

FORM FOR TABLING PARLIAMENTARY QUESTIONS

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To the: COUNCIL
COMMISSION

ORAL QUESTIONS		WRITTEN QUESTIONS	
Oral Question with debate (Rule 115)	<input type="checkbox"/>	Written Question (Rule 117)	<input type="checkbox"/>
Question Time (Rule 116)	<input type="checkbox"/>	Priority Written Question (Rule 117 (4))	<input checked="" type="checkbox"/>

AUTHOR(S): Sophie IN T VELD

SUBJECT: EU US PNR Agreement
(please specify)

TEXT:

The legal base for the Council decision to conclude the EU-US Agreement on the transfer of PNR data are Articles 82(1)(d) and 87(2)(a) TFEU, regarding police and justice cooperation. These Articles concern cooperation between judicial or equivalent authorities, and police cooperation, in relation to proceedings in criminal matters and the prevention, detection and investigation of criminal offences. Article 4(1) of the said EU-US Agreement authorizes the use of PNR data for the purposes of counter terrorism or the fight against serious transnational crime, punishable by a sentence of imprisonment of three years or more. Articles 4(2), 4(3) and 4(4) allows for additional use of PNR data:

- 1) The transfer of PNR data is from a commercial entity to various and unspecified government agencies. Can the Commission clarify how this qualifies as cooperation between judicial or equivalent authorities, or police cooperation, as intended in Articles 82(1)(d) and 87(2)(a) TFEU?
- 2) Can the Commission clarify if in its opinion articles 4(2), 4(3) and 4(4) of the Agreement would explicitly exclude the use of PNR data for purposes such as immigration or customs controls, or public health? Can the Commission explain in detail how it arrives at this conclusion?
- 3) Does the Commission consider that each of the purposes mentioned in articles 4(2), 4(3) and 4(4) of the Agreement qualifies as "criminal matter" or "criminal offence" as mentioned in Articles 82(1)(d) and 87(2)(a) TFEU?
- 4) Would the Commission agree that purposes such as immigration and customs checks or public health would not fall within the exemption foreseen in Article 3(2) of Directive 94/46/EC for "*the processing of personal data (...) in the course of an activity which falls outside the scope of Community law (...), and in any case to processing operations concerning public security, defence, State security (including the economic well-being of the State when the processing operation relates to State security matters) and the activities of the State in areas of criminal law*"? Does the Commission agree that the use of PNR data for the purposes as described in Article 4(2), 4(3) and 4(4) of the Agreement, may therefore fall inside the scope of Community law, and hence within the scope of Directive 95/46/EC?

Signature(s):

Date: 02.04.2012

