



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 16 October 2006

13991/06

PE 326

NOTE

from :	General Secretariat of the Council
to :	Delegations
Subject :	Plenary session of the European Parliament in Brussels, 11 October 2006 Council and Commission statements - Use of passenger data (PNR)

Mrs LEHTOMÄKI, for the Council, delivered the speech reproduced in Annex.

Mr FRATTINI, for the Commission, recalled that the new agreement would only cover a limited period, up till July 2007 and added that during the complex negotiations, the Presidency, the Commission and the US authorities had reaffirmed their commitment to start working on a wider scope in order to conclude a final agreement which would come into force from August 2007 onwards. He stated that it was vital that the European Parliament was involved in that process, even though as a result of the ECJ ruling, the matter came under the third pillar. He also gave an assurance that the new agreement did not allow for a transfer of more data than before and that access for other US agencies (only those involved in combating terrorism) was not direct, but merely on a case-by-case basis, following a request indicating a threat. He also said that the EU had received guarantees that the "push" system would become operational in December 2006 at the latest. Finally, he recalled that a reference to Article 6 of the EU Treaty had been inserted into the agreement.

On behalf of the political groups, the following speakers took the floor:

Mr KLAMT (PPE-DE, DE) deplored the fact that the security of EU citizens had not been reinforced by the new agreement, even though an improvement had been made as regards the move to the "push" system.

Mrs ROURE (PSE, FR) was concerned about a facilitation of transfer of data to other agencies responsible for combating terrorism. She stressed the need for effective legal measures for European citizens in case their data was not used properly. She considered it necessary to involve the European Parliament and national parliaments and added that although in accordance with article 24 of the EU Treaty the EU was a contracting party to the agreement, Member States should still apply a parliamentary ratification.

Mr in 't VELD (ALDE, NL) deplored the fact that the President-in-Office and the Commissioner ignored the letter signed by the Department of Homeland Security, which had given an interpretation of the agreement going in a different direction from what had been said. She asked for an explanation of the part of that letter, in accordance with which, in addition to the purpose of fighting terrorism and related crimes, data would also be collected to fight infectious disease and other risks, which meant a considerable widening of the scope. She also considered that the scope of the sharing of data had been widened to include agencies which had not all been specified. As regards the 'push system', she recalled that a clause whereby the Americans would move to the 'push system' as soon as it was technically feasible had already been a part of the previous agreement and had been technically feasible for more than a year. She reiterated that the agreement was necessary, as otherwise the Member States would have concluded bilateral agreements with the USA. Finally, she expressed the hope that the bridging clause would be adopted as soon as possible.

Mr VOGGENHUBER (Verts/ALE, AT) criticized the approach of the Commission and recalled that the issue concerned passing of the most personal data to a third state, which might cause a serious breach of fundamental rights. He also deplored the fact that as the issue fell under the third pillar, the European Court of Justice, national parliaments and the European Parliament did not have competence.

Mrs KAUFMANN (GUE/NGL, DE) announced that the agreement was not acceptable to her political group. She considered it to be scandalous that data could be transmitted to all US agencies combating terrorism, including the CIA. She also warned that European citizens would not have the same means of redress as US citizens. Finally, she called for the introduction of the "push" system and added that the fact that such a system was operational with Canada proved that it was feasible.

Mr CROWLEY (UEN, IE) asked what further guarantees the US authorities had given with regard to how the data would be used and what kind of criteria had been laid down for the use of the data. As regards actions on a case-by-case basis determining whether a threat existed or if a particular flight might be under threat, he asked how much time the EU had to respond to that request for information and what difficulty would there be in accessing that data, from a European as well as from a US perspective. He also asked what mechanism was in place if data was found to have been misused. He concluded by saying that in his view the new agreement was better than the previous one, but that there was still a need to clarify the agreement further.

As an individual speaker, Mr LAMBRINIDIS (PSE, EL) deplored that fact that the temporary agreement continued to treat as non-binding the US unilateral undertakings concerning the proper use and protection of personal data. He considered that the new agreement seemed more flexible on US obligations than even the agreement that a private company, SWIFT, had been able to negotiate with the US authorities for the unacceptable transfer of banking data. He stated that the PNR and SWIFT cases revealed a dangerous political and legal black hole in the protection of fundamental rights. He considered it to be unacceptable that a third country invoking exclusively reasons of its own national security could apparently impose upon Europe the level of access to, use, and even protection of, data. He also regretted that the Council denied the European Parliament the role of an equal partner in fighting terrorism and in protecting fundamental rights. He concluded by saying that a comprehensive and democratic European approach in cooperation with all partners on a global level was urgently needed.

Mr CASHMAN (PSE, UK) considered that the new agreement was not perfect but compromises had to be made, especially since the alternative was no agreement at all, which would mean a data anarchy and no EU-wide protection for European citizens. He stressed the fact that nothing was being imposed on the EU - if European citizens wish to travel to or set a business in the United States, they had to abide by conditions set by the United States.

Baroness LUDFORD (ALDE, UK) did not agree with the Presidency that the final outcome of negotiations was a success, especially that under paragraph 3 of the agreement, the Americans would process data in accordance with applicable US laws, and on the basis of paragraph 1, data would be handed over as required by the Department of Homeland Security. She also referred to the accompanying US letter which, in her view, meant a complete assertion of US jurisdiction.

In his closing remarks, Mr FRATTINI reiterated that no significant change had been made as regards the content of the agreement and reaffirmed his commitment to maintain political dialogue with the European Parliament. He responded to the statement by Mrs Kaufmann, saying that it was not true that CIA would have access to PNR data, as no secret services would have such a possibility. In response to Mrs Roure, he stated that the temporary agreement had been negotiated in conditions of absolute urgency and if its ratification by all the national parliaments had been necessary for its entry into force, it would not have been possible to avoid chaos. He added that the agreement contained a provision under which the agreement might be suspended if the level of protection of data was not adequate. As regards the letter from the Department of Homeland Security, he stressed the fact that it was a unilateral act and not a part of the agreement. He also disagreed with the opinion that the introduction of the "push" system would depend on the decision of the American authorities, as the entry into force of the system had been clearly scheduled for December 2006. He concluded by saying that a long-term political negotiation with the US authorities would be necessary and added that "it's terrorism that is a problem and not the USA".

For further information: Mrs Jaśkowiak (tel. 3607)

Minister for European Affairs Paula Lehtomäki at the European Parliament on 11 October 2006**Transfer of passenger name records to the United States**

Ladies and gentlemen,

the negotiations on the transfer of passenger name records to the United States were completed last week, the night between Thursday and Friday. The Permanent Representatives Committee monitored closely the progress of the negotiations. It convened immediately on Friday morning for a preliminary discussion on the negotiations outcome and the details of its content. On the basis of the received reports, the Coreper expressed that it supported initialling the text of the negotiations on behalf of the Union's negotiators. The outcome was reported to the Ministers of Justice at the meeting of the Justice and Home Affairs Council, which began immediately after the Coreper meeting. The Ministers of Justice continued to discuss the agreement during their lunch.

The outcome of negotiations enables us to avoid a period without a valid agreement, and this is extremely important. I believe that we all agree on it.

On the Presidency side, the Minister for Foreign Affairs has been responsible for the negotiations, but I am personally very pleased to have this opportunity to tell you about their outcome. The negotiations resulted in a new temporary PNR agreement. It is intended to replace the earlier agreement signed in 2004, which the Court of Justice of the European Communities annulled by a ruling in May this year. The new agreement makes it possible to continue to transfer passenger name records to US authorities and to ensure, at the same time, handling of these records with sufficient data protection in compliance with the relevant European standards, as committed earlier by the US Bureau of Customs and Border Protection.

The agreement is temporary and will be applicable as from the date of signature. The purpose is that the Council should be able to make a formal decision on signing the agreement as soon as possible, most probably this week. Before that, the decision still needs to be considered by the Coreper, as soon as the Member States have had a real chance to familiarize with it. The temporary agreement will be valid until the end of July 2007. During its validity, the parties will agree on a more permanent arrangement for the transfer of personal name records. Negotiations to this effect will probably be opened during the Finnish Presidency.

The temporary agreement is a result of difficult negotiations. The United States wanted to revise the earlier PNR arrangement so that it would better meet the requirements of the changed operating environment. Thus, the greatest challenge during the negotiations was the question how to respond to the changes that the US legislation and administrative organisation had undergone after the year 2004, while maintaining at the same time the principles for the European standards of data protection.

The final outcome is a success for many reasons. The success of political decisions is measured by their effects on the lives of individual citizens. This is a good point of departure for examining the content of the new agreement, too.

Firstly, the temporary agreement arrangements guarantee safety of airline passengers. This is, of course, of paramount importance.

Secondly, the earlier commitments by the US administration concerning the use of passenger name records will continue to apply. This, too, is important, for the task of our negotiators was to guarantee that the PNR data of citizens will enjoy the same level of data protection as in the earlier PNR system.

Thirdly, I am very pleased that also the new agreement concerns PNR data transfers for the same 34 data fields as previously. This means transferring data to the same extent as before.

Fourthly, the new agreement guarantees legal certainty for citizens and continuity of Transatlantic flights. At the same time, the agreement safeguards opportunities for airline companies to operate. As we all know, a period without a valid agreement would have been particularly difficult especially for airlines.

We have also other good news to airline companies: during the negotiations the United States committed to permit, as early as this year, testing of systems where airlines themselves can save PNR data in databases of US authorities. This has been an important objective for us.

As I already mentioned, we will open negotiations on a new, more permanent PNR system in the near future. This system will replace the current temporary agreement in July 2007. We have also agreed that the questions on keeping and destroying PNR data will be solved during the negotiations on the new PNR system.

This means that we will soon revert to the questions concerning the handling of passenger data.

Thank you.
