

Sophie in't Veld MEP  
European Parliament  
Rue Wiertz 60  
B-1047 Brussels  
Belgium

25 January 2021

Ref: OUT2021-0005

Dear Ms in 't Veld,

I would like to thank you for your letter of 14 September 2020 regarding the Commission's report on the review of Directive 2016/681 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime, which was published on 24 July 2020. The EDPB also took note of the accompanying Staff Working Document and the case studies given to prove that the Directive is contributing positively to its key objectives.

As main conclusion, the Commission considers that the assessment of the first two years of application of the Directive is overall positive and takes the view that no amendments to the PNR Directive should be proposed at this stage. The Commission also considers that some issues like a possible extension of the Directive's scope shall be further assessed. Furthermore, before deciding whether to propose a revision, the Commission wishes to take into account the results of the on-going evaluation of the Advance Passenger Information Directive as well as the outcome of the preliminary ruling requests currently before the Court of Justice of the European Union.

The Commission's conclusion clearly contradicts the opinion which the European data protection authorities had already put forward on 11 April 2018 in a letter of the former Working Party 29 (WP29) to the Commission<sup>1</sup>. The letter was an urge to react on the opinion of the CJEU on the envisaged PNR agreement with Canada. In the view of the WP29, the Court's Opinion, though not having a formal legal effect on other acts of the Union, highlighted deficiencies that could equally be found in other EU PNR instruments. While the processing, retention and transfer of PNR data is generally subject to stricter rules in the EU PNR Directive than in the envisaged PNR agreement with Canada, the WP29 considered in 2018 that the EU PNR Directive is at least partly not in compliance with the requirements expressed by the CJEU in its opinion. The EDPB upholds the former position of the WP29. Therefore, the EDPB has already reiterated its call on the European Commission to take action, in due time taking into account the related CJEU cases currently pending, in order to ensure compliance of all EU PNR

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<sup>1</sup> [https://ec.europa.eu/newsroom/article29/document.cfm?action=display&doc\\_id=51023](https://ec.europa.eu/newsroom/article29/document.cfm?action=display&doc_id=51023).

instruments, including the EU PNR Directive, with EU law and case-law in a letter of the Chair to the European Commission.<sup>2</sup>

Your questions regarding the PNR evaluation report get to the heart of the matter and reflect concerns which the EDPB also continues to share. More specifically, you raised questions concerning the big discrepancy between the total number of persons being subject to the processing of PNR data in comparison to technical hits and verified hits as well as the small number of case studies provided as qualitative evidence.

The EDPB has raised similar questions and concerns in its letter to the Commission. Having considered the Commission review report of the EU PNR Directive, and taking into account the latest CJEU case law (La Quadrature du Net and others), the EDPB takes the view that the necessity and proportionality of collecting and processing PNR data for each of the purposes set out in the Directive, as referred to in its Article 19, is not sufficiently substantiated and demonstrated.

Another question relates to the recommendations towards the Commission to ensure that fundamental rights standards are fully complied with, whether the EDPB will provide advice to the European Court of Justice (CJEU) in this case and whether there will be a formal reaction to the review report. The latter has been addressed by the above-mentioned letter of the Chair to the European Commission.

Regarding the cases pending at the CJEU, to date, the Court has not asked the EDPB to provide advice in pending cases regarding PNR. The EDPB is not party to these pending procedures and can only submit its views to these cases if formally called upon by the Court. However, the EDPB's letters to the Commission and previous positions expressed are all publicly available.

With regard to recommendable actions to ensure that fundamental rights standards are fully complied with, the EDPB has already and repeatedly recommended to review all PNR instruments and bring them into compliance with EU law and case law. This has to be the first step to be initiated by the European Commission which should then ensure that Member States respect the requirements set by those updated instruments.

Yours sincerely,



Andrea Jelinek

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<sup>2</sup> EDPB letter to the European Commission of 22 January 2021, [https://edpb.europa.eu/our-work-tools/our-documents/letters/edpb-letter-european-commission-commission-report-review\\_en](https://edpb.europa.eu/our-work-tools/our-documents/letters/edpb-letter-european-commission-commission-report-review_en)