

Collection of PNR Data Under Judicial Scrutiny in Germany



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European Law Forum: Prevention • Investigation • Prosecution

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News

The debate on the retention of passenger name records (PNR) data has gained new momentum in Germany. On 14 May 2019, the “Gesellschaft für Freiheitsrechte” (GFF) informed the public that it [brought actions](#) before the administrative court of Wiesbaden and other local civil law courts in order to tackle the collection, use, and processing of PNR data by the German authorities. As from May 2018, airlines are obliged to transmit dozens of PNR to the [centralised Passenger Information Unit](#), which belongs to the Federal Police Office (*Bundeskriminalamt – BKA*), if they operate third-country or intra-EU flights.

The BKA is entitled to check the data against police search databases (i.e. the German INPOL system or the Schengen Information System) and against patterns, in order to identify persons that allegedly committed certain serious crimes as defined in the [German Act on the Processing of Air Passenger Data](#). The PNR can be stored for a period of five years. The Act implements EU Directive 2016/681 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” (see [euclid 2/2016, 78](#)).

The actions of the GFF encourage the German courts to file references for preliminary rulings to the European Court of Justice. The judges in Luxembourg are to verify whether the EU PNR Directive complies with the EU’s fundamental rights. The GFF argues that the retention of PNR data of anyone for a long period of time breaches the fundamental rights enshrined in Arts. 7 and 8 CFR. It is submitted that this position is also backed by the 2017 CJEU judgment that declared the agreement between the EU and Canada on the exchange of PNR data void (see [euclid 3/2017, 114-115](#)).

The GFF closely cooperates with the Austrian organisation “epicenter.works,” which lodged data protection complaints against PNR in Austria.

The complainants point out that there is no evidence that the retention of PNR has led to tangible results in detecting criminals or suspicious air movements. Data on first experiences with the PNR scheme in Germany underpin this finding. In a [response of 17 April 2019 to questions from MPs](#) representing the left-wing party “Die Linke,” the German Federal Ministry of the Interior confirmed that, up to 31 March 2019, the automated “comparison processing system” had led to 94,098 hits – after an individual, manual assessment of the hits by law enforcement officers, however, follow-up measures (arrest, open or covert controls) were only undertaken in 277 cases. [Critics](#) therefore remark that almost all hits turned out to be waste data.

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