

AMENDMENT 1

by Anna Terrón i Cusí and Gerhard Schmid, on behalf of the PSE Group

Motion for a resolution

B5-0156/2004

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

Adequate level of protection provided for personal data contained in the Passenger Name Records (PNRs) transferred to the US Bureau of Customs and Border Protection

Recital A

- A. whereas, pursuant to the Transport Security Act and the implementing provisions thereof (such as Aviation Security Screening Records¹), the US Administration requires airlines operating in Europe to provide access to the commercial data contained in Passenger Name Records (PNRs), so as to enable the potential threat which each passenger could present to be established in advance and to ensure that any terrorist or individual responsible for serious crime is *identified and apprehended or denied entry to the US*,

Or. en

¹ FEDERAL REGISTER 68 FR 2101. TSA intends to use this system of records to facilitate TSA's passenger and aviation security screening programme under the Aviation and Transportation Security Act. TSA intends to use the CAPPS II system to conduct risk assessments to ensure passenger and aviation security.

25 March 2004

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AMENDMENT 2

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Recital B

- B. whereas such access *requires a clear legal framework if it is to be permitted* under Member-State and EU privacy laws in spite of which fact neither the Commission nor the Member States nor the authorities which are responsible for safeguarding privacy and which have been granted binding powers have taken any action to ensure that the laws are enforced,

Or. en

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Recital G

- G. whereas, at this stage, there is no *legal basis* in the European Union permitting the use of PNR commercial data for public-security purposes and whereas such *a legal basis* is essential in order for the data to be used for a purpose other than that for which they were originally collected and for the use of those data for public-security purposes,

Or. en

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Recital H

- H. whereas such *a legal basis* has to define the exact data to be collected, the rules to be followed for the processing and the responsibilities of each party involved (passengers, airlines and public authorities) (*deletion*),

Or. en

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Recital I

- I. whereas the Council recently approved the Commission's negotiating mandate for an international agreement in this field (*deletion*),

Or. en

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B5-0156/6

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Recital K, paragraph (b)

- (b) relates to a state of affairs which is still in a legal limbo both in the USA (since *the 'undertakings' provided by the US side do not in all cases have legal effect*) and in Europe (since no specific *legal basis* has *yet* been adopted which will enable PNR data to be legitimately transferred to public authorities),

Or. en

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Paragraph 1.1, subparagraph (a)

1.1 The draft Decision is not (and could not be):

- (a) a *legal basis* capable of enabling, within the European Union, the purpose for which the data were collected in the PNR to be changed and enabling them to be transferred by the airlines, in whole or in part, to third parties¹; its effect, however, may well be a lowering of the data-protection standards established by means of Directive 95/46/EC within the EU or the creation of new standards in agreement with third countries,

Or. en

¹ Furthermore, the obligation imposed on airlines under US law cannot be regarded as a sufficient 'legal obligation' within the meaning of Article 7(c) of Directive 95/46/EC, since the latter is to be interpreted in the light of the 'fundamental rights [which, according to settled case law,] form an integral part of the general principles of law, whose observance the Court ensures' (see in particular the judgment of 6 March 2001, Connolly v. Commission, C-274/99 P, ECR page I-1611, paragraph 37).

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Paragraph 1.2 a (new)

1.2a the 'pull' system for accessing PNR data undermines any limitations that may be agreed and must be replaced by a 'push' system with appropriate filters,

Or. en

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B5-0156/9

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Paragraph 4

4. Calls on the Commission to submit to Parliament a new adequacy-finding decision *and* to ask the Council for a mandate for a strong new international agreement in compliance with the principles outlined in this resolution (*deletion*);

Or. en