

UK seeking to extend Commission proposal to cover intra-EU flights from the start

The day before the Commission put out its proposal to re-introduce a EU-PNR (Passenger Name Record) [1] scheme on 2 February 2011 ([Commission proposal](#)) the UK was already working behind the scenes to extend its scope from monitoring flights in and out of the EU to cover all travel between EU countries as well.[2] And very quickly intervened on 10 February in the Council of the European Union's discussions: [UK proposals](#)

The UK proposal

The UK government is proposing that Member States are allowed the additional option of: 1) collecting PNR data on internal EU flights (intra-EU) and 2) each Member State exercising this option could decide "the particular intra-EU routes on which it wishes to collect PNR".[3] So, for example, the UK could require PNR data on flights to and from Greece, Italy, Bulgaria and France or all EU states.

The "Outcomes"(Minutes) of the Council's Article 36 Committee (CATS) on 10-11 February 2011 say that the UK proposal was discussed, "including intra-EU flights" and that: "*This proposal received support from a significant number of Member States*". (EU doc no: 6847/11)

The UK is also proposing that at the end of the transitional six year period to remove "*the requirement for Member States to collect data on every international flight.*" It proposes under Recital 18 that each Member State would decide, at their discretion, which international flights to monitor. This would be contrary to the concept of "harmonisation" and could lead to security "gaps".

Another UK amendment, amended Recital 28, would allow Member States to collect PNR for "*purposes other than those specified in Directive*" or "*from transportation providers other than those specified in the Directive*". In other words, the scope could extend to all crimes however minor and require PNR data to be transferred not just from flights but from boats and trains too.

Where Member States collect PNR data on international and intra-EU flights and sea and rail travel they could exchange this data with other Member States (amendment Article 1, para 1).

Under the UK Article 17 a review of the necessity of all Member States including intra-EU flights would be carried out within two years - which would remove the optional aspect.

The UK government's rationale, while claiming to "roll back" the authoritarian state at home, is that:

"Responsible governments must provide security for their citizens and protect their privacy. We do not agree with those who say that we have to choose between being safe and being free. This is a false choice - both are possible."

As noted below the UK has the most comprehensive PNR system covering flights, sea and rail for international, intra-EU and domestic travel which it seeks to encourage across the EU. The "freedom of movement" is one of the four founding principles of the EU and this presumes the right to travel without being placed under surveillance except for very limited and exceptional purposes. The UK proposals go it quite the opposite direction including gathering personal data for "*purposes other than those specified in Directive*" or "*from transportation providers other than those specified in the Directive*".

The Commission proposal

An EU-PNR scheme was first proposed in 2003: [Spanish proposal](#). In 2007 the Commission put forward a proposal for an EU-PNR scheme covering flights in and out of the EU. In November 2008 the European Parliament refused to vote on the the proposal and it was effectively dropped. But the Commission then put out a consultation paper in 2009 which raised the possibility, for the first time, of extending PNR data to - intra-EU and domestic travel by land,

sea and air: see: [Article 29 Working Party: Impact Assessment questionnaire](#) The scheme was revived by being included in the Stockholm Programme.

The new Commission proposal for a Directive on EU-PNR opens by citing the Sourcebook on Crime and Criminal Justice Statistics to the effect that that there were "approximately 14,000 criminal offences per 100,000 population in EU Member States in 2007". However, both Impact Assessment and its Summary, using the same source say: "there were 143,948 criminal offences per 100,000 population." The former would seem to be correct unless everyone in the EU commits 1.43 crimes a year. There is similar confusion throughout the three documents over the terminology used - the proposal specifically concerns terrorist offences and serious crime yet the texts lapse into simply referring to "crime".

The Commission is proposing that the collection of PNR data for flights in and out of the EU by Member States should be "harmonised". The usual reason given for "harmonising" EU laws is that a significant number (ie: 8-12) of Member States are developing an initiative independently. In this instance only three Member States have adopted national legislation - UK, France and Denmark:

UK: Scope: terrorism, immigration and all crimes. Travel: Flights in and out of EU, intra-EU (between Member States) and domestic flights. PNR also collected from sea and rail carriers where this data exists.

France: Scope: limited to terrorism and immigration. Travel: Flights in and out of EU, intra-EU (between Member States) and domestic flights. PNR also collected from sea and rail carriers where this data exists.

Denmark: Scope: terrorism and "crimes against the state". Travel: Air travel where data is gathered by carriers. (Source: Impact Assessment).

The rationale for introducing EU-PNR is not "harmonisation" but rather that it is in the Stockholm Programme, and it is in the Stockholm Programme partly because of the row of the EU-USA scheme to which the solution is perceived to be that the EU collects its own data for external flights and partly because the surveillance of movement is a key plank in the EU's security agenda.

The Commission's preferred Option is limited to air travel in and out of the EU for the purpose of terrorism and serious crime. But the Impact Assessment leaves lots of options on the table:

- *"It should be noted that this preferred] option it is not believed to present the ultimate solution to the problem but, at the current stage, it is the most desirable solution."*[3] [emphasis added]

- the option to extend the scope from terrorism and serious crime to include "other purposes" is considered to be *"disproportionate at this stage"* [4]

- the option to extend surveillance to cover travel by sea and rail: *"could be considered in the future, once we will have learned from the experiences with PNR collection from air travel."* [5] [emphasis added]

- the measure is to be reviewed within four years after its entry into force but the Commission is to consider the possibility of *"extending the measure to internal EU flights within two years from its entry to force"*. [6]

Respect for fundamental rights

The Impact Assessment recognises that the proposal will interfere with fundamental rights (Article 8 of the ECHR and Articles 7, 8 and 52 of the Charter of Fundamental Rights). However, interferences are permitted:

"in the interest of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others". "in accordance with the law" and "nec-

essary in a democratic society". As the proposed actions would be for the purpose of combating terrorism and other serious crime, contained in a legislative acts they would clearly comply with such requirements provided they are "necessary in a democratic society" and comply with the principle of proportionality."[p19]

This logic is self-justifying where measures are necessary for the "purpose of combating terrorism and other serious crime" and are contained in legislative acts meaning they are *necessary in a democratic society*". Do this mean that any measure however draconian to combat terrorism and serious crime and contained in a legislative act is legitimate in a democratic society?[7] And would it be legitimate if, in a few years time, the current PNR proposals were extended to cover for the "purpose of combating terrorism and other serious crime": i) all travel by land, sea and air; ii) into and out of the EU, between EU states (intra-EU) and all domestic travel; and iii) all travel by any means was subject to an Electronic System for Travel Authorisation (ESTA) system? [8]

Tony Bunyan, Statewatch Director, comments:

"The Commission's EU-PNR proposal covers flights in and out of the EU but its Impact Assessment opens the door to its scope being extended to flights between EU Member States and domestic flights plus sea and rail travel as well. The UK quickly exploited this and already a majority of EU Member States back the immediate extension of the proposal to internal EU flights.

This is a slippery slope. It is only a matter of time before the scheme is extended to cover every means of travel with the long-term prospect of an EU travel authorisation system to back it up - all travel would be surveilled and authorised by the state."

Footnotes

1. See Statewatch's Observatory: [EU surveillance of passengers \(EU-PNR, 2003-2008\) - revisited 2011](#)

2. [EU to collect data of international air travellers](#)

3. UK proposal: [Proposal for a Directive of the European Parliament and of the Council on the use of Passenger Name Record data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime- Proposed amendments](#) (pdf)

4. Impact Assessment, p 38

5. Impact Assessment, p35.

6. Impact Assessment, p36.

7. Certainly, a number of anti-terrorist laws passed since 11 September 2001 in the UK have been, or are being, revised because they went far too far.

8. Communication on the possibility of introducing an EU-ESTA (Electronic System for Travel Authorisation) first of all for visa visitors planned under the Stockholm Programme (planned for 2011)

Sources

- [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](#) (pdf)

- [Impact Assessment](#) (SEC 132, pdf)

- [Staff Working Paper](#) (SEC 133, pdf)

- [Statewatch: Summary of the Commission's EU-PNR Proposals](#) (pdf)

- [Statewatch: Summary of policy options analysed in Commission Impact Assessment](#) (pdf)
- Comparative table: [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](#) (pdf)