative (CWP/Catalogue/Comitology): CWP

Lead DG/contact person/details: DG JLS/F3

Expected date of adoption of the initiative (month/year): September 2010

Date of modification:

Version No:

### Initial IA screening & planning of further work

#### **A. Context and problem definition**

(i) What is the political context of the initiative? (ii) How does this initiative relate to past and possible future initiatives, and to other EU policies?

The communication will aim to set out the general standards that the EU will be requiring from third countries in order to enter in agreements for the transfer and processing of passenger name record (PNR) data with such third countries. The initiative will be based on the proposal for the use of PNR data for law enforcement purposes in the EU which is planned to be adopted on the same day as this communication. That proposal will be the result of the annulment of the initial proposal of the commission as a result of the entry into force of the Treaty of Lisbon [COM(2007)654]. The proposal will provide for a decentralised system of collection of PNR data on international flights to and from the EU and their use in the fight against terrorism and serious crime.

What are the main problems identified?

The data protection standards of the EU do not allow European and other carriers operating flights from the EU to transmit the PNR data of their passengers to third countries without prior authorisation. As a result when third countries demand that carriers transmit PNR data to them, the EU has to enter into negotiations with them to find a way of legitimising such transfers. This is necessary to help carriers, to ensure the protection of personal data of passengers and to contribute to the fight against terrorism and serious crime on an international level. Until today the EU's response to requests from third countries has been demand driven as it had not had a policy on this subject.

Who is affected?

Some third countries, some carriers and some passengers might be affected indirectly in the future. The direct impact on these stakeholders will come with the actual agreements with such third countries.

(i) Is EU action justified on grounds of subsidiarity? (ii) Why can the objectives of the proposed action not be achieved sufficiently by Member States (necessity test)? (iii) As a result of this, can objectives be better achieved by action by the Community (test of EU Value Added)?

This is a strategy for when the EU is asked and mandated to enter into an agreement with third countries. It will not have a binding legal effect. It is intended to act as a political statement to third countries that might, in the future, be interested in entering into PNR agreements with the EU. It will not aim to harmonise all future PNR agreements, since each agreement will have to cater for the requesting country's requests. It will aim to give an indication of the requirements of the EU in a general, conceptual way, rather than in specific and detailed manner. It is noted that the European Parliament and the Member States have asked the EU to deal with such agreements with third countries, rather than leave it to each Member State to make its own arrangements.

## **B. Objectives of EU initiative**

What are the main policy objectives?

The main objective is to set out the minimum standards that the EU will be requiring from third countries in order to enter in agreements for the transfer and processing of PNR data with such third countries in a general, conceptual way, rather than in specific and detailed manner, so as to ensure appropriate protections for data subjects, respect of fundamental rights, protection of the carriers and acknowledgement of the usefulness of PNR data in the fight against terrorism and crime.

Do the objectives imply developing EU policy in new areas or in areas of strategic importance?

The communication will be a political statement to third countries that might, in the future, be interested in entering into PNR agreements with the EU

## **C. Options**

(i) What are the policy options? (ii) What legislative or 'soft law' instruments could be considered? (iii) Would any legislative initiatives go beyond routine up-date of existing legislation?

Not applicable

Does the action proposed in the options cut across several policy areas or impact on action taken/planned by other Commission departments?

No

Explain how the options respect the proportionality principle

The communication will aim to give an indication of the minimum requirements of the EU in a general, conceptual way, rather than in specific and detailed manner. This exercise will itself aim at ensuring proportionality in future PNR agreements.

## **D. Initial assessment of impacts**

What are the significant impacts likely to result from each policy option (cf. list of impacts in the Impact Assessment Guidelines pages 32-37), even if these impacts would materialise only after subsequent Commission initiatives?

Some third countries, some carriers and some passengers might be affected indirectly in the future. The direct impact on these stakeholders will come with the actual agreements with such third countries. Third countries that request PNR data in the future might be affected as they would know that they would have to fit their use of PNR data within certain minimum parameters. Carriers might be affected positively in having legal certainty in transmitting data to third countries. Passengers will be affected positively as their data will be protected.

Could the options have impacts on the EU-Budget (above 5 Mio €) and/or should the IA also serve as the ex-ante evaluation, required by the Financial Regulation?

No

Could the options have significant impacts on (i) simplification, (ii) administrative burden or on (iii) relations with third countries?

Some third countries, some carriers and some passengers might be affected indirectly in the future. The direct impact on these stakeholders will come with the actual agreements with such third countries

## **E. Planning of further impact assessment work**

When will the impact assessment work start?

No impact assessment is planned for this communication, which relates only to external aspects of PNR. Any subsequent legislative proposal on EU PNR would be accompanied by an impact assessment.

(i) What information and data are already available? (ii) Will this impact assessment build on already existing impact assessment work or evaluations carried out? (iii) What further information needs to be gathered? (iv) How will this be done (e.g. internally or by an external contractor) and by when?

(v) What type and level of analysis will be carried out (cf. principle of proportionate analysis)?

The Commission adopted an impact assessment for the use of PNR data for law enforcement purposes in the EU [SEC(2007)1453] and a respective proposal for a Framework Decision [COM(2007)654]. The latter proposal became null and void with the entry into force of the Treaty of Lisbon and will be re-tabled in the form of a Directive. Further, the EU already has PNR agreements with 3 countries, i.e. US, Australia and Canada. The data protection world and the European Parliament have expressed themselves on this subject several times. The Commission believes that it has adequate material at its disposal.

Which stakeholders & experts have been/will be consulted, how and at what stage?

For the purposes of the impact assessment for the use of PNR data for law enforcement purposes in the EU [SEC(2007)1453] we consulted the Member States, data protection authorities and the carriers (industry). Following that impact assessment and the respective proposal for a Framework Decision [COM(2007)654], the data protection world (DPAs and EDPS) and the European Parliament have expressed themselves on this subject several times. The FRA also gave an opinion. The Member States have also expressed their opinion during discussions on the proposal in Council.