

Sophie in 't Veld
Member of the European Parliament

Brussels, 9 October 2019

By email only

Ref: OUT2019-0036

Subject: Your letter to the EDPB of 30 July 2019

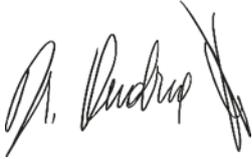
Dear Mrs. in 't Veld,

I would like to thank you for your letter dated 30 July 2019 with regard to the renegotiation of the EU PNR agreement with Canada and its impact on other PNR agreements. As you are probably aware, following up on the CJEU opinion of 26 July 2017 on the draft EU PNR agreement with Canada, the Working Party 29 (WP29) had sent in April 2018 a letter to the Commissioners Jourova, Avramopoulos and King, calling in particular on the European Commission to take action in order to ensure compliance with the CJEU's opinion of both PNR agreements with the U.S. and Australia, as many of the findings of the opinion were found to be equally relevant with regard to other PNR instruments. The WP29 had notably stressed that *"as the guardian of the EU treaty and thus of EU law, the European Commission is required to make all efforts necessary and to take all steps necessary to ensure compliance of all PNR instruments with the requirements set by the CJEU in its opinion as soon as possible"*.

With regard to your question on the issue of onward transfers, I would also like to recall that the WP29 stated in its letter that *"with a view to the other PNR agreements, Art. 19 of the PNR agreement with Australia and Art. 17 of the PNR agreement with the U.S. include - in part – detailed provisions on onward transfers. Both of them, however, do not provide for the limitations expressed by the CJEU"*. The WP29 added that *"the natural understanding of the CJEU opinion would be that onward transfers to other third countries also benefiting from a PNR agreement with the EU could only take place where both PNR agreements in place are in compliance with the Charter of Fundamental Rights as interpreted by the CJEU. In consequence, PNR data could only be further transferred from Canada to the U.S. or, vice versa, from the U.S. to Canada, once both of the PNR agreements are in line with the Charter of Fundamental Rights as interpreted by the CJEU"*.

As regards the question whether the new draft for a PNR agreement with Canada provides for sufficient guarantees in order to address the deficits identified by the CJEU in its opinion, we are currently not in a position to comment due to the fact that a written draft has not been shared with us yet. We have only been orally briefed at working level on the progress achieved and the finalization of the negotiation. In this regard, the EDPB stands ready to issue an opinion on the new draft, once we have it, which would also allow to further answer the questions you raised in your letter.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'A. Jelinek', with a stylized flourish at the end.

Andrea Jelinek