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The Threat by Islamic State and similar groups to the European Union Member States' Security: Why the EU Needs to Introduce a Directive on the use of Passenger Name Record data in Counter-Terrorism Investigations

Introduction

This article proposes that the European Union (EU) should consider re-introducing the Passenger Name Record Directive from 2011. The Directive did not get through the legislative process due to concerns over how it would cultivate a surveillance society and fail to adequately protect data protection along with an individual's privacy. In relation to terrorist activity, events have moved on since 2011 posing an increased threat to the national security of EU Member States, in particular the rise of the terrorist group Islamic State. By examining the current terrorist threat the EU faces, this paper argues that a different version of the 2011 directive on Passenger Name Records should be introduced in a form that does not compromise the EU's commitment to data protection and rights to privacy of EU citizens. Following the terrorist attacks in Paris in January 2015, European Parliament MEP's have already heard proposals for an amended draft of the Passenger Name Records Directive be introduced. The proposal in this article challenges the content of that draft by recommending that a new Directive applies solely to terrorism investigations allowing only a very short, limited period of retention of the data by national security and a counter-terrorism policing agencies. To prevent data mining, it is recommended that the information contained in passenger name records is checked only against terrorist suspects already on intelligence systems.

The Current Terrorist Threat

The civil war in Syria and the inability to control and defend its north western territory by the Iraqi government has allowed a political vacuum to exist enabling Islamist groups, in particular Islamic State (formerly Al Qaeda in Iraq (AQI) and also referred to as ISIL) and the Al Qaeda affiliate, Jabhat al-Nusra Front to flourish and become more powerful in the region. These groups do not just pose a threat to the security of the Syrian/Iraqi region, they pose a threat to the security of nations around the world, especially EU Member States. The threat is posed on two fronts. Firstly from the number of EU Member State citizens who have gone to countries such as Syria, Iraq, Libya and Yemen to join Islamist terror groups with those citizens becoming radicalised to such a degree they see their home state as an enemy. In this context, the threat to security is these citizens are more likely to plan and carry out terrorist attacks in their home state. The second threat posed by these groups is how their skilful use of social media is used to radicalise EU citizens and influence them to carry out terrorist attacks in their home EU Member State.

The rise in number of EU citizens joining the group to fight in Syria and Iraq

The terrorist group causing most concern to the threat of national security within the EU Member States is Islamic State. Islamic State was originally the group AQI that split from Jabhat al-Nusra Front in 2013. A predominantly Sunni jihadist terror group, 2014 witnessed the rise and increased terrorist activity of Islamic State (Nance 2015 pp. 311-312). In January 2015 it was estimated that up to 5,000 European citizens travelled to Syria and Iraq to join Islamic State to fight for their cause. Regarding this figure, what is of concern is this could be a conservative estimate (BBC News 2015). From September 2014 to January 2015 there has been a significant increase in the number of citizens from EU Member States that have travelled to join Islamic state in Syria and Iraq. From just four of the EU's Member States, in September 2014 the estimated number of citizens that travelled to fight with Islamic State was:

France – September 2014 900 citizens, January 2015 an increase of 500 to 1,400 (Mezzfiorie 2014);
UK – September 2014 approximately 400 citizens, January 2015 an increase of 200 to 600 (Murray 2014);
Germany – September 2014 320 citizens, January 2015 there was an increase of 280 to 600 (Mamighano 2014);
Belgium – September 2014 350 citizens, January 2015 that figure increased to 450 (the highest number in the ratio per head of the population of any of the EU Member States) (BBC News 2015).

This alarming increase in the number of citizens who have gone to Syria and Iraq to fight with Islamic state has led the director of Europol (the EU's policing agency), Rob Wainwright to warn of the security gap facing EU policing agencies as they try to monitor online communications of terrorist suspects which is compounded by the fact that by being in Syria and Iraq these suspects are effectively out of reach (BBC News 2015a). More recently Rob Wainwright has revealed further concerns of the difficulty security and policing agencies face in monitoring electronic communications used by terrorists. He said that hidden areas of the Internet and encrypted communications are making it harder to monitor terrorist suspects, adding that Tech firms should consider the impact sophisticated encryption software has on law enforcement. Wainwright mentioned how this can range from blogging websites to social media sources such as Twitter where he revealed that Islamic State is believed to have up to 50,000 different Twitter accounts, tweeting up to 100,000 messages a day (BBC News 2015f).

In September 2014 three Dutch citizens were arrested in the Netherlands on suspicion of recruiting for Islamic State with the Dutch General Intelligence and Security Service calling that support for Islamic State in the Netherlands amounts to a few hundred followers and several sympathisers (Aljazeera 2014). The danger of having Islamic State followers, even where there are small numbers, in the EU's Member States was evident in May 2014 when four people were killed at the Jewish Museum in Brussels (BBC News 2014) by an Islamic State militant, Muhdi Nemmouche (Rawlinson 2014).

Mainly due to the threat Islamic State pose, on the 29th August 2014 the UK terrorist threat was raised by the UK's Joint Terrorism Analysis Centre from substantial to severe as terrorist attacks are now highly likely (BBC News 2014a). The Monday following the raising of the UK's terrorist threat level, the UK Prime Minister, David Cameron announced the UK would introduce a terrorism related measures that included a proposal that airlines be forced to hand over more information about passengers travelling to and from conflict zones (BBC News 2014b). From that announcement travel measures related to aviation, maritime and rail security were included in the UK's Counter-Terrorism and Security Act 2015 (sections 22-25 and Schedule 5) that was more specifically applicable only to authority-to-carry schemes. Regarding passengers, the Act only applies to individuals who are suspected or assessed to pose a threat to the security of the aircraft, ship or train or individuals who are using invalid travel documentation and these provisions are not directly related to passenger name records (Home Office 2015).

Where access to passenger name records data would be an asset to Member State security services and counter-terrorism policing agencies are in circumstances relating to those reported by Europol who in their 2014 T-SAT Report stated that Syria and Turkey are the main destinations of choice for travellers seeking to joined armed terror groups due to the accessibility of their borders to Islamic state gained territory (Europol 2014 p.23). In the report Europol state that specific organised facilitation networks are likely to be involved in ensuring a smooth transport transition for those wishing to travel and join radical fighting groups such as Islamic State, as well as other groups such as Jabhat al- Nusra Front, citing the example of Sharia4Belgium as one such network (Europol 2014 p.24).

The Threat of Islamic State/Jabhat al-Nusra Front Influenced terrorist attacks in EU Member States: Post Paris 2015 Attacks

On January 7th 2015 Europe received a stark wake-up call to the threat Islamist groups pose to the Continent's sovereign states with the attack on the offices of the French satirical magazine, Charlie Hebdo where Cherif and Said Kouachi killed twelve people, ten of the staff of the magazine and two police officers who were protecting the building. These two brothers were French citizens of Algerian descent who, after travelling to an Al Qaeda training camp in the Yemen were influenced by the Al Qaeda affiliate, Al Qaeda in the Arabian Peninsula (AQAP) (Wilsher 2015), where the group subsequently claimed responsibility for the attack (Saul 2015). On the 8th January 2015 Amedy Coulibaly, who claimed association with Islamic State, killed a policewoman and injured another police officer outside a metro station in Paris. On the 9th January he took a number of people hostage in a Jewish Supermarket in Paris, killing four of the hostages before the French police stormed the building (Berger 2015). Both he and the Kouachi brothers were killed by the French police following two respective siege situations (BBC News 2015).

Paris was not the sole focus of Islamist terrorist activity in Europe during January 2015. In Brussels the Belgian police executed a warrant at premises suspected to be used by an Islamist terrorist cell that contained citizens who had returned from fighting with Islamic State in Syria and Iraq. While two of the suspects were killed by the Belgian police during the raid, five were arrested for terrorist related offence where the terrorist cell's targets were a Belgian police station and police officers (BBC News 2015c). The investigation led to connections in Greece where the Greek police arrested several people linked to the Belgian terror plot. In addition to this the Greek police were also searching for Abdelhamid Abaaoud, a Brussels resident of Moroccan origin who is believed to be a ringleader of a jihadi cell based in Belgium and who has links to Al Qaeda, possibly Jabaht al-Nusra Front (BBC News 2015d). In the same week in January 2015, German police arrested two men in Berlin on suspicion of recruiting individuals to join Islamic State in Syria and for raising finances for

the group (Connelly 2015). During this period a UK citizen, Imran Khawaja was convicted and received a prison sentence at the Old Baily Court in London for preparing acts of terrorism, attending a terrorist training camp in Syria, receiving training there and for possessing firearms. Khawaja had spent six months in Syria fighting with Islamic state and using social media sources faked his own death in an attempt to return to the UK (BBC News 2015e). More recently another concern for EU Member States has been the number of young people and families flying to Turkey in the hope of crossing the border into Syria to join Islamic State, many of whom appear to have been radicalised to the group's cause prior to leaving their home state (BBC News 2015g).

From just the terrorist activities and investigations among the EU Member States from the 7th to the 20th January 2015 one can see how real and lethal the terrorist threat to Europe is from international terrorist groups such as Islamic State and Jabhat al-Nusra Front. As at the time of writing, the fact that over 5,000 EU citizens have travelled to Syria and Iraq to fight alongside these groups, it is submitted that what Europe has witnessed in the last nine months is only the tip of the iceberg. As more of these citizens return to Europe, the potential for attacks will increase and maintaining surveillance on individuals who have been identified as a terrorist risk will add further to the strain EU Member States security services and counter-terrorism police officers are already facing as they try to prevent acts of terrorism and keep EU citizens safe. The potential result of the security gap the Europol Director stated is as the head of the UK's national security agency MI5, Andrew Parker pointed out when he gave the stark warning that currently it is impossible to prevent every type of terrorist attack (Security Service MI5 2015). Having an EU passenger Name Record directive would go some way to preventing potential attacks and keeping EU citizens safe.

The EU's Directive on Passenger Name Records 2011/0023

In February 2011 the European Commission produced a proposal for a directive on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime (2011/0023). At the time of its publication the explanation memorandum covered issues as to why the directive was needed by agencies involved in investigating terrorism and serious crime where a comparison was drawn between PNR and aircraft passenger information (API). The main difference between PNR's and API's is the detail of information they contain. PNR's contain the following information:

1. Name of Passenger;
2. Contact details for the travel agent or airline office;
3. Ticketing details;
4. Itinerary of at least one segment, which must be the same for all passengers listed;
5. Name of person providing the information or making the booking;
6. Passenger gender;
7. Passport details (includes nationality, passport number and date of passport expiry);
8. Date and place of birth;
9. Billing information;
10. Form of payment (include debit/credit card details);
11. Contact details (potentially include landline/mobile phone numbers);
12. Frequent flyer data; and
13. Vendor remarks kept by the airline (International Civil Aviation Organisation (2010) Guidelines on Passenger Name Record (PNR) Data Quebec: International Civil Aviation organisation).

This is far more extensive information compared to API's that only contains a passenger's name, date of birth, gender, nationality and passport details and this limitation was recognised by the European Commission in the explanatory memorandum to the 2011 PNR Directive saying:

‘API data does not enable law enforcement authorities to conduct an assessment of passengers and therefore do not facilitate the detection of hitherto “unknown” criminals or *terrorists*’ [my emphasis] (2011/0023 Directive p.7).

While API is useful in terrorism investigations at port and border controls for investigating officers to ascertain who is on a flight list that can be checked against suspects already contained within intelligence systems, this information is limiting. It is limiting when investigating officers are assessing the wider picture at the stage of the investigation when

they are trying to ascertain details of unknown associates of known terrorist suspects that pose a threat to security. This is the main point being made by the European Commission regarding how restrictive APIs are. The additional information contained in the Directive, such as who made the booking or contact details and methods of payment can be cross-checked making it easier for investigating officers to see if there is a connection with terrorist suspects in intelligence systems. As stated above, Europol have already found that there are groups known to security and counter-terrorism policing that are facilitating the travel of unknown individuals who may not be on intelligence systems that in intelligence circles are referred to as clean-skins. However if from the PNR data a link is made, this will greatly assist the agencies investigating terrorism. The fact that PNR data is an important intelligence tool is also recognised in the PNR Directive's explanatory memorandum (Directive 2011/0023 Explanatory Memorandum p.8).

Key Provisions in the 2011 PNR Directive

While clearly stating the scope of use of PNR data was the prevention, detection and prevention of terrorist offences and serious crime (Directive 2011/0023 article 9) the Directive recommended that Member States identified competent authorities to process the PNR data issued from Passenger Information Units (Directive 2011/0023, article 5). It is clear that no decision should be taken by the competent authority on the basis of a person's race or ethnic origin, religious or philosophical belief, political opinion, trade union membership, health or sexual life. One concern with the Directive related to data retention was the protection of personal data and the transfer of data to third countries. In essence, the proposed period of retention of data by competent authority was 30 days, with the Passenger Information Unit to retain the data for 5 years (Directive 2011/0023 article 9). The protection of the data should be covered by the Council Framework Decision on the protection of personal data processed in the framework of police and judicial cooperation in criminal

matters (FD 2008/977/JHA). The data subject has the right to expect the competent authority to fulfil their duties regarding their duties under the Framework Decision (article 18) and that includes the right for the data subject to have a judicial remedy for any breach of the rights guaranteed to them by the applicable national law (FD 2008/997/JHA article 20). Where the PNR data is transferred to a third country, the Framework Decision makes it clear that the third country must have an adequate level of protection of the intended data processing (FD 2008/997/JHA article 14).

Concerns Regarding the PNR Directive

In 2011 the European Parliament expressed concerns that the proposed method of automatically processing PNR data using fact based pre-determined assessment criteria was very wide and thought that such an assessment should never result in , ‘...profiling on the basis of sensitive data’ (Directive 2011/0023 Memorandum p.10). Compared to when the PNR Directive was first proposed recent activities from terrorist groups such as Islamic State demonstrates how the terrorist threat has escalated in severity since 2011 and is not only real but is potentially dangerous to the right to life of EU citizens. This is important as the European Data Protection Supervisor questioned if the PNR Directive was necessary and proportionate. His main concern was the collection of data of innocent persons. It was insufficient protection of the individual’s data privacy that led to his criticism of the Directive proposal that he saw as contributing towards a surveillance society (Directive 2011/0023 Memorandum p.10).

Concerns Over a Surveillance Society

In April 2013, the Committee on Civil Liberties of the European Parliament (LIBE) saw the PNR Directive being too wide and consequently refused to agree for the need of the Directive.

The concerns mainly centered on Passenger Information Unit as having the potential to refuse to erase a person's data even if they are not suspected of a crime and the Committee had a concern the Directive left it open to authorities to carry out offender profiling on individuals who matched certain behaviour (The European Citizen 2014). 2013 was a year where fears of a surveillance society were confirmed following the revelations by the former US National Security Agency (NSA) employee, Edward Snowden on the practices of the NSA and the UK's General Communications Headquarters (GCHQ) in particular Operation PRISM and the bulk surveillance of electronic forms of communication and telephone use, some of which was unauthorised (Greenwald 2014 pp.33-42). The shock waves of the NSA's actions reverberated around the world, more so when it was revealed that politicians in the EU's Member States were also spied on by the NSA, in particular the German Chancellor Angela Merkel (Greenwald 2014 p. 141). As Greenwald (the *Guardian* newspaper journalist Snowden passed the NSA documentation onto) says, what is more remarkable are the revelations that the NSA was spying on millions of European citizens adding;

‘...in addition to foreign leaders the United states ... also spied extensively on international organisations such as the United Nations to gain a diplomatic advantage.’ (Greenwald 2014 p142)

It is understandable why there is such a concern when recommendations that further surveillance powers be granted to national security and policing agencies, yet a balance has to be drawn between the needs of protecting the interests of security within the EU's Member States and the rights of individual citizens.

European Union law is clear that personal data is to be protected. Article 16 of the Treaty on the Functioning of the European Union (TFEU) states that everyone has the right to the protection of personal data concerning them (TFEU C326/55 Article 16(1)) and the European Parliament and the Council must act in accordance with ordinary legislative procedure that will lay down rules relating to the protection of individuals with regard to the

processing of personal data by Union institutions, bodies, office and agencies when carrying out activities that fall with the scope of EU law (TFEU article 16(2)) as does article 39 in the Treaty of Union. The Charter of Fundamental Rights of the European Union also is clear that everyone has the right to the protection of personal data concerning them (2000/C 364/01 Article 8(1)) 8(2)). In that right it states, ‘...data must be processed fairly for specified purposes on the basis of consent of the person concerned *or some other legitimate basis laid down by law*’ (2000/C 364/01 Article 8(2)) [My emphasis]. This is in addition to the respect the state must have for the right of a person to their private and family life in both the Charter of Fundamental Rights of the European Union (2000/C 364/01 Article 7) and the Council of Europe’s European Convention of Human Rights (ECHR) (Article 8). Article 8 of the ECHR does allow for the state to interfere with the right to privacy where it is under an act proscribed by law and it is necessary in democratic state when it is in the interests of national security or to prevent crime or disorder.

These protections are upheld in the agreements the European Union has with the United States regarding the transfer of PNR (Agreement between the United States of America and the European Union on the use and transfer of Passenger Name records to the United States Department of Homeland Security 17434/11) and the agreement with Australia of PNR data (Agreement between the European Union and Australia on the processing and transfer of Passenger name records (PNR) data by air carriers to the Australian Customs and Border Protection Service 10093/11). In the agreement between the US and the EU it states the US will confirm that effective administrative, civil and criminal enforcement measures are available under US law for privacy incidents and the US Department of Homeland Security will take disciplinary action against persons responsible for inappropriate use of the privacy conditions (17434/11 article 5(6)). It also says in the agreement that the Department of Homeland Security will inform the relevant EU authorities of cases of privacy incidents

involving PNR of EU citizens (17434/11 article 5(4)). Similar provisions relating to data security and integrity also are present in the agreement between the EU and Australia (10093/11 article 9) including the separate storing of EU citizens' PNR data and it is only stored for the purpose of matching with intelligence data Australian authorities have on persons suspected of being involved in terrorism or serious crime (10093/11 article 9(1)(a)). The EU has understandably and rightly taken a strict approach as to how intelligence and citizens' personal data is handled and dealt with by state authorities. This is provided for in the European Commission's overview of information management (Communication from the Commission to the European Parliament and Council: Overview of information management in the area of freedom, security and justice COM(2010)385 final) which concludes saying:

‘Adopting ... a principled approach to policy development and evaluation is expected to enhance the coherence and effectiveness of current and future instruments in a manner that fully respects fundamental rights.’ (Communication from the Commission to the European Parliament and Council: Overview of information management in the area of freedom, security and justice COM(2010)385 final^{p.28})

This is seen in the current Directive regarding the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences (Directive of the European Parliament and of the Council on the protection of individuals data 2012/0010 (COD)) that is expected to be introduced in 2016.

New EU Data Protection Regulation and Directive

The EU was looking to amend the data protection provisions it currently has in place prior to the Snowden revelations, however the EU is introducing changes to take effect by 2016 at the latest that will tighten up EU citizens' data protection, in particular regarding data exchange with third countries. The two pieces of legislation proposed are:

1. Personal data protection regulation: processing and free movement of data (General Data Protection Regulation) 2012/0011 COD;
2. Personal data protection directive: processing of data for the purposes of prevention, investigation, detection or prosecution of criminal offences or execution of criminal penalties and free movement of data, 2012/0010 COD

The regulation will have an impact in the private sector as businesses will have to set up new processes to facilitate the rights of citizens to access information held on them. Regarding the directive, the transfer of data to a third country/international organisation will only occur if it is for the same purpose as the directive and that organisation is a public authority in a state that provides a proper level of data protection within a country where appropriate safeguards are established in a legally binding instrument (article 33).

Post the January 2015 terrorism events in Europe, the EU's Justice and Home Affairs Commission has brought back on the EU's legislative agenda a proposal for blanket collection and storage of passenger name record data for up to five years on all records of passengers flying in and out of Europe. It is not a given that the plans will become legislation in the EU as the vice-chairman of the European Parliament's civil liberties committee, Jan Philip Albrecht sees the plans as an affront, in particular to the EU's main court, the European Court of Justice decision in *Google Spain SL, Google Inc. v Agencia Espanola de Prroteccion de Datos (APED)* Case C-131/12, which held in 2014 that data retention without any link to risk or suspicion is not proportionate. For Albrecht a plan to blanketly retain all passenger data would be open to a breach of fundamental rights (Travis 2015).

A Proposed New Version of a PNR Directive

While the Directive 2012/0010 (COD) is expansive in its coverage of criminal activity it is submitted that a separate directive is required to deal with the transfer of PNR. Building on the 2011 draft PNR Directive, a new draft text on an EU system for the use of PNR data was tabled by lead Member of the European Parliament (MEP), Timothy Kirkhope (ECR, UK)

that was discussed in the LIBE Committee on 26 February 2015. An evaluation of the necessity and proportionality of the proposal in the face of current security threats, its scope (list of offences covered), retention periods, the inclusion or exclusion of intra-EU flights, the connection with the on-going data protection reform, as well as the consequences of the EU Court of Justice judgement annulling the 2006 data retention directive, were among the issues discussed by MEPs. The 2011 Commission proposal would require more systematic collection, use and retention of PNR data on passengers taking “international” flights (those entering the EU from, or leaving it for, a third country), and would therefore have an impact on the rights to privacy and data protection.

The changes proposed by Timothy Kirkhope in the revised draft report include:

1. The scope of the proposal is narrowed to cover terror offences and serious "transnational" crime (the list of specific offences includes, for instance, trafficking in human beings, child pornography, trafficking in weapons, munitions and explosives);
2. Sensitive data to 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;
3. The inclusion of intra-EU flights (not initially included by the Commission, but the Council of the European Union favours the inclusion of internal EU flights);
4. 100% coverage of flights (the Commission text proposed to reach 100% coverage of international flights in gradual steps);
5. Access to the PNR data continues to be allowed for five years for terrorism, but is reduced to four years for serious crime;
6. Each EU member state should appoint a data protection supervisory officer;
7. Persons who operate security controls, who access and analyse the PNR data, and operate the data logs, must be security cleared, and security trained;
8. References are made in the text to the EU Court of Justice judgment on data retention and to the current EU data protection rules; and,
9. 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).

It is understandable why the revised draft included serious transnational crime as well as terrorism as offences such as the trafficking of human beings causes great suffering to those who are being trafficked. However, the trafficking in weapons, munitions and explosives can be linked to terrorism investigations. The wider the inclusion of offences thereby giving greater access to PNR data, there is the potential for wider data mining and profiling of EU citizens. The advantage of linking PNR data access to terrorism investigations minimises potential abuse in the collection and retention of PNR data. By having tighter control in the data's access by only allowing security and counter-terrorism policing agencies to use the data to link passenger connections with known terrorist or terrorist organisations currently on intelligence systems again minimises the potential for offender profiling.

Incorporating some of the points in the revised draft and building on it, it is submitted that consideration be given to the following points, which is more likely to conform to data privacy and protection law and avert fears of a surveillance society. While keeping from Kirkhope's revised draft that each EU Member State appoint a data protection supervisory officer, persons who have access to PNR data are security cleared and have training, and, that in the Directive reference is made to EU Court of Justice and current EU data protection rules, a PNR Directive proposal includes:

1. Any amended Directive is solely related to terrorism investigations;
2. The Directive only applies to targeted flights to and from states that border or are terrorist conflict zones;
3. The PNR data is only held by competent authorities (who would be Member States' national security agencies and Counter-Terrorism Policing Departments);
4. Requests for PNR data on applicable flights is carried out through and by Europol on behalf of the respective Member State competent authority requesting the data;
5. It is necessary that all Member States collect, process and exchange PNR data to avoid security gaps as this will contribute towards the security of the EU;
6. All PNR data is handled in accordance with the provisions of Article 8 of the Charter of Fundamental Rights of the European Union, Article 16 of the Treaty on the Functioning of the European Union and article 39 treaty for Union along with article 8 ECHR;

7. The data is pulled from the PNR data solely for matching purposes in relation to terrorism intelligence already in the possession of the Member States' competent authorities. The data cannot be requested for sole purpose offender profiling, thereby preventing data mining.

In addition to these suggestions, the sections in Kirkhope's revised draft referring to serious crime is omitted and by targeting flights to or states bordering terrorist conflict zones rather than all flights, this reduces the concern over data mining by Member States' competent authorities. The flights that are targeted will be based on intelligence, in particular those recognised by Europol from its intelligence source, Schengen Information System II. By having requests for PNR data through Europol will help to enhance Europol's role as they have the capability to organise Joint Investigation teams as well as negotiate intelligence exchange treaties with third countries outside the EU. The PNR data targeting could be fluid to match travel patterns as countries are identified as destinations for those wanting to travel and join terrorist groups. The main aim of counter-terrorism investigations is to prevent terrorist acts from happening and ensuring that EU Member States' citizens are safe. Such a proposal would enhance this capability and it is submitted this proposal is not only necessary but is also a proportionate legislative response to the terrorist threat the EU faces.

Conclusion

Following the Snowden revelations in 2013 regarding the electronic surveillance practices of the US' NSA and the UK's GCHQ, it is understandable there is a degree of caution when legislation is considered in granting further surveillance and data gathering powers to national security and policing agencies. This is certainly the situation for EU bodies when it was revealed that EU Member State leaders and citizens were targeted by the NSA and GCHQ. As outlined, the terrorist threat is a

constantly evolving issue and the current threat, especially from Islamist terror groups is severe. In just the early months of 2015 EU Member States have suffered the devastating effects of terrorist attacks in Paris (January 2015) and Copenhagen (February 2015). This is in addition to the Member States counter-terrorism agencies, supported by Europol, preventing terrorist attacks during this period. When senior figures of security and policing agencies are openly expressing their concerns over their respective agency's capability to consistently prevent attacks under the current surveillance related legal framework, these expressions should not be ignored. As covered, with the ever increasing number of EU citizens flying to or returning from countries bordering states containing Islamist terror groups' bases, an introduction of a PNR Directive would go some way to aid security and counter-terrorism policing agencies in identifying individuals who may pose a security threat. In addition to the proposals for the data protection Regulations and Directives that will be introduced in 2016, the EU already has in place legal provisions to protect personal data. The recommendation submitted here of a new PNR Directive that is applicable only to terrorism related activity, along with minimal data retention and intelligence analysis linked to suspects already on intelligence systems would help to protect personal data as well as go some way to aiding those agencies' investigations into acts of terrorism. Enhancing the capability of preventing terrorist acts enhances further EU Member States' agencies capability of protecting EU citizens, especially in protecting their right to life. The right to life is just as important as the right to privacy.

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