

Annex

I. ON PNR 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?*
- In August 2009, the Canada Border Services Agency sent a letter addressed to the EU Member States, their Data Protection Authorities and the Commission, assuring that the Commitments originally annexed to the adequacy decision¹ would be extended beyond their date of expiry, until a new agreement will apply.

¹ OJ L 91, 29.3.2006, p. 49 ff.

- This interim situation was acknowledged by the European Parliament in its resolution of 5 May 2010 on the launch of negotiations for Passenger Name Record (PNR) agreements with the United States, Australia and Canada.²
- The data protection guarantees embedded in these Commitments continue to be acknowledged by Canada and are still in full force and effect - this was confirmed in a letter of 31 July 2017 addressed by the Canadian Border Services Agency to the Commission
- Whilst the Court's Opinion does not allow the envisaged EU-Canada PNR Agreement to be concluded in its current form, it does not concern the regime under which PNR data continues to be transferred during the interim period.
- Consequently, transfers of PNR data to Canada continue to take place on the basis of those Commitments by Canada towards Member States and Member States continue to assume responsibility for the legality of the transfers. Therefore the Commission is not in a position to provide an overview of PNR transfers between Member States and Canada.
- On 18 October the Commission proposed a Recommendation (COM(2017)605 final) to the Council to authorise the opening of negotiations for a revised Agreement that contains all the safeguards required in order for it to be compatible with Articles 7, 8, 21, and 52(1) of the Charter of Fundamental Rights of the European Union as specified in the Opinion 1/15 of the Court, in accordance with article 218(11) TFEU. To this end, once the Council has adopted the Decision to authorise the opening of the negotiations, the Commission will work – together with Canada – to find appropriate solutions to fulfil all the Court's requirements.

II. 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*

² European Parliament resolution of 5 May 2010 on the launch of negotiations for PNR agreements with the United States, Australia and Canada (OJ C 81E , 15.3.2011, p. 70–74) and similarly in European Parliament resolution of 11 November 2010 on the global approach to transfers of PNR data to third countries, and on the recommendations from the Commission to the Council to authorise the opening of negotiations between the European Union and Australia, Canada and the United States (OJ C 74E , 13.3.2012, p. 8–11).

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 the Commission will 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?*

- The PNR agreements concluded by the EU with the US and Australia remain in force until suspended, terminated, amended, superseded or invalidated.
- The analysis of the broader implications of the Canada Opinion on other existing agreements is ongoing and will inform the subsequent course of action.
- Regarding Mexico, the negotiating directives as adopted by the Council³ already include that the Agreement with Mexico must take full account of the Opinion of the Court of Justice on the Canada Agreement.
- The Commission will redefine its global approach⁴ towards PNR Agreements before starting new negotiations with third countries.
- The Commission will continue to explain to its international partners at all

³ Council Decision to authorise the opening of negotiations for an agreement between the EU and Mexico for the transfer and use of Passenger Name Record (PNR) data to prevent and combat terrorism and other serious transnational crime, adopted on 23 June 2015, Council document reference ST 9218 2015 REV 3 (EU RESTRICTED).

⁴ See Communication from the Commission to the European Parliament and the Council, On the global approach to transfers of Passenger Name Record (PNR) data to third countries, COM(2010) 492 final, 21.09.2010 and Communication from the Commission to the European Parliament and the Council, Exchanging and Protecting Personal Data in a Globalised World, COM(2017) 7 final, 10.01.2017.

levels the legal framework for transfers of PNR data to third countries and the Court's Opinion, emphasising the need to combine the objective for the security of citizens worldwide, with a high level of protection of their private life and personal data.

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?*

- As stated in the 11th progress report towards an effective and genuine Security Union⁵, the Commission underlines its continuing support to Member States in implementing the EU PNR Directive; the obligations on Member States deriving from that Directive are unaffected by the Court's Opinion.

IV. ON OTHER LEGAL INSTRUMENTS AND OTHER 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?*

⁵ COM(2017)608 final (18.10.2017).

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?*

- At the request of the rapporteur of the Entry-Exit System (EES) proposal, the possible implications of the Court's Opinion 1/15 on this proposal were discussed with shadow rapporteurs and representatives of the three Legal Services (European Parliament, Council and Commission) on 5 October 2017. The representatives of the three Legal Services confirmed that Opinion 1/15 does not have a direct automatic impact on the EES proposal. This is due to the differences between the EES and PNR instruments, in particular in respect of the objectives pursued and the scope of the personal data collected.
- Like for the EES, the Commission considers that Opinion 1/15 does not have a direct automatic impact on the EU-US TFTP Agreement, nor on the ETIAS proposal, due to the differences between these instruments and the PNR Agreement, in particular in respect of the objectives pursued and the scope of the personal data collected.
- The Commission does not see any direct impact of the Court's Opinion on the EU-US Umbrella Agreement which is different in scope and nature from a PNR agreement as it does not constitute a legal basis for the transfer of personal data.

- The EU-US Privacy Shield also differs from a PNR agreement as it does not contain obligations to transfer personal data and moreover concerns only transfers of personal data between private companies. The Commission has just adopted a report on the annual review of the functioning of the EU–U.S. Privacy Shield⁶ accompanied by a Commission Staff Working Document⁷ concerning the functioning of all aspects of the Privacy Shield framework after its first year of operation.

⁶ COM (2017) 611

⁷ SWD(2017)344