

Note for the meeting of Conference of Presidents, 16 June 2004

EU-USA agreement on the transfer of PNR data adopted by the Council on 17 May 2004 - Letters from Mr BARÓN CRESPO, Mr WATSON, Mr COHN-BENDIT and Mrs FRASSONI - recommendation of the Committee on Legal Affairs

Invited: Mr Giuseppe GARGANI, chairman of the Committee on Legal Affairs and the Internal Market

The papers for the meeting include:

- Parliament's resolution of 31 March 2004 on the protection of the personal data of passengers travelling by air;
- a letter of 14 April 2004 from Mr GARGANI, chairman of the Committee on Legal Affairs and the Internal Market;
- a letter of 6 May 2004 from the President to Mr COWEN, President-in-Office of the Council (PE 346.280(CPG/ANN));
- a letter of 6 May 2004 from the President to the Commission President, Mr PRODI (PE 346.279/CPG/ANN);
- a letter of 14 May 2004 from the Commission President, Mr PRODI (PE 346.279/CPG);
- the Council decision of 17 May 2004 concerning the conclusion of an agreement between the European Community and the USA relating to the processing and transfer of PNR data (published in OJ L 183, 20 May 2004, pp. 83-85);
- a letter of 17 May 2004 from Mr BARÓN CRESPO, chairman of the PSE Group (PE 346.263/CPG);
- a letter of 18 May 2004 from Mr WATSON (chairman of the ELDR Group) and Mr BOOGERD-QUAAK, rapporteur (PE 346.256/CPG);
- a letter of 18 May 2004 from Mr COHN-BENDIT and Mrs FRASSONI, co-chairmen of the Greens/ALE Group (PE 346.257/CPG);
- a legal note signed by the Jurisconsult on 27 May 2004, entitled 'PNR - Situation following the adoption of the Council and Commission decisions' (PE 346.266/CPG);
- a letter of 4 June 2004 from Mrs ANDERSON, chairman of COREPER (PE 346.280/CPG);
- a letter of [16 June 2004] from Mr GARGANI, chairman of the Committee on Legal Affairs and the Internal Market (PE .../CPG - *letter on the table*)

DECISION REQUESTED

The Conference of Presidents is being asked to:

- note the recommendation put forward by the Committee on Legal Affairs and the Internal Market regarding the possible launch by Parliament of proceedings for annulment in respect of:
 - (1) the Commission's decision of 14 May 2004 concerning an appropriate level of protection for personal data contained in the airline passenger records transferred to the US Customs and Border Protection Bureau,
 - (2) the Council decision of 17 May 2004 concerning the conclusion of an agreement between the European Community and the USA concerning the processing and the transfer of PNR data by airlines to the Customs and Border Protection Bureau within the US Ministry responsible for homeland security;
- put forward a recommendation to the President, who alone has the power to bring a legal action on behalf of Parliament.

REGULATORY FRAMEWORK

Pursuant to Article 230 of the EC Treaty:

"The Court of Justice shall review the legality of (...) acts of the Council, of the Commission (...). It shall for this purpose have jurisdiction in actions brought by (...) the European Parliament (...) on grounds of **lack of competence, infringement of an essential procedural requirement, infringement of this Treaty or of any rule of law relating to its application, or misuse of powers** (...)

The proceedings provided for in this Article shall be instituted within **two months** of the **publication** of the measure, or of its **notification** to the plaintiff, or, in the absence thereof, of the day on which it **came to the knowledge** of the latter, as the case may be."

Pursuant to Parliament's Rules of Procedure, Parliament is represented by the President in legal matters (Rule 19(4)). Rule 91(3) - Proceedings before the Court of Justice - stipulates in greater detail that:

"3. The President shall bring an action on behalf of Parliament in accordance with the recommendation of the committee responsible.

At the start of the following part-session, he may put to plenary the decision on maintaining the action. Should plenary rule against the action by a majority of the votes cast, he shall withdraw it.

Should the President bring an action contrary to the recommendation of the committee responsible, he shall put to plenary, at the start of the following part-session, the decision on maintaining the action."

DECISION-MAKING FRAMEWORK: RECENT DEVELOPMENTS

- 31 March 2004 Resolution on the protection of airline passengers' personal data (paragraph 7): **Parliament** reserves the right to appeal to the Court of Justice against the Commission decision
- 6 April 2004 The **Legal Affairs Committee** decides, by 16 votes to 12, to recommend that the Court of Justice be asked for its opinion as to whether the draft EU-USA agreement on the transfer of data relating to passengers on transatlantic flights is compatible with the treaty and with the basic right to data protection
- 15 April 2004 The **Conference of Presidents**:
- noted a statement by the President concerning a Legal Affairs Committee recommendation, forwarded to him by means of a letter of 14 April 2004 from Mr GARGANI, in favour of Parliament's requesting a Court of Justice opinion;
 - agreed that the Commission would first have to consider Parliament's request for the draft 'light' agreement to be withdrawn and replaced by a proper international agreement;
 - called, therefore, on the Commission to give a statement on the subject to plenary at the sitting on Monday, 19 April in Strasbourg;
 - noted that if the Commission did not come out clearly in favour of the approach adopted by Parliament, the President would ask the plenary to take a decision the following day on the merits of submitting a request for a Court of Justice opinion.
- 21 April 2004 Having heard (on the previous day) the Commission view spelt out by Mr BOLKESTEIN and Mr PATTEN, **Parliament** approves (by 276 votes to 260, with 13 abstentions) the submission of a request for a Court of Justice opinion on whether or not the draft EU-USA agreement is compatible with the treaty
- 4 May 2004 **Parliament** rejects the Council's request for urgent consideration of the Council's proposal for a decision on the conclusion of an EU-USA agreement on the processing and transfer of PNR data
- 6 May 2004 The **President** writes to the Commission and the Council, requesting them to suspend their respective procedures pending receipt of an opinion from the Court of Justice
- 14 May 2004 The **Commission** adopts its decision, which it justifies in a letter from Mr PRODI to the President (to our knowledge that decision has not so

far been published in the Official Journal or officially notified to Parliament)

- 17 May 2004 On behalf of the Community the **Council** approves the EU-USA agreement on the processing and transfer of PNR data. The decision is published in OJ L 183 of 20 May 2004. Approval of the decision renders the request for a Court of Justice opinion superfluous
- 2 June 2004 The **Conference of Presidents** notes information from the President concerning:
- the Council's approval of the agreement with the USA, despite the reservations expressed on a number of occasions by Parliament;
 - the President's call to the Legal Affairs Committee to hold an extraordinary meeting with a possible view to bringing an action before the Court of Justice pursuant to Rule 91 of the Rules of Procedure
- 4 June 2004 The **COREPER** chairman informs the President of the fact that the Council has adopted the decision
- 16 June 2004 The **Legal Affairs Committee** meets from 10.30 to 12.30