

EU external strategy on Passenger Name Record (PNR)

European Parliament resolution of 11 November 2010 on the global approach to transfers of passenger name record (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 States

The European Parliament,

- having regard to Articles 16 and 218 of the Treaty on the Functioning of the European Union, Article 6 of the Treaty on European Union, the Charter of Fundamental Rights of the European Union, in particular Article 8 thereof, and the European Convention for the Protection of Human Rights and Fundamental Freedoms, in particular Articles 6, 8 and 13 thereof,
- having regard to the Commission communication on the global approach to transfers of passenger name record (PNR) data to third countries,¹
- having regard to the recommendation from the Commission to the Council to authorise the opening of negotiations for an agreement between the European Union and Australia for the transfer and use of PNR data to prevent and combat terrorism and other serious transnational crime,
- having regard to the recommendation from the Commission to the Council to authorise the opening of negotiations for an agreement between the European Union and the United States of America for the transfer and use of PNR data to prevent and combat terrorism and other serious transnational crime,
- having regard to the recommendation from the Commission to the Council to authorise the opening of negotiations for an agreement between the European Union and Canada for the transfer and use of PNR data to prevent and combat terrorism and other serious transnational crime,
- having regard to the recommendation from the Commission to the Council to authorise the opening of negotiations for an agreement between the European Union and the United States of America on protection of personal data when transferred and processed for the purpose of preventing, investigating, detecting or prosecuting criminal offences, including terrorism, in the framework of police cooperation and judicial cooperation in criminal matters,
- having regard to its previous resolutions on the EU-US PNR data issue, notably its resolutions of 5 May 2010 on the launch of negotiations for passenger name

¹ http://ec.europa.eu/commission_2010-2014/malmstrom/archive/COMM_NATIVE_COM_2010_0492_F_EN_COMMUNICATION.pdf

record (PNR) agreements with the United States, Australia and Canada,² of 13 March 2003 on transfer of personal data by airlines in the case of transatlantic flights,³ of 9 October 2003 on transfer of data by airlines in the case of transatlantic flights: state of negotiations with the USA,⁴ of 31 March 2004 on the draft Commission decision noting the adequate level of protection provided for personal data contained in the passenger name records (PNRs) transferred to the US Bureau of Customs and Border Protection,⁵ its recommendation to the Council of 7 September 2006 on the negotiations for an agreement with the United States of America on the use of PNR data to prevent and combat terrorism and transnational crime, including organised crime,⁶ its resolution of 14 February 2007 on SWIFT, the PNR agreement and the transatlantic dialogue on these issues,⁷ and its resolution of 12 July 2007 on the PNR Agreement with the United States of America,⁸

- having regard to the request for consent to conclude the Agreement between the EU and the USA on the processing and transfer of passenger name record (PNR) data by air carriers to the United States Department of Homeland Security (DHS)⁹ and to conclude the Agreement between the EU and Australia on the processing and transfer of EU-sourced passenger name record (PNR) data by air carriers to the Australian Customs Service,¹⁰
 - having regard to the opinion of the European Data Protection Supervisor on the Commission communication on the global approach to transfers of PNR data to third countries,
 - having regard to Rule 110(2) of its Rules of Procedure,
- A. whereas the Treaty of Lisbon, amending the Treaty on European Union and the Treaty establishing the European Community, entered into force on 1 December 2009,
- B. whereas the Charter of Fundamental Rights of the European Union became binding with the entry into force of the Treaty of Lisbon on 1 December 2009,

² <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2010-0144+0+DOC+XML+V0//EN&language=EN>

³ http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2010-0144+0+DOC+XML+V0//EN&language=EN#def_1_1#def_1_1

⁴ http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2010-0144+0+DOC+XML+V0//EN&language=EN#def_1_2#def_1_2

⁵ http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2010-0144+0+DOC+XML+V0//EN&language=EN#def_1_3#def_1_3

⁶ http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2010-0144+0+DOC+XML+V0//EN&language=EN#def_1_4#def_1_4

⁷ http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2010-0144+0+DOC+XML+V0//EN&language=EN#def_1_5#def_1_5

⁸ http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2010-0144+0+DOC+XML+V0//EN&language=EN#def_1_6#def_1_6

⁹ http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2010-0144+0+DOC+XML+V0//EN&language=EN#def_1_11#def_1_11

¹⁰ http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2010-0144+0+DOC+XML+V0//EN&language=EN#def_1_12#def_1_12

- C. whereas the Commission presented its recommendation to the Council to authorise the opening of negotiations for an agreement between the EU and the USA on protection of personal data when transferred and processed for the purpose of preventing, investigating, detecting or prosecuting criminal offences, including terrorism, in the framework of police cooperation and judicial cooperation in criminal matters on 26 May 2010,
 - D. whereas, with the entry into force of the Treaty of Lisbon, Parliament is asked to give its consent to the agreements between the EU and, respectively, the USA and Australia on the transfer of PNR data, with a view to concluding those agreements,
 - E. whereas Parliament decided on 5 May 2010 to postpone the vote on the request for consent to the agreements with the USA and Australia,
 - F. whereas the Commission communication on the global approach to transfers of PNR data to third countries and the recommendations from the Commission to the Council to authorise the opening of negotiations between the EU and Australia, Canada and the USA reflect important elements contained in the relevant European Parliament resolutions on the matter,
 - G. whereas the EU-Canada agreement on the transfer of PNR is no longer valid, owing to the expiry of the Adequacy Decision in September 2009, and the transfer of PNR data has taken place since that date on the basis of unilateral undertakings by Canada to the Member States,
 - H. whereas other third countries are already requesting the transfer of PNR data, or have announced their intention of doing so in the near future,
 - I. whereas, in our digital age, data protection, the right of informational self-determination, personal rights and the right to privacy have become values that play an ever-increasing role and must therefore be protected with special care,
 - J. whereas, in a world in which mobility is essential, greater security and improved efforts to combat serious crime and terrorism must go hand in hand with more effective, focused and faster exchanges of data both within Europe and globally,
1. Recalls its determination to fight terrorism and organised and transnational crime, and, at the same time, its firm belief in the need to protect civil liberties and fundamental rights, including the rights to privacy, informational self-determination and data protection; reaffirms that necessity and proportionality, as set out in Article 8 of the European Convention on Human Rights and Articles 7 and 8 of the Charter of Fundamental Rights of the European Union, are key principles in ensuring effectiveness in the fight against terrorism;
 2. Welcomes the Commission communication on the global approach to transfers of PNR data to third countries;
 3. Welcomes the recommendation from the Commission to the Council to authorise the opening of negotiations for agreements between the EU and Australia, Canada and the USA for the transfer and use of PNR data to prevent and combat terrorism

and other serious transnational crime; welcomes the decision of the Council to start all negotiations simultaneously, while acknowledging that the length of the negotiations may vary;

4. Underlines the importance of the spirit of cooperation between the EU and the USA, Canada and Australia in the fight against global terrorism and urges the EU and the USA, Canada and Australia to continue to work cooperatively in order to further counter the threat from terrorism;
5. Calls to mind that the purpose of the agreements is to ensure that the transfer of data is in line with European data protection standards; emphasises, therefore, that the legal base must include Article 16 TFEU;
6. Points out that proportionality remains a key principle in data protection policies, and that any agreement or policy measure must also stand the legal proportionality test, demonstrating that it aims to attain Treaty objectives and does not exceed what is necessary to attain those objectives; reiterates its call to the Commission to provide it with factual evidence that the collection, storage, and processing of PNR data is necessary for each of the stated purposes; equally reiterates its call to the Commission to explore less intrusive alternatives;
7. Reiterates its position that PNR data shall in no circumstances be used for data mining or profiling; in this respect, reiterates its demand to the Commission to clarify the differences between the concepts of 'risk assessment' and 'profiling' in the PNR context;
8. Highlights the need to be fully informed on all PNR-related and relevant developments in order to be able to consider giving its consent to the agreements under negotiation; therefore urges the Commission and the Council to clarify fully the state of play with regard to bilateral agreements and memorandums of understanding between Member States and the USA concerning the exchange of law-enforcement data and participation in the US Visa Waiver Programme, as well as the One-Stop Security programme;
9. Emphasises that bilateral memorandums of understanding between Member States and the USA, alongside negotiations between the EU and the USA, are contrary to the principle of loyal cooperation between the EU institutions; urges the Council to provide further information and legal clarity on the situation regarding the legal base and competence of bilateral memorandums of understanding between Member States and the USA concerning information exchanges related to PNR data;
10. Welcomes and strongly supports the recommendation from the Commission to the Council to authorise the opening of negotiations for an agreement between the EU and the USA on protection of personal data when transferred and processed for the purpose of preventing, investigating, detecting or prosecuting criminal offences, including terrorism, in the framework of police cooperation and judicial cooperation in criminal matters; supports the Commission's approach of having such a framework agreement apply to all future and all existing EU or Member States' agreements with the USA on personal data transfer and processing for the purpose of preventing, investigating, detecting or prosecuting criminal offences in

the framework of judicial and police cooperation;

11. Emphasises that the firm objectives set out in the Commission's recommendation to the Council to authorise the opening of negotiations for an agreement between the EU and the USA on protection of personal data when transferred and processed for the purpose of preventing, investigating, detecting or prosecuting criminal offences, including terrorism, in the framework of police cooperation and judicial cooperation in criminal matters are essential for any data-sharing agreements with USA – as is an early start to negotiations on enforceable data-protection rights, in line with the Charter of Fundamental Rights of the European Union and with Directive 95/46/EC;
12. Instructs its President to forward this resolution to the Council, the Commission, the European Data Protection Supervisor, the governments and parliaments of the Member States, the Government of Canada, the Government of Australia, the US Congress and the Government of the United States of America.