



EUROPEAN COMMISSION

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Dear President,

The Commission would like to thank the Austrian Nationalrat for its Opinion on the proposal for a Directive on the use of Passenger Name Record data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime {COM(2011) 32 final}.

The Commission has studied your opinion carefully and I am hereby enclosing our comments. Allow me to start by apologising for our delay in replying to your Opinion.

The Commission agrees that the proposal should guarantee the highest possible level of data protection. For this reason, the Commission proposal aims to safeguard security whilst fully respecting fundamental rights and the principle of proportionality. The Commission strongly believes that the proposal is balanced and proportionate

Nevertheless, you raise a number of questions in your Opinion to which the Commission would like to respond.

The EU adopted measures for the collection and exchange of personal data between law enforcement and other authorities. Although these measures have proven useful, they tend to focus on data relating to persons who are already under suspicion, i.e. persons who are "known" to law enforcement authorities. The Schengen Information System (SIS) and the Visa Information System (VIS) are examples of such measures. The Advance Passenger Information Directive is another such example, even though it is focused on border control and migration rather than law enforcement issues. However, these measures do not enable law enforcement authorities to identify suspects whose names do not appear in other databases in the way that the analysis of PNR data does. Indeed, the use of PNR data enables law enforcement authorities to address the threat of serious crime and terrorism from a different perspective than through the processing of other categories of personal data. All these issues are carefully explained and elaborated in both the proposal and the accompanying impact assessment.

Passenger Name Record (PNR) data is already being used successfully in preventing and fighting serious crime, as well as terrorism, and that is why this proposal is so important.

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PNR data is already being used in many Member States. To give an idea of the necessity of this kind of data, Belgium reported to the Commission that 95 percent of the illegal drugs seized in 2009 were exclusively or predominantly due to the processing of PNR data. In Sweden, the corresponding figure was 65-75 percent. France provided similar figures. The analysis of PNR data has also proven very important for identifying and dismantling terrorists' networks and identifying criminal networks involved in human trafficking.

On the length of the data retention period, according to the Commission's assessment, 5 years represents the right balance between law enforcement needs and data protection. It is noted that the Commission included for the first time the depersonalisation of the data just 30 days after their receipt, a principle that reinforces the proportionality of the proposal and offers very important benefits to the protection of personal data. It is the Commission's firm belief that the appropriate retention period of each type of data should be judged on its own merits. In the case of PNR data, a commensurate period of retention is necessary to carry out an appropriate and useful analysis of the data.

As regards the criteria for processing of passenger data, the Commission believes that these should be left to each Member State to define on the basis of its own security threats and realities. Those threats and realities differ throughout the EU. It is also important that the criteria for the assessment of passenger data remain confidential in each Member State. It should also be up to each Member State to decide against which national databases PNR data should be compared. Such criteria and practices should of course be reviewable and overseen by the National Supervisory Authority. These elements make the proposal both predictable and subject to independent and effective oversight and monitoring.

I hope that these clarifications address the questions raised in your Opinion.

We look forward to pursuing our political dialogue, on this and other matters of interest to the European citizen.

Yours faithfully,

*Maroš Šefčovič
Vice-President*