



Council of the
European Union

Brussels, 28 October 2019
(OR. en)

13505/19

DAPIX 309
RELEX 967
DATAPROTECT 255
AVIATION 206
JAI 1114
COASI 143
ASIE 45

COVER NOTE

From: Mr Wojciech Rafal WIEWIOROWSKI, Assistant Supervisor of EDPS
date of receipt: 25 October 2019
To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

Subject: EDPS Opinion on the negotiating mandate of an Agreement between the
EU and Japan for the transfer and use of Passanger Name Record data

Delegations will find enclosed the European Data Protection Supervisor Opinion on the negotiating mandate of an Agreement between the EU and Japan for the transfer and use of Passanger Name Record data.



~~E-MAIL / FAX~~

WOJCIECH RAFAL WIEWIÓROWSKI
ASSISTANT SUPERVISOR

President of the Council of
the European Union
General Secretariat
Council of the European Union
Rue de la Loi 175
1048 Brussels

Brussels, **25 OCT. 2019**
WRW/PA/mt/D(2019)2238 C2019-0881
Please use edps@edps.europa.eu for all
correspondence

**Subject: EDPS Opinion on the negotiating mandate of an Agreement between the EU
and Japan for the transfer and use of Passenger Name Record data.**

Dear Mr President,

Having regard to Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC and in particular its article 42(1) we send you an Opinion on the negotiating mandate of an Agreement between the EU and Japan for the transfer and use of Passenger Name Record data.

We have sent this opinion to the President of the European Commission and the President of the European Parliament as well.

Yours sincerely,

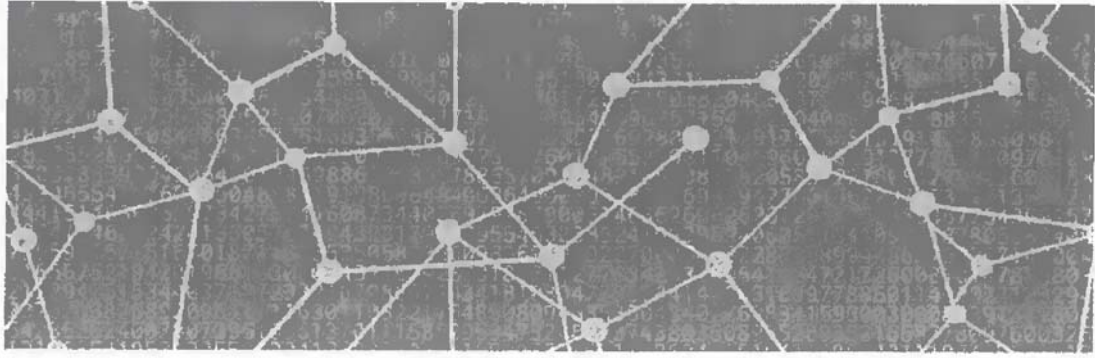
Wojciech Rafał WIEWIÓROWSKI

Encl.: Opinion

Cc: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General
Ms Marja RISLAKKI, Permanent Representative of Finland
Mr Ralph KAESSNER, Secretariat General of the Council

Contact persons: *Angelov Plamen (tel. 02 2831885), Lara Smit (tel. 02 2831966)*

Postal address: rue Wiertz 60 - B-1047 Brussels
Offices: rue Montoyer 30
E-mail : edps@edps.europa.eu - Website: www.edps.europa.eu
Tel.: 02-283 19 00 - Fax : 02-283 19 50



EUROPEAN DATA PROTECTION SUPERVISOR

Opinion 6/2019

EDPS Opinion on the negotiating mandate of an Agreement between the EU and Japan for the transfer and use of Passenger Name Record data



25 October 2019

The European Data Protection Supervisor (EDPS) is an independent institution of the EU, responsible under Article 52(2) of Regulation 2018/1725 'With respect to the processing of personal data... for ensuring that the fundamental rights and freedoms of natural persons, and in particular their right to data protection, are respected by Union institutions and bodies', and under Article 52(3) '...for advising Union institutions and bodies and data subjects on all matters concerning the processing of personal data'.

Under Article 42(1) of Regulation 2018/1725, the Commission shall 'following the adoption of proposals for a legislative act, of recommendations or of proposals to the Council pursuant to Article 218 TFEU or when preparing delegated acts or implementing acts, consult the EDPS where there is an impact on the protection of individuals' rights and freedoms with regard to the processing of personal data' and under article 57(1)(g), the EDPS shall 'advise on his or her own initiative or on request, all Union institutions and bodies on legislative and administrative measures relating to the protection of natural persons' rights and freedoms with regard to the processing of personal data'.

He was appointed in December 2014 together with the Assistant Supervisor with the specific remit of being constructive and proactive. The EDPS published in March 2015 a five-year strategy setting out how he intends to implement this remit, and to be accountable for doing so.

This Opinion relates to the EDPS' mission to advise the EU institutions on coherently and consistently applying the EU data protection principles when negotiating agreements in the law enforcement sector, in line with Action 5 of the EDPS Strategy: 'Mainstreaming data protection into international agreements'. It builds on the general obligation that international agreements must comply with the provisions of TFEU and the respect for fundamental rights that stands at the core of EU law. In particular, compliance with Articles 8 of the Charter of Fundamental Rights of the EU and 16 TFEU must be ensured.

Executive Summary

On 27 September 2019, the European Commission adopted a Recommendation for a Council Decision to authorise the opening of negotiations for an agreement between the European Union and Japan for the transfer and use of Passenger Name Record (PNR) data to prevent and combat terrorism and other serious transnational crime. The purpose of the envisaged Agreement is to lay down the legal basis and the conditions under which air carriers will be authorised to transfer to Japan the PNR data of passengers flying between the EU and Japan, in compliance with the requirements of the EU law, including the Charter of Fundamental Rights of the EU.

The EDPS welcomes the fact that the negotiation mandate aims at ensuring full respect for fundamental rights and freedoms enshrined in Article 7 and Article 8 of the Charter of Fundamental Rights of the EU, as well as for the principles of necessity and proportionality, as interpreted by the Court of Justice in its Opinion 1/15 on the EU-Canada PNR Agreement.

Given the impact of the envisaged agreement on the fundamental rights of a very large number of individuals not implicated in a criminal activity, the EDPS considers that it should contain all the necessary substantive and procedural safeguards to guarantee the proportionality of the PNR system and to limit the interference with the right to privacy and data protection only to what is strictly necessary and justified by the general interest of the Union. To this end, the EDPS makes a number of recommendations to improve the negotiating directives, such as:

- a strict approach with regard to the necessity and proportionality of the PNR system;
- in line with the principle of purpose limitation, any further use of the transferred PNR data for other purposes should be very well justified, specified in a clear and precise manner and limited to what is strictly necessary;
- the Council Decision authorising opening of negotiations should contain a reference not only to the procedural legal basis but also to the substantive legal basis, including Article 16 TFEU;
- special attention should be paid to prevent the risk of indirectly revealing special categories of data about air passengers, as well as the risk of re-identification of individuals after the anonymisation of the PNR data relating to them;
- the envisaged Agreement should contain clauses allowing for its suspension in case of breaches of its rules, as well as for termination of the Agreement if the non-compliance is serious and persistent.

Further detailed recommendations by the EDPS are provided in this Opinion.

The EDPS remains at the disposal of the institutions for further advice during the negotiations. He also expects to be consulted at later stages of the finalisation of the draft Agreement in accordance with Article 42 of Regulation (EU) 2018/1725.

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THE EUROPEAN DATA PROTECTION SUPERVISOR,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 16 thereof,

Having regard to the Charter of Fundamental Rights of the European Union, and in particular Articles 7 and 8 thereof,

Having regard to 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 (General Data Protection Regulation)¹,

Having regard to Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC², in particular Articles 42(1),

Having regard to Directive (EU) 2016/680 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 by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA³,

HAS ADOPTED THE FOLLOWING OPINION:

1. INTRODUCTION AND BACKGROUND

1. On 27 September 2019, the European Commission adopted a Recommendation for a Council Decision to authorise the opening of negotiations for an agreement between the European Union (EU) and Japan for the transfer and use of Passenger Name Record (PNR) data to prevent and combat terrorism and other serious transnational crime. The Annex to the Recommendation (hereinafter “the Annex”) lays down the Council’s negotiating directives to the Commission, *i.e.* the objectives the latter should aim to achieve on behalf of the EU in the course of the negotiations.
2. The Recommendation has been adopted on the basis of the procedure laid down in Article 218 of the Treaty on the Functioning of the European Union (TFEU) for agreements concluded between the EU and third countries. With this Recommendation, the Commission seeks to obtain authorisation from the Council to be appointed as the negotiator on behalf of the EU and to start the negotiations with Japan, in line with the negotiating mandate. Once the negotiations are completed, in order for the agreement to be concluded, the European Parliament will have to give its consent to the text of the agreement negotiated, after which the Council will have to adopt a decision concluding the agreement.
3. The legal framework for processing PNR data in the EU is Directive (EU) 2016/681 of the European Parliament and of the Council on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious

crime (PNR Directive), adopted on 27 April 2016. Member States were obliged to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive by 25 May 2018. The European Commission has to conduct the first review of the PNR Directive by 25 May 2020.

4. Currently, there are two international agreements in force between the EU and third countries on the processing and transfer of PNR data - with Australia⁴ and with the United States⁵, both from 2011. At the request of the European Parliament, pursuant to Article 218(11) TFEU, the Court of Justice of the EU (CJEU) adopted Opinion 1/15 of 26 July 2017⁶ on the envisaged Agreement between the EU and Canada on the transfer and processing of PNR data, signed on 25 June 2014. The Court concluded that the Agreement is incompatible with Articles 7, 8 and 21 and Article 52(1) of the Charter of Fundamental Rights of the EU (Charter) in so far as it does not preclude the transfer of sensitive data from the EU to Canada and the use and retention of that data. Furthermore, the Court laid down a number of conditions and safeguards for lawful processing and transfer of PNR data. Based on Opinion 1/15, new PNR negotiations with Canada have been launched in June 2018, which, according to the Commission, are in their final stage.
5. At global level, the issue of PNR data is dealt with by the Convention on International Civil Aviation (the 'Chicago Convention') of 1947, which regulates international air transport and has established the International Civil Aviation Organization (ICAO). The Council of ICAO has adopted Standards and Recommended Practices on PNR, which are part of Annex 9 ('Facilitation') to the Chicago Convention. They are complemented by additional guidance, notably ICAO Document 9944 setting out 'Guidelines on Passenger Name Record (PNR) Data'⁷. All EU Member States are Parties to the Chicago Convention.
6. Furthermore, the United Nations Security Council Resolution 2396 (2017) on threats to international peace and security caused by returning foreign terrorist fighters, adopted on 21 December 2017, requires UN Member States to "*develop the capability to collect, process and analyse, in furtherance of ICAO standards and recommended practices, passenger name record (PNR) data and to ensure PNR data is used by and shared with all their competent national authorities, with full respect for human rights and fundamental freedoms*", as well as "*where appropriate, encourages Member States to share PNR data with relevant or concerned Member States to detect foreign terrorist fighters*"⁸.
7. The EDPS welcomes the fact that he has been consulted following the adoption of the Recommendation by the European Commission and expects that a reference to this Opinion will be included in the preamble of the Council Decision. The present Opinion is without prejudice to any additional comments that the EDPS could make on the basis of further available information at a later stage.

2. OBJECTIVES OF THE AGREEMENT

8. The objective of the envisaged Agreement is to lay down the legal basis, the framework and the conditions under which air carriers will be authorised to transfer to Japan PNR data of passengers flying between the EU and Japan in a manner that is compliant with the requirements of EU law, including the Charter as interpreted by the CJEU⁹.
9. 'Passenger Name Record' or 'PNR' means a record of each passenger's travel requirements in the reservation and departure control systems, or in equivalent systems with the same

functionalities, with the information necessary to enable reservations to be processed by air carriers for each journey booked¹⁰. PNR may contain different types of data, such as travel dates, travel itinerary, ticket information, contact details, travel agent through which the flight was booked, means of payment used, seat number, baggage information, etc.

10. In accordance with the PNR Directive, PNR data are used to prevent, detect, investigate and prosecute terrorist offences and serious crime, to gather evidence and, where relevant, to find associates of criminals. Moreover, the assessment of PNR data may allow identification of persons who were not previously suspected of involvement in terrorist offences or serious crime and who are subject to further examination by the competent authorities¹¹.
11. As the purpose of the envisaged Agreement is to circumscribe the conditions under which air carriers may transfer PNR data of passengers to Japanese public authorities, the EDPS wishes to recall that the transfer of personal data, such as PNR data, from the EU to a third country is lawful only if there are rules in that country which ensure a level of protection of fundamental rights and freedoms that is essentially equivalent to that guaranteed within the EU¹². Furthermore, such transfer may take place only in compliance with the provisions on international transfers laid down in Chapter V of Regulation (EU) 2016/679 (GDPR).
12. The adequacy decision in relation to the transfer of personal data from the EU to Japan, adopted by the European Commission on 23 January 2019 pursuant to Article 45(3) of Regulation (EU) 2016/679¹³, applies only to transfers between commercial operators and cannot be used as legal basis in the case of PNR data. Hence, the envisaged Agreement must include appropriate legally binding and enforceable safeguards, in accordance with Article 46(2)(a) of Regulation (EU) 2016/679. Moreover, the Agreement must ensure that the level of data protection of natural persons guaranteed by the EU law is not undermined in case of onward transfers to competent authorities of other third countries.

3. MAIN RECOMMENDATIONS

3.1. Necessity and proportionality¹⁴

13. The EDPS has in multiple opinions¹⁵ voiced its concerns in relation to the blanket collection of PNR data, which entails an interference with the fundamental rights of a very large number of air passengers, without any initial differentiation, limitation or exception being made, in the light of the objective of fighting against serious crime and terrorism.
14. At the same time, the EDPS is mindful of the assessment of the CJEU that such interferences *“are capable of being justified by an objective of general interest of the European Union and are not liable adversely to affect the essence of the fundamental rights enshrined in Articles 7 and 8 of the Charter”*¹⁶.
15. In view of the policy objectives and the legal framework outlined above, the EDPS believes that a **key objective of the negotiations should be to ensure that the future Agreement contains the necessary substantive and procedural safeguards, which, considered in their entirety, would guarantee the proportionality of the PNR system.** To this end, the EDPS welcomes the fact that the negotiation directives in the Annex to the Recommendation are based upon the requirements laid down by CJEU in its Opinion 1/15.

3.2. Purpose limitation

16. Purpose limitation is one of fundamental principles of the EU data protection legal framework and a key prerequisite for ensuring the proportionality of any interference with the rights enshrined in Articles 7 and 8 of the Charter. It is even more important in the context of PNR which involves processing by law enforcement authorities of personal data of a very large number of individuals not implicated in a criminal activity.
17. The EDPS appreciates the fact that points 3 and 5 of the negotiating directives in the Annex to the draft Council Decision explicitly limit the transfer and use of PNR data to the *“sole purpose of preventing and combating terrorism and other serious transnational crime”*. Regarding possible further use of PNR data for other purposes, point 8(g) of the negotiating directives states that *“[t]he use of PNR data by the Japanese competent authority beyond security and border control checks should be based on new circumstances and subject to substantive and procedural conditions based on objective criteria. In particular, such use should be subject to a prior review carried out either by a court or by an independent administrative body, except in cases of validly established urgency”*. The EDPS acknowledges that this directive is directly derived from Opinion 1/15 of CJEU¹⁷.
18. Nevertheless, **to the extent the future Agreement would allow for further use of the PNR data for other purposes not directly linked to “preventing and combating terrorism and other serious transnational crime”, the EDPS recommends that these new purposes should be very well justified, specified in a clear and precise manner in the envisaged Agreement, and limited to what is strictly necessary.**

3.3. Substantive legal basis of the Council Decision

19. The explanatory memorandum of the Recommendation states that it is based on Article 218 TFEU. The preamble to the draft Council Decision also refers to Article 218 (3) and (4) TFEU. However, the preamble does not refer to any substantive legal basis for this legal act.
20. In accordance with Article 296 (2) TFEU and the settled case law of the CJEU¹⁸, the EDPS questions the fact that the citations in the preamble to the Council Decision only refer to the appropriate procedural legal basis and do not equally refer to the relevant substantive legal basis. The EDPS recalls that, in a similar law enforcement context, the CJEU found that *“the Council Decision on the conclusion of the envisaged Agreement [between Canada and the European Union on the transfer and processing of Passenger Name Record] data must be based jointly on Article 16(2) and Article 87(2)(a) TFEU”*¹⁹.
21. It follows from the Annex on the negotiating directives that the Commission should simultaneously pursue several objectives during the negotiations of the envisaged Agreement, among which allowing the transfer of personal data and ensure respect for the fundamental rights enshrined in the Charter, including the rights to privacy and the protection of personal data. The envisaged Agreement would thus relate directly to the objective pursued by Article 16 TFEU. **Therefore, the EDPS recommends adding in the preamble of the Council Decision a reference to the appropriate substantive legal basis for the future Agreement, which should include Article 16 TFEU.**

4. ADDITIONAL RECOMMENDATIONS

4.1. Transfer of operational personal data

22. Point 4 of the Annex to the Recommendation provides that the Agreement should “also acknowledge the transfer of PNR data to Japan as fostering police and judicial cooperation [...] through the transfer of analytical information flowing from PNR data” and “ensure the transfer of analytical information flowing from competent authorities of Japan to police and judicial authorities of the Member States, as well as to Europol and Eurojust within their respective competences”. The EDPS wonders whether “analytical information” in this objective of the negotiating directives would cover operational personal data and whether transfers of such data would take place from the EU, i.e. police and judicial authorities of the Member States, Europol and Eurojust, to the competent public authorities of Japan.
23. In such cases, the EDPS recalls that the transfers of operational personal data from the EU to Japan should be in compliance with specific legal frameworks laid down in Chapter V of Directive (EU) 2016/680, Article 25 of Regulation (EU) 2016/794²⁰, Chapter IX of Regulation (EU) 2018/1725 and the conditions in Article 11 of Directive (EU) 2016/681.
24. Therefore, **the EDPS recommends clarifying in the negotiating directives whether the envisaged police and judicial cooperation between the competent public authorities of Japan and the police and judicial authorities of the Member States, as well as with Europol and Eurojust, would include such transfers of operational personal data from the EU to Japan. If this is the case, references to the appropriate legal basis for transfers of operational personal data should at least be included.**

4.2. Special categories of personal data (sensitive data)

25. The EDPS welcomes the fact that point 8(b) of the negotiating directives explicitly envisages a prohibition of processing of sensitive data within the meaning of EU law. Nevertheless, it should be borne in mind that the above-mentioned ICAO Doc 9944 “Guidelines on PNR Data” includes as an element of PNR “general remarks including Other Supplementary Information (OSI), Special Service Information (SSI) and Special Service Request (SSR) information”. Moreover, the CJEU in its Opinion 1/15 has concluded that “it may even encompass information entirely unrelated to the purpose of the transfer of PNR data” and “cannot be regarded as being delimited with sufficient clarity and precision”²¹.
26. In those circumstances, **the EDPS recommends to the Commission as EU negotiator to pay special attention to the way in which the categories of PNR data are defined for the purpose of the Agreement in order to prevent the possibility of transferring and processing of information that could indirectly reveal special categories of data about air passengers, such as religious or philosophical beliefs or health data.**

4.3. Anonymisation of personal data

27. Point 8(h) of the negotiating directives provides for anonymisation of PNR data as an alternative to deletion upon the expiry of the retention period. In this context, the EDPS would like to recall the finding of the Commission in the course of the negotiations with Japan on the adequacy decision that the concept of “anonymously processed personal

information", as defined by the Japanese legislation, includes data for which re-identification of the individual is still possible and thus could be considered a form of "pseudonymisation" rather than "anonymisation"²².

28. Given this divergence in concepts, the **EDPS invites the Commission to ensure that, when referring to "anonymous personal data" in the future Agreement, it is meant as anonymisation of PNR data in such a manner that the individual concerned is no longer identifiable**, as stated in point 8(h) of the negotiating directives.

4.4. Independent oversight

29. Both the EU legislation²³ and the settled case law of CJEU²⁴ spell out the existence and the effective functioning of one or more independent supervisory authorities as an essential guarantee of the right to data protection. The Commission adequacy decision on Japan offers an overview of the Japanese system of independent oversight in the area of law enforcement and security²⁵.
30. Given the complexity of the Japanese system and the various supervisory authorities involved, **the EDPS recommends the clear identification of the specific authority or authorities entrusted by Japan with the independent oversight of compliance with the rules of the PNR Agreement**.
31. In addition, the EDPS sees particular added value in developing **international cooperation for the protection of personal data in the field of PNR data** between the supervisory authorities of the EU and Japan, in line with Article 50 of Regulation (EU) 2016/679 and Article 40 of Directive (EU) 2016/680.

4.5. Suspension and termination of the Agreement

32. The EDPS notes that points 13 to 15 of the negotiating directives in the Annex stipulate legal possibilities for regular joint review, dispute settlement and automatic renewal of the future Agreement. However, the negotiating directives do not provide for the possibility to suspend or terminate the Agreement in case of breach of its rules by a Contracting Party.
33. Similarly to the provisions of Article 45(5) of Regulation (EU) 2016/679 and Article 36(5) of Directive (EU) 2016/680 regarding adequacy decisions for commercial and law enforcement purposes respectively, **the EDPS recommends introducing in the negotiating directives the possibility to suspend the Agreement in case of breaches of its provisions, as well as for terminating it if the non-compliance is serious and persistent**.

5. CONCLUSIONS

34. The EDPS welcomes the fact that the negotiation mandate aims at ensuring full respect for fundamental rights and freedoms enshrined in Article 7 and Article 8 of the Charter, as well as for the principles of necessity and proportionality, as interpreted by the CJEU in its Opinion 1/15 on the EU-Canada PNR Agreement.
35. Given the impact of the envisaged Agreement on the fundamental rights of a very large number of individuals not implicated in a criminal activity, the EDPS considers that the

future Agreement should contain all the necessary substantive and procedural safeguards, which, considered in their entirety, would guarantee the proportionality of the PNR system and to limit the interference with the right to privacy and data protection only to what is strictly necessary and justified by the general interest of the EU.

36. To this end, as main recommendation, the EDPS stresses the need of a strict approach with regard to the necessity and proportionality of the PNR system. Furthermore, special attention should be given to the practical implementation of the principle of purpose limitation concerning the use of the transferred PNR data. In addition, the EDPS repeats its position from its previous opinions²⁶ that the Council Decision authorising opening of negotiations pursuant to Article 218 TFEU should contain a reference not only to the procedural legal basis but also to the relevant substantive legal basis, which should include Article 16 TFEU.
37. The additional recommendations of the EDPS in the present Opinion relate to the appropriate legal framework for transfer of operational personal data; the need to prevent the risk of indirectly revealing special categories of data about air passengers, as well as the risk of re-identification of individuals after the anonymisation of PNR data relating to them. The EDPS underlines also the need to clarify the independent supervision of PNR data processing by the competent Japanese authorities, which is one of the essential guarantees for the right to data protection. In addition, the EDPS recommends the introduction of clauses allowing for the suspension of the future Agreement in case of breaches of its provisions, as well as for termination of the Agreement if the non-compliance is serious and persistent.
38. The EDPS remains at the disposal of the Commission, the Council and the European Parliament to provide advice at further stages of this process. The comments in this Opinion are without prejudice to any additional comments that the EDPS could make as further issues may arise and would then be addressed once further information is available. To this end, the EDPS expects to be consulted later on the provisions of the draft Agreement before its finalisation.

Brussels, 25 October 2019



Wojciech Rafał WIEWIÓROWSKI

Notes

- ¹ OJ L 119, 4.5.2016, p. 1.
- ² OJ L 295, 21.11.2018, p. 39.
- ³ OJ L 119, 4.5.2016, p. 89.
- ⁴ OJ L 186, 14.7.2012, p. 4–16.
- ⁵ OJ L 215, 11.8.2012, p. 5–14.
- ⁶ Opinion 1/15 of the Court of Justice of 26 July 2017 pursuant to Article 218(11) TFEU on draft Agreement between Canada and the EU on the transfer and processing of PNR data, ECLI:EU:C:2017:592.
- ⁷ ICAO, Doc 9944 Guidelines on Passenger Name Record (PNR) Data, First Edition — 2010.
- ⁸ Security Council resolution 2396 (2017) on threats to international peace and security caused by returning foreign terrorist fighters, adopted by the Security Council at its 8148th meeting, on 21 December 2017, point 12.
- ⁹ See the Explanatory Memorandum to the Recommendation for Council Decision, doc. COM(2019) 420 final from 27.9.2019.
- ¹⁰ See Article 3(5) of Directive (EU) 2016/681.
- ¹¹ Directive (EU) 2016/681, Recitals 6 and 7.
- ¹² CJEU, Opinion 1/15, EU-Canada PNR Agreement, ECLI:EU:C:2017:592, par. 93
- ¹³ Commission Implementing Decision of 23 January 2019 pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council on the adequate protection of personal data by Japan, OJ L 76, 19.3.2019
- ¹⁴ See also EDPS Necessity Toolkit available at: https://edps.europa.eu/sites/edp/files/publication/17-06-01_necessity_toolkit_final_en_0.pdf
- ¹⁵ Latest in the EDPS Opinion 5/2015 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, available at: https://edps.europa.eu/sites/edp/files/publication/15-09-24_pnr_en.pdf
- ¹⁶ CJEU, Opinion 1/15, EU-Canada PNR Agreement, ECLI:EU:C:2017:592, par. 151.
- ¹⁷ *Ibid.*, par. 232(3)(c).
- ¹⁸ CJEU judgments in Case C-43/12 Commission v Parliament and Council, par. 29 and Case C-263/14 Parliament v Council, par. 43.
- ¹⁹ CJEU, Opinion 1/15, EU-Canada PNR Agreement, ECLI:EU:C:2017:592, par. 232.
- ²⁰ Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA, OJ L 135, 24.5.2016, p. 53.
- ²¹ CJEU, Opinion 1/15, EU-Canada PNR Agreement, ECLI:EU:C:2017:592, par. 160.
- ²² Commission Implementing Decision on the adequate protection of personal data by Japan, Recital 30.
- ²³ Article 16 TFEU and Article 8(3) of the Charter, Article 45(2)(b) GDPR
- ²⁴ CJEU judgments in Case C-362/14 Schrems, Case C-518/07 Commission v Germany, and Case C-288/12 Commission v Hungary.
- ²⁵ Commission Implementing Decision on the adequate protection of personal data by Japan, point 3.2.2. of the preamble and Annex II.
- ²⁶ See EDPS Opinion 2/2019 on the negotiating mandate of an EU-US agreement on cross-border access to electronic evidence and EDPS Opinion 3/2019 regarding the participation in the negotiations in view of a Second Additional Protocol to the Budapest Cybercrime Convention, available at: https://edps.europa.eu/sites/edp/files/publication/19-04-02_edps_opinion_on_eu_us_agreement_on_e-evidence_en.pdf and https://edps.europa.eu/sites/edp/files/publication/19-04-02_edps_opinion_budapest_convention_en.pdf.