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Study confirms doubts about lawfulness of the Entry Exit System

A study commissioned by the Greens/EFA Group

Today, MEPs vote on the new travel data collection "Entry Exit System" (EES). The plenary debate on this with MEP Jan Philipp Albrecht at 9am and the subsequent vote at 12pm can be followed live here. The system is set up to record passport data, fingerprints and facial scans of all third-country nationals who travel to the European Union, regardless of any reason or suspicion and for each entry and exit. The data is to be stored for up to four years and made available to the police and other law enforcement authorities. After an Opinion of the European Court of Justice has already declared the EU-Canada PNR agreement – which also related to travel data collection – unlawful and thus also raised doubts about the lawfulness of the Entry Exit System, a legal study published today confirms these doubts:

“The Opinion of the CJEU impacts other data retention schemes, including the one proposed in the EES, significantly and therefore cannot be ignored – neither in on-going legislative procedures nor in view of potential amendments to be made to existing instruments. The transferability of the general principles developed in previous case law and most recently in the Opinion leads to the conclusion that at least some key elements of the EES are problematic in light of those findings.”

In detail, the study reveals that:

- "The data retention periods as proposed under the EES Regulation for the purpose of improving the management of the Union’s external borders cannot be justified in light of that holding."
- "An objective argument concerning the primary goal of the introduction of a retention scheme is necessary for justifying a specific length. This is not at all evident for the retention periods foreseen in the proposal for an EES."
- "The “objective evidence”-standard that needs to be fulfilled before LEA access to retained data may be granted, does not seem to accomplish the expectation of the Court"
- "The proposed EES Regulation does not fulfil the requirements of the Court with regard to prior judicial review and lacks truly independent ex post review where access requests were granted in a case of urgency."

- Download the full study

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Responsible MEPs



Jan Philipp Albrecht

Member

Attached documents

Data Retention under the Proposal for an EU Entry/Exit System (EES)

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