

Vienna, 10th September 2020

Position paper on the European Commission's Roadmap „The external dimension of the EU policy on Passenger Name Records“

The ÖRAK (Austrian Bar) is the legally established representation of lawyers in Austria and, as such, is appointed to safeguard the rights and matters of Austrian lawyers at national, European and international level. It is particularly responsible for the submission statements on draft laws as well as for reporting deficiencies in the administration of justice and administration to the competent authorities and for proposals for the improvement of the administration of justice and administration.

The ÖRAK (Austrian Bar) thanks the European Commission for the opportunity to comment in the context of the Roadmap “The external dimension of the EU policy on Passenger Name Records”.

It is essential to take into account the considerable risks with regard to the privacy of each individual (Art 7 Charter of Fundamental Rights of the European Union) and the right of personal data protection (Art 8). The European Court of Justice, with reference to the European Court of Human Rights, has developed principles that must be applied to general monitoring programmes and random data collection. These principles must continue to be strictly adhered to and must not be violated.

Often it is unclear according to which criteria the data are classified or provided with comments. There need to be specific regulations in place on how and according to which specifications or evaluation standards the stored data will later be categorised. Unsubstantiated allegations, assessments and observations can lead to stigmatisation which could cause to classify innocent people as suspects. Data access must depend on objective criteria and be limited to what is absolutely necessary with regard to the group of persons being accessed.



Therefore, the excessive and groundless retention of data of all air travellers and thus primarily of unsuspecting passengers must be avoided. The data retention mainly concerns persons for whom there are no indications of direct or indirect involvement in terrorism or serious crime. This then creates a disproportionate risk of violating the fundamental rights of innocent citizens. In view of the fact that the European Commission is planning to combine the use of API and PNR data¹, these considerations, especially with regards to data protection aspects, must also be applied even more rigorously to API data and in relation to the expected volume of data.

In conclusion, the ÖRAK (Austrian Bar) wants to emphasize that it is of the utmost importance to respect the fundamental rights and freedoms as well as data protection in the context of the EU policies on Passenger Name Records and the external field.

Ansprechpartner/ Contact: Jessica König, Legal Advisor, ÖRAK-Vertretung Brüssel / Brussels Office

¹ See the European Commission Inception Impact Assessment for Advance Passenger Information – API on page 2: “In addition, preliminary results of the currently ongoing review of the PNR Directive show the usefulness to combine API and PNR data in order to strengthen the reliability and effectiveness of PNR data as a law enforcement tool. The combined use of API and PNR data is believed to improve the data quality of the latter, limiting the number of false positives currently experienced by Passenger Information Units in the automated processing of PNR data and hence the amount of data that are subject to manual verification.”

