



EUROPEAN COMMISSION

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Dear President,

The Commission would like to thank the German Bundesrat 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}, and apologises for the delay.

The Commission welcomes the Bundesrat's agreement to the fact that the use of PNR data to prevent and prosecute terrorism and serious crime should be regulated.

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

Nevertheless, the Commission notes that in its opinion the Bundesrat raises a number of questions to which it will attempt to reply hereunder.

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 suspected - 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 persons 'unknown' to law enforcement authorities 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 its accompanying impact assessment.

Crime and terrorism continue to cause very serious harm to victims, to the society, to the economy and to citizens' sense of security in the EU. Illegal drugs alone cost thousands of lives each year within the EU, and in 2008 22 Member States reported that drug related crime cost them 4.2 billion EUR.

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PNR data is already being used successfully to prevent and fight serious crime, including terrorism, 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. As regards the Bundesrat's comments on the criteria for re-personalisation of the data, the Commission will consider the relevant suggestions when negotiating this proposal with the European Parliament and the Council. However, as regards the length of the period of retention, 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 it should be left to each Member State to define them 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. Such criteria can of course be reviewed and overseen by the National Supervisory Authority.

Finally, as regards the Bundesrat's additional comments, the Commission will keep them in mind when negotiating the proposal with the European Parliament and the Council.

I look forward to continuing our political dialogue.

Yours faithfully,

*Maroš Šefčovič
Vice-President*