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Plenary sitting

A7-0099/2012

3.4.2012

RECOMMENDATION

on the draft Council decision on the conclusion of the Agreement between the United States of America and the European Union on the use and transfer of Passenger Name Records to the United States Department of Homeland Security
(17433/2011 – C7-0511/2011 – 2011/0382(NLE))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Sophia in 't Veld

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

CONTENTS

	Page
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION	5
MINORITY OPINION	8
OPINION OF THE COMMITTEE ON FOREIGN AFFAIRS	9
RESULT OF FINAL VOTE IN COMMITTEE	12

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the draft Council decision on the conclusion of the Agreement between the United States of America and the European Union on the use and transfer of Passenger Name Records to the United States Department of Homeland Security (17433/2011 – C7-0511/2011 – 2011/0382(NLE))

(Consent)

The European Parliament,

- having regard to the draft Council decision (17433/2011),
- having regard to the Agreement between the United States of America and the European Union on the use and transfer of Passenger Name Records to the United States Department of Homeland Security, annexed to that draft Council decision (17434/2011),
- having regard to the Communication from the Commission on the global approach to transfers of Passenger Name Record (PNR) data to third countries (COM(2010)0492),
- having regard to its resolutions of 14 February 2007 on SWIFT, the PNR agreement and the transatlantic dialogue on these issues¹, of 12 July 2007 on the PNR agreement with the United States of America², of 5 May 2010 on the launch of negotiations for Passenger Name Record (PNR) agreements with the United States, Australia and Canada³, and of 11 November 2010 on the global approach to transfers of passenger name records (PNR) data to third countries, and on the recommendations from the Commission to the Council to authorise the opening of negotiations between the European Union and Australia, Canada and the United States⁴,
- having regard to the opinions of the European Data Protection Supervisor of 19 October 2010 on the Communication from the Commission on the global approach to transfers of Passenger Name Record (PNR) data to third countries⁵ and of 9 December 2011 on the proposal for a Council Decision on the conclusion of the Agreement between the United States of America and the European Union on the use and transfer of Passenger Name Records to the United States Department of Homeland Security⁶,
- having regard to Opinion 7/2010 of 12 November 2010 on the European Commission's Communication on the global approach to transfers of Passenger Name Record (PNR) data to third countries adopted by the Article 29 Data Protection Working Party, and to the letter of 6 January 2012 on the Agreement between the United States of America and the European Union on the use and transfer of Passenger Name Records to the United States Department of Homeland Security,

¹ OJ C 287 E, 29.11.2007, p. 349.

² OJ C 175 E, 10.7.2008, p. 564.

³ OJ C 81 E, 15.3.2011, p. 70.

⁴ OJ C 74 E, 13.3.2012, p. 8.

⁵ OJ C 357, 30.12.2010, p. 7.

⁶ OJ C 35, 9.2.2012, p. 16.

- having regard to the request for consent submitted by the Council in accordance with Article 218(6), second subparagraph, point (a), in conjunction with Article 82(1), second subparagraph, point (d), and Article 87(2), point (a), of the Treaty on the Functioning of the European Union (C7-0511/2011),
 - having regard to Article 16 of the Treaty on the Functioning of the European Union and Articles 7 and 8 of the Charter of Fundamental Rights of the European Union,
 - having regard to Rules 81 and 90(7) of its Rules of Procedure,
 - having regard to the recommendation of the Committee on Civil Liberties, Justice and Home Affairs and the opinion of the Committee of Foreign Affairs (A7-0099/2012),
1. Gives its consent to the conclusion of the Agreement;
 2. Considers that procedure 2009/0187(NLE) has lapsed as a result of the 2007 PNR Agreement between the European Union and the United States being replaced by the new PNR Agreement.
 3. Instructs its President to forward its position to the Council, the Commission, the governments and parliaments of the Member States and the government of the United States of America.

MINORITY OPINION

pursuant to Rule 52(3) of the Rules of Procedure
Jan Philipp Albrecht, Rui Tavares

The EU-US agreement on transfer of PNR data does not meet the guarantees requested by the EP in its previous resolutions. These guarantees were real red lines.

The Commission has neither presented factual evidence supporting the claim that storage and processing of PNR for law enforcement purposes is necessary and proportionate, nor has it seriously explored less intrusive alternatives.

The Commission has not managed to improve the 2007 agreement in any way. Completely unsuspecting travellers will still be profiled, sorted into intransparent risk categories, and have their data stored for 15 years. Their data will then be "fully anonymised" rather than deleted. This raises serious concerns regarding compatibility of the agreement with the Charter of Fundamental Rights, as well as with case law of the ECHR and German Constitutional Court.

We stress our commitment to cooperate with the United States and other third countries in the fight against terrorism, but believe the blanket retention and processing of passenger name record data of all passengers is incompatible with our vision of an open society.

5.3.2012

OPINION OF THE COMMITTEE ON FOREIGN AFFAIRS

for the Committee on Civil Liberties, Justice and Home Affairs

on the draft Council decision on the conclusion of the Agreement between the United States of America and the European Union on the use and transfer of Passenger Name Records to the United States Department of Homeland Security (17433/2011 – C7-0511/2011 – 2011/0382(NLE))

Rapporteur: Traian Ungureanu

PA_Leg_Consent

SHORT JUSTIFICATION

The European Union and the United States are facing a number of common challenges in ensuring an effective fight against international terrorism as part of a wider global agenda. In this common endeavour, information sharing, in particular the transfer of Passenger Name Record (PNR) by air carriers operating flights between the EU and the US, serves the purpose of combating the threat to international peace and security.

In order to advance their cooperation on data exchange aimed at containing international terrorism, the EU and the US signed an agreement on PNR in 2007, which has been applied on a provisional basis since. In May 2010, the European Parliament declined to give its consent and requested to re-negotiate the provisional agreement referring to the necessity to meet European data protection standards. In its resolution, the Parliament underlined its determination to fight international terrorism and organised and transnational crime as a key component of European external action and to pursue a policy of prevention.

Simultaneously, it demanded to protect fundamental rights and to ensure utmost respect for the privacy of EU citizens in compliance with relevant EU standards and norms of data protection. It called for a new agreement to introduce, inter alia, appropriate mechanisms for independent review and judicial oversight, to set out arrangements – in accordance with the PUSH method - on the use of PNR data only for law enforcement and security purposes in cases of terrorist offences and transnational crime as well as to prohibit in all circumstances the use of PNR for data mining and profiling. The European Parliament has also re-affirmed that necessity and proportionality remain key principles without which the fight against terrorism and transnational crime can not be effective.

The re-negotiated EU-US PNR agreement, which was initialled in November 2011 and now awaits Parliament's consent, provides better information sharing between EU and US law-enforcement agencies, tightens a number of provisions on the protection of data of European citizens and enhances data protection safeguards. The purpose of processing PNR data was limited to preventing, detecting and prosecuting terrorist offences and serious transnational crimes, the data retention period was limited, the disclosure of information contained in PNR was subject to legal limitations and the PUSH method was recognized as the standard mode of transfer. Individuals were provided with the right inter alia to access, correct and erase their data and any EU citizen may now be able to seek effective administrative and judicial redress.

While a number of shortcomings are recognized in the new draft agreement as regards particularly the broad purpose of using PNR data, the retention periods and concerns on the onward transfer of data to third countries, the rapporteur is committed to an agreement which would reinforce the common fight of the EU and the US against international terrorism in the interests of the security of EU citizens. He strongly believes that the EU and US shall be united in rolling back the threat from terrorism by pursuing a multi-faceted approach, including information sharing, to mitigate its many risks.

Considering the above provisions, the rapporteur is of the view that the new draft agreement is an essential and necessary element of close transatlantic cooperation in the successful common fight against terrorism and provides the basic safeguards for the respect of the data protection rights of EU citizens.

The Committee on Foreign Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to propose that Parliament give its consent.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	1.3.2012
Result of final vote	+: 26 -: 12 0: 13
Members present for the final vote	Bastiaan Belder, Franziska Katharina Brantner, Frieda Brepoels, Elmar Brok, Jerzy Buzek, Arnaud Danjean, Mário David, Michael Gahler, Marietta Giannakou, Ana Gomes, Andrzej Grzyb, Richard Howitt, Anna Ibrisagic, Tunne Kelam, Andrey Kovatchev, Paweł Robert Kowal, Eduard Kukan, Alexander Graf Lambsdorff, Vytautas Landsbergis, Krzysztof Lisek, Sabine Lösing, Ulrike Lunacek, Mario Mauro, Francisco José Millán Mon, Alexander Mirsky, Annemie Neyts-Uyttebroeck, Norica Nicolai, Kristiina Ojuland, Ria Oomen-Ruijten, Ioan Mircea Pașcu, Alojz Peterle, Bernd Posselt, Cristian Dan Preda, Libor Rouček, José Ignacio Salafranca Sánchez-Neyra, Nikolaos Salavrakos, György Schöpflin, Werner Schulz, Charles Tannock, Inese Vaidere, Kristian Vigenin
Substitute(s) present for the final vote	Charalampos Angourakis, Emine Bozkurt, Andrew Duff, Hélène Flautre, Lorenzo Fontana, Carmen Romero López, Marietje Schaake, Traian Ungureanu, Ivo Vajgl
Substitute(s) under Rule 187(2) present for the final vote	Vicente Miguel Garcés Ramón

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	27.3.2012
Result of final vote	+: 23 -: 31 0: 1
Members present for the final vote	Jan Philipp Albrecht, Edit Bauer, Mario Borghesio, Rita Borsellino, Emine Bozkurt, Simon Busuttil, Philip Claeys, Carlos Coelho, Rosario Crocetta, Agustín Díaz de Mera García Consuegra, Ioan Enciu, Frank Engel, Cornelia Ernst, Tanja Fajon, Monika Flašíková Beňová, Héléne Flautre, Kinga Gál, Kinga Göncz, Nathalie Griesbeck, Sylvie Guillaume, Ágnes Hankiss, Anna Hedh, Salvatore Iacolino, Sophia in 't Veld, Teresa Jiménez-Becerril Barrio, Juan Fernando López Aguilar, Baroness Sarah Ludford, Monica Luisa Macovei, Svetoslav Hristov Malinov, Véronique Mathieu, Anthea McIntyre, Nuno Melo, Louis Michel, Claude Moraes, Jan Mulder, Antigoni Papadopoulou, Georgios Papanikolaou, Carmen Romero López, Birgit Sippel, Rui Tavares, Kyriacos Triantaphyllides, Axel Voss, Renate Weber, Josef Weidenholzer, Cecilia Wikström, Tatjana Ždanoka, Auke Zijlstra
Substitute(s) present for the final vote	Elena Oana Antonescu, Monika Hohlmeier, Ulrike Lunacek, Hubert Pirker
Substitute(s) under Rule 187(2) present for the final vote	Julie Girling, Esther Herranz García, Vincenzo Iovine, Marina Yannakoudakis