



NORWEGIAN PARLIAMENTARY
OVERSIGHT COMMITTEE
ON INTELLIGENCE AND SECURITY SERVICES

Special report to the Storting on PST's unlawful collection and storage of information about airline passengers

Document 7:2 (2019–2020)

To the Storting

In accordance with Act No 7 of 3 February 1995 relating to the Oversight of Intelligence, Surveillance and Security Services (the Oversight Act) Section 17 third paragraph, the Committee hereby submits its report on PST's unlawful collection and storage of information about airline passengers to the Storting.

The report is unclassified, cf. the Oversight Act Section 17 third paragraph. Pursuant to the Security Act, the issuer of information decides whether or not it is classified. Before the report is submitted to the Storting, the final draft is sent to the service to clarify whether the report is unclassified. PST has also been given an opportunity to check that there are no factual errors or misunderstandings.

Oslo, 5 December 2019



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Table of contents

1	The EOS Committee's main conclusion.....	5
2	The background to the special report and how the investigation was conducted.....	6
2.1	PST's collection of passenger information in 2014	6
2.2	The EOS Committee's follow-up and implementation of the investigation.....	6
3	The legal authority for PST's collection of information.....	7
3.1	General information about personal data protection	7
3.2	A brief description of the regulatory framework governing PST's activities	8
3.3	The Immigration Act as a possible legal basis for collecting information about Norwegian airline passengers.....	9
3.3.1	<i>The provisions of the Immigration Act and the Immigration Regulations</i>	9
3.3.2	<i>The PNR and API Directives</i>	9
3.3.3	<i>New Borders Act</i>	11
3.4	The EOS Committee's view on the Immigration Act as possible legal basis	12
4	The concrete collection methods	13
4.1	Introduction	13
4.2	PST's access to the airline Norwegian's booking system	13
4.2.1	<i>How did PST gain access?</i>	13
4.2.2	<i>What searches has PST made?</i>	13
4.2.3	<i>Legal basis for access to the airline Norwegian's booking systems</i>	15
4.2.4	<i>The EOS Committee's opinion</i>	16
4.3	PST's collection of passenger lists	17
4.3.1	<i>Background to and scope of PST's collection of airline passenger lists</i>	17
4.3.2	<i>Legal basis for submitting airline passenger lists routinely</i>	17
4.3.3	<i>Where were the passenger lists stored?</i>	19
4.3.4	<i>For how long were the passenger lists stored?</i>	19
4.3.5	<i>The EOS Committee's opinion</i>	19
5	The EOS Committee's oversight of PST staff's email accounts and personal areas	21
6	PST's handling of the case.....	22
7	The EOS Committee's concluding remarks	23

Preface

The EOS Committee is charged with ensuring that the services' activities are carried out within the framework of law.¹ The purpose of the EOS Committee's review of legality is to ascertain whether the rights of any person have been violated and to prevent such violations, and to ensure that the means of intervention employed do not exceed those required under the circumstances, and that the services respect human rights. The Committee fulfils this function by among other things checking what information the services collect, and how and for how long the information is stored.

The EOS Committee reports to the Storting annually in the form of an annual report, but it may also submit a special report to the Storting if 'matters are uncovered that should be made known to the Storting immediately'.² It is established practice that the Committee also submits special reports to the Storting on matters of a certain scope and importance.

The EOS Committee decided in June 2018 to submit a special report on this matter.

The Committee adopted the report on 14 November 2019, and it is up to date as of that date.

¹ Act No 7 of 3 February 1995 relating to the Oversight of Intelligence, Surveillance and Security Services (the Oversight Act) Section 2.

² The Oversight Act Section 17 third paragraph.

1 The EOS Committee's main conclusion

The EOS Committee strongly criticises the Norwegian Police Security Service (PST) for having collected a large quantity of information about Norwegian citizens' air travel. It is our opinion that the collection has been – and is – unlawful because PST has not had legal basis for it.

The EOS Committee wishes to bring the following four circumstances to the Storting's attention:

- PST has continued its practice of collecting information about Norwegian airline passengers' travel abroad, also after being criticised by the Committee in a concrete case in 2014 for not having legal authority for such collection.
- PST has unlawfully obtained access to large quantities of information about both Norwegian and foreign passengers on domestic and international flights through access to the booking system of the airline Norwegian Air Shuttle ASA. PST has not had legal authority for such access. This is information that PST would otherwise have required court authorisation to obtain in each case.
- Eight airlines have routinely submitted their passenger lists to PST. This routine submission concerned information about approximately one million passengers a year, several hundred thousand of whom were Norwegians. This routine collection of information is unlawful. The information has been stored for several months and has been available for searches.
- PST has not had sufficient internal control and documentation of its own collection activities.

In 2017, PST wrote to the Committee that the regulatory framework 'probably does not' authorise either access to the booking system or the routine submission of passenger lists. Instead of discontinuing the practice, the service adopted an internal procedure (submitted to the Committee in February 2019) in which it is stated that the service will continue to collect such information. In September 2019, PST stated to the Committee that the legal authority for the collection is unclear.

It is the Committee's clear expectation that PST will discontinue a practice that the service itself believes does not comply with the regulatory framework.

The way in which PST has handled the matter has prompted stronger criticism from the Committee.

2 The background to the special report and how the investigation was conducted

2.1 PST's collection of passenger information in 2014

It emerged in connection with a case considered in 2014 that PST had collected information about people from several airlines, and the Committee asked the service about the legal basis for this.

In 2014, PST's view was that the Immigration Act³ provided legal authority, and the service argued that the scope of the Act was much wider than just immigration control. The service argued that, although the legal authority provided by the Immigration Act was unclear, 'particularly having regard to the scope of the Act', it could be appropriate to use the Immigration Act as the legal basis for the disclosure of information 'given how legislation is *presently* structured'. PST concluded that the Act could be used to authorise the prevention and investigation of criminal acts in general.⁴

PST also wrote that it would raise the question of the Immigration Act's scope of application with the Ministry of Justice and Public Security (from now on Ministry of Justice). The service also emphasised that it needed information about the travel of the person in question at the time.

The Committee, on its part, found it difficult to see how the Immigration Act and the regulatory framework governing immigration control could warrant the disclosure of travel information about a Norwegian citizen to PST, and we therefore criticised the service. The matter was summarised as follows in the Committee's annual report for 2014:

'The Committee accordingly believed that surrender of passenger information about the person to PST did not appear to have legal basis in the immigration legislation as argued by PST'.⁵

2.2 The EOS Committee's follow-up and implementation of the investigation

In 2017, the Committee carried out new searches that showed that PST still had wide-ranging access to information about airline passengers. This access included foreign travel by Norwegian citizens.

The investigations showed that several airlines routinely submitted complete passenger lists to PST, and that PST stored these lists. The Committee also found that PST had its own username and password that the service used for searches of the airline Norwegian's booking system.

We have sent several letters to PST to obtain an overview of the factual and legal circumstances surrounding this collection and storage of airline passenger information.⁶ PST has replied to the Committee's enquiries,⁷ and the Committee has also received copies of correspondence between PST and the Ministry of Justice.⁸

When, in December 2017, PST confirmed in its reply to the Committee that information collection had taken place on a large scale and also wrote that this had taken place without sufficient legal authority, the Committee decided to conduct an inspection of the PST office at Oslo Airport Gardermoen. The inspection took place on 14 March 2018, and the service was only notified shortly before the inspection.⁹ Moreover, the Committee has sent letters with questions to the airline Norwegian,¹⁰ the National Bureau of Crime Investigation (Kripos)¹¹ (Kripos is the data controller for the border and territorial control register, GTK), and Norwegian Customs.¹²

³ Act No 35 of 15 May 2008 on the entry of foreign nationals into the kingdom of Norway and their stay in the realm (the Immigration Act) Section 20 first paragraph letter (a).

⁴ Letter of 11 May 2015.

⁵ Document 7:1 (2014-2015) The EOS Committee's annual report to the Storting for 2014, see section 3.10.3 on page 25.

⁶ Letters from the Committee to PST of 24 October 2017, 2 May 2018 and 7 August 2019.

⁷ Letters from PST to the Committee of 6 December 2017, 2 May 2018 and 24 September 2019.

⁸ Letter from PST to the Ministry of Justice of 28 June 2018 and letter from the Ministry of Justice to PST of 12 March 2019.

⁹ The Committee sent a letter informing PST of the inspection 48 hours in advance to ensure that the office would be staffed on the Committee's arrival.

¹⁰ Letters to Norwegian of 8 April and 11 September 2019 and replies of 21 May and 16 October 2019, respectively.

¹¹ Letter to Kripos of 11 September 2019 and reply of 4 October 2019.

¹² Letter to Norwegian Customs of 11 September 2019 and reply of 10 October 2019.

3 The legal authority for PST's collection of information

3.1 General information about personal data protection

Personal data enjoy strong protection in Norwegian law through Article 102 of the Norwegian Constitution and Article 8 of the European Convention on Human Rights (ECHR). It is important in order to ensure trust in public institutions that personal data are processed in accordance with the law.

Personal data are defined as any information relating to an identified or identifiable natural person.¹³ The processing¹⁴ of personal data is protected by the Norwegian Constitution Article 102:

'Everyone has the right to the respect of their privacy and family life, their home and their communication. Search of private homes shall not be made except in criminal cases.
The authorities of the state shall ensure the protection of personal integrity.'

A majority of the Storting's Standing Committee on Scrutiny and Constitutional Affairs expressed the view that Article 102 of the Constitution 'should be interpreted to mean that systematic collection, storage and use of information about personal matters can only take place in accordance with the law, be used in accordance with the law or by informed consent and deleted when the grounds for processing such information have ceased to exist'.¹⁵ The Norwegian Supreme Court has since applied this interpretation.¹⁶

A similar protection against interference with the right to privacy follows from ECHR Article 8 on the right to respect for private and family life.¹⁷

In a decision on the storage of material obtained through lawful interception of communication, the Supreme Court stated that: 'to provide such legal authority as required by the Constitution and the human rights conventions, it is not sufficient that the law is formally in order, and that, based on general principles of interpretation, it provides a basis for the storage'. The Supreme Court continued:

'Qualitative requirements also apply: The law must be accessible and as precise as the circumstances permit. It must also – in light of the heightened risk of abuse and arbitrariness that experience shows may arise when the authorities are permitted to operated covertly – provide reasonable guarantees as regards, among other things, the form of storage, the use of the material and possibilities for access, security and deletion.'¹⁸

The statement concerns information acquired through lawful interception of communications, but it shows that the requirement for clear legal authority is more stringent in cases that entail a risk of abuse and arbitrariness. In the Committee's opinion, this is relevant to the assessments in the present report.

¹³ See Act No 38 of 15 June 2018 relating to the processing of personal data (Personal Data Act), cf. the General Data Protection Regulation (EU 2016/679) on the protection of natural persons with regard to the processing of personal data Article 2(1).

¹⁴ The word 'processing' is used in the sense of the Personal Data Act, cf. the General Data Protection Regulation (EU 2016/679) Article 4(2) to mean: 'any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction'.

¹⁵ Recommendation No 186 to the Storting (2013–2014), page 27.

¹⁶ Norsk Retstidende 2014 p. 1105, ground 28.

¹⁷ ECHR Article 8, *Right to respect for private and family life*, reads as follows:

'1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.'

¹⁸ Norsk Retstidende 2014 p. 1105, ground 30.

Generally speaking, data protection has been strengthened since 2018, when the EU's General Data Protection Regulation was incorporated into Norwegian law through the Personal Data Act Section 1.¹⁹

Based on the above, the collection and storage of airline passenger information is an interference with fundamental rights whose protection can only be departed from if warranted by clear authority in law.

3.2 A brief description of the regulatory framework governing PST's activities

The Norwegian Police Security Service is charged with preventing and investigating criminal acts against national security, unlawful intelligence activities, sabotage and politically motivated violence.²⁰ Collecting information about persons and groups that could constitute a threat is a key part of PST's work.

The processing and storage of information by PST is regulated by the Police Databases Act.²¹ It is a requirement that information can only be processed if it is necessary and relevant to PST's performance of its duties.²²

In addition to investigating criminal acts, PST is also charged with *preventing* certain criminal acts. PST has been given wider authority to process personal data than the rest of the police. The following is quoted from the preparatory works to the Police Databases Act:

'The committee is of the opinion that, if PST is to be capable of fulfilling its preventive duties in a way that is proportional to the threat situation and the interests threatened, its right to process, outside the context of a criminal prosecution, information about persons who are not suspected of any concrete criminal acts must be assessed differently than is the case for the rest of the police service'.²³

Under the Criminal Procedure Act and the Police Act, PST can collect personal data both as part of an investigation and in cases in preventive cases.²⁴ Such information collection must comply with the material and procedural due process guarantees stipulated in law.

The Regulations concerning the Norwegian Police Security Service ('the PST Regulations') Section 9 first paragraph assigns PST a role in immigration control:

'If necessary for performance of the service's duties, the Police Security Service may carry out control of visiting and resident foreign nationals. The control function shall be exercised in cooperation with other police and immigration authorities to the extent necessary.'

According to the Border Control Circular,²⁵ PST's involvement in the planning and execution of border control and immigration control on Norwegian territory is otherwise limited, and in order for 'PST to be able to fulfil the duties it has been assigned in the Police Act Sections 17b and 17c in the best possible way, the service is completely dependent on effective control of who enters and stays in the realm.'²⁶

¹⁹ The Personal Data Act implements the EU's General Data Protection Regulation (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)), and it also strengthens the right to protection of personal data.

²⁰ PST's duties and the use of coercive measures are regulated in Act No 53 of 4 August 1995 relating to the Police (the Police Act).

²¹ Act No 16 of 28 May 2010 relating to the processing of data by the police and the prosecuting authority (the Police Databases Act) Section 2.

²² The Police Databases Act Section 64, cf. Regulations No 1097 of 20 September 2013 relating to the processing of data by the police and the prosecuting authority (the Police Databases Regulations) Sections 21-1 and 21-2.

²³ Proposition No 108 to the Odelsting in the Storting (2008–2009) concerning the Act relating to the processing of data by the police and the prosecuting authority (the Police Databases Act), section 17.2, second paragraph, page 269.

²⁴ A prevention case is a case opened for the purpose of investigating whether someone is preparing to commit a criminal offence that PST is tasked with preventing.

²⁵ Circular RPOD-2016-9, the Border Control Circular.

²⁶ The Border Control Circular section 9.5 *The Police Security Service (PST)*.

The Committee understands this to mean that PST depends on other bodies exercising effective border control, since PST itself is little involved in such control activities.

3.3 The Immigration Act as a possible legal basis for collecting information about Norwegian airline passengers

3.3.1 The provisions of the Immigration Act and the Immigration Regulations

The purpose of the Act is to 'provide the basis for regulating and controlling the entry and exit of foreign nationals and their stay in the realm, in accordance with Norwegian immigration policy and international obligations'.²⁷ The scope of the Act is described in Section 2:

'The Act concerns the entry of foreign nationals into the kingdom and their stay in the realm. Obligations under the Act may also be imposed on Norwegian nationals and legal entities.'

A 'foreign national' means any person who is not a Norwegian national,²⁸ and the purpose of the Act includes to 'ensure legal protection for foreign nationals who are entering or leaving the realm'.²⁹

The Immigration Act Section 20 states that the King may by regulations make provisions to the effect that 'the commander of an aircraft arriving from, or departing for, another country shall give the police a list of passengers and crew members'.

The Immigration Regulations³⁰ Section 4-24, first paragraph, first and second sentences, read as follows:

'On request, the commander of an aircraft which is coming from or going abroad shall give the police a list of the passengers and crew after the check-in process has been completed, see Section 20, first paragraph (a) of the Act. The list shall contain the same information as the passenger list.'³¹

As part of the implementation of the new EU General Data Protection Regulation in 2018, new provisions were incorporated into the Immigration Act and the Immigration Regulations³² in order to 'give the authorities a clear authority in law for processing personal data in immigration cases'.³³ The Regulations state that personal data 'shall be collected for specific, explicitly stated and justified purposes, including a) regulating and controlling foreign nationals' entry into, exit from and stays in the realm'.³⁴

In a consultation submission of 12 January 2018, PST stated that the service supports the Ministry's proposal, and made no mention of a need for special regulation to enable the service to obtain passenger information about Norwegian citizens.

3.3.2 The PNR and API Directives

In connection with the 2014 case, PST wrote that it had entered into a dialogue with the Ministry of Justice about the scope of the Immigration Act and the Immigration Regulations.³⁵ In its letter of 24 October 2017, the Committee requested an account of this dialogue. PST replied in a letter of

²⁷ The Immigration Act Section 1.

²⁸ The Immigration Act Section 5.

²⁹ The Immigration Act Section 1.

³⁰ Regulations No 1286 of 15 October 2009 on the entry of foreign nationals into the kingdom of Norway and their stay in the realm (the Immigration Regulations), adopted pursuant to the Immigration Act.

³¹ The Immigration Regulations Section 4-24, first paragraph first and second sentences. In a consultation paper of 7 August 2019, case number 19/3484, the Ministry of Justice proposed changing this provision to explicitly state that PST, as well as the police, can request a list of passengers and crew. The consultation deadline was 10 October 2019, and the matter was still under consideration as of 14 November 2019.

³² The Immigration Act Section 83a and the Immigration Regulations Section 17-7a.

³³ Proposition No 59 to the Storting (Bill) (2017–2018) Amendments to the Immigration Act (processing of personal data), Chapter 1, third paragraph.

³⁴ The Immigration Regulations Section 17-7a.

³⁵ Letter of 11 May 2015 from PST to the Committee.

6 December 2017 that the service had not proceeded with the dialogue because work on the implementation of the API and PNR Directives was under way.

The PNR Directive (Passenger Name Record Directive)³⁶ was adopted by the EU in April 2016. The purpose of the Directive is to prevent, detect, investigate and prosecute terrorist offences and serious crime. PNR data are 'the airlines' commercial booking information, such as name, seat preferences, meal preferences, payment methods, itinerary, assistance and travelling companions'.³⁷ The Directive instructs airlines to give a national official body appointed or established by the member state access to passenger data, which will then be stored for five years. The Directive is neither EEA-relevant nor Schengen-relevant, which means that Norway has no obligation under international law to implement it. However, PST writes in its letter to the Committee of 24 September 2019 that 'it has been indicated that the PNR Directive will be implemented in Norwegian law' and that the National Police Directorate 'has been charged with developing a system for collecting PNR data'. PST is also participating in this work.

The API (Advance Passenger Information) Directive³⁸ was adopted by the EU in April 2004 for the purpose of 'improving border controls and combating illegal immigration by the transmission of advance passenger data by carriers to the competent national authorities'.³⁹ The Directive was deemed to be Schengen-relevant and is binding on Norway. According to the Ministry of Justice, the Immigration Regulations Section 4-24 is deemed to implement the requirements set out in the API Directive. Pursuant to this provision, it is the police that shall receive such a list.⁴⁰

Article 3 first paragraph of the Directive reads as follows:

'Member States shall take the necessary steps to establish an obligation for carriers to transmit at the request of the authorities responsible for carrying out checks on persons at external borders, by the end of check-in, information concerning the passengers they will carry to an authorised border crossing point through which these persons will enter the territory of a Member State.'

The second paragraph of the API Directive's Article 3 specifies what information is to be transmitted.⁴¹ No exemptions from the duty to submit information based on nationality or other factors are provided for.

The personal data shall be 'communicated to the authorities responsible for carrying out checks on persons at external borders through which the passenger will enter the territory of a Member State, for the purpose of facilitating the performance of such checks with the objective of combating illegal immigration more effectively'.⁴² Pursuant to the Directive, the data shall be saved in a temporary file before being deleted 'within 24 hours after transmission, unless the data are needed later for the purposes of exercising the statutory functions of the authorities responsible for carrying out checks on persons at external borders in accordance with national law and subject to data protection provisions under Directive 95/46/EC'.⁴³

³⁶ The full name of the directive is *Directive (EU) 2016/681 of the European Parliament and of the Council 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*. It was adopted by the European Parliament on 14 April 2016. The Directive is intended to facilitate the automatic transfer of airline passenger information to the police. The Directive is not covered by the EEA Agreement and is not binding on Norway, but the Ministry writes that a separate association agreement to the Directive can be negotiated for Norway.

³⁷ Proposition No 161 to the Storting (Bill), section 3.2, page 13.

³⁸ Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data.

³⁹ The API Directive, Article 1.

⁴⁰ See consultation paper of 7 August 2019 on amendments to the Immigration Regulations, case number 19/3484, page 2, where it is proposed that the provision should be amended to allow PST to also request such information.

⁴¹ The transmitted information shall comprise the number and type of travel document used, nationality, full name, date of birth, the border crossing point of entry into the territory of the Member States, code of transport, the departure and arrival time of the transportation, the total number of passengers carried on that transport, and the initial point of embarkation.

⁴² The API Directive, Article 6(1).

⁴³ The API Directive Article 6(1).

In its letter of 6 December 2017, PST wrote that when Section 4-24 of the Immigration Regulations was drafted, it was 'intended as an attempt to implement the API Directive'. The service referred to the preparatory works to the new Borders Act, which states the following:

'The obligation to give notification of aircraft passengers pursuant to the Immigration Regulations Section 4-24 is intended to fulfil the obligation of carriers to communicate passenger data pursuant to Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data (the Advance Passenger Information (API) Directive)'.⁴⁴

Moreover, a circular from the National Police Directorate⁴⁵ indicates that it may have been the legislators' intention that the provisions on airline passenger information should apply to Norwegian citizens as well. Section 4.4 of the circular refers to the duty of aircraft commanders to give the police advance notification on request in the form of a list of the passengers and crew. This is specified in section 4.4.2 of the circular to mean that 'systematic entry and exit controls shall take place of *all* persons on flights to/from Norway directly to/from countries outside the Schengen area' (*the Committee's emphasis*).

3.3.3 *New Borders Act*

PST has also made reference⁴⁶ to Act No 8 of 20 April 2018 on border supervision and border control of persons (the Borders Act).⁴⁷ The Act has been adopted, but had not entered into force as of 14 November 2019. The current provisions on border crossing and entry and exit control⁴⁸ in the Immigration Act will be transferred to the Borders Act. This also applies to the provision stating that carriers that operate aircraft that arrive from or depart for another country are obliged to communicate information about passengers and crew to the police.⁴⁹

PST has⁵⁰ referred to the preparatory works to the new Borders Act, in which the following is stated:

'Entry and exit control is part of immigration control, but it is also more than that. Everyone who crosses external borders is subject to such control, regardless of whether they are Norwegian citizens or citizens of Schengen countries or third countries.

[...]

The vital importance of entry and exit control in combating transnational crime is significant in this context.

[...]

When the committee is to draft a Borders Act based on the majority opinion, the rules on entry and exit control and immigration control must therefore be split up, so that the Borders Act, like the Schengen Borders Code, will simply be a regulatory framework for control and monitoring of borders and border crossings. The best way to go about this would be to move the Immigration Act's provisions on entry and exit control to the Borders Act'.⁵¹

⁴⁴ Proposition No 161 to the Storting (Bill) (2016-2017), section 9.4.1, page 62.

⁴⁵ RPOD 2016-9, Retningslinjer for politiets planlegging og gjennomføring av grensekontroll og utlendingskontroll på territoriet ('Guidelines to the police's planning and execution of border control and immigration control on Norwegian territory') (The Border Control Circular).

⁴⁶ Letter of 6 December 2017 from PST to the EOS Committee.

⁴⁷ The Borders Act is intended to fulfil both national needs and international obligations.

⁴⁸ Border checks (i.e. entry and exit control) are defined as 'checks carried out at border crossing points to ensure that persons, including their means of transport and the objects in their possession, may enter or leave the Schengen Area', cf. the Schengen Borders Code [32016R0399] Article 2(11). This definition is quoted from circular RPOD-2016-9 issued by the National Police Directorate, *Retningslinjer for politiets planlegging og gjennomføring av grensekontroll og utlendingskontroll (Grensekontrollrundskrivet)* ('Guidelines to the police's planning and implementation of border control and immigration control' (The Border Control Circular)).

⁴⁹ Section 16 of the Borders Act has the heading 'Advance notification about passengers and crew etc.' and reads as follows:

'Carriers that operate aircraft that arrive from or depart for another country and carriers that operate vessels arriving in or leaving the internal waters of Norway or a Norwegian port shall communicate information about passengers and crew to the police, and give notification of the planned time and place of the arrival, port call or departure.

Carriers that operate aircraft and vessels are obliged to comply with the instructions of the police regarding place of call or departure for entry and exit control.

Passengers and crew are obliged to provide such information as is necessary to fulfil the obligation to provide advance notification pursuant to the first paragraph.' The Act has not yet entered into force.

⁵⁰ Letter of 6 December 2017 from PST to the EOS Committee.

⁵¹ Official Norwegian Report NOU 2009:20 Ny grenselov ('New borders act'), page 71.

PST has also referred to the description of prevailing law in the preparatory works, which states:

'The obligation to give notification of aircraft passengers pursuant to the Immigration Regulations Section 4-24 is intended to fulfil the obligation of carriers to communicate passenger data pursuant to Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data (the Advance Passenger Information (API) Directive)'.⁵²

3.4 The EOS Committee's view on the Immigration Act as possible legal basis

In 2014, the Committee was of the opinion that immigration legislation could not be used to collect information about Norwegian citizens. At the time, we criticised PST and expected the service to clarify the legal authority for collecting information about international flights by Norwegian citizens.

The Committee notes that it may have been the legislators' intention to implement the provisions of the API Directive in the Immigration Regulations Section 4-24, as suggested by the quote on prevailing law from the preparatory works to the new Borders Act.⁵³ Nevertheless, the Immigration Act, which constitutes the statutory basis for the Immigration Regulations, concerns the entry of *foreign nationals* into the realm and contains no provision that provides clear legal authority for demanding information about the air travel of Norwegian citizens.

PST argues that the proposal to move the provision obliging the commander of an aircraft to give the police passenger list suggests that the provision was not intended to solely target foreign nationals. In our opinion, little weight can be given to the Ministry expressing its view on how the law should be interpreted in the preparatory works to an act that has yet to enter into force.

We also find that the amendments made to immigration legislation when the General Data Protection Regulation was implemented in 2018⁵⁴ underpin the Committee's conclusion that PST cannot demand information about Norwegian citizens' foreign travel.

It is another matter that PST can collect information for both investigative and preventive purposes under the provisions of the Criminal Procedure Act and the Police Act. This however requires court approval on a case-to-case basis.

The collection of passenger information about Norwegian citizens travelling abroad is not authorised by the Immigration Act. The Committee has therefore criticised PST again, as it did in 2014.

The Committee notes that the service and the Committee still disagree on this matter. Despite the disagreement about legal authority that arose several years ago, PST has still not clarified the legal basis for collecting information about Norwegian citizens' travel abroad. This gives grounds for stronger criticism of PST.

⁵² Proposition No 161 to the Storting (Bill) (2016-2017), section 9.4.1, page 62.

⁵³ See section 3.3.3 above.

⁵⁴ The Immigration Act Section 83a and the Immigration Regulations Section 17-7a.

4 The concrete collection methods

4.1 Introduction

According to information obtained by the Committee, PST has used two methods to collect airline passenger information. PST's access to the airline Norwegian's booking system is discussed in section 4.2 below. The routine submission of passenger lists by some airlines is discussed in section 4.3.

4.2 PST's access to the airline Norwegian's booking system

4.2.1 How did PST gain access?

In 2017, the EOS Committee became aware of information showing that PST had direct access to and could carry out searches of passenger information in the airline Norwegian's booking system. In response to a question from the Committee, PST confirmed that the service had its own username and password that allowed it to search the booking system for information.

PST does not have documentation that shows when this access to the booking system was granted, but believes that it probably was in 2010.⁵⁵ PST has informed the Committee that the service was given a username and password via the border control service, which also gave PST an introduction to the system.⁵⁶

In response to a question from the EOS Committee, the airline Norwegian stated on 21 May 2019 that Norwegian Customs has a statutory right to access the airline's booking system, and that various officials attached to the customs service's local collaboration group (the PTG group)⁵⁷ are also entitled to such access. In the airline Norwegian's opinion, PST does not have a statutory right to access to the booking system, nor was the service 'at any time' granted such access. The airline Norwegian also wrote that, when the company's security manager asked employees to explain why a PST official had access to the booking system, the reply was that 'the person was a member of the customs service's PTG group and had been introduced to the airline Norwegian as such'.

After being contacted by the Committee on 8 April 2019, the airline Norwegian had asked Norwegian Customs and been informed that PST is not part of the PTG group. The head of customs also 'expressed the clear opinion that only the customs service should be able to use this access to the airline Norwegian's booking system'. When it came to the company's attention that PST had access, the airline submitted a non-conformity report to the Norwegian Data Protection Authority.⁵⁸

The airline Norwegian has informed the Committee that the airline has now informed all its staff that 'police officers shall not have access to the airline's booking system'.

The EOS Committee forwarded the airline Norwegian's reply to PST. In a letter to the Committee dated 24 September 2019, PST stated that, as the service understood it, 'everyone has been aware that the PTG group's access rights were used by PST staff and this has been a tolerated and accepted practice'. PST also states that it is important to 'emphasise that the service has never intended to covertly pose as anything other than PST staff'.⁵⁹

4.2.2 What searches has PST made?

The EOS Committee has endeavoured to clarify what kind of searches PST has carried out in the airline Norwegian's booking system.

⁵⁵ Norwegian Customs stated in a letter to the Committee dated 10 October 2019 that the customs service was also given access to one of the search systems in 2010.

⁵⁶ The airline Norwegian believes that it is Norwegian Customs that has shared its access with PST.

⁵⁷ The PTG (*Politi-Toll-Gardermoen*, 'Police-Customs-Gardermoen') group is a local collaboration group between the police and Norwegian Customs at Oslo Airport Gardermoen.

⁵⁸ On 21 May 2019, Norwegian wrote that the airline became aware of PST's access as a consequence of the EOS Committee's enquiry and then submitted a non-conformity report to the Norwegian Data Protection Authority dated 22 May 2019.

⁵⁹ Letter of 24 September 2019 from PST to the Committee.

PST has informed the Committee⁶⁰ that it conducted searches in the airline Norwegian's system. It is possible to perform searches for persons that return hits for all their flights with Norwegian.

Through this system, the service has had access to people's names, time of booking, time of travel, information about where people travelled to/from, payment, form of payment, amount and the six first and final four digits of credit card numbers, email address, phone number, booking number, and information about any other persons on the same booking/joint bookings. According to PST, such information could be accessed for the preceding 18 and 3 coming months, i.e. a total period of nearly two years.⁶¹ The airline Norwegian has written to the Committee that the information is normally stored for a period of five years.⁶²

According to the airline Norwegian, the login frequency has varied from several times a day to once a week.⁶³ According to PST, searches were carried out based on requests from PST Headquarters or tips from the border control service.⁶⁴

The Committee asked PST to send it the ten most recent searches carried out in the airline's booking system.⁶⁵ In the covering letter, PST wrote that the airline Norwegian had helped the service by re-performing the most recent searches to print them. PST also wrote 'normally, we only note the results of the searches we conduct'.

According to PST, no log was kept of searches of the booking system.⁶⁶ The airline Norwegian has informed the Committee that the airline has information about which usernames are logged on at what times, but not about the content of searches.⁶⁷

The Committee has attempted to find out whether the search access also included Norwegian citizens' *domestic travel*. PST clearly cannot obtain such information under the legal authority of the Immigration Act.⁶⁸ Initially, PST provided the following information about the search access:

'The search access to Norwegian's systems is limited to flights to and from Norway, and access has not been granted to search for domestic flights or flights between other states'.⁶⁹

During our inspection of PST's office at Oslo Airport Gardermoen on 14 March 2018, information was uncovered that indicates that no such limitation existed. The Committee therefore asked PST again on 3 May 2018.

In its reply of 31 May 2018, PST started by stating that their previous reply of December 2017 'could be misunderstood'. PST also wrote:

'It is correct, as pointed out by the Committee, that PST's access allows it to perform searches of Norwegian's booking system based on names of individual persons regardless of nationality and of whether the flight is a domestic flight in Norway, a flight to or from Norway, or a flight between other states.'

PST went on to state that the restriction on the search access was 'self-imposed by the service based on the legal authority in the Immigration Act Section 20, cf. the Immigration Regulations Section 4-24'.

⁶⁰ Letter of 31 May 2019 from PST to the Committee.

⁶¹ Letter of 31 May 2018 from PST to the Committee.

⁶² Letter of 16 October 2019 from Norwegian to the Committee.

⁶³ Letter of 21 May 2019 from Norwegian to the Committee.

⁶⁴ Letter of 31 May 2019 from PST to the Committee.

⁶⁵ Letter of 3 May 2018 from the Committee to PST. The lists were enclosed with a letter of 31 May 2018.

⁶⁶ Letter of 31 May 2018 from PST to the Committee.

⁶⁷ Letter of 16 October 2019 from Norwegian to the Committee.

⁶⁸ Pursuant to the Immigration Act Section 20, the King may by regulations make provisions to the effect that the commander of an aircraft shall give the police a list of passengers and crew members, but this is limited to an aircraft arriving from, or departing for, another country.

⁶⁹ Letter of 6 December 2017 from PST to the Committee.

The transcripts show that the restriction has not been complied with in practice. The searches carried out by PST have returned information about all Norwegian flights the person in question has taken, including domestic flights.

4.2.3 Legal basis for access to the airline Norwegian's booking systems

In response to a question from the Committee about the basis for PST's search access to Norwegian's booking system, the service first explained the basis for collection in connection with investigation cases,⁷⁰ cases where the party with information will not voluntarily surrender it,⁷¹ and the provisions concerning requests pursuant to the immigration legislation.⁷²

Otherwise, PST wrote the following in its letter of 6 December 2017 about the routine submission of passenger lists to PST and access to a username in Norwegian's booking systems:

'PST realises that the Immigration Act Section 20, cf. the Immigration Regulations Section 4-24, probably does not authorise this type of routine submission, nor access via own username and password. Such a practice ought to and shall be regulated by law, and we will therefore raise the matter with the Ministry for an assessment of whether the practice should be discontinued.'

The statement was couched in general terms, and the Committee understood it to mean that PST believed that the immigration legislation (or other Norwegian law) did not provide legal authority for PST's direct access to the airline Norwegian's booking system.

After conducting an inspection of PST's office at Oslo Airport Gardermoen on 14 March 2018, the Committee received a letter from PST stating the following:

'We find reason to inform the Committee that PST has taken note of findings made during the inspection and has taken immediate steps to close non-conformities. An overall plan for this work has been drawn up'.⁷³

On 3 May 2018, the Committee asked which non-conformities PST had noted and how the service planned to close them. On 31 May 2018, PST replied:

'Following the inspection, PST has seen a need to put in place procedures for the collection, storage and use of passenger information to ensure that these activities are carried out within the framework of law. The procedures will regulate different ways of collecting passenger information, how the data will be stored and when they will be deleted. The procedure was scheduled to be completed in April, but the work is somewhat delayed. We expect the procedure to be completed and approved by the end of June. PST will send the procedure to the Committee immediately.'

After having requested it, the Committee received *Rutine for behandling av passasjeropplysninger* ('Procedure for processing of passenger information') on 20 February 2019. The procedure largely consisted of a description of the practice already established by PST – including searches of the airline Norwegian's booking system. The following is quoted from the procedure:

'The collection of airline passenger information can be based on different legal authority. Either as routine submission from airlines, through searches of Norwegian's booking systems or on request pursuant to the Immigration Act Section 20, cf. the Immigration Regulations Section 4-24. Passenger information can also be collected through seizures pursuant to the Criminal Procedure Act Section 203 or a surrender order pursuant to the Criminal Procedure Act Section 210 ff.'

The procedure appears to cite the Immigration Act Section 20 and the Immigration Regulations Section 4-24 as legal authority for conducting searches of the airline Norwegian's booking system. This contradicts the view previously expressed by PST in relation to those same provisions, namely

⁷⁰ In investigation cases, collection will depend on a concrete assessment of the information's significance as evidence, cf. the Criminal Procedure Act Section 203.

⁷¹ A court may issue an order requiring the information to be surrendered, cf. the Criminal Procedure Act Section 210 ff.

⁷² The Immigration Regulations Section 4-24, cf. the Police Databases Act Section 64.

⁷³ Letter of 21 March 2018 from PST to the Committee.

that the regulatory framework 'probably does not authorise [...] access via own username and password'.⁷⁴

Since the procedure describes a practice that conflicts with the service's previous view, the Committee sent another letter to PST on 7 August 2019 in which it again requested a satisfactory explanation of the legal authority.

In its reply of 24 September 2019, PST wrote that the service 'sees that the legal authority is unclear, and this has been raised with the responsible ministry'.

In the same letter, PST also wrote that the service 'no longer [has] access to the airline Norwegian's booking system, and the airline has stopped all disclosure of passenger lists to PST'.

4.2.4 The EOS Committee's opinion

PST has not been able to provide the Committee with documentation of how the service actually came to have access to the airline Norwegian's booking system.

The Committee has found it challenging to clarify PST's views regarding the legal basis for access to the booking system.

We disagree with PST that the legal authority situation is unclear. There is no legal authority for PST's access to the airline Norwegian's booking system, neither in the regulatory framework governing the immigration field nor in any other Norwegian legislation. This means that all searches carried out in the booking system were unlawful. The search access gave PST access to large quantities of personal data over several years.

The due process guarantees that otherwise ensure that PST's collection of information is necessary and relevant, such as reviews by the courts, have been circumvented.

Since no log was kept of the searches, neither by PST nor by the airline Norwegian, it has not been possible for us to oversee the searches that have taken place or how the data that PST has retrieved from the booking system have been processed. This in itself is unsatisfactory. The practice continued over a period of several years and seems to have been common knowledge in PST. Only when the airline Norwegian denied PST further access to its booking system, which the airline Norwegian informed the Committee about in a letter of 21 May 2019, was the practice discontinued.

The service first informed us that the search access was limited to flights to and from Norway. This turned out to be incorrect, and the service then stated that this restriction was self-imposed. Transcripts of searches that PST had performed in the airline Norwegian's system showed that the service had, in any case, not complied with this self-imposed restriction.

PST's log entries in one of the service's cases showed that PST was aware that access to information about passengers on domestic flights must be requested in accordance with the provisions of the Criminal Procedure Act.⁷⁵ Despite this, PST carried out searches for Norwegian citizens, thereby gaining access to information about these persons' travel in Norway.

The Committee finds that it does not inspire confidence that PST has not had an overview of which access rights the service had, how they came to have such access and what information PST had collected. PST has not established any form of log or internal control procedure for which staff members have carried out searches, when searches have taken place and what data have been retrieved.

The EOS Committee strongly criticises PST for having unlawfully gained access to the airline Norwegian's booking system. The access in question concerned information about flights taken by

⁷⁴ Letter of 6 December 2017 from PST to the EOS Committee.

⁷⁵ A person had behaved in a suspicious manner on a domestic flight, and the service concluded that, pursuant to the provisions of the Immigration Act, PST is only entitled to receive lists of passengers travelling to and from Norway.

Norwegian and foreign citizens – information that PST would otherwise have had to request court permission to obtain.

It aggravates the matter that the practice continued over a period of several years and seems to have been common knowledge within PST. Despite the amount of data available through the booking system, the service did not establish any form of restriction or logging procedure to check what information it searched for. The Committee finds that this warrants criticism.

4.3 PST's collection of passenger lists

4.3.1 Background to and scope of PST's collection of airline passenger lists

The Committee's investigations in 2017 also showed that PST receives complete passenger lists from certain airlines routinely. When PST confirmed⁷⁶ that it received such lists, the Committee requested⁷⁷ further information about PST's processing of airline passenger lists.

In response to the Committee's question about when the practice of sending airline passenger lists began, PST replied that this was somewhat uncertain, but the service assumed that the practice began in 2013.⁷⁸

PST also pointed out that the number of airlines that submitted information routinely had decreased from eight to six as of May 2018.⁷⁹ PST also wrote:

'The number of flights the service receives information about from the above-mentioned airlines in the course of a year is estimated to be 5,304 per year. The total number of passengers is approximately one million, with an average of 188 passengers per flight. Of these passengers, 464,949 are Norwegian citizens.'

These calculations are based on the six airlines that still submit passenger lists and information from three airlines that submitted passenger lists containing information about nationality. On 3 May 2018, the Committee requested PST to send the newest and oldest stored lists of airline passengers. The lists were submitted on 31 May 2018. The oldest lists were dated 1 January 2018. The content of the lists varies, but usually includes information about the itinerary and date of travel, the passenger's name, passport number, date of birth, sex and nationality, as well as the time of booking, the booking reference number, who made the booking, seat number and booking class. To the Committee's knowledge, six airlines still routinely submit complete lists of passenger information to PST.

4.3.2 Legal basis for submitting airline passenger lists routinely

PST's replies to the Committee's questions about the legal basis for receiving airline passenger lists routinely have largely corresponded to the legal basis it has cited for its access to the airline Norwegian's booking system, namely the Immigration Act.

The Immigration Act Section 20 states that the King may by regulations make provisions to the effect that the commander of an aircraft arriving from, or departing for, another country shall give the police a list of passengers and crew members. The Immigration Regulations Section 4-24 states that, on request, the commander of an aircraft which is coming from or going abroad shall give the police a list of the passengers and crew after the check-in process has been completed.

The question is whether the provision stating that the commander of an aircraft shall give the police such a list *on request* provides a basis for receiving these lists *routinely*.

⁷⁶ Letter of 6 December 2017 from PST to the Committee.

⁷⁷ Letter of 3 May 2018 from the Committee to PST.

⁷⁸ Letter of 31 May 2018 from PST to the Committee.

⁷⁹ The reason is that one airline has stopped flying to Oslo and another one no longer submits information to PST.

On 6 December 2017, PST wrote that the regulatory framework governing the immigration field 'probably does not authorise' such routine submission of airline passenger lists and that such a practice 'ought to and shall be regulated by law'.

On 20 February 2019, the Committee received PST's procedure, which states that 'several airlines routinely submit passenger lists to PST'. It goes on to state:

'As a rule, these will be passenger lists for flights from destinations that are considered relevant to the prevailing threat situation at all [times] and to PST's preventive purpose, cf. the Police Act Section 17 b. It is vital to PST's preventive work that the service has swift and efficient access to information from the airlines. Experience shows that the recruitment and radicalisation of potential terrorists often involves travel to certain countries and areas. The same applies to unlawful intelligence activities.

PST therefore needs continuous access to passenger information about particular destinations and travel patterns deemed to be relevant in the prevailing threat situation at all times.'⁸⁰

In response to the Committee's request of 7 August 2019 for clarification of the legal authority, PST replied as follows on 24 September 2019:

'Following dialogue with the EOS Committee and the Ministry of Justice, PST sees that the legal authority for requesting passenger lists is unclear. This applies both to API data and the possibilities we have had to conduct searches of Norwegian's booking systems'.

PST stated that, if the PNR Directive is implemented, that would meet the service's information needs. PST continued:

'In light of the recognised need and the risk associated with not having access to airline passenger information, we have therefore continued the practice of receiving API data from airlines from certain risk areas. This has been communicated to the Ministry both verbally and in writing.'

In a letter to PST of 12 March 2019, the Ministry of Justice wrote that it is the police, in its capacity as border control agency, that shall receive passenger data, but that PST *has access* to the border and territorial register where the data are entered. This is in agreement with the Police Databases Act Section 21, which states that police officers may be granted access to data to the extent that they have an official need for the data, and it is for purposes that fall within the scope of the Act.

The Ministry of Justice nevertheless proposed in its consultation paper of 8 August 2019 on amendments to the Immigration Regulations that it be specified that PST, in addition to the police, shall have the right to request a list of passengers and crew members from the commander of an aircraft arriving from, or departing for, another country. According to the consultation paper, this would not entail any change to the prevailing law, since PST is in any case a branch of the police and as such entitled to receive information. The amendment is proposed to 'improve clarity and predictability'.⁸¹

On the same page of the consultation paper, the Ministry wrote:

'It is therefore proposed that airlines should also submit passenger lists at PST's request. The proposal would mean that lists would be provided "on request" in the same way as to the rest of the police. This means that passenger lists will not be sent routinely to PST.'

The Committee interprets the Ministry's statement to mean that the submission of passenger lists *routinely* neither has been nor will be permitted. This interpretation is in line with the Committee's understanding of the wording of the Immigration Regulations.

⁸⁰ PST's *Rutine for behandling av passasjeropplysninger* ('Procedure for processing of passenger information'), pages 2 and 3.

⁸¹ Consultation on amendments to the Immigration Regulations – advance notification of passenger lists to the Norwegian Police Security Service, case number 19/3483, page 5.

4.3.3 Where were the passenger lists stored?

The Committee has investigated where the passenger lists were stored. In a letter of 6 December, PST stated that the lists were stored on one employee's file area. No one else has had access to the data, and, according to PST, the passenger lists were deleted after six months. The service stated that the practice would be discussed with the Ministry.

During its inspection on 14 March 2018, the Committee found that the data were not stored on the file area as previously stated, but in the email program of two members of staff at PST's office at Oslo Airport Gardermoen.

In response to the Committee's questions about the practice, PST wrote in a letter of 31 May 2018:

'The passenger lists from airlines are sent to two members of staff at PST's office at Oslo Airport Gardermoen. The airlines also send the lists to the border control service and Norwegian Customs. The passenger lists received by the staff members at PST's office at Oslo Airport Gardermoen are automatically forwarded [...] to a shared email address belonging to PST's office in Romerike. The reason for this is to enable other members of staff to reply to any enquiries from PST if the staff members who work at PST's Gardermoen office are absent.'

PST added that the practice has now been changed:

'The practice of sending these lists to the personal email addresses of PST staff at Oslo Airport Gardermoen has now been changed. A shared email address has been created to receive passenger lists from the airlines [...], which will replace the email addresses of PST staff at Oslo Airport Gardermoen. Access to this inbox will be task-based. The new email box will be used from 24 May 2018.'

The Committee found that large quantities of airline passenger data were stored on PST staff's email accounts.

4.3.4 For how long were the passenger lists stored?

The Committee has asked PST how long the airline passenger lists were stored for and what the legal basis for the storage was. In a letter of 6 December 2017, PST wrote that 'the lists have been stored [...] for six months before being deleted'. This practice was to be reviewed with the Ministry.

During its inspection in March 2018, the Committee found stored airline passenger lists that were almost a year old. There were also examples of data being stored for several years.

PST stated in a letter of 31 May 2018 that the procedures had been changed following the Committee's inspection:

'Following the EOS Committee's inspection at Gardermoen on 21 March 2018, the procedures for storage and deletion of passenger information have been changed. At present, only passenger lists for the first four months of 2018 are stored, while all older lists have been deleted. The present and future practice will be to delete passenger information twice a month.'

PST has not provided the Committee with any legal basis for storing the lists for up to four months.

4.3.5 The EOS Committee's opinion

We have also found it challenging to obtain clarification as regards whether PST believes that it has an adequate legal basis for its practice of collecting airline passenger lists routinely.

The collection of passenger lists from initially eight, now six, airlines containing information about a total of approximately one million passengers a year would appear to constitute bulk collection. Lists have been stored for several months for the purpose of conducting searches of the data, despite the fact that a significant proportion of the data is assumed to be completely irrelevant to the service's performance of its duties.

Initially, PST wrote on 6 December 2017 that the regulatory framework governing the immigration field 'probably does not' warrant the routine submission of passenger lists. Later, a procedure⁸² was adopted that described how PST would continue this practice, while PST wrote in its most recent letter to the Committee of 24 September 2019 that 'the legal authority is unclear'.

When the service first concluded that the regulatory framework probably did not warrant the routine submission of passenger lists and wrote that the practice 'ought to and shall be regulated by law', it stated that it would follow up the matter by raising it with the ministry for an assessment of whether the practice should be discontinued. It is the Committee's clear expectation that PST will discontinue a practice that the service itself believes does not comply with the regulatory framework.

In the Committee's opinion, PST interpreted the legal authority correctly when the service, in a letter to the Committee of 6 December 2017, concluded that the Immigration Act Section 20, cf. the Immigration Regulations Section 4-24, probably does not authorise the routine submission of airline passenger information to PST.

The EOS Committee criticises PST for its practice of routinely receiving large quantities of airline passenger information without legal authority. It gives grounds for stronger criticism that the collection appears to have been bulk collection of data, most of which is of no relevance to the service's performance of its duties, and that the data were then stored for several months.

⁸² Received by the Committee on 20 February 2019.

5 The EOS Committee's oversight of PST staff's email accounts and personal areas

As described in section 4.3.3, passenger lists were stored on the email accounts of PST staff. Such areas fall outside the normal scope of the Committee's oversight activities in relation to PST.

The Committee has no indications that the motivation for storing the lists on PST staff's email accounts was a wish to withhold information from the EOS Committee's oversight. Nevertheless, this could have resulted in the unlawful collection not coming to the Committee's attention.

It is a precondition for the Committee's oversight that we have access to all PST's systems where the service processes information relevant to the Committee's oversight mandate. Until now, the Committee has not requested access to the email accounts of PST staff. This case has illustrated that the Committee needs to conduct regular spot checks of PST's email servers. The Committee will also request access to employees' personal areas. The provision on right of inspection in the Oversight Act Section 8 entitles the Committee to demand such access.

The EOS Committee therefore requests PST to facilitate oversight of PST's email servers and personal areas.

6 PST's handling of the case

This case has required extensive work, and it was a demanding task for the Committee to map all aspects of the case and the assessments of all parties involved. The Committee would like to comment briefly on PST's handling of the case.

The Committee has contacted PST several times for clarification of factual and legal aspects of the case. The Committee expects PST to answer its questions. In this case, several questions remain unanswered, such as the legal authority for storing passenger information and some factual information regarding access to the airline Norwegian's booking system.

Moreover, some of PST's answers to the Committee have been found to contain incorrect information. For example, the Committee was misinformed about what PST had access to in the airline Norwegian's booking system, and the access proved to be more extensive than initially stated. It gives cause for concern that PST does not have adequate documentation to clarify a matter for the Committee.

Moreover, PST does not seem to have looked into the legal aspects in sufficient detail before answering the EOS Committee.

7 The EOS Committee's concluding remarks

One goal of the EOS Committee's oversight is to 'create confidence that the EOS services' activities, which the population does not have full access to information about, are kept within their statutory framework'.⁸³

Based on the criticism expressed above, the EOS Committee expects PST to refrain from further unlawful collection of information. We also expect PST to delete all information collected in contravention of the regulatory framework.

The Committee also urges PST to improve its internal control and ensure that it has good procedures for documenting its surveillance activities. This is also important to enable subsequent oversight by the Committee. The Committee also expects PST to facilitate our oversight of employees' email accounts and any other personal areas at PST staff's disposal.

The EOS Committee does not express an opinion about what legal authority PST should have to process information about airline passengers. The service, in consultation with the responsible ministry, is best placed to assess its need and, if relevant, propose statutory amendments. It is up to the Storting, in its capacity as the legislative body, to determine the legal framework for the service's activities. The EOS Committee's function is to oversee that the legal framework is complied with.

⁸³ Recommendation No 146 to the Storting (2016–2017) from the Standing Committee on Scrutiny and Constitutional Affairs *Rapport fra Evalueringsutvalget for Stortingets kontrollutvalg for etterretnings-, overvåknings- og sikkerhetstjeneste (EOS-utvalget) om evaluering av EOS-utvalget* ('Report from the Evaluation Committee for the Norwegian Parliamentary Intelligence Oversight Committee (EOS Committee) on the evaluation of the EOS Committee') section 2.7.1, page 33.



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