



**COUNCIL OF
THE EUROPEAN UNION**

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NOTE

from : Legal Service
to : Permanent Representatives Committee (2nd part)

Subject : **Case before the Court of Justice**
- **Case C-317/04**: European Parliament against Council of the European Union

1. By an application notified to the Council on 4 August 2004, the European Parliament has brought an action under Article 230 of the EC Treaty before the Court of Justice, for the annulment of Council Decision (2004/496/EC) of 17 May 2004, on the conclusion of an agreement between the European Community and the United States of America on the processing and transfer of PNR ("Passenger Name Record") data by Air Carriers to the United States Department of Homeland Security, Bureau of Customs and Border Protection¹.

At the same time, the European Parliament has brought an action against the Commission, for the annulment of Commission Decision (2004/535/EC) of 14 May 2004, on the adequate protection of personal data contained in the Passenger Name Record of air passengers transferred to the United States' Bureau of Customs and Border Protection².

¹ OJ L 183 of 20.5.2004, p. 83.

² OJ L 235 of 6.7.2004, p. 11.

The Legal Service also recalls that European Parliament had previously requested the Court for an opinion (Opinion 1/04) under Article 300 (6) EC, on the compatibility of the draft PNR agreement with the Treaty³. However, the European Parliament has now withdrawn this request since it has become devoid of purpose following the conclusion of the agreement.

2. The European Parliament invokes the following grounds in support of its claim against the Council's decision to conclude the PNR agreement :

- Article 95 EC is not a proper legal basis for the contested decision;
- The Council should have followed the procedure laid down in the 2nd sub-paragraph of Article 300 (3) EC (assent of the European Parliament instead of mere consultation), insofar as the PNR agreement involves an amendment of Directive 95/46/EC on data protection ;
- Infringement of the right to privacy and data protection (Article 8 of the European Convention on Human Rights);
- Breach of the principle of proportionality ;
- Failure to state reasons ;
- Breach of the principle of loyal cooperation between the institutions (Article 10 EC), in view of the fact that the Council concluded the PNR agreement whilst there was a request pending for an Opinion from the Court pursuant to Article 300 (6) EC.

3. The European Parliament has also requested the Court to use the expedited procedure provided for in Article 62 a of the Court's Rules of Procedure. The Council is not objecting to this request.

³ See the note from the Legal Service to Coreper in doc. 9425/04.

4. According to Article 40 (1) of the Court's Rules of Procedure, the Council has one month in which to lodge a statement of defence. The Director-General of the Council Legal Service has appointed Mrs. Maria Cristina GIORGI FORT and Mr. Michael BISHOP, legal advisors in the Council Legal Service, as the Council's agents in this case. The Member States may request to intervene in the case, pursuant to Article 93 of the Court's Rules of Procedure, in conjunction with Article 40 of the Statute of the Court of Justice.⁴
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⁴ However, if the European Parliament's request for an expedited procedure is granted, the aforementioned Article 62 a (2) of the Rules of Procedure stipulates that interveners may only lodge a written statement in intervention if the President of the Court so allows.