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DG HOME

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Defensive Briefings on Home Affairs issues
EU-UAE and EU-KSA CT Dialogues

Briefing for the Managing Director
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Briefing dossier written [REDACTED] (DG HOME D2 ☎ [REDACTED])

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UAE: PNR

Scene setter

- In January 2013, the UAE authorities wrote to the Commission asking for bilateral discussions with the EU. They wish to ensure that passenger data provided by EU airlines comply with the highest international standards. The letter also said that airlines operating to UAE were informed already in November 2012 about the UAE's intention to deploy a state of the art border management system. This system would involve capturing and processing both API and PNR data.
- The TTE (Transport) Council adopted conclusions in December 2012 which acknowledged Commission's intention to engage in an aviation dialogue with the Gulf States. PNR discussions could be part of this dialogue.
- Once the EU PNR proposal is adopted carriers operating flights from and to UAE (as well as other third countries) will be required to transmit the PNR of their passengers to the relevant MS law enforcement authorities. It is therefore important to inform UAE of this prospect and obtain a reaction from them on whether there would be any obstacles to their carriers transmitting the data.
- The issue was discussed between DG Stefano Manservigi and UAE Minister of State for Foreign Affairs, Dr Anwar Gargash (AG), on 11 February 2013. On that occasion, Mr Manservigi requested more information on planned UAE rules on PNR. He explained that the UAE requirements would also have an influence on the perspectives for the country's Annex II visa free inclusion.

Line to take

- Note that the issue has been raised directly with the European Commission [incl. on the occasion of a meeting between DG Manservisi and Minister Gargash on 11 February], which is currently studying the request.
- Inform that the major concern of the EU is often data protection aspects. The European Parliament usually questions the compliance of PNR agreements with third countries with fundamental rights.
- The European Commission is about to start discussions on the new PNR regime with the relevant UAE authorities, with the aim in particular to receive more information on this and other matters.
- On 2 February 2011, the Commission presented a proposal for a Directive on the use of PNR data to prevent, detect, investigate and prosecute terrorist offences and serious crime.
- This means that, once the proposal is adopted, all carriers operating flights in and out of the EU will have to send the PNR data of their passengers to the relevant MS law enforcement authorities.
- The proposal is currently being discussed by the European Parliament.
- PNR could be part of a wider dialogue with the Gulf States on aviation matters. This dialogue has not yet started yet.
- In the future, EU may seek alternatives to negotiate PNR agreements with every third country.
- One possibility could be a legal instrument setting the requirements for transmitting PNR data to third countries.

Background information

PNR in UAE

The UAE Civil Aviation Authorities are responsible for implementing the PNR legislation. In a letter dated 14 January 2013 they asked the Commission (Baldwin/MOVE.E) for a meeting to inform about their PNR system. Airlines operating to UAE were informed in November 2012 about the intention to introduce a system that would capture and process API and PNR data.

Discussions on PNR could be part of a wider discussion on aviation matters with the Gulf States. The TTE (Transport) Council adopted conclusions on 20 December 2012 that mentioned this dialogue:

"28. CONSIDERS that a tailored EU approach is now particularly appropriate in relation to Turkey, India, Russia, certain Gulf countries, ASEAN, and at the earliest opportunity to China, and therefore:

...
Taking note of the market developments in recent years between individual EU Member States and the Gulf countries identified in the Commission's Communication,
ACKNOWLEDGES the Commission's intention to engage in a dialogue with those countries, with a view to enhancing transparency and safeguarding fair competition;
..."

The main issue in this dialogue would be the increased competition from airlines based in the Gulf States and competitive advantages of being based there.

UAE have the intention to comply with the Parliament's resolution of 5 May 2010 on the launch of negotiations for Passenger Name Record (PNR) agreements with the United States, Australia and Canada. Paragraph 9 of the resolution considers that a PNR agreement with a third country should meet the following minimum requirements:

- (a) PNR data may only be used for law enforcement and security purposes in cases of organised and transnational serious crime or terrorism of a cross-border nature, on the basis of the legal definitions laid down in Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism and in Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant;
- (b) the use of PNR data for law enforcement and security purposes must be in line with European data protection standards, in particular regarding purpose limitation, proportionality, legal redress, limitation of the amount of data to be collected and of the length of storage periods;
- (c) in no circumstances may PNR data be used for data mining or profiling; no 'no-fly' decision or decision to investigate or prosecute may ever be taken on the sole results of such automated searches or browsing of databases; use of data must be limited to specific crimes or threats, on a case-by-case basis;

- (d) in the case of the transfer of PNR data of EU citizens to third countries, the terms of such transfers shall be laid down in a binding international treaty, providing legal certainty and equal treatment for EU citizens and companies;
- (e) the onward transfer of data by the recipient country to third countries shall be in line with EU standards on data protection, to be established by a specific adequacy finding; this will apply equally to any possible onward transfer of data by the recipient country to third countries;
- (f) PNR data may only be provided on the basis of the PUSH method;
- (g) Results will immediately be shared with the relevant authorities of the EU and of the Member States;

International PNR

The discussions on finding a solution at EU level for the transfer of API data to third countries seem to point towards a unilateral instrument allowing the data transfers to take place. These discussions could be used also to examine possible unilateral solutions for the transfer of PNR data to third countries. A unilateral approach would be in line with the principles outlined in the 2010 Communication.

A unilateral approach seems like the preferred option at the moment. It would be based on a separate legal instrument, which authorises the transfer of PNR data and which may outline the conditions to be respected by third countries, in line with those outlined in the 2010 Communication.

EU PNR

The Stockholm programme called upon the Commission to present an EU PNR proposal to prevent, detect and investigate terrorism and serious crime. On 2 February 2011 the Commission adopted a new proposal for a Directive on the use of PNR data to prevent, detect, investigate and prosecute terrorist offences and serious crime. A new Impact Assessment was also adopted for this proposal.

The main aspects of the proposal are the following:

- purpose limitation: terrorist offences and serious crime
- geographical scope: international flights – review on intra-EU flights to be done 2 years after the adoption of the instrument
- sensitive data: absolute prohibition to their use
- period of data retention: 30 days in full use and 5 years in a depersonalised database. Re-personalisation of the data permitted if there is a specific investigation
- data protection: the right of access, rectification, erasure, compensation, redress, data security and confidentiality of processing are taken from the Framework Decision of Data Protection. Oversight will be exercised by the national supervisory authority established by the Framework Decision of Data Protection.
- transfers to third countries: permitted but under very strict conditions
- transfers to private entities: absolute prohibition

The Council adopted a common approach on the file on 26 April 2012. The common approach is very close to the original commission proposal with 2 main changes: (i)

voluntary inclusion of targeted intra-EU flights, (ii) extension of the fully personalised period of retention from 30 days to 2 years.

In the Parliament, LIBE is the lead committee. Mr Kirkhope (ECR/UK) is the rapporteur. LIBE has not voted yet. The rapporteur is very favourable to the proposal and has the support of the EPP. However, the other political groups aim to substantially limit the scope of the proposal while GUE, Greens and NI suggest to reject the proposal altogether (apparently several ALDE and S&D members are inclined to support this). The rapporteur finds it therefore very difficult to find majority for the compromise amendments and is wary of putting the proposal to a vote, fearing a negative vote in LIBE will lead to a rejection of the proposal in the plenary vote. At the same time, some MEPs are trying to link the discussions on this proposal with the discussions on the data protection framework.

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**3. UAE: Radicalisation – GCTF Center of Excellence on
Countering Violent Extremism (CVE)**

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4. KSA: Defensive briefing on visa free

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