

**Request for a preliminary ruling from the Cour constitutionnelle (Belgium) lodged on 31 October 2019 — Ligue des droits humains v Conseil des ministres**

**(Case C-817/19)**

*Language of the case: French*

**Referring court**

Cour constitutionnelle

**Parties to the main proceedings**

*Applicant:* Ligue des droits humains

*Defendant:* Conseil des ministres

**Questions referred**

Is Article 23 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 ‘on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC’ (the General Data Protection Regulation — GDPR), [1](#) read in conjunction with Article 2(2)(d) of that regulation, to be interpreted as applying to national legislation such as the Law of 25 December 2016 ‘on the processing of passenger data’, which transposes Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April 2016 ‘on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime’, [2](#) as well as Council Directive 2004/82/EC of 29 April 2004 ‘on the obligation of carriers to communicate passenger data’ [3](#) and Directive 2010/65/EU of the European Parliament and of the Council of 20 October 2010 ‘on reporting formalities for ships arriving in and/or departing from ports of the Member States and repealing Directive 2002/6/EC’? [4](#)

Is Annex I of Directive (EU) 2016/681 compatible with Articles 7, 8 and 52(1) of the Charter of Fundamental Rights of the European Union, given that the data it refers to are very wide in scope — particularly the data referred to in paragraph 18 of Annex I to Directive (EU) 2016/681, which go beyond the data referred to in Article 3(2) of Directive 2004/82/EC — and also given that, taken together, they may reveal sensitive information, and thus go beyond what is ‘strictly necessary’?

Are paragraphs 12 and 18 of Annex I to Directive (EU) 2016/681 compatible with Articles 7, 8 and 52(1) of the Charter of Fundamental Rights of the European Union, given that, having regard to the word ‘including’, the data referred to in those paragraphs is given by way of example and not exhaustively, such that the requirement for precision and clarity in rules which interfere with the right to respect for private life and the right to protection of personal data is not satisfied?

Are Article 3(4) of Directive (EU) 2016/681 and Annex I of that directive compatible with Articles 7, 8 and 52(1) of the Charter of Fundamental Rights of the European Union, given that the system of generalised collection, transfer and processing of passenger data established by those provisions relates to any person using the mode of transport concerned, regardless of whether there is any objective ground for considering that that person may present a risk to public security?

Is Article 6 of Directive (EU) 2016/681, read in conjunction with Articles 7, 8 and 52(1) of the Charter of Fundamental Rights of the European Union, to be interpreted as precluding national legislation such as the contested law, which includes, among the purposes for which PNR data is processed, furthering activities within the remit of the intelligence and security services, thus treating that purpose as an integral part of the prevention, detection, investigation and prosecution of terrorist offences and serious crime?

Is Article 6 of Directive (EU) 2016/681 compatible with Articles 7, 8 and 52(1) of the Charter of Fundamental Rights of the European Union, given that the advance assessment for which it provides, which is made by comparing passenger data against databases and predetermined criteria, applies to such data in a systematic and generalised manner, regardless of whether there is any objective ground for considering that the passengers concerned may present a risk to public security?

Can the expression ‘another national authority competent under national law’ in Article 12(3) of Directive (EU) 2016/681 be interpreted as including the PIU created by the Law of 25 December 2016, which would then have power to authorise access to PNR data after six months had passed, for the purposes of ad hoc searches?

Is Article 12 of Directive (EU) 2016/681, read in conjunction with Articles 7, 8 and 52(1) of the Charter of Fundamental Rights of the European Union, to be interpreted as precluding national legislation such as the contested law which provides for a general data retention period of five years, without making any distinction in terms of whether the advance assessment indicated that the passengers might present a risk to public security?

(a) Is Directive 2004/82/EC compatible with Article 3(2) of the Treaty on European Union and Article 45 of the Charter of Fundamental Rights of the European Union, given that the obligations for which it provides apply to flights within the European Union?

(b) Is Directive 2004/82/EC, read in conjunction with Article 3(2) of the Treaty on European Union and Article 45 of the Charter of Fundamental Rights of the European Union, to be interpreted as precluding national legislation such as the contested law which, for the purposes of combating illegal immigration and improving border controls, authorises a system of collection and processing of data relating to passengers ‘travelling to or from Belgium, or transiting through Belgian territory’, which may indirectly involve a re-establishment of internal border controls?

If, on the basis of the answers to the preceding questions, the Cour constitutionnelle (Constitutional Court) concludes that the contested law, which transposes, inter alia, Directive (EU) 2016/681, fails to fulfil one or more of the obligations arising under the provisions referred to in those questions, would it be open to it to maintain the effects of the Law of 25 December 2016 ‘on the processing of passenger data’, on a temporary basis, in order to avoid legal uncertainty and enable the data hitherto collected and retained to continue to be used for the purposes envisaged by the law?

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<sup>1</sup> OJ 2016 L119, p. 1.

<sup>2</sup> OJ 2016 L 119, p. 132.

<sup>3</sup> OJ 2004 L 261, p. 24.

<sup>4</sup> OJ 2010 L 283, p. 1.