

ARTICLE 29 Data Protection Working Party



Brussels, 12/06/2012
Just.c.3(2012)818378

Juan Fernando López Aguilar
Chairman of the LIBE
Committee
European Parliament
B - 1047 Brussels
Belgium

Subject: Negotiations on the Proposal for a Directive on EU PNR¹

Dear Mr López Aguilar,

The Article 29 Working Party (WP 29) has already expressed his views on this Proposal². However, in light of the recent discussions at the Parliament and the Council, it finds it appropriate to remind some of his main concerns.

Retention periods

The WP 29 is concerned about the long retention periods proposed by the Commission and about the preference for some Member States to extend them. We recommend deleting data of non-suspect travellers as soon as possible. In case it is necessary to retain some personal data, we recommend masking them at the latest on the arrival of the flight. These data should only be accessed on a case by case basis and subject to a judicial decision.

Purpose limitation

The purposes and the scope of the processing should be clearly defined and not left open to Member States, especially as regards the possibility to extend the use of PNR to intra-EU flights and other means of transport, as well as for other purposes.

The WP 29 is also concerned about the wide definition of serious crime, which would also apply to onward transfers within and outside the EU. We would recommend limiting the use of PNR to the fight against terrorism and organised crime.

¹ Proposal for a Directive of the European Parliament and of the Council on the use of Passenger Name Record data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime (COM(2011) 32 final).

² Opinion 10/2011 on the proposal for a Directive of the European Parliament and of the Council on the use of passenger name record data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime, of 5 April 2011 WP 181
http://ec.europa.eu/justice/policies/privacy/docs/wpdocs/2011/wp181_en.pdf.

Profiling

The WP 29 is particularly concerned about the systematic matching of data of all passengers against unspecified databases and evolving assessment criteria. Such an interference to fundamental rights should be specified, proportional³ (e.g., only used in case of specific threats) and foreseeable⁴.

The Working Party 29 is available for any further clarification and would welcome the possibility of presenting its views to the LIBE Committee.

A copy of this letter has been sent to the European Commission and the Council.

Yours sincerely,

On behalf of the Article 29 Working Party,

Jacob Kohnstamm
Chairman of the Article 29
Working Party

³ As required by the EU Charter of Fundamental Rights. See also the Recommendation CM/Rec(2010)13 of the Committee of Ministers to member states on the protection of individuals with regard to automatic processing of personal data in the context of profiling.

⁴ See European Court of Human Rights, *Rotaru v. Romania*, No 28341/95, §§ 50, 52 and 55; and *Amann v. Switzerland*, No 27798/95, §§ 50 *et s.*