



Committee on Civil Liberties, Justice and Home Affairs
The Chairman

IPOL-COM-LIBE D (2017) 40281

Mr Frans TIMMERMANS
First Vice-President
European Commission
Rue de la Loi 200
1049 Bruxelles

D 315241 09.10.2017

Dear First Vice-President Timmermans,

On 26 July the Court of Justice of the European Union issued its Opinion on the PNR Agreement between the European Union (EU) and Canada.

Further to the presentation of the case by the Parliament's Legal Service on 7 September 2017, the Chair asked the rapporteur of the PNR Canada to meet with the shadow rapporteurs to discuss on this topic. Further to this meeting, a list of questions to the Commission and the Council has been drawn in view of having an exchange of views with the two institutions in the LIBE Committee in October.

You will therefore find herewith the document with the list of the questions posed so as to provide us with a written reply.

We would be grateful if this reply could be delivered at the earliest opportunity, but at the latest by 19th of October 2017 in view of the forthcoming exchange of views with the Commission and the Council.

We are looking forward to your reply.

Yours sincerely,

Claude MORAES
Chair of the LIBE Committee

Sophie IN 'T VELD
Rapporteur

Cc: Dimitris AVRAMOPOULOS, Commissioner for Migration, Home Affairs and
Citizenship
Věra Jourová, Commissioner for Justice, Consumers and Gender Equality
Julian KING, Commissioner for Security Union

Annex: List of Questions

Annex

I. On the PNR agreement with Canada:

- 1) Since the agreement cannot be concluded, on what legal basis do the transfers of PNR data currently take place between individual Member States and Canada?

Could the Commission provide an overview of these bilateral transfers?

How will the Commission ensure that these PNR data are processed in line with the criteria set out by the Court? This includes that personal data of persons from the EU are retained after they leave Canada only in cases where there is a clear indication that those persons pose a security risk or are linked to a criminal or terrorist offense.

- 2) Considering the Court's ruling that the onward disclosure of PNR data by Canada to third countries requires an equivalent PNR agreement between that third country with the EU or an adequacy decision, does the Commission consider that the PNR agreement between the EU and US is equivalent to the EU Canada PNR agreement and in line with the Charter?

Does the Commission consider further onward transfers of PNR data of European citizens from Canada to the US in line with the Court's Opinion? If not, how will the Commission ensure that Canada will not transfer these data to the US?

- 3) Will the Commission prepare a new draft negotiation mandate for an EU-Canada PNR agreement that meets the criteria set out by the Court? If yes, when will the Commission propose a new draft mandate? If not, why not?
- 4) In its opinion, the Court stated that, without a specific justification (e.g. link to serious crime or terrorism) regarding an individual, it is not in line with the Charter of Fundamental Rights to retain the collected personal data of that individual, beyond the period when that individual leaves the country to which she/he has travelled.

What kind of model for the retention of personal data transferred under a PNR agreement is the Commission going to propose in its new draft mandate?

II. On PNR agreements with other countries:

- 5) What are the implications of this Opinion for the current PNR agreements with the United States and Australia?

What are the mechanisms for modifying these two agreements, so that they comply with the standards set by the Court?

Will the Commission present a draft mandate to the Council for terminating and potentially re-negotiating the existing agreements with the United States and Australia? If yes, when? If not, why not?

- 6) According to Article 26 of both the EU Australia PNR agreement and the EU US PNR agreement, the agreements shall remain in force for a period of seven years from the date of its entry into force. Upon the expiry of this period, the Agreement shall be renewed for a subsequent period of seven years unless one of the Parties notifies the other in writing through diplomatic channels, at least 12 months in advance, of its intention not to renew the Agreement. The EU Australia PNR agreement and the EU US PNR agreement entered into force on 1 June 2012 and 1 July 2012 respectively.

Does the Commission intend to terminate the Agreements in 2019? If not, why not?

- 7) When will the Commission present an amended draft mandate to the Council for the on-going negotiations with Mexico about a PNR agreement?
- 8) Are there plans for other PNR agreements with third countries, if yes, with which countries?
Will the Commission propose a general model for future PNR agreements with third countries? If yes, how will the Commission take the Opinion into account when considering a model agreement setting out the requirements third countries have to meet to be able to receive PNR data from the EU?

III On the EU PNR Directive:

- 9) What are the implications for PNR Directive (EU) 2016/681?

Does the existing EU PNR directive satisfy all the criteria set out by the Court, especially with regard to the following points:

- legal basis;
- definitions of PNR data;
- rules have to be non-discriminatory;
- data retention period;
- transfer to third countries;
- right to individual information when PNR data has been accessed

- 10) Will the Commission present a draft legislative act repealing the PNR Directive (EU) 2016/681? If so, when?

Does the Commission agree that, following the Court's decision, the EU must not retain the PNR data of travellers from third countries longer and more comprehensively than the data of EU travellers by Canada?

- 11) How and when will the Commission ensure that PNR instruments and agreements adopted by Member States to transpose the Directive are repealed or amended in order to ensure they fully meet the criteria set out by the Court?

IV On other legal instruments and legal proposals:

- 12) What are the implications for the Privacy Shield and the EU-US Umbrella Agreement?

How will the Commission take this court ruling in consideration when conducting the first annual review of the Privacy Shield, set for this month?

- 13) What is the implication of the ruling for the TFTP agreement with the US?
- 14) What are the implications for the proposal for a regulation establishing an Entry/Exit System (EES), which will be voted in the Parliament in the end of October?

Does the Commission consider that the EES satisfies all the criteria set out by the Court, especially with regard to the prohibition to retain the collected personal data of an individual without a specific justification, beyond the period when that individual leaves the country to which she/he has travelled?

- 15) What are the implications for the proposed ETIAS regulation?

Does the Commission consider that the planned ETIAS satisfies all the criteria set out by the Court, especially with regard to (a) the retention of sensitive data, and (b) the provision that when the traveller has been allowed to enter the territory, the access to and use of their data during their stay in the Union must be based on a request based on objective criteria and permitted only by a court or an independent administrative body?

- 16) How does the Commission see the impact of the Court's decision on instruments adopted on EU level providing for the mass transfer and/or retention of other types of personal data, such as banking data or telecommunications data, also taking into account the Court's judgement in the joined cases *Watson and Tele2* (C 203/15 and C 698/15) of 21 December 2016 and the Court's judgement in the case *Schrems* (C-362/14) of 6 October 2015?