



Member of the European Parliament

Brussels, 9 April 2014

Dear Commissioner Malmström,

Dear Minister Michelakis,

As the end of term is approaching for the European Parliament, I would urgently like to seek clarification on a number of files relating to the collection and processing of Passenger Name Records. The majority of files are still open, and Parliament has received little to no information about the state of play and the reasons for the delay. Citizens and carriers are left in the dark as to their rights and legal protection. It is extremely disappointing that the Commission and the Council have not shown the slightest sense of urgency in resolving the issues described below. The passivity of Commission and Council on these files is in stark contrast to the rush in creating an EU PNR system, despite the clear and resounding "no" of the European parliament.

I kindly request Commission and Council to provide complete answers to the questions below, before the European elections next month.

- 1) In September the EU-Canada PNR agreement lapsed, as the underlying adequacy decision was no longer valid. Since then, personal data have been transferred on the basis of legally weak bilateral undertakings. The Commission has been negotiating a new agreement with Canada since 2010. On 5-6 December 2013 the Justice and Home Affairs Council adopted a decision on the signing of the Canada-EU PNR agreement. On the basis of Article 218 TFEU Parliament has to give its consent for the Agreement to enter into force. However. To date Parliament has not received a request for consent. Why has Council not yet submitted a request for consent? When does the Council expect to do so?
- 2) Russia has announced it will start the collection of PNR data very soon. Despite repeated questions from members of the European Parliament, and despite the growing tensions between Russia and the EU, the Commission has so far failed to provide any clarity on the situation. Can Commission explain what action it has taken so far, and what legal protections are in place for passengers and carriers? What does the Commission propose in order to solve this urgent matter?
- 3) Mexico will start the collection and processing of PNR data soon. The Commission has yet to clarify the situation. Can Commission explain what action it has taken so far, and what legal protections are in place for passengers and carriers?
- 4) South Korea has been asking the Commission since 2007 for an agreement that would constitute an adequate legal base for the transfer of PNR data from the EU to South Korea. However, the Commission has never responded. South Korea has now indicated it has run out of patience and will start the collection and processing of PNR data without an agreement. Can the Commission explain why it has ignored the repeated requests by South

Korea? Can the Commission explain what legal protections are in place for citizens and carriers?

- 5) Several other countries, including countries like Saudi Arabia, Cuba and the United Arab Emirates are also preparing for the collection and processing of PNR data. However, the Commission has so far refused to negotiate the terms with those countries. Can the Commission inform about the state of play? Can Commission explain what action it has taken so far, and what legal protections are in place for passengers and carriers?
- 6) In the Commission's indicative roadmap on the transfer of passenger data to third countries of October 2013, the Commission considers two new policy options besides leaving the issue to the Member States and the EU concluding bilateral agreements with third countries. The first option is to seek a mandate from the Council to negotiate an international convention on the transfer of PNR, for instance at the UN level. The second policy option is to propose a legal instrument listing the countries to which air carriers can send passenger data, while providing for the conditions which those third countries need to respect. Can the Commission indicate which policy option it prefers and why? When will the Commission present a proposal in order to deal with the transfer of PNR data to third countries?
- 7) The Commission has often justified its refusal to negotiate with the aforementioned countries by stating it has insufficient capacity to negotiate. However, the Commission has allocated 50 million euro to the creation of national PNR systems. Why has the Commission not decided to allocate the 50 million to extra capacity to negotiate with third countries, and let EU Member States fund their own national PNR systems?

With kind regards,

Sophie in 't Veld