



## Constitutional Court

### PRESS RELEASE ON JUDGMENT 135/2019

#### The Belgian Constitutional Court refers ten preliminary questions to the Court of Justice concerning the obligation to transfer passenger information

*The Belgian Constitutional Court refers ten preliminary questions to the Court of Justice of the European Union in light of the review of the law requiring transportation providers and travel operators to communicate passenger information. The Court inquires whether the system of the PNR Directive, transposed by the contested law, is compatible with the right to respect for private life and the protection of personal data. In addition, the Court asks several questions regarding the interpretation of the Directive. Lastly, the Court refers a question to the Court of Justice on the applicability of the API Directive, also transposed in Belgian law, that requires air carriers to communicate certain passenger data to combat illegal immigration and to improve border control. With respect to flights within the European Union, the question arises as to its compatibility with the free movement of persons.*

#### **1. The contested law and its context**

The federal Act of 25 December 2016 concerning the treatment of passenger information establishes an **obligation for carriers and travel operators to communicate passenger information**, the so-called PNR data. This law mainly aims to transpose the PNR Directive 2016/681/EU (Passenger Name Record) into Belgian legislation.

The collected PNR data are transferred to a Passenger Information Unit (PIU), which is in charge of the database set up for that purpose. The PNR system is applicable in Belgium to air carriers (as determined by the PNR Directive). It was extended to bus and train carriers. The contested Act also transposes the API Directive 2004/82/EG (Advanced Passenger Information), which requires air carriers to transfer certain data, inter alia, to combat illegal immigration and to improve border control.

#### **2. The purpose of the action for annulment**

The NGO *Ligue des droits de l'homme* (currently *Ligue des droits humains*) has introduced an action before the Constitutional Court for annulment of the federal Act of 25 December 2016. The applicant in essence invokes a violation of the right to respect for private life and the protection of personal data, protected by the Constitution and the Charter of Fundamental Rights of the European Union. The applicant objects to the general character of the collection, transferral and processing of the PNR data, which concern all passengers, as well as the very broad nature of these data. The Act is also contended to violate the free movement of persons, protected by the Treaty on European Union and the EU Charter, by

extending the PNR system to flights within the European Union, as it would indirectly reintroduce border controls.

### **3. The judgment of the Court and the preliminary questions to the Court of Justice**

The Belgian Constitutional Court validates several measures that are contested in the action for annulment. The Court holds that the delegations to the King for the execution of the law do not violate the right to respect for private life (B.21-B.29). It validates **the terms « identity document » and « travel documents »**, which the applicant found too vague. According to the Court, these terms have an ordinary meaning and do not create legal uncertainty (B.30-33). The creation of the **passenger database** and its administration by the PIU is also considered constitutional, taking into account the guarantees provided for by the contested law (B.56-B.59).

Furthermore, the Court refers **ten preliminary questions to the Court of Justice**, in particular in view of the [Opinion 1/15 of 26 July 2017 of the Court of Justice](#) on the PNR draft agreement between the European Union and Canada.

Firstly, the Court refers a question to the Court of Justice on the **compatibility** of the system of the PNR Directive with the right to respect for private life and the protection of personal data, in particular on the following points :

- **the extremely broad and non-exhaustive character of the PNR data** (B.34-B.43);
- **the general and untargeted character of the PNR system**, which concerns all passengers without distinction (B.44-B.47);
- **the systematic prior assessment** of the PNR data of all passengers (B.60-B.61).

In addition, several questions concern the interpretation that must be given to provisions of the PNR Directive with respect to:

- the possibility to process PNR data in the framework of monitoring the activities pursued by intelligence and security services (B.54);
- the designation of the **Passenger Information Unit (PIU)** as authority that decides on granting access to PNR data in the framework of targeted searches, after a period of six months (B.62-B.63);
- the **general retention period of the data of five years**, without making a distinction between passengers that could pose a risk for public safety and other passengers (B.64-B.67).

Moreover, the Court inquires whether Article 23 of the **General Data Protection Regulation (GDPR) applies** to the contested law (B.19).

The Court also refers a question to the Court of Justice with respect to the **applicability of the obligations to the API Directive to flights within the European Union**, which could indirectly implicate the reintroduction of internal border controls (B.68-B.70).

Lastly, the Court asks the Court of Justice whether it can **temporarily maintain the effects of the Act** if, based on the answers of the Court of Justice, it would come to the conclusion that the contested Act violates European law. This would permit the Court to avoid legal uncertainty and enable the continued usage of prior collected and saved information.

Pending the response of the Court of Justice, the case before the Belgian Constitutional Court is suspended.

The Belgian Constitutional Court is a court of law that watches over the observance of the Constitution by the different legislative authorities of Belgium. The Court has the power to annul, declare unconstitutional and suspend laws, decrees and ordinances infringing on a fundamental right or a provision which allocates powers between the federal authorities, the Communities and the Regions.

This press release is a document produced by the Registry of the Belgian Constitutional Court and the law clerks charged with media relations. It does not bind the Belgian Constitutional Court. A summary, by its very nature, contains neither the necessary reasoning as developed in the judgment, nor its specific nuances.

The judgment No 135/2019, available in French, Dutch and German, can be found on the website of the Belgian Constitutional Court, [const-court.be](http://const-court.be).

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