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NOTE

from : General Secretariat of the Council
to : Delegations

Subject : Plenary session of the European Parliament, Strasbourg, 9 July 2007:
Commission statement - PNR Agreement with the United States

In the presence of Mr Franco FRATTINI, Vice-President of the European Commission and Commissioner for Freedom, Security and Justice.

A transcript of Mr FRATTINI's speech is annexed to this note.

The following Members spoke on behalf of the political groups:

On behalf of the EPP-ED Group, Mr COELHO (EPP-ED, PT) congratulated the Commission and the Council Presidency on the conclusion of the negotiations with the United States on the processing and transfer of passenger name record (PNR) data by air carriers to the United States Department of Homeland Security, emphasising the crucial importance of the agreement for the EU. As to the substance of the agreement, Mr COELHO welcomed in particular the reduction of the number of accessible data from 34 to 19, the change from the 'pull' to a 'push' system for air carriers and the extension of the rights of redress to non-US citizens.

At the same time, Mr COELHO voiced concern at the continuation of the collection of data through the 'push' system from air carriers that were technically not yet ready to switch to the new system; and he also deplored the lacunae in the means of redress for passengers.

On behalf of the PSE Group, Mr LAMBRINIDIS (PSE, EL) criticised the agreement on the following grounds: the US would be entitled to transfer EU passenger data to third countries with which the EU had not concluded data transfer agreements; the agreement was binding only on the EU, not on the US; there was no effective enforcement mechanism available to parties in the event of violation of the agreement; and the purpose of data transfer was defined too broadly.

On behalf of the ALDE Group, Ms IN 'T VELD (ALDE, NL) said that the PNR agreement failed in its objective of providing a high level of data protection, and pointed out various loopholes and exceptions in the terms of the agreement. Ms IN 'T VELD especially deplored the fact that the agreement did not confer any rights on any person or any party, that it was applicable retrospectively, and that it failed to reduce the real number of data collected; she also deplored the total absence from the agreement of any effective democratic oversight. She welcomed the extension of the scope of the Privacy Act to European citizens, but also referred to various exceptions that prevented the effective judicial protection of citizens' rights. As well as the shortcomings in the terms of the agreement, Ms IN 'T VELD regretted the absence of any prior evaluation of the aptness of the agreement's achieving its anti-terrorism objectives.

Ms BUITENWEG (Verts/ALE, NL), for the Greens Group, also doubted that the PNR agreement would bring any improvement to the present system for the transfer of passenger data to the US authorities.

Ms LUDFORD (ALDE, UK) asked the Commissioner whether Article 38 TEU was one of the legal bases for the agreement and, if that were the case, why the Parliament had not been consulted on the agreement. Considering the importance of the fight against terrorism among the objectives of the agreement, Ms LUDFORD inquired why the implementation of counter-terrorism measures by Member States was lagging behind and why no EU counter-terrorism coordinator had yet been nominated.

In response to Members, Mr FRATTINI remained convinced of the value of the agreement with the United States. He confirmed that the agreement was indeed legally binding, that the protection of the Privacy Act was extended to EU citizens, and that the parties endorsed the principle of the transfer of data via a 'pull' system. He also said that it was reasonable to assume that air carriers would be able to carry out the necessary technical changes in the next six months and assured Members that the Commission would give air companies all the assistance necessary. As to the question of the transfer of data to third countries, Mr FRATTINI emphasised that the EU would be entitled to monitor the correct use of EU PNR data.

**Speech by Mr Franco FRATTINI, Vice-President of the European Commission
before the European Parliament
Strasbourg, 9 July 2007**

Mr President, as you already know, the United States and the European Union concluded talks on a long-term PNR agreement. I want to use this occasion to thank the German Presidency and in particular Minister Schäuble for his personal involvement in making this happen. The unanimous mandate given by the Council of Ministers has been fulfilled. The new agreement provides for a high level of data protection and important commitments on the handling of future European PNR data.

Several important interests had to be addressed. Firstly, the fight against terrorism and serious international crime, and in parallel the right to privacy and protection of fundamental civil rights, the need for air carriers to be able to comply with diverse legal requirements at an acceptable economic cost, the wider transatlantic relationship and the true international scope of these issues. The United States has agreed on a binding international agreement and by doing so they have understood the need for legal certainty.

The agreement is divided into three parts. First, an agreement signed by both parties. Second, a letter which the United States sent to the EU in which it set out assurances on the way in which it will handle European PNR data in the future. And third, a letter from the EU to the United States acknowledging the receipt of assurances and confirming that on that basis it considers the level of protection afforded by the US Department of Homeland Security to be adequate for European PNR data.

In the past, the exchange of undertakings was not binding in character. It was in my personal view, but also in the view of the Council, a major achievement of the new agreement. This agreement will be valid for 7 years, thus providing for a considerable period of legal certainty. There is not an extension of the time during which passenger data are kept from 3.5 to 15 years. There is an increase from 3.5 to 7 years of the time during which data are kept in an active file. The further period of 8 years that was already provided for in the previous agreements and that undertaking is not newly introduced in this new agreement.

The purpose for which data will be used remains the same. The number of PNR data has been reduced from 34 to 19 as a result of rationalisation and merging. Sensitive data will be filtered and made accessible only in exceptional circumstances which have been justified and will be deleted after 30 days. Those air carriers not already pushing the data will go from a ‘pull’ to a ‘push’ system as soon it becomes technically feasible. It is now up to air carriers to introduce new technologies as soon as possible, but both the United States and the EU agree that this system should be a ‘push’ system and no longer a ‘pull’ system.

The Commissioner for Justice, Freedom and Security and the United States Secretary of Homeland Security will be responsible for the review system. Finally, the United States has accepted a review system which was likely to be agreed at the beginning of our negotiations.

Protection given under the United States Privacy Act will be extended through administrative procedures to non-US citizens, in particular with regard to redress and correction, and, therefore, EU citizens will be entitled to protection under that Act. That was not the case under the previous agreement.

Common efforts are needed in order to protect our societies, including our human rights, from attempts by terrorists to undermine them. The recent events in London and Glasgow have shown that terrorism will stay with us for some time. That is why, as I have already announced, I will present a package in the autumn, which will include new measures – both legislative and operational – aimed at improving and increasing our capacity to cooperate at an international level against terrorism. I shall also propose that the EU Member States establish a European PNR system at national level in as many Member States as possible.