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NOTE

from:	General Secretariat of the Council
to:	Delegations
No. prev. doc.:	5618/2/09 REV 2 CRIMORG 7 AVIATION 3 DATAPROTECT 2
No. Cion prop.:	6007/11 GENVAL 5 AVIATION 15 DATAPROTECT 6 + ADD 1 + ADD 2
Subject:	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

Delegations find attached a comparative table in which the provisions of the 2011 Commission proposal for a PNR Directive are presented side by side with the provisions of the draft Framework Decision on the use of Passenger Name Record data for law enforcement purposes, as it stood at the end of the Czech Presidency in 2009. Even though the latter text had been thoroughly amended following discussions under the Slovenian, French and Czech Presidency, there was no general agreement on it yet. The (scrutiny) reservations on this text can be found in 5618/2/09 REV 2 CRIMORG 7 AVIATION 3 DATAPROTECT 2

<p>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</p>	<p>Proposal for a Council Framework Decision on the use of Passenger Name Record (PNR) for law enforcement purposes</p>	
<p><i>Article 1</i></p> <p>Subject matter and scope</p> <p>1. This Directive provides for the transfer by air carriers of Passenger Name Record data of passengers of international flights to and from the Member States, as well as the processing of that data, including its collection, use and retention by the Member States and its exchange between them.</p>	<p><i>Article 1</i></p> <p><i>Objectives</i></p> <p>This Framework Decision provides for the transfer or the making available by air carriers of PNR data of passengers of international flights to the Member States, for the purpose of preventing, detecting, investigating and prosecuting terrorist offences or serious crime, as well as the processing of those data, including their collection, use and retention by the Member States and their exchange between them.</p>	
<p>2. The PNR data collected in accordance with this Directive may be processed only for the following purposes:</p>		
<p>(a) The prevention, detection, investigation and prosecution of terrorist offences and serious crime according to Article 4(2)(b) and (c); and</p>		

<p>(b) The prevention, detection, investigation and prosecution of terrorist offences and serious transnational crime according to Article 4(2)(a) and (d).</p>		
<p style="text-align: center;"><i>Article 2</i> Definitions</p> <p>For the purposes of this Directive the following definitions shall apply:</p> <p>(a) ‘air carrier’ means an air transport undertaking with a valid operating licence or equivalent permitting it to carry out carriage by air of passengers;</p>	<p style="text-align: center;"><i>Article 2</i> <i>Definitions</i></p> <p>For the purpose of this Framework Decision the following definitions shall apply:</p> <p>(a) ‘air carrier’ means an air transport undertaking with a valid operating licence or equivalent permitting it to carry out carriage by air of passengers, as stated in the operating licence. The obligations under this Framework Decision shall be incumbent on the air carrier also in the event that the air carrier designates an intermediary for the purposes related to this Framework Decision;</p>	

<p>(b) 'international flight' means any scheduled or non-scheduled flight by an air carrier planned to land on the territory of a Member State originating in a third country or to depart from the territory of a Member State with a final destination in a third country, including in both cases any transfer or transit flights;</p>	<p>(b) "international flight" means any scheduled or non-scheduled flight by air carrier planned to land in the territory of at least one Member State of the European Union originating in a third country or to depart from the territory of at least one Member State of the European Union with a final destination in a third country, including any transfer or transit flights;</p>	
<p>(c) 'Passenger Name Record' or 'PNR data' means a record of each passenger's travel requirements which contains information necessary to enable reservations to be processed and controlled by the booking and participating air carriers for each journey booked by or on behalf of any person, whether it is contained in reservation systems, Departure Control Systems (DCS) or equivalent systems providing the same functionalities;</p>	<p>(c) 'Passenger Name Record (PNR)' means a record of each passenger's travel requirements which contains all information necessary to enable reservations to be processed and controlled by the booking and participating air carriers for each journey booked by or on behalf of any person. Such a record may be contained in reservation systems, Departure Control Systems (DCS), or equivalent systems providing the same functionalities. In the context of this Framework Decision, PNR data shall mean the data elements described in the Annex and only to the extent that these are collected by the carrier;</p>	

(d) 'passenger' means any person, except members of the crew, carried or to be carried in an aircraft with the consent of the carrier;	(d) 'passenger' means any person, except members of the crew, carried or to be carried in an aircraft with the consent of the carrier;	
(e) 'reservation systems' means the air carrier's internal inventory system, in which PNR data are collected for the handling of reservations;	(e) 'reservation systems' means the air carrier's computerised inventory system, in which PNR data are collected for the handling of reservations ;	
(f) 'push method' means the method whereby air carriers transfer the required PNR data into the database of the authority requesting them;	(f) 'Push method' means the method under which air carriers transmit the required PNR data into the database of the authority requesting them;	
	(g) "Pull method" means the method under which the authority requiring the data can access the air carrier's reservation system, departure control system and equivalent system and extract the required data into their database;	
(g) 'terrorist offences' means the offences under national law referred to in Articles 1 to 4 of Council Framework Decision 2002/475/JHA;	(h) "terrorist offences" means the offences under national law, referred to in Articles 1 to 4 of the Council Framework Decision 2002/475/JHA on combating terrorism as amended by the Council Framework Decision 2008/919/JHA;	

<p>(h) ‘serious crime’ means the offences under national law referred to in Article 2(2) of Council Framework Decision 2002/584/JHA if they are punishable by a custodial sentence or a detention order for a maximum period of at least three years under the national law of a Member State, however, Member States may exclude those minor offences for which, taking into account their respective criminal justice system, the processing of PNR data pursuant to this directive would not be in line with the principle of proportionality;</p> <p>(i) ‘serious transnational crime’ means the offences under national law referred to in Article 2(2) of Council Framework Decision 2002/584/JHA if they are punishable by a custodial sentence or a detention order for a maximum period of at least three years under the national law of a Member State, and if :</p> <ul style="list-style-type: none"> (i) They are committed in more than one state; (ii) They are committed in one state but a substantial part of their preparation, planning, direction or control takes place in another state; (iii) They are committed in one state but involve an organised criminal group that engages in criminal activities in more than one state; or (iv) They are committed in one state but have 	<p>(i) "serious crime" means the offences under national law, referred to in Article 2 of Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime as well as the offences under national law, referred to in Article 2(2) of the Council Framework Decision on the European Arrest Warrant and the surrender procedures between Member States if they are punishable by a custodial sentence or a detention order for a maximum period of at least three years under national law of the Member State collecting the PNR data, or, in case of the processing thereof in another Member State, the Member State processing the PNR data.</p>	
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substantial effects in another state.		
<p style="text-align: center;"><i>Article 3</i></p> <p style="text-align: center;">Passenger Information Unit</p> <p>1. Each Member State shall set up or designate an authority competent for the prevention, detection, investigation or prosecution of terrorist offences and serious crime or a branch of such an authority to act as its ‘Passenger Information Unit’ responsible for collecting PNR data from the air carriers, storing them, analysing them and transmitting the result of the analysis to the competent authorities referred to in Article 5. Its staff members may be seconded from competent public authorities.</p>	<p style="text-align: center;"><i>Article 3</i></p> <p style="text-align: center;"><i>Passenger Information Unit</i></p> <p>1. Each Member State shall set up or designate a law enforcement authority or a branch of such an authority to act as its "Passenger Information Unit "responsible for collecting the PNR data from the air carriers, store them, analyse them and transmit the result of the analysis to the competent authorities referred to in Article 4. Its staff members may be detached from competent public authorities.</p>	
<p>2. Two or more Member States may establish or designate a single authority to serve as their Passenger Information Unit. Such Passenger Information Unit shall be established in one of the participating Member States and shall be considered the national Passenger Information Unit of all such participating Member States. The participating Member States shall agree on the detailed rules for the operation of the Passenger Information Unit and shall respect the requirements laid down in this Directive.</p>	<p>(6) Two or more Member States may jointly set up or designate the same authority to serve as their Passenger Information Unit. Such Passenger Information Unit shall be established in one of the participating Member States and shall be considered the national Passenger Information Unit of all such participating Member States. The participating Member States shall agree on the modalities of the operation of the Passenger Information Unit, the control of the data and in particular on the applicable requirements on data security, data protection and supervision, in accordance with the requirements laid down in this Framework decision.</p>	

<p>3. Each Member State shall notify the Commission thereof within one month of the establishment of the Passenger Information Unit and may at any time update its declaration. The Commission shall publish this information, including any updates, in the <i>Official Journal of the European Union</i>.</p>	<p>Each Member State shall notify its Passenger Information Unit to the Commission and the General Secretariat of the Council within twelve months after this Framework Decision enters into force, and may at any time update its notification. The Commission shall publish this information in the <i>Official Journal of the European Union</i>.</p>	
<p style="text-align: center;"><i>Article 4</i></p> <p style="text-align: center;">Processing of PNR data</p> <p>1. The PNR data transferred by the air carriers, pursuant to Article 6, in relation to international flights which land on or depart from the territory of each Member State shall be collected by the Passenger Information Unit of the relevant Member State. Should the PNR data transferred by air carriers include data beyond those listed in the Annex, the Passenger Information Unit shall delete such data immediately upon receipt.</p>	<p style="text-align: center;"><i>Article 3</i></p> <p>(2) The Passenger Information Unit shall be responsible for collecting the PNR data transferred or made available by air carriers, according to Article 5, in relation to international flights which land on or depart from the territory of the Member States which it serves. Should the PNR data transferred or made available by air carriers erroneously include data beyond those listed in the Annex, the Passenger Information Unit shall delete such data immediately upon its receipt.</p>	
<p>2. The Passenger Information Unit shall process PNR data only for the following purposes:</p>	<p>3. The Passenger Information Unit shall process PNR data only for the following purposes:</p>	

<p>(a) carrying out an assessment of the passengers prior to their scheduled arrival or departure from the Member State in order to identify any persons who may be involved in a terrorist offence or serious transnational crime and who require further examination by the competent authorities referred to in Article 5. In carrying out such an assessment, the Passenger Information Unit may process PNR data against pre-determined criteria. Member States shall ensure that any positive match resulting from such automated processing is individually reviewed by non-automated means in order to verify whether the competent authority referred to in Article 5 needs to take action;</p>	<p>(a) carrying out real time risk assessment of the passengers in order to identify the persons who may be involved in a terrorist offence or serious crime and who require further examination by the competent authorities of the Member State, referred to in Article 4. In carrying out such risk assessments, the Passenger Information Unit may process PNR data against pre-determined risk criteria and against relevant databases, including international or national files or national mirrors of European files on persons or objects sought or under alert, in accordance with European, international and national rules applicable to such files. Member States shall ensure that a positive match as a result of such automated processing is manually reviewed in order to verify whether to the competent authority referred to in Article 4 needs to take action with a view to preventing, detecting, investigating or prosecuting terrorist offences or serious crime;</p>	
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<p>(b) carrying out an assessment of the passengers prior to their scheduled arrival or departure from the Member State in order to identify any persons who may be involved in a terrorist offence or serious crime and who require further examination by the competent authorities referred to in Article 5. In carrying out such an assessment the Passenger Information Unit may compare PNR data against relevant databases, including international or national databases or national mirrors of Union databases, where they are established on the basis of Union law, on persons or objects sought or under alert, in accordance with Union, international and national rules applicable to such files. Member States shall ensure that any positive match resulting from such automated processing is individually reviewed by non-automated means in order to verify whether the competent authority referred to in Article 5 needs to take action;</p>		
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<p>(c) responding, on a case-by-case basis, to duly reasoned requests from competent authorities to provide PNR data and process PNR data in specific cases for the purpose of prevention, detection, investigation and prosecution of a terrorist offence or serious crime, and to provide the competent authorities with the results of such processing; and</p>	<p>(b) responding, on a case-by-case basis, to requests from competent authorities to provide PNR data and process PNR data in a specified manner and to provide the competent authorities with the results of such processing. Such requests shall relate to a specific cases of prevention, investigation or prosecution of a terrorist offences or serious crime and must be reasoned; and</p>	
<p>(d) analysing PNR data for the purpose of updating or creating new criteria for carrying out assessments in order to identify any persons who may be involved in a terrorist offence or serious transnational crime pursuant to point (a).</p>	<p>(c) analysing PNR data for the purpose of identifying trends and patterns and allowing the PIU and/or competent authorities referred to in Article 4 to update or create new risk criteria for carrying out risk assessments according to paragraph (a).</p>	
<p>3. The assessment of the passengers prior to their scheduled arrival or departure from the Member State referred to in point (a) of paragraph 2 shall be carried out in a non-discriminatory manner on the basis of assessment criteria established by its Passenger Information Unit. Member States shall ensure that the assessment criteria are set by the Passenger Information Units, in cooperation with the competent authorities referred to in Article 5. The assessment criteria shall in no circumstances be based on a person's race or ethnic origin, religious or philosophical belief, political opinion, trade union membership, health or sexual life.</p>	<p>4. The criteria and guarantees in respect of real time risk assessments referred to in paragraph 3(a) will be provided for in compliance with national law, taking due account of the recommendations for common general criteria, methods and practices for risk assessments which shall be adopted under the procedure of Articles 13, 14 and 15. Member States shall ensure that the risk criteria shall be set by the PIU and/or by the competent authorities referred to in Article 4 and shall in no circumstances be based on a person's race or ethnic origin, religious or philosophical belief, political opinion, trade union membership, health or sexual orientation.</p>	

<p>4. The Passenger Information Unit of a Member State shall transfer the PNR data or the results of the processing of PNR data of the persons identified in accordance with points (a) and (b) of paragraph 2 for further examination to the relevant competent authorities of the same Member State. Such transfers shall only be made on a case-by-case basis.</p>	<p>5. The transmission by the Passenger Information Unit of a Member State of the PNR data or analysis of PNR data of the individuals identified in accordance with paragraph 3(a) and (b) for further examination to the relevant competent authorities of the same Member State shall take place by electronic means or, in case of technical failure, by any other appropriate means.</p>	
<p style="text-align: center;"><i>Article 5</i></p> <p style="text-align: center;">Competent authorities</p> <p>1. Each Member State shall adopt a list of the competent authorities entitled to request or receive PNR data or the result of the processing of PNR data from the Passenger Information Units in order to examine that information further or take appropriate action for the purpose of preventing, detecting, investigating and prosecuting terrorist offences and serious crime.</p>	<p style="text-align: center;"><i>Article 4</i></p> <p style="text-align: center;"><i>Competent authorities</i></p> <p>1. Each Member State shall adopt a list of the competent authorities which shall be entitled to request or receive PNR data or analysis of PNR data from the Passenger Information Units in order to examine this information further or take appropriate action.</p>	
<p>2. Competent authorities shall consist of authorities competent for the prevention, detection, investigation or prosecution of terrorist offences and serious crime.</p>	<p>2. Competent authorities shall only include authorities of the Member States which are responsible for the prevention, detection, investigation or prosecution of terrorist offences or serious crime.</p>	

<p>3. Each Member State shall notify the list of its competent authorities to the Commission twelve months after entry into force of this Directive at the latest, and may at any time update its declaration. The Commission shall publish this information, as well as any updates, in the <i>Official Journal of the European Union</i>.</p>	<p>3. Each Member State shall notify the list of its competent authorities in a declaration to the Commission and the General Secretariat of the Council within twelve months after this Framework Decision enters into force, and may at any time update its declaration. The Commission shall publish the declarations in the <i>Official Journal of the European Union</i>.</p>	
<p>4. The PNR data of passengers and the result of the processing of PNR data received by the Passenger Information Unit may be further processed by the competent authorities of the Member States only for the purpose of preventing, detecting, investigating or prosecuting terrorist offences or serious crime.</p>	<p>4. The PNR data of passengers and the analysis of PNR data by the Passenger Information Unit may be further processed by the competent authorities of the Member States only with the aim of preventing, detecting, investigating or prosecuting terrorist offences or serious crime.</p>	
<p>5. Paragraph 4 shall be without prejudice to national law enforcement or judicial powers where other offences, or indications thereof, are detected in the course of enforcement action further to such processing.</p>	<p>5. The limitation set out in paragraph 4 shall not affect or interfere with national law enforcement or judicial powers in case other offences, or indications thereof, are detected in the course of enforcement action further to such processing.</p>	

<p>6. The competent authorities shall not take any decision that produces an adverse legal effect on a person or significantly affects a person only by reason of the automated processing of PNR data. Such decisions shall not be taken on the basis of a person's race or ethnic origin, religious or philosophical belief, political opinion, trade union membership, health or sexual life.</p>	<p>6. The competent authorities of the Member States shall not take any decision which produces an adverse legal effect on a person or significantly affects him only by reason of the automated processing of PNR data or only on the basis of a person's race or ethnic origin, religious or philosophical belief, political opinion, trade union membership or health or sexual orientation.</p>	
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<p style="text-align: center;"><i>Article 6</i></p> <p style="text-align: center;">Obligations on air carriers</p> <p>1. Member States shall adopt the necessary measures to ensure that air carriers transfer ('push') the PNR data as defined in Article 2(c) and specified in the Annex, to the extent that such data are already collected by them, to the database of the national Passenger Information Unit of the Member State on the territory of which the international flight will land or from the territory of which the flight will depart. Where the flight is code-shared between one or more air carriers, the obligation to transfer the PNR data of all passengers on the flight shall be on the air carrier that operates the flight. Where the flight has one or more stop-overs at the airports of the Member States, air carriers shall transfer the PNR data to the Passenger Information Units of all the Member States concerned.</p>	<p style="text-align: center;"><i>Article 5</i></p> <p style="text-align: center;"><i>Obligation on air carriers</i></p> <p>1. Member States shall adopt the necessary measures to ensure that air carriers transfer or make available the PNR data of the passengers of international flights to the national Passenger Information Unit of the Member State on whose territory the international flight referred to is landing in or departing from, in accordance with the conditions specified in this Framework Decision. In cases in which an international flight is code-shared between one or more air carriers, the obligation to transfer or to make available the PNR data of all passengers of the flight should be on the air carrier that operates the flight. In cases in which a transiting international flight includes a segment involving two or more different Member States, air carriers should transfer or make available the PNR data of the passengers to the Passenger Information Units of all the involved Member States.</p>	
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<p>2. Air carriers shall transfer PNR data by electronic means using the common protocols and supported data formats to be adopted in accordance with the procedure of Articles 13 and 14 or, in the event of technical failure, by any other appropriate means ensuring an appropriate level of data security:</p>	<p>2. Air carriers shall transfer or make available to the Passenger Information Unit the PNR data as defined in Article 2(c) and specified in the Annex.</p>	
<p>(a) 24 to 48 hours before the scheduled time for flight departure; and</p>		
<p>(b) immediately after flight closure, that is once the passengers have boarded the aircraft in preparation for departure and it is no longer possible for further passengers to board.</p>		
<p>3. Member States may permit air carriers to limit the transfer referred to in point (b) of paragraph 2 to updates of the transfer referred to in point (a) of paragraph 2.</p>		

<p>4. On a case-by-case basis, upon request from a Passenger Information Unit in accordance with national law, air carriers shall transfer PNR data where access earlier than that mentioned in point (a) of paragraph 2 is necessary to assist in responding to a specific and actual threat related to terrorist offences or serious crime.</p>		
<p style="text-align: center;"><i>Article 7</i></p> <p style="text-align: center;">Exchange of information between Member States</p> <p>1. Member States shall ensure that, with regard to persons identified by a Passenger Information Unit in accordance with Article 4(2)(a) and (b), the result of the processing of PNR data is transmitted by that Passenger Information Unit to the Passenger Information Units of other Member States where the former Passenger Information Unit considers such transfer to be necessary for the prevention, detection, investigation or prosecution of terrorist offences or serious crime. The Passenger Information Units of the receiving Member States shall transmit such PNR data or the result of the processing of PNR data to their relevant competent authorities.</p>	<p style="text-align: center;"><i>Article 7</i></p> <p style="text-align: center;"><i>Exchange of Information between Member States</i></p> <p>1. Member States shall ensure that, with regard to persons identified by a Passenger Information Unit in accordance with Article 3(3)(a), the PNR data or analysis of PNR data shall be transmitted by that Passenger Information Unit to the Passenger Information Units of other Member States only in such cases and to the extent that such transmission is necessary in the prevention, detection, investigation or prosecution of terrorist offences or serious crime. The Passenger Information Units of the receiving Member States shall transmit such PNR data or analysis of PNR data to their relevant competent authorities.</p>	

<p>2. The Passenger Information Unit of a Member State shall have the right to request, if necessary, the Passenger Information Unit of any other Member State to provide it with PNR data that are kept in the latter's database in accordance with Article 9(1), and, if necessary, also the result of the processing of PNR data. The request for such data may be based on any one or a combination of data elements, as deemed necessary by the requesting Passenger Information Unit for a specific case of prevention, detection, investigation or prosecution of terrorist offences or serious crime. Passenger Information Units shall provide the requested data as soon as practicable and shall provide also the result of the processing of PNR data, if it has already been prepared pursuant to Article 4(2)(a) and (b).</p>	<p>2. The Passenger Information Unit of a Member State shall have the right to request, either on an ad hoc or on a regular basis, the Passenger Information Unit of any other Member State to provide it with PNR data which are kept in the latter's database as per Article 9(1), and, if necessary, also the analysis of PNR data. The request for such data may be based on any one or a combination of data elements, as deemed necessary by the requesting Unit for a specific case of prevention, detection, investigation or prosecution of terrorist offences or serious crime. Passenger Information Units shall provide requested PNR data as soon as practicable and shall provide also analysis of PNR data, if it has already been prepared pursuant to Article 3(1).</p>	
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<p>3. The Passenger Information Unit of a Member State shall have the right to request, if necessary, the Passenger Information Unit of any other Member State to provide it with PNR data that are kept in the latter's database in accordance with Article 9(2), and, if necessary, also the result of the processing of PNR data. The Passenger Information Unit may request access to specific PNR data kept by the Passenger Information Unit of another Member State in their full form without the masking out only in exceptional circumstances in response to a specific threat or a specific investigation or prosecution related to terrorist offences or serious crime.</p>	<p>3. When a Passenger Information Unit requests specific PNR data of another Member State which are kept in archives as per Article 9(2), the request shall be made to the Passenger Information Unit of that Member State. Such request shall be made only in exceptional circumstances in response to a specific threat or a specific investigation or prosecution related to the prevention, detection, investigation or prosecution of terrorist offences or serious crime.</p>	
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<p>4. Only in those cases where it is necessary for the prevention of an immediate and serious threat to public security may the competent authorities of a Member State request directly the Passenger Information Unit of any other Member State to provide it with PNR data that are kept in the latter's database in accordance with Article 9(1) and (2). Such requests shall relate to a specific investigation or prosecution of terrorist offences or serious crime and shall be reasoned. Passenger Information Units shall respond to such requests as a matter of priority. In all other cases the competent authorities shall channel their requests through the Passenger Information Unit of their own Member State.</p>	<p>2a. Only in those cases where it is absolutely necessary for the prevention of an immediate and serious threat to public security, shall the competent authorities of a Member State have the possibility to request directly the Passenger Information Unit of any other Member State to provide it with PNR data which are kept in the latter's database as per Article 9(1) (2). Such requests shall relate to a specific investigation or prosecution of terrorist offences or serious crime and must be reasoned. Passenger Information Units shall respond to such requests as a matter of priority. In all other cases the competent authorities shall channel their requests through the Passenger Information Unit of their own Member State.</p>	
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<p>5. Exceptionally, where early access is necessary to respond to a specific and actual threat related to terrorist offences or serious crime, the Passenger Information Unit of a Member State shall have the right to request the Passenger Information Unit of another Member State to provide it with PNR data of flights landing in or departing from the latter's territory at any time.</p>	<p>2. The Passenger Information Unit of a Member State shall have the right to request, either on an ad hoc or on a regular basis, the Passenger Information Unit of any other Member State to provide it with PNR data which are kept in the latter's database as per Article 9(1), and, if necessary, also the analysis of PNR data. The request for such data may be based on any one or a combination of data elements, as deemed necessary by the requesting Unit for a specific case of prevention, detection, investigation or prosecution of terrorist offences or serious crime. Passenger Information Units shall provide requested PNR data as soon as practicable and shall provide also analysis of PNR data, if it has already been prepared pursuant to Article 3(1).</p>	
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<p>6. Exchange of information under this Article may take place using any existing channels for international law enforcement cooperation. The language used for the request and the exchange of information shall be the one applicable to the channel used. Member States shall, when making their notifications in accordance with Article 3(3), also inform the Commission with details of the contacts to which requests may be sent in cases of urgency. The Commission shall communicate to the Member States the notifications received.</p>		
<p style="text-align: center;"><i>Article 8</i></p> <p style="text-align: center;">Transfer of data to third countries</p> <p>A Member State may transfer PNR data and the results of the processing of PNR data to a third country, only on a case-by-case basis and if:</p> <p>(a) the conditions laid down in Article 13 of Council Framework Decision 2008/977/JHA are fulfilled,</p>	<p style="text-align: center;"><i>Article 8</i></p> <p style="text-align: center;"><i>Transfer of Data to Third Countries</i></p> <p>1. PNR data and the analysis of PNR data may be transferred (...) by a Member State to a third country only on a case-by-case basis and only if the Member State is satisfied that:</p> <p>(a) the transfer is necessary-for the purpose of preventing, detecting, investigating or prosecuting of terrorist offences or serious crime;</p>	
<p>(b) the transfer is necessary for the purposes of this Directive specified in Article 1(2), and</p>	<p>(b) the receiving authority in the third country is an authority responsible for the prevention, investigation, detection or prosecution of terrorist offences or serious crime;</p>	

<p>(c) the third country agrees to transfer the data to another third country only where it is necessary for the purposes of this Directive specified in Article 1(2) and only with the express authorisation of the Member State.</p>	<p>(c) in case the PNR data was obtained from another Member State, that Member State has given its consent to the transfer in compliance with its national law;</p>	
<p style="text-align: center;"><i>Article 9</i></p> <p style="text-align: center;">Period of data retention</p> <p>1. Member States shall ensure that the PNR data provided by the air carriers to the Passenger Information Unit are retained in a database at the Passenger Information Unit for a period of 30 days after their transfer to the Passenger Information Unit of the first Member State on whose territory the international flight is landing or departing.</p>	<p style="text-align: center;"><i>Article 9</i></p> <p style="text-align: center;"><i>Period of data retention</i></p> <p>1. Member States shall ensure that the PNR data provided by the air carriers to the Passenger Information Unit are kept in a database at the Passenger Information Unit for a period of three years after their transfer to the Passenger Information Unit of the first Member State on whose territory the international flight is landing or departing.</p>	

<p>2. Upon expiry of the period of 30 days after the transfer of the PNR data to the Passenger Information Unit referred to in paragraph 1, the data shall be retained at the Passenger Information Unit for a further period of five years. During this period, all data elements which could serve to identify the passenger to whom PNR data relate shall be masked out. Such anonymised PNR data shall be accessible only to a limited number of personnel of the Passenger Information Unit specifically authorised to carry out analysis of PNR data and develop assessment criteria according to Article 4(2)(d). Access to the full PNR data shall be permitted only by the Head of the Passenger Information Unit for the purposes of Article 4(2)(c) and where it could be reasonably believed that it is necessary to carry out an investigation and in response to a specific and actual threat or risk or a specific investigation or prosecution.</p>	<p>2. Upon the expiry of the period of three years of the transfer of the PNR data to the Passenger Information Unit referred to in paragraph 1, the data may be archived at the Passenger Information Unit for a further period of [not more than seven] years. During this period, the PNR data may be accessed, processed and used only by specially authorised personnel of the Passenger Information Unit, whose functional description comprises such access. Access shall be permitted only in response to a specific and actual threat or risk or a specific investigation or prosecution or for analytical purposes related to the prevention, detection, investigation and prosecution of terrorist offences or serious crime.</p>	
<p>For the purposes of this Directive, the data elements which could serve to identify the passenger to whom PNR data relate and which should be filtered and masked out are: Name (s), including the names of other passengers on PNR and number of travellers on PNR travelling together;</p>		

<ul style="list-style-type: none"> – Address and contact information; 		
<ul style="list-style-type: none"> – General remarks to the extent that it contains any information which could serve to identify the passenger to whom PNR relate; and 		
<ul style="list-style-type: none"> – Any collected Advance Passenger Information. 		
<p>3. Member States shall ensure that the PNR data are deleted upon expiry of the period specified in paragraph 2. This obligation shall be without prejudice to cases where specific PNR data have been transferred to a competent authority and are used in the context of specific criminal investigations or prosecutions, in which case the retention of such data by the competent authority shall be regulated by the national law of the Member State.</p>	<p>3. Member States shall ensure that the PNR data is deleted from all the databases of their Passenger Information Unit upon the expiry of the period specified in paragraph 1, or in the case of archiving the data, in paragraph 2.</p>	

<p>4. The result of matching referred to in Article 4(2)(a) and (b) shall be kept by the Passenger Information Unit only as long as necessary to inform the competent authorities of a positive match. Where the result of an automated matching operation has, further to individual review by non-automated means, proven to be negative, it shall, however, be stored so as to avoid future ‘false’ positive matches for a maximum period of three years unless the underlying data have not yet been deleted in accordance with paragraph 3 at the expiry of the five years, in which case the log shall be kept until the underlying data are deleted.</p>	<p>3a. The result of matching referred to in Article 3(3)(a) shall be kept by the Passenger Information only as long as necessary to inform the competent authorities of a positive match. Where the result of an automated matching operation has, further to manual verification, proven to be negative, it may, however, be stored so as to avoid future "false" positive matches [for a maximum period of three years].</p>	
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<p style="text-align: center;"><i>Article 10</i></p> <p style="text-align: center;">Penalties against air carriers</p> <p>Member States shall ensure, in conformity with their national law, that dissuasive, effective and proportionate penalties, including financial penalties, are provided for against air carriers which, do not transmit the data required under this Directive, to the extent that they are already collected by the them, or do not do so in the required format or otherwise infringe the national provisions adopted pursuant to this Directive.</p>	<p style="text-align: center;"><i>Article 10</i></p> <p style="text-align: center;"><i>Sanctions</i></p> <p>Member States shall ensure, in conformity with their national law, that dissuasive effective and proportionate sanctions, including financial penalties, are provided for against air carriers which, with regard to PNR data collected by them, do not transmit all data required under this Framework decision or do not do so in the required format or otherwise infringe the national provisions adopted pursuant to this Framework Decision.</p>	
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<p style="text-align: center;"><i>Article 11</i></p> <p style="text-align: center;">Protection of personal data</p> <p>1. Each Member State shall provide that, in respect of all processing of personal data pursuant to this Directive, every passenger shall have the same right to access, the right to rectification, erasure and blocking, the right to compensation and the right to judicial redress as those adopted under national law in implementation of Articles 17, 18, 19 and 20 of the Council Framework Decision 2008/977/JHA. The provisions of Articles 17, 18, 19 and 20 of the Council Framework Decision 2008/977/JHA shall therefore be applicable.</p>	<p style="text-align: center;"><i>Article 11</i></p> <p style="text-align: center;">Protection of PNR data</p> <p>1. Member States shall ensure that all processing of PNR data pursuant to this Framework Decision by the Passenger Information Unit, takes place in accordance with the provisions of Articles 11-12.</p> <p>2. PNR data which is received or collected pursuant to this Framework Decision by the Passenger Information Units and the competent authorities of all the Member States shall exclusively be processed for the purposes set out in Articles 3(3) and 4(4)(5). Processing of the data must be legitimate and adequate, relevant and not excessive.</p> <p style="text-align: center;"><i>Article 11d</i></p> <p style="text-align: center;">Right of access</p> <p>1. Every data subject is entitled, on request made at reasonable intervals, to receive without constraint and without excessive delay or expense:</p> <p style="margin-left: 40px;">(a) at least a confirmation from the Passenger Information Unit or from the national supervisory authority as to whether or not PNR data relating to him or her have been transmitted</p>	
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	<p>to another Passenger Information Unit or a competent authority, communication of the PNR data undergoing processing and, where possible, information on this Passenger Information Unit or competent authority; or</p> <p>(b) at least a confirmation from the national supervisory authority that all necessary verifications have taken place.</p> <p>2. The Member States may adopt legislative measures restricting access to information pursuant to paragraph 1(a), where such a restriction, with due regard for the legitimate interests of the data subject, constitutes a necessary and proportional measure:</p> <p>(a) to avoid obstructing official or legal inquiries, investigations or procedures;</p> <p>(b) to avoid prejudicing the prevention, detection, investigation and prosecution of criminal offences or for the execution of criminal penalties;</p> <p>(c) for protecting public security;</p>	
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	<p>(d) for protecting national security;</p> <p>(e) for protection of the data subject or of the rights and freedoms of others.</p> <p>3. Any refusal or restriction of access shall be set out in writing to the data subject. At the same time, the factual or legal reasons on which the decision is based shall also be communicated to him. This communication may be waived where a reason pursuant to paragraph 2, points (a) to (e), exists. In all of these cases the data subject shall be advised that he may appeal to the competent national supervisory authority, a judicial authority or to a court.</p> <p style="text-align: center;"><i>Article 11e</i></p> <p style="text-align: center;">Right to rectification and erasure</p> <p>1. PNR data shall be rectified by the Passenger Information Unit (...) if inaccurate, and where possible and necessary, completed or updated.</p> <p>2. Where such data have been transferred or made available by the air carriers in violation of the national provisions adopted pursuant to this Framework Decision, the PIU shall erase such data.</p>	
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	<p>3. Member States shall lay down whether the data subject can assert these rights directly against the Passenger Information Unit or through the intermediary of the competent national supervisory authority. If the Passenger Information Unit refuses rectification or erasure of such data, the refusal must be communicated in writing and the data subject informed of the possibilities provided for in national law for lodging a complaint or seeking judicial remedy. When the complaint or judicial remedy is examined, the data subject shall be informed whether the Passenger Information Unit acted properly or not. Member States may also provide that the data subject shall only be informed by the competent national supervisory authority that a review has taken place.</p> <p style="text-align: center;"><i>Article 11f</i> Right to compensation</p> <p>1. Member States shall ensure that any data subject who has suffered damage as a result of an unlawful processing operation or of any act incompatible with the national provisions adopted pursuant to this Framework Decision is entitled to receive compensation from the Member State responsible for the damage suffered.</p>	
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	<p>2. Member States shall ensure that any data subject who has suffered damage as a result of a transmission of PNR data by the air carriers in violation of the national provisions adopted pursuant to this Framework Decision, is entitled to receive compensation from the air carrier under national law for the damage suffered.</p> <p style="text-align: center;"><i>Article 11g</i> Judicial remedies</p> <p>Without prejudice to any administrative remedy for which provision may be made prior to referral to the judicial authority, the data subject must have the right to seek judicial remedy for any breach of the rights guaranteed to him by the national provisions adopted pursuant to this Framework Decision.</p>	
<p>2. Each Member State shall provide that the provisions adopted under national law in implementation of Articles 21 and 22 of the Council Framework Decision 2008/977/JHA regarding confidentiality of processing and data security shall also apply to all processing of personal data pursuant to this Directive.</p>		

<p>3. Any processing of PNR data revealing a person's race or ethnic origin, religious or philosophical belief, political opinion, trade union membership, health or sexual life shall be prohibited. In the event that PNR data revealing such information are received by the Passenger Information Unit they shall be deleted immediately.</p>	<p style="text-align: center;"><i>Article 11a</i></p> <p style="text-align: center;">Processing of special categories of data</p> <p>1. Any processing, other than the collection or storage, by Passenger Information Units of PNR data revealing a person's race or ethnic origin, religious or philosophical belief, political opinion, trade union membership, health or sexual orientation shall be prohibited, unless in a specific case (...) the following conditions are met:</p>	
<p>4. All processing of PNR data by air carriers, all transfers of PNR data by Passenger Information Units and all requests by competent authorities or Passenger Information Units of other Member States and third countries, even if refused, shall be logged or documented by the Passenger Information Unit and the competent authorities for the purposes of verification of the lawfulness of the data processing, self-monitoring and ensuring proper data integrity and security of data processing, in particular by the national data protection supervisory authorities. These logs shall be kept for a period of five years unless the underlying data have not yet been deleted in accordance with Article 9(3) at the expiry of those five years, in which case the logs shall be kept until the underlying data are deleted.</p>	<p style="text-align: center;"><i>Article 11b</i></p> <p style="text-align: center;">Logging and documentation</p> <p>1. All transmissions of PNR data by air carriers, all transmissions of PNR data by Passenger Information Units and all requests by competent authorities or Passenger Information Units of other Member States [and third States], even if refused, are to be logged or documented by the Passenger Information Unit for the purposes of verification of the lawfulness of the data processing, self-monitoring and ensuring proper data integrity, security and accountability of data processing.</p>	

<p>5. Member States shall ensure that air carriers, their agents or other ticket sellers for the carriage of passengers on air service inform passengers of international flights at the time of booking a flight and at the time of purchase of a ticket in a clear and precise manner about the provision of PNR data to the Passenger Information Unit, the purposes of their processing, the period of data retention, their possible use to prevent, detect, investigate or prosecute terrorist offences and serious crime, the possibility of exchanging and sharing such data and their data protection rights, in particular the right to complain to a national data protection supervisory authority of their choice. The same information shall be made available by the Member States to the public.</p>	<p>5. Member States shall ensure that air carriers or their agents or other ticket sellers for the carriage of passengers on air services inform passengers in accordance with Article 11c of this Framework Decision.</p>	
<p>6. Any transfer of PNR data by Passenger Information Units and competent authorities to private parties in Member States or in third countries shall be prohibited.</p>		

<p>7. Without prejudice to Article 10, Member States shall adopt suitable measures to ensure the full implementation of the provisions of this Directive and shall in particular lay down effective, proportionate and dissuasive penalties to be imposed in case of infringements of the provisions adopted pursuant to this Directive.</p>		
<p style="text-align: center;"><i>Article 12</i></p> <p style="text-align: center;">National supervisory authority</p> <p>Each Member State shall provide that the national supervisory authority established in implementation of Article 25 of Framework Decision 2008/977/JHA shall also be responsible for advising on and monitoring the application within its territory of the provisions adopted by the Member States pursuant to the present Directive. The further provisions of Article 25 Framework Decision 2008/977/JHA shall be applicable.</p>	<p style="text-align: center;"><i>Article 11i</i></p> <p style="text-align: center;">National Supervisory Authority</p> <p>1. Without prejudice to wider powers under national law, each Member State shall provide that one or more public authorities are responsible for [advising on and] monitoring the application within its territory of the provisions on data protection adopted by the Member States pursuant to this Chapter. These authorities shall act with complete independence in exercising the functions entrusted to them.</p>	

<p style="text-align: center;"><i>Article 13</i></p> <p style="text-align: center;">Common protocols and supported data formats</p> <p>1. All transfers of PNR data by air carriers to the Passenger Information Units for the purposes of this Directive shall be made by electronic means or, in the event of technical failure, by any other appropriate means, for a period of one year following the adoption of the common protocols and supported data formats in accordance with Article 14.</p>	<p style="text-align: center;"><i>Article 13</i></p> <p style="text-align: center;">Common Protocols</p> <p>1. Until the time limit referred to in paragraph 6 of this Article has elapsed, all transmissions of PNR data by air carriers to the Passenger Information Units made for the purposes of this Framework Decision shall be made by electronic means or, in case of failure, by any other appropriate means, and in a specified data format.</p>	
<p>2. Once the period of one year from the date of adoption of the common protocols and supported data formats has elapsed, all transfers of PNR data by air carriers to the Passenger Information Units for the purposes of this Directive shall be made electronically using secure methods in the form of accepted common protocols which shall be common to all transfers to ensure the security of the data during transfer, and in a supported data format to ensure their readability by all parties involved. All air carriers shall be required to select and identify to the Passenger Information Unit the common protocol and data format that they intend to use for their transfers.</p>	<p>2. Once the time limit referred to in paragraph 6 of this Article has elapsed, all transmissions of PNR data by air carriers to the Passenger Information Units made for the purposes of this Framework Decision shall be made electronically using secure methods in the form of acceptable common protocols which shall be common to all transmissions to ensure the security of the data during transmission, and in a supported data format to ensure their readability by all parties involved. Air carriers shall be required to select and identify to the Passenger Information Unit the common protocol and data format that it intends to use for its transmissions to it.</p>	

<p>3. The list of accepted common protocols and supported data formats shall be drawn up and, if need be, adjusted, by the Commission in accordance with the procedure referred to in Article 14(2).</p>	<p>3. The list of acceptable common protocols and supported data formats shall be set up and, if need be, adapted in accordance with the procedure provided for in Article 15.</p>	
<p>4. As long as the accepted common protocols and supported data formats referred to in paragraphs 2 and 3 are not available, paragraph 1 shall remain applicable.</p>	<p>4. If the mode of transmission referred to in paragraphs 2 and 3 is not available, paragraph 1 shall remain applicable for the entire period of such unavailability.</p>	
<p>5. Each Member State shall ensure that the necessary technical measures are adopted to be able to use the common protocols and data formats within one year from the date the common protocols and supported data formats are adopted.</p>	<p>5. Each Member State shall ensure that the necessary technical alterations are carried out to be able to support all the acceptable common protocols and data formats.</p>	
<p style="text-align: center;"><i>Article 14</i></p> <p style="text-align: center;">Committee procedure</p> <p>1. The Commission shall be assisted by a committee ('the Committee'). That Committee shall be a committee within the meaning of Regulation [.../2011/EU] of 16 February 2011.</p>	<p style="text-align: center;"><i>Article 14</i></p> <p style="text-align: center;">Committee procedure</p> <p>1. The Commission shall be assisted by a committee composed of the representatives of the Member States and chaired by the representative of the Commission (the "Committee").</p>	

<p>2. Where reference is made to this paragraph, Article 4 of Regulation [.../2011/EU] of 16 February 2011 shall apply.</p>	<p>2. The Committee shall adopt its rules of procedure on a proposal made by the Chair on the basis of standard rules of procedure which have been published in the <i>Official Journal of the European Union</i>.</p>	
<p style="text-align: center;"><i>Article 15</i></p> <p style="text-align: center;">Transposition</p> <p>1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive at the latest two years after the entry into force of this Directive. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.</p> <p>When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.</p>	<p style="text-align: center;"><i>Article 16</i></p> <p style="text-align: center;">Implementation</p> <p>1. Member States shall take the necessary measures to comply with the provisions of this Framework Decision before [31 December 2010]. By the same date they shall transmit to the General Secretariat of the Council and the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision and a correlation table between those provisions and this Framework Decision.</p> <p>When Member States adopt those provisions, they shall contain a reference to this Framework Decision or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.</p>	

<p>2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.</p>	<p>2. On the basis of a report established using this information and a written report from the Commission, the Council shall before 31 December 2011 assess the extent to which Member States have complied with the provisions of this Framework Decision.</p>	
<p style="text-align: center;"><i>Article 16</i></p> <p style="text-align: center;">Transitional provisions</p> <p>Upon the date referred to in Article 15(1), i.e. two years after the entry into force of this Directive, Member States shall ensure that the PNR data of at least 30% of all flights referred to in Article 6(1) are collected. Until two years after the date referred to in Article 15, Member States shall ensure that the PNR data from at least 60% of all flights referred to in Article 6(1) are collected. Member States shall ensure that from four years after the date referred to in Article 15, the PNR data from all flights referred to in Article 6(1) are collected.</p>	<p style="text-align: center;"><i>Article 5</i></p> <p>1a. During [3] years following [the date referred to in Article 16] Member States shall ensure that the PNR data from at least 30 % of all flights referred to in paragraph 1 are collected. During next [3] years Member States shall ensure that the PNR data from at least 60 % of all flights referred to in paragraph 1 are collected. After [6] years following [the date referred to in Article 16] Member States shall ensure that the PNR data from all flights referred to in paragraph 1 are collected.</p>	

<p style="text-align: center;"><i>Article 17</i></p> <p style="text-align: center;">Review</p> <p>On the basis of information provided by the Member States, the Commission shall:</p> <p>(a) review the feasibility and necessity of including internal flights in the scope of this Directive, in the light of the experience gained by those Member States that collect PNR data with regard to internal flights. The Commission shall submit a report to the European Parliament and the Council within two years after the date mentioned in Article 15(1);</p>	<p>2. In the context of this review, the Commission shall examine the following two questions and, if appropriate, make recommendations on:</p> <ul style="list-style-type: none"> - the gradual increase of flights with regard to which PNR data are collected, as referred to in Article 5(1a); and - the cost-benefit impact of the potential inclusion of intra-community flights in the scope of the Framework Decision, in the light of the national experiences gathered by those Member States that have decided to collect PNR data with regard to intra-community flights. 	
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<p>(b) undertake a review of the operation of this Directive and submit a report to the European Parliament and the Council within four years after the date mentioned in Article 15(1). Such review shall cover all the elements of this Directive, with special attention to the compliance with standard of protection of personal data, the length of the data retention period and the quality of the assessments. It shall also contain the statistical information gathered pursuant to Article 18.</p>	<p style="text-align: center;"><i>Article 17</i></p> <p style="text-align: center;">Review</p> <p>1. On the basis of information provided by the Member States, the Commission shall undertake a review of the operation of this Framework Decision and shall submit a report to the Council within four years after this Framework Decision has been implemented. Such review shall comprise all the elements of this Framework Decision, with special attention to the implementation of the "push method", the level of adherence to the data protection safeguards, the evaluation of the length of the data retention period and the quality of the risk assessments. It shall also contain the statistical information gathered pursuant to Article 18.</p>	
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<p style="text-align: center;"><i>Article 18</i></p> <p style="text-align: center;">Statistical data</p> <p>1. Member States shall prepare a set of statistical information on PNR data provided to the Passenger Information Units. Such statistics shall as a minimum cover the number of identifications of any persons who may be involved in a terrorist offence or serious crime according to Article 4(2) and the number of subsequent law enforcement actions that were taken involving the use of PNR data per air carrier and destination.</p>	<p style="text-align: center;"><i>Article 18</i></p> <p style="text-align: center;">Statistical data</p> <p>1. Member States shall ensure that a set of statistical information on PNR data provided to the Passenger Information Units is available.</p>	
<p>2. These statistics shall not contain any personal data. They shall be transmitted to the Commission on a yearly basis.</p>	<p>3. These statistics should not contain any personal information. They should be transmitted to the General Secretariat of the Council and the Commission on a yearly basis.</p>	
<p style="text-align: center;"><i>Article 19</i></p> <p style="text-align: center;">Relationship to other instruments</p> <p>1. Member States may continue to apply bilateral or multilateral agreements or arrangements between themselves on exchange of information between competent authorities, in force when this Directive is adopted, in so far as such agreements or arrangements are compatible with this Directive.</p>	<p style="text-align: center;"><i>Article 19</i></p> <p style="text-align: center;">Relationship to other instruments</p> <p>1. Member States may continue to apply between them bilateral or multilateral agreements or arrangements on exchange of information between competent authorities, in force when this Framework Decision is adopted in so far as such agreements or arrangements are compatible with the objectives of this Framework Decision.</p>	

<p>2. This Directive is without prejudice to any obligations and commitments of the Union by virtue of bilateral and/or multilateral agreements with third countries.</p>		
<p style="text-align: center;"><i>Article 20</i></p> <p style="text-align: center;">Entry into force</p> <p>This Directive shall enter into force the twentieth day following that of its publication in the <i>Official Journal of the European Union</i>.</p> <p>This Directive is addressed to the Member States in accordance with the Treaties.</p> <p>Done at Brussels, <i>For the European Parliament The President</i> <i>For the Council The President</i></p>	<p style="text-align: center;"><i>Article 20</i></p> <p style="text-align: center;">Entry into force</p> <p>This Framework decision shall enter into force the day following its publication in the <i>Official Journal of the European Union</i>.</p> <p>Done at Brussels,</p> <p><i>For the Council</i> The President</p>	