



EUROPEAN COMMISSION

Brussels, 11 OCT. 2011
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Dear President,

The Commission would like to thank the Senate of the Dutch Parliament 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) 032}.

The Commission would like to provide the following elements in response to the issues raised by the Senate of the States General:

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), the second-generation Schengen Information System (SIS II) and the Visa Information System (VIS) are examples of such measures. The Advance Passenger Information Directive is another 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. The use of PNR data would enable 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.

Crime and terrorism continue to cause very serious harm to victims, to the economy and to citizen's feeling 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.

PNR data has proved successful in preventing and fighting this kind of serious crime, as well as terrorism, and that is why this proposal is so important.

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

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data. In Sweden, the corresponding figure was 65-75 percent. The analysis of PNR data has also proven very important for identifying and dismantling terrorists' networks.

As regards the analysis of PNR, it is envisaged that this is done by (i) matching PNR against relevant databases. It is of course self-evident that such databases should contain information relevant to terrorism and serious crime, as this is the purpose limitation applying to the whole of the proposal, and (ii) on the basis of criteria pre-determined by each Member State.

The Commission believes that the scope of the proposal is sufficiently clear and precise. Terrorist offences and serious crime are defined on the basis of pre-existing EU definitions in order to provide the necessary legal certainty.

As regards sensitive data, the proposal contains an absolute prohibition of their use. Details about special meals and medical conditions contained in the PNR are exactly the type of data that should be considered to be 'sensitive' and hence deleted and not used.

Finally, on the length of the data retention period, according to the Commission's assessment, 5 years represent 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.

The Commission hopes that these clarifications address the questions raised in your opinion. I look forward to pursuing the political dialogue with the Senate of the States General.

Yours faithfully,

*Maroš Šefčovič
Vice-President*