

# DÁIL ÉIREANN

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AN COMHCHOISTE UM DHLÍ AGUS CEART, COSAINT AGUS COMHIONANNAS

JOINT COMMITTEE ON JUSTICE, DEFENCE AND EQUALITY

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*Dé Céadaoin, 13 Samhain 2013*

*Wednesday, 13 November 2013*

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The Joint Committee met at 2 p.m.

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MEMBERS PRESENT:

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| Deputy Niall Collins,             | Senator Ivana Bacik,     |
| Deputy Marcella Corcoran Kennedy, | Senator Denis O'Donovan. |
| Deputy Alan Farrell,              |                          |
| Deputy Seán Kenny,                |                          |
| Deputy Pádraig Mac Lochlainn,     |                          |
| Deputy Finian McGrath,            |                          |
| Deputy John Paul Phelan,          |                          |

DEPUTY DAVID STANTON IN THE CHAIR.

**EU Legislative Proposals: Discussion**

**Chairman:** Before we begin, I ask members and witnesses to turn off their mobile telephones, as they interfere with the sound system. Putting them on silent mode is not sufficient. Apologies have been received from Deputy Anne Ferris and Senator Katherine Zappone.

The purpose of the meeting is to consider two motions that have been laid before the Dáil and Seanad: COM (2013) 258, proposal for a Council decision on the conclusion of an agreement between Canada and the European Union on the transfer and processing of passenger name record data; and COM (2013) 259, proposal for a Council decision on the signature of an agreement between Canada and the European Union on the transfer and processing of passenger name record data. Briefing information has been circulated to members. I thank the Minister of State at the Department of Justice and Equality, Deputy Kathleen Lynch, and her officials for agreeing to assist us in our consideration of these matters. We will begin with an opening statement by the Minister of State, to be followed by a question and answer session. We look forward to the Minister of State enlightening us on these matters.

**Minister of State at the Department of Justice and Equality (Deputy Kathleen Lynch):** They are very simple proposals which I am sure will meet the approval of everybody.

**Chairman:** That is good to know.

**Deputy Kathleen Lynch:** I thank the Chairman for allocating time today to consider these two EU motions dealing with the proposed agreement between Canada and the EU on the transfer and processing of passenger name record, PNR, data. Two motions are required because the agreement itself is the subject of two separate proposals for Council decisions. This simply reflects the EU procedure for establishing such agreements, whereby the Council of Ministers and the European Parliament are co-legislators. It requires that the Council of Ministers must first adopt a decision to sign the agreement. The agreement is then sent to the European Parliament for its consent and, if that consent is given, the Council of Ministers subsequently adopts a decision to conclude the agreement.

The motions before the committee today are necessary to enable Ireland to participate in this measure. They propose that Ireland should exercise the option provided by Protocol 21 to the treaty on the functioning of the EU - that is to say, the Lisbon treaty - to participate in the adoption and application of an EU-Canada PNR agreement. The prior approval of both Houses of the Oireachtas is required, in accordance with the provisions of Article 29.4.7 of the Constitution, to enable Ireland to exercise that option. In line with the provisions of Protocol 21 to the Lisbon treaty, Ireland has three months to signal its participation in any given measure. In the case of this proposed agreement, the State must signal its participation by 26 November.

The Government has approved the proposal of the Minister for Justice and Equality that Ireland should take part in this measure. It is our view that measures such as these are to be welcomed and deserve our support. They can provide important support to police and law enforcement authorities in the fight against transnational serious crime and terrorism.

The proposal replaces the current EU-Canada PNR agreement which was concluded in 2005 and has been in operation since then. Following the entry into force of the Lisbon treaty, the European Parliament requested a renegotiation of this and the PNR agreements then in place with the United States and Australia. Members will be aware that revised agreements with those two countries have been established and put in place, and were considered by the commit-

tee under the same Protocol 21 in advance of Ireland's participation in them. Subsequent to the European Parliament's request for a renegotiation of the agreement with Canada, the Council of Ministers authorised the European Commission to conduct negotiations on behalf of the EU. It presented a draft agreement with Canada to the Council in May of this year. It is intended to seek approval to sign the proposed agreement at the meeting of the Council of Justice and Home Affairs Ministers in December. However, the deadline for opting into the agreement remains 26 November.

The proposed agreement provides that air carriers operating flights between the EU and Canada will provide to the Canada Border Services Agency certain PNR data for passengers flying to or from Canada. PNR data comprise information relating to passengers' travel reservations that is collected and held by air carriers as part of their reservations systems. The proposed agreement will require the airlines to continue to provide a portion of this information to the Canadian authorities for the purposes of combating terrorism and serious transnational crime. In practical terms, the proposed agreement will have no new or additional impacts for EU air carriers as the PNR data is already being provided under the 2005 agreement. However, unlike that agreement, the new proposal encompasses comprehensive data protection provisions and safeguards to be built in as part of the agreement itself. Under the 2005 agreement, on the other hand, data protection measures did not form part of the agreement. Rather, they were included as a set of commitments by the Canada Border Services Agency in regard to the application of the PNR agreement.

As I said, the proposed provisions represent an important tool in the fight against serious crime and terrorism. However, I am conscious of the need to ensure the rights of citizens are not subject to unnecessary or disproportionate intrusion, notwithstanding the importance of protecting both individuals and society against harm. It is essential to strike the right balance in measures such as these, especially with regard to privacy and the protection of personal data. Accordingly, the agreement contains a number of important and specifically tailored safeguards in respect of the use of PNR data. In particular, the purpose of processing the data is strictly limited to preventing, detecting, investigating and prosecuting terrorist offences and serious transnational crimes. We can all agree that detecting terrorists, people traffickers and other serious criminals is worthy of support.

Furthermore, the agreement sets out clearly a series of provisions relating to the arrangements for the handling and security of the PNR data and for data protection.

I draw particular attention to the provisions which establish that an individual will have the right to access his or her own data, to have incorrect data corrected and to seek judicial redress, including compensation, for any violation of his or her rights under the proposed agreement.

The retention period relating to PNR data will be limited to five years in total. However, it is important to note that this data will be depersonalised by the masking out of passenger names after an initial period of only 30 days. Furthermore, the full depersonalisation of the data, that is, the masking out of all other identifying information, will take place after two years. Compliance with these rules will be subject to independent oversight by the Privacy Commissioner of Canada - the equivalent of our Data Protection Commissioner - in addition to the Recourse Directorate of the Canada Border Services Agency.

There are additional controls included in the proposed agreement to deal with the processing of sensitive data, that is, personal data revealing race, ethnicity, religious beliefs, political opinion, etc. The processing of this data is limited to very exceptional cases and subject to strict

additional conditions and safeguards, including approval by the president of the Canada Border Services Agency and the deletion of the sensitive personal data after a maximum period of 15 days. The European Union is satisfied that the data protection provisions in force in Canada are sufficiently robust to protect EU citizens.

As stated, Ireland has until 26 November to decide whether to opt in to the adoption and application of the proposed agreement. This proposal is one of a number of measures being taken at EU level in the justice and home affairs field which arise from commitments set out in the 2009 Stockholm programme. The Government is determined that Ireland will have a full, active and constructive engagement in bringing forward the European justice agenda.

A number of countries, including the United Kingdom, the United States, Australia, Canada, Sweden and Spain, have been collecting PNR data for some years in order to help tackle transnational and serious crimes and terrorism. The use of PNR data has proved to be a very valuable tool in a range of investigations, particularly those targeting drug smugglers, human trafficking and terrorists. It is, as members will appreciate, difficult to provide details of the operational methods that police and law enforcement investigators might use, particularly when dealing with sensitive investigations. However, I will give the committee a flavour of the value of PNR in contributing to investigations. For example, the UK authorities targeted and successfully prosecuted a Chinese gang of people traffickers who had been bringing illegal immigrants into that jurisdiction and Ireland through other EU states. The use of PNR data was a key tool in the investigation in identifying the people who were being trafficked and linking them with the trafficking facilitators. I have no doubt that the committee will agree that human trafficking is a particularly reprehensible crime, a serious abuse of human rights and an affront to human dignity. It is often characterised as the modern equivalent of the slave trade. It is also often linked with the sexual exploitation of women. We should never tolerate human trafficking and must use all the tools and resources at our disposal to prevent and combat it, to protect the victims and prosecute the perpetrators.

PNR data were also used by investigators in the case of David Headley who was convicted for his involvement in the atrocious terrorist attacks in Mumbai, India, in November 2008, in which 164 innocent people lost their lives. By using details of the suspect's first name, his partial travel itinerary and a possible travel window and entering this intelligence into the PNR database, David Headley's full name, address and passport number were obtained. He was subsequently arrested and pleaded guilty to terrorism-related charges.

We can be in no doubt either about the pernicious nature of the international drugs trade. The supply and use of illegal drugs have a profound destructive impact on individuals' lives, as well as on entire communities. Drug trafficking is a highly lucrative internationalised crime that has a very local impact. As public representatives, we have all witnessed the impact of drugs in communities throughout the country. We must seek to ensure that those who are working to disrupt this criminal activity can take advantage of the relevant tools such as PNR to put the people involved out of business. Members will also be conscious of the potential value to police services of PNR data in contributing to the investigation of people who travel to overseas locations, often in the Far East, in order to have sex with under-age children. This is a particularly depraved form of "tourism" and we can be very sure the victims are not willing participants in what is an organised trade.

Given the potential law enforcement value of PNR data, particularly with regard to investigations into drug smuggling, human trafficking and international terrorism, the Government has no doubt that it is important that Ireland should opt-in in to the proposed agreement. Our

participation in the measure is also a clear demonstration of our continued support and solidarity with our EU and international partners in the fight against these transnational criminal activities.

I have great pleasure in commending the motions to the committee.

**Chairman:** I thank the Minister of State for her presentation which was fairly straightforward and easy to understand. Deputy Pádraig Mac Lochlainn is the first member indicating a desire to contribute.

**Deputy Pádraig Mac Lochlainn:** Every public representative will agree that we must support the policing and intelligence services in combating serious criminality of the type outlined by the Minister of State. She has also highlighted the need to balance the rights of citizens in order to ensure we assist in the ongoing war against serious criminality. Said criminality does not recognise borders, particularly in the context of its impact on victims. In the context of human and civil rights, is the Minister of State satisfied with what is contained in the agreement? It appears that the original agreement will be strengthened by the new version. Is the Minister of State satisfied with the protections provided for citizens? In the past the European Commission's legal service had concerns about the categories of offences on which information was required to be given. For example, a person who might have been convicted of an offence which was not that serious could have had his or her details passed on. Will the Minister of State clarify the position on the types of offences involved?

I am also seeking reassurance on data protection issues, particularly in the context of the information revealed by Edward Snowden during the past year. Of course, the policing and intelligence services should be given what they need in order to combat crime, but we must also ensure they do not have too much power and that a Big Brother-type scenario is not created. Will the Minister of State provide reassurance on the position in this regard.

**Deputy Kathleen Lynch:** We all share the Deputy's concerns and there is certainly a need to ensure a proper balance is struck. However, we must also consider how we can combat human trafficking and the drugs trade. People who are trafficked often do not know the language spoken in the country to which they have been brought; they can be extremely scared and their documentation will have been taken from them. It is difficult to obtain a fix on how to combat serious crime, but the agreement will prove to be a major tool in that regard because the relevant experts will be able to use it to monitor the continual comings and goings of individuals and groups. We will never be able to completely eliminate serious crime, but the agreement will increase our chances of detecting it.

Let us ignore what happened during the past year and concentrate on that which has occurred in recent days in the context of people's personal information being stolen by those who are clearly not going to use it for any legitimate purpose. It is welcome that the European Union has decided to renegotiate this agreement in order to ensure it will be more robust, which is extremely important.

The fact that people will be able to access the relevant information themselves is also very important, as is the fact that a data protection officer in the country in which the information is being stored will have responsibility for ensuring it is kept safe. The only remit of data protection officers in any jurisdiction is to ensure data relating to individuals are both protected and used for the correct purpose. I am completely assured of that. It is a good thing that we are coming back to this issue today and that we are building a regime of data protection. The



world has changed in that in 2005 I am not certain that we were as conscious of breaches of data protection as we are now, but we are very conscious of them now. The robust mechanisms that have been built into this agreement will serve us well. However, I share the Deputy's concerns. We always need to be conscious that the details of an individual that are on the system for legitimate purposes could find their way into a space where they not should be. The fact that individuals will have access to their records and there is a provision built into the system that, in the event that something should happen, they will have a recourse to action should give us some degree of comfort.

**Chairman:** Deputy Finian McGrath indicated that he wanted to contribute.

**Deputy Finian McGrath:** I welcome the Minister of State to the committee. I share her view on value of the system of investigations into violent activity, criminal activity, drugs crimes, human trafficking and the exploitation of under-aged children. However, I have a concern about an issue, which has arisen again recently, namely, the trust between the security services in different countries. I saw a programme on BBC1 last night which showed that the PSNI had a major lack of trust and confidence in the intelligence service in the North. That is in a divided community where they are trying build to trust in the relationship between the police force and the local community, and the Nationalist community in particular. I have a concern about elements of security services in Europe and other countries having PNR data, and many people share that concern.

I do not know if the Minister of State is familiar with Anne Cadwallader's book, *Lethal Allies*, which deals with the issue of collusion, an issue the joint committee covered at the time of the investigation into the Dublin and Monaghan bombings. There was an issue of trust and confidence involved there. The reason I raise this issue is that there are elements within the security forces about which many of us have concerns; their track record in terms of people's rights has let us down. Does the Minister of State have those concerns? She hinted at this when she said that when one has this type of information, it must be treated respectfully and there can be no violation of human rights. The reality is that some people have major concerns about some of the data in respect of individuals that is being shared. There is a lack of confidence and trust in certain aspects of security services.

**Deputy Kathleen Lynch:** It is always healthy to be a little sceptical of State agencies when they have the capacity to deprive one of one's liberty. It is good for all of us to have that approach and we should question matters. The BBC programme to which the Deputy referred was about a time when things were very different. I was here for the inquiry into the Dublin and Monaghan bombings. Anyone who sat at the table and looked at the pieces we saw was very clear that we were living in an entirely different space. In terms of transnational crimes, terrorism, drug trafficking, human trafficking and all such crimes, when one is negotiating an agreement with other countries, the only thing one can do is ensure that what is in that agreement is robust and one must then assume that the country which it is with will follow the law in their own land. I believe we can be assured of that. If that does happen, as I have said it to Deputy MacLochlainn, there are various of mechanisms in place to ensure people have access to their records and that they have a means of redress.

**Deputy Seán Kenny:** This agreement is purely between the EU and Canada only. It does not refer to any other country. Under this agreement the airlines will have to pass on passengers' names and details to the Canadian border authorities. I went to Canada about 15 years ago and the Canadian mounted police were at the airport when I arrived in Toronto. I never got as thorough a check in my life as I did then. They told me that my passport photograph was

not a good likeness and that I had deteriorated since the time it had been taken. The Canadian authorities are quite thorough in their checks. Is there a particular reason that it is only Canada that is doing this?

**Deputy Kathleen Lynch:** No, it is doing that already. This is not something new. This agreement has been in place since 2005 but we are now building in a more robust mechanism to protect people's data. We have an agreement with Spain, Australia and the USA and the EU is negotiating agreements with different countries. This one, which we have to opt into by 26 November, is with Canada, but this is not about our relationship with Canada in isolation. It is about the EU's relationship with other countries.

**Deputy Marcella Corcoran Kennedy:** I thank the Minister of State and her officials for attending. I do not believe anyone could argue with the intention of the motions. We would all agree that the type of information sharing is critical for law enforcement across borders. How easy would it be for people to examine the data that is on system and to check whether it is correct or incorrect? How user friendly will it be for the citizen to establish who has data and what are the data? If there is anything wrong with their details, how would a person go about getting them changed? It should be user friendly to ensure that people do not have to deal with a weight of bureaucracy to obtain their rights.

**Deputy Kathleen Lynch:** I am just checking that for the Deputy. It will be on the printed material one normally completes on these flights. The provision states that candidates shall ensure that any individual may access the PNR data. I assume that the only way they can ensure that is by informing the person by way of written documentation. It states that candidates shall ensure that a compliance authority, within a reasonable time, shall provide the individual with a copy of his or her PNR data and if the individual makes a written request for his or her PNR data, there will be a reply in writing to any request. It further states that Canada shall ensure that the Canadian compliance authority makes the following available on its website: a list of the legislation authorising the collection of PNR data; the reason for the collection of the PNR data; the manner of protecting the PNR data; and the manner and extent to which the data may be disclosed. There is a website, and there is also information on the transit cards we all complete from time to time. It will be made clear where that can be accessed but if the request is made, the data must be supplied to the individual and if they are incorrect, it is the data protection officer in charge of that particular section who will alter the information online if the individual requests it.

The protections in terms of depersonalising the information are very important. There may be other issues connected to groups travelling and so on but they may not concern the individual on whom they have the data but it is important that this can be dealt with separately.

**Chairman:** What exactly is included in the passenger name record, PNR, data in these instances?

**Deputy Kathleen Lynch:** I should have included that in my contribution. It includes a PNR locator code, date of reservation-issue of ticket - it is a code with which everyone is issued - dates of intended travel, name, and available frequent flier and benefits information. If someone is on the frequent flier list, one's name could end up on this. It also includes numbers of travellers, and I spoke earlier in terms of a group of people. It includes all available contact information, including originator information; all available payment billing information not included; other transaction details linked to a credit card or account and not connected to the travel transaction; travel itinerary for specific passenger name record, PNR; travel agency code

## MESSAGES TO DÁIL AND SEANAD

share information - again, all of those details are numbered; split or divided information; travel status of passenger, including confirmation and check-in status; ticketing information, including ticket number, one-way tickets, automated ticket fare quote, all baggage information; seat information, including seat number; general remarks including other supplementary information, OSI, special services information, SSI, and special service request, SSR, information; any advance passenger information, API, data collected for reservation purposes; and all historical changes to PNR data listed in numbers.

Any of us who have done this knows it is not always necessary that the airline would collect all of this information. It is only the information that the airline collects. We do not expect that the airline would be obliged to collect all of the information outlined. Usually, it is a case of name, address, postal code if one has one and country of birth. In some countries the information might be requested internally more than externally. The information available will simply be what the airline collects as a matter of course.

**Chairman:** Airlines collect a lot of information. We have seen recent reports of serious data protection breaches. We all know what I am talking about in that regard. In the case of a data protection breach in this context, are there mechanisms in place so that citizens can be informed or forewarned? What are they? How will someone be told if there is a data protection breach?

**Deputy Kathleen Lynch:** I can only speak from personal experience. I have never been asked for a credit card number on a transit card. Such information is not usually collected which is a protection in itself. If there is a breach then it is incumbent on the holders of the information to inform people. That said, there is a depersonalisation after 30 days and all of the sensitive information which it might have been considered necessary to keep is gone after two years and all of the information is gone after five years. Such a flushing out of the system will probably ensure that there would not be a great deal of information held at any one time. It is incumbent on the holders to inform people where the information is still held.

**Chairman:** If all members are satisfied with that, I thank the Minister of State. We have now completed our consideration of the motion. I thank the Minister of State and her officials for their attendance before the committee today.

**Deputy Kathleen Lynch:** Thank you, Chairman.

## Messages to Dáil and Seanad

**Chairman:** In accordance with Standing Order 87, the following message will be sent to the Dáil:

The Joint Committee on Justice, Defence and Equality has completed its consideration of the following motion:

That Dáil Éireann approves the exercise by the State of the option or discretion under Protocol No. 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, to take part in the adoption and application of the following proposed measure:

Proposal for a Council Decision on the conclusion of the Agreement between



JOINT COMMITTEE ON JUSTICE, DEFENCE AND EQUALITY

Canada and the European Union on the transfer and processing of Passenger Name Record data,

a copy of which was laid before Dáil Éireann on 6 August 2013.

The Joint Committee on Justice, Defence and Equality has completed its consideration of the following motion:

That Dáil Éireann approves the exercise by the State of the option or discretion under Protocol No. 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, to take part in the adoption and application of the following proposed measure:

Proposal for a Council Decision on the signature of the Agreement between Canada and the European Union on the transfer and processing of Passenger Name Record data,

a copy of which was laid before Dáil Éireann on 6 August 2013.

In accordance with Standing Order 72 the following message will be sent to the Seanad:

The Joint Committee on Justice, Defence and Equality has completed its consideration of the following motion:

That Seanad Éireann approves the exercise by the State of the option or discretion under Protocol No. 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, to take part in the adoption and application of the following proposed measure:

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a copy of which was laid before Seanad Éireann on 6 August 2013.

*Sitting suspended at 2.34 p.m. and resumed at 2.37 p.m.*

**Recognition of Traveller Ethnicity: Discussion**

**Chairman:** The next part of this meeting is an engagement with representatives of the Irish Human Rights Commission and the Equality Authority on recognition of Traveller ethnicity. Briefings have been circulated to members. On behalf of the committee, I welcome Ms Sinéad Lucey from the Irish Human Rights Commission and Mr. Laurence Bond from the Equality Authority. The format of the meeting will be for both witnesses to make an opening statement and then we will have questions from members. I remind everybody to make sure their mobile telephones are switched off because they interfere with the sound system.

Witnesses are protected by absolute privilege in respect of their evidence to this committee. However, if they are directed by the committee to cease giving evidence in relation to a particular matter and continue to do so, they are entitled thereafter only to qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise nor make charges against any person, persons or entity by name or in such a way as to make him, her or it identifiable.

Members are reminded that under the salient rulings of the Chair they should not comment on, criticise or make charges against a person outside the Houses or an official either by name or in such a way as to make him or her identifiable. I invite Ms Lucey to make her presentation.

**Ms Sinéad Lucey:** The commission appreciates the opportunity to make a presentation to the committee today. Since its establishment, the commission has consistently expressed its concern regarding the human rights of the Irish Traveller community. This concern has been reflected at various levels of the commission's work. It was in the context of the State's first examination under the International Convention on the Elimination of All Forms of Racial Discrimination, CERD, in 2004 that the commission undertook a detailed consideration of the question of Traveller ethnicity. That was in response to the State's assertion at that time that Travellers did not constitute an ethnic minority in the State. A discussion paper was published which was a legal analysis of the recognition of Travellers as an ethnic minority measured against international human rights standards, relevant case law and legislation. At that point the commission predicted that the CERD committee would regard Travellers as an ethnic minority when the State's report was examined. The commission was correct in its prediction and the CERD committee has made two recommendations, in 2005 and again in 2011, urging the State to work more concretely towards recognising the Traveller community as an ethnic minority. In addition, the UN Human Rights Committee, in considering the State's compliance with the International Covenant on Civil and Political Rights, also made the same observation in 2008 and expressed concern regarding the State's approach to the matter. It is notable that the UN Human Rights Committee has issued further questions to the State on its work towards the recognition of Traveller ethnicity.

At Council of Europe level, the Advisory Committee on the Framework Convention for the Protection of National Minorities expressed its concern in 2006 regarding the outright rejection by the State of Traveller ethnicity. The advisory committee, in its most recent opinion on Ireland published in April this year, welcomed the fact that the Government was now demonstrating a more open approach to the question of Traveller ethnicity and recommended that the State finalised its consideration of the proposed recognition of Travellers as an ethnic minority so that they could access all applicable international and domestic non-discrimination rights. As for standards, in January 2013 the Irish Human Rights Commission published its most

recent consideration on the question of recognition of Traveller ethnicity. The commission's submission to the Government welcomed the more open response of the State to the question. However, the commission also expressed concern that the State had shifted its position from outright denial of ethnicity to one which focused on what may prove to be a wholly-elusive consensus among the Traveller community and Traveller representative organisations as a possible prerequisite to recognition.

The commission's submission explores this position in detail and submits that the principle of self-identification as protected under the International Convention on the Elimination of all Forms of Racial Discrimination, CERD, and indeed similarly enshrined in the framework convention, was being misunderstood by the State and that a universal form of self-identification as an ethnic group is not a necessary prerequisite for recognition of an ethnic minority by the State for the purpose of ensuring legal protection of that group. We pointed out that the Human Rights Committee is clear that the existence of an ethnic minority in a State requires to be established by objective criteria. This is nothing to do with opinion or consensus. The principle of self-identification presupposes the existence of an ethnic minority but affords protection to each individual within that group from being coerced in any way to so identify. One can think of many reasons from history as to the reason such protection is considered necessary for vulnerable minorities.

As to the question of whether the State should recognise Traveller ethnicity, the commission would submit that Traveller ethnicity essentially is a legal reality by which the State is bound, irrespective of any formal act of recognition. Regardless of whether the State chooses to so recognise Travellers, it will in no way prevent the international bodies identified in our submission from continuing to recognise Travellers as an ethnic minority and to hold the State to account for their treatment in that light. By its denial, the State puts itself in the anomalous situation of denying ethnicity but not being able to deny the protections that flow from that status. We point out that the State has never itself put forward cogent reasons as to why it considers that Travellers do not satisfy the necessary criteria for recognition as an ethnic minority. More positively, the commission sets out in its submission the reasons recognition of Traveller ethnicity will be of benefit to the Traveller community itself and to the State and society in general. We also pose the question as to how the State should recognise the ethnicity of Travellers and observe the modalities for recognition of ethnicity are not set out in any international instrument or opinion and so there is no defined process in this regard. In our written statement, we suggest a possible statement on the record of Dáil Éireann, which then is reflected in the State's international reporting and is carried through into domestic law and policy.

In conclusion, the commission is presently anticipating its merger with its sister organisation, the Equality Authority, and it is appropriate that representatives of both organisations are sitting here side by side today. We understand that new legislation is imminent and may confer on the new Irish human rights and equality commission a wider remit, including in respect of encouraging intercultural understanding, promoting tolerance and acceptance of diversity in the State. At this juncture the commission respectfully urges the State itself to lead by example in this regard by finally recognising Traveller ethnicity.

**Chairman:** I thank Ms Lucey and invite Mr. Bond to make his submission.

**Mr. Laurence Bond:** On behalf of the Equality Authority, I thank the joint committee for its invitation to make a presentation today. It is the view of the authority that recognition of Traveller ethnicity is central to effective promotion of equality for members of the Traveller community. Such recognition has significant practical implications. International agreements and EU

legislation will not name specific ethnic groups from particular states within their provisions on ethnicity. Therefore, Traveller ethnicity needs to be recognised by Ireland to ensure Travellers can fully enjoy the protections and benefits that flow from these agreements and legislation alongside other ethnic groups. In addition, Traveller ethnicity is a key factor that must be taken into account in identifying and responding to the needs of the Traveller community. Furthermore, equality is not only concerned with access to resources or decision-making, important as they are, but must involve access to recognition, status and standing in society. The recognition of Traveller ethnicity is in our view central to achieving equality of status or standing for the Traveller community and would provide a strong foundation for building new relationships of respect and solidarity between the Traveller and settled communities. Our submission to the Committee consists of a detailed consideration of the issue of Traveller ethnicity, which the authority published in 2006. Prior to this, as we have just heard, the Irish Human Rights Commission had already published an in-depth consideration of the question of the recognition of Travellers as an ethnic group from a legal perspective, which the Equality Authority endorsed. Our report, therefore, has a different focus.

It provides an overview of the evolution of public policy thinking on Travellers' identity as a group in Irish society, drawing on the three major official reports on Travellers and related material, relevant Dáil debates and various statements of Government policy. What this overview shows is that official policy thinking has in fact moved to a position of strongly affirming the distinct culture and identity of Travellers as an indigenous minority within Irish society. There is indeed general consensus on this matter. It further shows that what this has actually meant is that in many ways, Traveller ethnicity has de facto been acknowledged. For example, I refer to the decision in the Equal Status Act 2000 to incorporate in equality legislation a definition of the Traveller community that was explicitly modelled on the Northern Ireland Race Relations Order 1996. Not surprisingly the incorporation of this definition in the legislation at the time was generally interpreted as confirming legislative recognition of Travellers as an ethnic group. However, if on the one hand it appeared as though Traveller ethnicity was being acknowledged, on the other it was being denied and specifically in the context of Ireland's engagement with the international human rights system. In the light of the positive shifts in official thinking that were evident, the position then taken by Ireland when reporting to CERD, in explicitly denying that Travellers should be recognised as an ethnic group in the international human rights context, was surprising to say the least. The basis for this denial was far from clear but at least in part was based on a claim that the argument that Travellers are an ethnic group was "controversial within academic research". Our report, therefore, specifically addressed this issue through a detailed analysis of the principal academic literature on Travellers' ethnicity. This demonstrates that in fact, academic work overwhelmingly supports the recognition of Travellers as an ethnic group.

In conclusion, the Equality Authority believes that the case in support of recognising Traveller ethnicity is comprehensive and compelling. It is recommended that the Government should now recognise Travellers as an ethnic group and that this recognition should be reflected in all policies, programmes and institutional practices that affect the Traveller community.

**Deputy Pádraig Mac Lochlainn:** I thank both witnesses for their presentations, which will be of considerable assistance in the compilation of the report the joint committee will draw up shortly with recommendations for the Government. The position of both bodies is clear and has been on the public record in the past. However, I now wish to go through some of the implications of what appears to be ongoing ethnicity denial within this State. As was pointed out in the presentations, in England, Wales and Scotland, on foot of a court decision, the ethnicity of the

Irish Traveller community essentially has been recognised. Through the equality legislation in Northern Ireland, there clearly is a definition of Irish Travellers as an ethnic minority. Are there are legal implications for the State because the Government has refused to recognise ethnicity? Are there possible legal implications for the State at a European level in the future if it persists in sustaining this position? I am mindful the witnesses are not attending as legal experts but I seek their thoughts on this point.

**Chairman:** Can I stop the Deputy there to get an answer to this very interesting question? We can then return to further questioning. Are there particular reasons, legal or otherwise, in respect of European regulations or whatever, that directives for this cannot happen? What are the implications if it can?

**Ms Sinéad Lucey:** The Commission's view on this would be that most protections from discrimination in terms of the Committee for the Elimination of Racial Discrimination, CERD, are linked to ethnicity. Therefore, if one does not recognise Travellers as an ethnic group, one does not recognise that they are automatically entitled to the protections under CERD, the framework convention or any similar instruments. In that regard, the State has been saying that it confers the same protection on Travellers anyway and, therefore, it does not make a difference. However, it actually makes a significant difference in terms of how the State brings back what those committees are saying to it, how it discusses those issues with Travellers and how it seeks to resolve them. If the State is having a dual relationship, stating at an international level it is affording them those protections but at a domestic level stating they are not entitled to those protections, that must have legal implications in terms of recognition of ethnicity.

More specifically, a more obvious example that has been raised quite consistently is that under EU law, protection from discrimination for minorities is based on race and ethnicity. It is far from clear whether Travellers can automatically rely on those protections, and that could come up in the context of domestic proceedings before the Equality Tribunal if a question arises regarding the interpretation of the EU race directive. If it happens in the context of a case that is based on a race ground, there is no question that directive will apply but if it happens in a case of somebody claiming discrimination on the Traveller ground, it is far from clear whether the directive applies, and that merely creates an anomalous situation for Travellers.

**Chairman:** The question was whether there is any reason it cannot happen. Is there a legal reason or are there other implications? Why is the State not going along with the recommendation of the Irish Human Rights Commission? I think that is the gist of Deputy Mac Lochlainn's question.

**Deputy Pádraig Mac Lochlainn:** I will clarify. I appreciate every state has its own laws and framework, but the English, Welsh and Scottish law clearly recognises, following a court decision, that the Irish Traveller community is an ethnic community within that jurisdiction. They have made a legal judgment and it has been published. Would Ms Lucey see that as also applying to Ireland, if we looked at it in the same way? Are there legal implications for the State that it is not fulfilling its international obligations?

I have looked through the judgment but I have not had a chance in the past 24 hours to go back over it in advance of the meeting today. One presumes the judge or judges who made that decision were mindful of the international obligations of England, Scotland and Wales as jurisdictions and that they made the decision based on the evidence presented to them. Is the Government exposing us to legal consequences because of its ongoing denial of ethnicity? This position of the Irish Human Rights Commission and the Equality Authority is not new.



They have had this position for a number of years. They have given detailed evidence-based submissions and the denial is ongoing. Could there be legal implications for the State, such as challenges, because of this?

**Ms Sinéad Lucey:** The legal implications happen at an international and a domestic level. There are quite different consequences, depending on the context. The legal implications at an international level are being played out in the sense that we are being increasingly criticised by expert international bodies for not taking the step of recognising Traveller ethnicity. Those observations are on the record and they do not do the State credit at this stage.

At a domestic level, it depends on the type of case that arises and the exposure. Ethnicity has arisen in the context of domestic proceedings, and while in general they have not gone to a full court hearing, there are certainly implications for the State. It would be difficult to imagine a situation where the United Kingdom precedent would not be followed in Ireland. The same evidence would be adduced before the court, and the same experts and the same arguments. It would be almost impossible for the State to defend its position in that regard, and undesirable to be doing so as well.

**Deputy Pádraig Mac Lochlainn:** I thank Ms Lucey. There are a couple of other questions.

**Chairman:** Of course.

**Deputy Pádraig Mac Lochlainn:** I do not mean to hog the meeting.

**Chairman:** Not at all. It is fine.

**Deputy Pádraig Mac Lochlainn:** Ms Lucey dealt with the issue of this requirement for consensus among the Traveller community. That goes against the principle of self-identification. It is internationally recognised. That is dealt with.

Perhaps Ms Lucey would elaborate on this matter she touched on in her earlier comments and in her response initially to my first question. In terms of the international human rights treaties, what are the implications for the Traveller community of ethnicity denial and what protections under those treaties are being denied that would change if ethnicity were granted? That is my final question.

**Ms Sinéad Lucey:** In terms of the implications for the Traveller community, I am happy to have had an opportunity to read the transcripts. Traveller organisations and Traveller representatives have set out some of the implications they perceive and it is difficult to expand further than that. It is the fact that the State is patently in breach of its international obligations. It is the way that, first, Traveller ethnicity has become something of a distraction and these committees are taken up with considering issues around ethnicity that should not arise when they should be focusing on the issues Travellers experience.

Second, many of the recommendations of the committees tend to be linked to the ethnicity question and if the State continues to deny ethnicity, there is no need for the State to consider issues around nomadism. There are implications beyond that.

**Senator Ivana Bacik:** I thank the witnesses for the helpful presentations. Many of us hold a strong view on this issue of ethnicity, and Deputy Mac Lochlainn's questions go to the heart of the ongoing impact of denial of ethnicity.

I am interested in focusing on an aspect of the presentation about the process of recogni-

tion. If the committee is to recommend recognition of ethnicity, how does the Government go about implementing that? I note the suggestion that it may not require legislation. Perhaps I, as a lawyer, have been prejudiced and assumed legislation would be required, but I note the witnesses point out, rightly, that a statement of recognition could be made in the Dáil and Seanad and the State, at an international level, could affirm ethnicity without necessitating legislation, although the witnesses state it would be useful. Could Ms Lucey elaborate on that? Would it be enough to make that sort of statement and to take that position as a State without explicitly setting it out in statutory format?

**Ms Sinéad Lucey:** From the point of view of the international community and the international bodies, what they want to receive from the State are reports stating it accepts Travellers are an ethnic minority, these are the issues that arise and these are how we are addressing them. They will not be overly concerned about whether we have that in legislation unless there is a specific implication where Travellers are not able to access the range of protections against discrimination available to any other ethnic group. It is only if it had a practical implication that they would become particularly concerned. If it does not, I am sure they would be satisfied with a statement that cannot later be resiled from. If it were on the record of the Dáil, it would be difficult for the State or the Government, having stated that in the Dáil, to argue in any other context on a legal point that Travellers are not an ethnic group. A statement in the Dáil would be a positive first step.

It is interesting that the international bodies have spoken less about recognising Travellers as an ethnic group and more about taking steps to recognise or moving in a concrete way towards recognition. I would interpret that as meaning a series of engagements with the Traveller community to identify and discuss the issues in a meaningful way. It would involve asking how have we not recognised Traveller ethnicity and what elements of our law and policy do not validate Traveller culture and way of life. It is also a matter of asking how we do not support Travellers in education and whether we do not recognise Traveller history in education. We must ask whether there are barriers to nomadism or certain laws that are inimical to nomadism that have suppressed the practice of travelling. The first step is a formal one that might include making a formal statement. It could be legislation but it could be just a statement in the Dáil. A process must flow from that. It should not be a case of making a statement of recognition and doing nothing further. There should be a meaningful process thereafter.

**Senator Ivana Bacik:** The way proposed is certainly an easier approach. As Ms Lucey said, Traveller status is recognised in anti-discrimination and equality legislation, including unfair dismissal law. Seeking a statement could be desirable at first, and then one could engage in a process of examining other forms of discrimination. This seems easier than beginning with legislation.

**Ms Sinéad Lucey:** It would have considerable symbolic significance for the Traveller community. In this regard, I defer to the others present. The statement of the Taoiseach on the Magdalen laundries is noteworthy. This is an emotional matter associated with esteem and such issues. The symbolic effect of a statement would be very powerful.

**Mr. Laurence Bond:** I wish to add to that. It is undoubtedly the case that Ireland, in its presentations to international human rights bodies, accepts and recognises characteristics of the Traveller community, such as its history, different cultural identity and its experience of discrimination, that in themselves are sufficient criteria for recognition as an ethnic group. One of the difficulties associated with this issue and which probably causes some confusion internationally is our position that although we acknowledge and affirm in our reports all the character-

istics that are taken in jurisprudence and anthropology as the characteristics that define a group as an ethnic group, and although we affirm these characteristics' importance and significance in determining how one thinks about policy on Travellers, we do not recognise Travellers as an ethnic group. It causes significant confusion simply because it begs the questions as to what exactly is required and what missing criteria are not being fulfilled.

A factor we addressed in our report was the suggestion that there is some academic reason for failing to grant recognition. We found this did not hold. A further issue that may have arisen is the idea that there must be universal consensus. This does not hold either. I have come across a suggestion that it is not so much an issue of principle but that there is a risk of significant costs. I cannot see where they come from.

In many ways, we have acknowledged Traveller ethnicity. With regard to the specific provision in the equal status legislation, there was a specific discussion on adopting a form of description or definition of the Traveller community that recognised its ethnicity. Having done so, we have done much of what is required. The Government has affirmed that. It seems to be counter-productive to achieve all this while holding back on actual recognition, especially with regard to respect and recognition of a people for who they are. With that in mind, it is undoubtedly the case that the approach suggested by my colleague, that is, to have clear political recognition at Government level in the first instance followed by reporting to international bodies, is a clear first step. The issue then arises in practice as to whether something further is required whereby particular issues may be identified. One would have the option at that stage of examining the potential for amendments to our equality legislation or other legislation. If one were to have political recognition and carry this over to the reporting to international bodies, it could be that one would have done most of what needs to be done. One could then deal with whatever additional formal recognition is required as particular issues are identified.

**Chairman:** I have a couple of questions for my benefit. I am learning a lot. We have debated this issue before. I recognise the presence in the Public Gallery of some witnesses who were present on the previous day. I compliment Deputy Mac Lochlainn on the work he is doing in this area. We spoke on the last day about Traveller history, education, music and culture. We spoke about a potential visit to educate us on the tradition, culture and richness that exists. Deputy Naughten is going to work on this for us at some stage in the near future.

Ms Lucey's document refers to objective criteria and self-identification. It also refers to shared history, culture, way of life, the practice of nomadism, etc. I apologise if I am being a little crude but I seek clarification. Are we talking about what is almost a box-ticking exercise? Many Traveller families are not travelling anymore and do not practice nomadism. If they do not, does that mean they are not part of an ethnic group, for instance? Have we a set of criteria that must be fulfilled before somebody is recognised as part of an ethnic group? Could one be half in and half out? I apologise if I am being extremely crude. How does one know whether one is part of an ethnic group, including the one in question? Perhaps Ms Lucey could tease that out for us.

**Ms Sinéad Lucey:** The principle of self-identification is quite separate from the question of how one recognises an ethnic group. The main point of our submission was to argue that they are different. With regard to ethnicity, it was stated at a meeting of this committee in the past that various legal tests have been set down in UK case law, most famously in the case *Mandla v. Dowell-Lee*. It establishes the legal test that has been set out in terms of the criteria. Certain criteria are essential and others are optional. Irish Travellers have been found to fulfil the necessary criteria and also certain of the optional criteria. In strict legal terms, it is an objective test

as to whether an ethnic minority exists in the state.

Self-identification, as the commission understands it, is in essence a protection that has been put in place for ethnic minorities for reasons related to historical events in which ethnic minorities were targeted in a particular way. There are examples in the Irish context where Travellers were segregated in services. This was because the principle of self-identification was not properly applied to them. It would allow them to say they are not subscribing to a particular service in a particular way just because they are Travellers. They could say they do not have to identify in a particular way to gain access to the service available to the community in general.

It is probably more appropriate for Traveller organisations to address the question as to whether somebody is half in or half out. There have been discussions on Travellers who may conceal their identity in certain contexts for reasons associated with negativity and the perception of Travellers in society, but I do not believe I could elaborate on it much more than the Traveller representatives have done.

**Deputy Niall Collins:** I apologise as I had to leave for a few minutes, resulting in my missing some of the contributions. I read the opening submissions. What does the conferring of ethnic status on the Traveller community mean in layman's terms for Travellers or society in general?

**Mr. Laurence Bond:** My colleague has outlined the modalities of how that would happen. In terms of the practical implications, I would see the starting point as recognising people for who they are and affirming that. A key starting point in the history of public policy thinking about Travellers was in the 1960s when the Commission on Itinerancy published its report, 50 years ago this year. This was the first time the State had tried to collectively reflect on the position of Travellers in Irish society. I quoted some of that in our main report and it is well known that there was a specific suggestion that it was essential not to recognise Travellers for who they were. The report said it would call them itinerants even though they refer to themselves as Travellers and want to be referred to as Travellers. That was partly related to saying it was important not to recognise Travellers but rather to insist that they be absorbed into the general community and become like us.

The core message of that report was that Travellers are a problem, and that problem is solved by absorbing them into the community. The whole argument about recognition of ethnicity is fundamentally related to that. This debate has been going on since the 1970s. Not long after that report was published, many Travellers were saying this is not just about absorption into the community. They said Travellers have a history, culture and identity and recognising who they are is core to treating them equally and on a basis of mutual respect between Travellers and the settled community. Public policy has moved a certain way along that road but, clearly, has found it difficult to take the final step in terms of that recognition.

One can think of many parallels. The current argument about access to marriage for gay people is partly about saying one recognises people as not different or a lesser but as of equal value. One recognises that by recognising people for who they are, not insisting they be like oneself. That is our fundamental starting point for the significance of recognition of ethnicity. If one takes that as factor at a symbolic and personal level, it clearly has implications for public policy. If one is to take that seriously and apply it to issues such as development of housing and education policy, one thinks about what this means for how one teaches about Traveller children, teach Traveller children, how Travellers are engaged in the classroom, etc. We do a lot about Traveller education and housing, but it is about doing them better by taking this into

## RECOGNITION OF TRAVELLER ETHNICITY: DISCUSSION

account.

**Chairman:** On a matter that Mr. Bond raised earlier and about which Deputy Collins may have asked, Mr. Bond implied he was not sure whether there would be a significant cost to the State as a result of this proposed recognition of ethnicity. Has he any points to make on that?

**Mr. Laurence Bond:** I have heard it suggested that to recognise ethnicity would expose the State to significant additional costs above what is already spent on Traveller policy, which is significant. I can clearly see how recognition of ethnicity may have implications for rethinking how some of the money we currently spend is used, what is prioritised and what is not. However I have tried to think about what significant additional costs there could be and I cannot see what they would be.

**Chairman:** Is everybody happy? I thank the delegates for taking part in this process and for their very useful contribution.

The joint committee went into private session at 3.15 p.m. and adjourned at 3.40 p.m. until 4 p.m. on Wednesday, 20 November 2013.