EU Passenger Name Record (PNR) & Bilateral PNR Agreements

**Issue summary**

There are two different aspects to the use of PNR in the EU: the EU is trying to set-up a system of more systematic collection of PNR data by EU countries for passengers entering or leaving the EU and an external system, via bilateral agreements with third countries, which regulate the transfer of PNR from EU air carriers to third countries' law enforcement authorities.

- **EU PNR Directive:**
  This Directive is currently under discussion at the EU level. The Member States support the text and have even called for the integration of internal EU flights into the system. The European Parliament is more divided on the issue with the left-wing demanding the introduction of better safeguards in terms of data protection. In July 2015, the European Parliament Committee in charge of the file (Committee on Civil Liberties, Justice and Home Affairs, LIBE) adopted its position, which will now form the basis of negotiations with Member States. Following the January 2015 terrorist attacks in Paris, EU Member States called for the quick adoption of the file.

- **Bilateral PNR agreements**
  Two PNR agreements are currently in place with the US and Australia. The EU/Canada agreement is signed but cannot enter into force because it has not yet received the European Parliament’s consent. The European Parliament is awaiting a decision from the European Court of Justice before giving its final consent. A planned EU-Mexico PNR data transfer deal is currently being negotiated.

In 2013, the EU also started discussing (internally) several policy options that would regulate EU airlines’ transfers of PNR data to third countries to avoid a multiplication of bilateral PNR agreements. As part of this, the European Commission proposed creating a legal instrument providing the legal basis for the transmission of passenger data to third countries. However, there has not been any concrete development on this since October 2013 and it looks like this option has been abandoned by the new European Commission.

Any initiative aimed at increasing travel safety and easing security checks is a positive development for GBTA.

**Relevance to GBTA and proposed actions**

**Impact on GBTA**

Measures to improve EU travel safety and facilitate security checks are positive for business travellers. The electronic processing of data in advance of the arrival of passengers largely facilitates and expedites security and border control checks, since the risk assessment process is done before arrival. It provides the opportunity for law enforcement authorities to focus only on those passengers for whom they have a fact-based reason to believe they might pose an actual risk to security, rather than making assessments based on instinct, pre-conceived stereotypes, or profiles. Both the EU PNR Directive and the bilateral agreements being signed with third countries are positive developments for business travellers.

However, GBTA members are likely to be divided on these issues:
Airlines have expressed their will to see the quick adoption of the EU PNR Directive. They are now confronted with 28 different systems for PNR data requests from a wide diversity of national authorities. A coordinated EU system would simplify the process for them. In addition, airlines are currently confronted with PNR data requests from more than 15 non-EU countries. A comprehensive EU PNR framework would be a first step towards providing clear standards and references for airlines on how to handle international requests on passenger data transfer.

European airlines have also welcomed the European Commission’s option to create a legal instrument providing a legal basis for the transmission of passenger data to third countries. They argue that this would provide clear criteria for third countries to comply with, prior to their request to EU-based airlines to transmit PNR data. The advantage of this option is that it would allow the EU to set the framework for transferring passenger data from EU citizens and/or EU territory to any compliant third country government. This approach would be clear and transparent to third countries.

However, the European travel agents’ and tour operators’ associations (ECTAA) and Guild of European Business Travel Agents (GEBTA), which are involved in the booking and sale of air travel services, would be subject to the EU PNR, have raised some concerns and even opposed the proposal when it was first published. In particular, they refuse to be mentioned as being responsible for the obligation to inform passengers on the use of their PNR information, arguing that this obligation should only fall on air carriers. They also reject the expansion of the EU PNR Directive to intra-EU flights (as suggested by EU Member States).

It is therefore necessary that GBTAs checks its members’ positions internally before developing its own position.

Recommended Actions by GBTA

Since the EU PNR Directive is relatively close to adoption and highly technical, and although the European Parliament still has the possibility to block it, the scope of GBTA’s actions is limited.

Informal discussions with EU policy makers in charge of PNR transfers to third countries could also be useful to better understand if the new European Commission wants to follow-up on the proposal of the former European Commission to manage the PNR data requests from third countries and whether it will keep its bilateral approach or move towards a more coordinated approach.

Given the sensitivity of the data protection topic, proactive external communication should be carefully considered, since it could potentially have a negative impact on GBTA Europe’s reputation.

Background and next steps

PNR data is information provided by passengers and collected by air carriers during reservation and check-in procedures. It includes several different types of information, such as travel dates, travel itinerary, ticket information, contact details, baggage information, and payment information. This information is then submitted to law enforcement authorities for the purpose of law enforcement and the fight against terrorism.

Background on the EU PNR Directive:

- The use of PNR data is not currently regulated at the EU level. Some Member States already have a PNR system (e.g. the UK), while others have either enacted legislation or are currently testing PNR data systems.
- The main legislative instrument at the EU level governing this field is the Data Retention Directive, which was adopted in November 2006 following the Madrid terrorist train bombings in 2004 and the public transport bombings in London in 2005. These resulted in a text which gave room for different applications at national level and which did not guarantee a sufficient level of harmonisation.
The proposed EU PNR Directive was launched in 2011 and would require more systematic collection, use, and retention of PNR data on passengers taking "international" flights (those entering the EU from, or leaving for, a third country). It would harmonise the conditions that Member States require third countries to comply with before they are able to ask EU-based airlines to transmit PNR data.

This proposal was initially rejected by the European Parliament in 2013. MEPs who voted against it questioned the proportionality of the proposed scheme for the collection, use and retention of airline passengers' data (irrespective of whether they are suspects) and its compliance with fundamental rights, especially data protection.

Debate on the proposal has gained momentum due to concerns over possible threats to the EU's internal security. In the aftermath of the January 2015 terrorist attacks in Paris, this proposal is again under the spotlight.

In the text adopted in July 2015, which lays the ground for negotiations with EU Member States, the European Parliament proposes that:
  - Sensitive data should be permanently deleted no later than 30 days from the last receipt of PNR containing such data by competent authorities. Other data will continue to be masked after 30 days,
  - Intra-EU flights are included (not initially included by the Commission, but the Council of the European Union favours the inclusion of internal EU flights),
  - An immediate objective of 100% coverage of flights (the Commission text proposed 100% coverage of international flights in gradual steps),
  - Access to the PNR data continues to be allowed for five years for terrorism, but is reduced to four years for serious crime,
  - Each EU Member State should appoint a data protection supervisory officer,
  - Persons who operate security controls, who access and analyse the PNR data, and operate the data logs, must be security cleared, and security trained,
  - References are made in the text to the EU Court of Justice judgment on data retention and to the current EU data protection rules,
  - The period for Member States to transpose the Directive is extended from two to three years (given the specific technological and structural demands of setting up an EU PNR system for each Member State).

This file is also closely linked to the Data Protection Directive, which is also currently being revised at the EU level. The European Parliament has asked for the adoption of this Directive, which regulates the use of personal data in the EU, before an agreement on the EU PNR Directive can be found.

Bilateral PNR agreements:
- An increasing number of third countries are asking for PNR data from the EU, but the EU has only signed bilateral PNR agreements with the US and Australia. The agreement with Canada cannot yet enter into force because its approval by the European Parliament is awaiting a decision by the European Court of Justice.
- These agreements are in place to provide a clear legal framework and a high level of data protection when PNR data is exchanged between the EU and these countries. These apply to flights between the EU and the US, the EU and Canada, and the US and Australia.
- In 2010, the European Commission formulated in a Communication the key considerations and conditions for future PNR agreements as part of the EU’s global approach to PNR. To follow-up on this Communication, the European Commission published a roadmap in 2013, presenting how it intends to move forward on regulating the transfer of PNR data to third countries.
- In the roadmap, the European Commission proposes three different options:
  - Do nothing, and let Member States handle PNR requests from third countries
  - Continue with the current practice of considering the conclusion of a bilateral agreement between the EU and each third country that asks for passenger data
  - A multilateral approach through which the European Commission seeks to negotiate an international convention allowing the transfer of passenger data, for example at the UN level
  - Finally, the preparation of a proposal for a legal instrument providing the legal basis for the transmission of PNR data to third countries. This instrument would list the third countries to which air carriers can send passenger data.
Since 2013, there has not been any concrete development on this aspect, and since the EU has now started negotiations with Mexico on PNR data transmission, it seems that the European Commission's preferred option remains the signature of bilateral agreements.

Next steps

- Once approved, Member States would have two years – or three, depending on what the Member States and the European Parliament agree – to transpose the EU PNR Directive into their national laws.

Key stakeholders

- **European Parliament**: LIBE Committee & MEP Kikhope (ECR, UK) (Rapporteur)
- **European Commission**: DG Migration and Home Affairs & Amici Victoria, Head of Unit – Police cooperation
- **Council of the EU**: Home Affairs attachés

Read more

- Legislative Observatory:
  - Link to the EU PNR
  - Link to the EU-Canada PNR agreement
- European Parliament briefing on the EU PNR
- Council of the EU's initial position, 2012

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