

Dear Mr Šefčovič,

The Senate has noted with interest that the European Commission has now put forward a new proposal based on the provisions of the Treaty of Lisbon to regulate the use of Passenger Name Record (PNR) data at EU level¹ in place of the proposal of 6 November 2007 on this subject, which had not yet been adopted by the Council on the date of entry into force of the Treaty and had thus become obsolete.² The new proposal implements an intention expressed in the Stockholm Programme. In principle, the efforts to harmonise the various arrangements that exist in the different Member States deserve a positive approach. However, the members of the Senate still have a number of questions.

Various databanks containing passenger data already exist in Europe. These are the Schengen Information System (SIS), the Visa Information System (VIS) and the Advanced Passenger Information system (API). The question that now arises is whether yet another system is actually necessary.

According to the European Commission, the proposed PNR directive would have an added value in combating terrorism and serious crime (see recital 9 of the preamble). Can the Commission substantiate this claim? What part does the PNR data play in the prosecution of such crime?

The Senate also wonders what relevant databases (relating to terrorism and serious crime) are involved in the search for a match between the PNR data and other data (see the proposed article 4 (2)(c)). Are these limited to the databases that contain information relevant to terrorism and serious crime?

Next, the Senate wonders whether the proposal complies with the requirements of proportionality. It is, after all, aimed at the prevention, detection, investigation and prosecution of terrorist offences and serious crime. The latter term is unclear and is not sufficiently defined by the requirement of a prison sentence of at least three years. Moreover, this involves the retention of data of persons who are not guilty of committing a criminal offence and where the manner of processing could lead to the preparation of profiles (cf. article 4). In addition, the arrangements made to anonymise retained data appear inadequate; for example, the provisions for masking information about the manner of payment (including credit card numbers) are not watertight.

By reference to what criteria are the PNR data examined and what combination of data warrants further examination? Although the retention of 'sensitive data' such as data concerning a passenger's race or ethnic origin, religious or philosophical belief, political opinion, health or sexual life is prohibited, details about the reservation and travel itinerary are kept. These data include information about meals, which could be indicative of a particular religious conviction or medical condition. How should such data be dealt with? Why is na-

¹ COM(2011)32.

² COM(2007)654.

tionality too not excluded as a basis for assessment? After all, Article 21 (2) of the Charter of Fundamental Rights prohibits any discrimination on grounds of nationality.

According to the European Commission, the PNR data are used mainly by intelligence services prior to the departure of passengers. Nonetheless, the Commission proposes a maximum retention period of 5 years. The Senate would like the choice of this period to be explained more fully.

Yours sincerely,

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President of the Senate of the States General