

**Translation of letter**

*From:* Ms Tsetska Tsacheva, President of the National Assembly, Republic of Bulgaria

*To:* Mr Barroso

*Encl.:* As per text

The 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, which figures as item 47 on the National Assembly's 2011 annual work programme for European affairs, was examined by the Committee on European Affairs and Oversight of European Funds and the Committee on Internal Security and Public Order on 30 March 2011.

For the purposes of political dialogue, I am sending you the report approved by the Committee on European Affairs and Oversight of European Funds, which also includes the key points of the Committee on Internal Security and Public Order's opinion.

The National Assembly of the Republic of Bulgaria considers the text of the proposal consistent with the principle of subsidiarity, though the annexed report does contain a number of observations concerning the principle of proportionality.

We appreciate the fact that the Bulgarian parliament's opinion will be taken into account.

I would like to express my conviction that the constructive working relationship we have established will grow from strength to strength.

**REPUBLIC OF BULGARIA FORTY-FIRST NATIONAL ASSEMBLY**  
**COMMITTEE ON EUROPEAN AFFAIRS AND OVERSIGHT OF EUROPEAN**  
**FUNDS**  
**REPORT**

**Subject: 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, No 102-00-15/16.03.2011**

I. On 30 March 2011 the Committee on European Affairs and Oversight of European Funds examined the 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, which figures as item 47 on the National Assembly's 2011 annual work programme for European affairs.

II. This proposal, which was presented by the European Commission on 2 February 2011, is aimed at harmonising the Member States' provisions concerning the obligations of air carriers operating flights between third countries and Member States to transfer PNR<sup>1</sup> data to the competent authorities for the purposes of the prevention, detection, investigation and prosecution of terrorist offences and serious crime (Article 1 of the proposal).

PNR data are provided by travellers and collected and stored in the air carriers' systems. These data cover the date of travel, itinerary, ticketing information, contact information, travel agent, means of payment, seat number, baggage etc. They are currently collected by air carriers for business purposes.

It is proposed that each Member State set up a 'passenger information unit' to collect, store and analyse the information. Two or more Member States may opt to set up a single authority (Article 3).

Data processing is governed by Article 4 of the proposal, which enumerates the purposes for which the unit may process PNR data.

The Member States are to draw up a list of the competent authorities entitled to request or receive PNR data from the passenger information units and notify that list to the European Commission (Article 5).

The obligations on air carriers to transfer PNR data are governed by Article 6 of the proposal and the exchange of information between Member States by Article 7.

Data may be transferred to third countries on a case-by-case basis when necessary for the purposes of the directive and with the express authorisation of the Member State (Article 8).

Initially, the Member States are to ensure that PNR data are retained in a database at the passenger information unit for a period of 30 days after their transfer. Upon expiry of this period, data are to be retained at the passenger information unit for a further period of five years, though they will be anonymised and accessible to only a limited number of personnel. The following data are to be masked: name, address, general remarks on the passenger. Upon expiry of the five-year period, PNR data are to be deleted, unless they are being used for a specific investigation (Article 9).

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<sup>1</sup> Passenger Name Record.

The proposal requires the Member States to provide for dissuasive, effective and proportionate penalties against air carriers which infringe the directive or the national provisions implementing it (Article 10 et seq.).

Personal data protection rules are to apply when PNR data are processed (Article 11).

Each year Member States are to send statistics on PNR data and follow-up action to the European Commission (Article 19).

III. In line with the position adopted by the Ministerial Council, the Republic of Bulgaria appreciates the importance of this instrument in the fight against terrorism and serious crime.

It expresses its support in principle for the draft directive, appreciating the efforts to reinforce its effectiveness.

It feels that it would be worthwhile to study the value that might be added by extending the scope of the directive to encompass data on internal flights.

The proposal provides for decentralised data collection, but the option of setting up and administering a single EU information system for PNR data is also worth considering, as it is likely to cost far less than having each Member State set up its own system for storing and processing these data.

Consideration could be given to including a general provision to the effect that the directive does not prevent Member States from introducing national legislation binding air carriers to collect and process PNR data from internal flights.

Financing is a key issue, and the possibility of funding under European programmes needs to be discussed, especially if the system is to be decentralised, with each Member State setting up or designating its own unit.

IV. The proposal for a directive was discussed by the Committee on Internal Security and Public Order on 30 March 2011. The position of the Personal Data Protection Committee was presented at the meeting.

The Committee's report notes that the proposal for a directive complies with the principle of subsidiarity but not with the principle of proportionality, since it creates an additional administrative and financial burden exceeding that necessary for the achievement of its objectives. The Committee believes there should be a review of whether the creation of a single EU information system on PNR data would not offer better value for money than the decentralised system proposed.

The five-year data retention period provided for in Article 9 of the proposed directive seems unreasonably long. With regard to the option of also collecting PNR data on internal flights within the EU, the report stresses the need to maintain the restriction of the directive's scope to international flights. In conclusion, when finalising the text of the directive, personal data protection requirements need to be carefully observed in line with Article 8 of the Charter of Fundamental Rights of the European Union and the Personal Data Protection Act, as does the right to privacy enshrined in Article 8 of the European Convention on Human Rights.

V. Having discussed the 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, the Committee on European Affairs and Oversight of European Funds has adopted the following position, which will be sent to the European institutions:

1. The Committee on European Affairs and Oversight of European Funds endorses on the whole the position of the Ministerial Council expressing the Republic of Bulgaria's support in principle for the draft directive, appreciating the efforts to increase its effectiveness.

2. The proposal for a directive complies with the principle of subsidiarity established in Article 5(3) of the Treaty on European Union (TEU). As the objective of the proposal cannot be sufficiently achieved by the Member States acting separately, the measure should be adopted at EU level. Terrorism, like much serious crime, often has a transnational dimension.

3. The proposal for a directive does not comply with the principle of proportionality established in Article 5(4) of the TEU, since it creates an additional administrative and financial burden exceeding that necessary for the achievement of its objectives:

- The five-year data retention period provided for in Article 9 of the proposed directive seems unreasonably long<sup>2</sup>;

- We feel there should be a review of whether the creation of a single EU information system on PNR data would not offer better value for money than the decentralised system proposed<sup>3</sup>.

4. When finalising the text of the directive, personal data protection requirements need to be carefully observed, in line with Article 8 of the Charter of Fundamental Rights of the European Union and the Personal Data Protection Act,

The report and the associated position were adopted by 11 votes.

CHAIR OF THE COMMITTEE ON EUROPEAN AFFAIRS AND OVERSIGHT OF EUROPEAN FUNDS

Monika Panayotova

AK/II

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<sup>2</sup> In comparison, Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC requires the Member States to ensure that the categories of data specified are retained for periods of not less than six months and not more than two years from the date of communication.

<sup>3</sup> The majority of Member States, including Bulgaria, have to set up systems from scratch, so it would be more effective to set up a single EU information system for PNR data.