

EUROPEAN PARLIAMENT

2004



2009

Session document

9.7.2007

B6-0281/2007

MOTION FOR A RESOLUTION

to wind up the debate on statements by the Commission
pursuant to Rule 103(2) of the Rules of Procedure
by Kathalijne Maria Buitenweg and Eva Lichtenberger
on behalf of the Verts/ALE Group
on the PNR agreement with the United States

European Parliament resolution on the PNR agreement with the United States

The European Parliament,

- having regard to Article 6 TEU and Article 8 of the Charter of Fundamental Rights;
- having regard to its resolutions on PNR of 7 September 2006 (P6_TA(2006)0354) and of 14 February 2007 (P6_TA(2007)0039),
- having regard to the previous PNR agreements between the European Community and the United States of America of 28 May 2004 and between the European Union and the United States of America of 19 October 2006,
- having regard to the draft agreement of 28 June 2007 between the European Union and the United States of America on the processing and transfer of PNR data by air carriers to the United States Department of Homeland Security (DHS), informally transmitted by the President-in-Office, Mr Schäuble, to the Chair of the LIBE committee,
- having regard to the letter from the DHS of 28 June 2007 on the assurances explaining its safeguarding of PNR data, informally transmitted by the President-in-Office, Mr Schäuble, to the Chair of the LIBE committee,
- having regard to the letter of the European Data Protection Supervisor of 27 June 2007, concerning the new PNR agreement with the US addressed to the President-in-Office, Mr Schäuble,
- having regard to Directive 2004/82/EC on the obligation of carriers to communicate passenger data,
- having regard to Rule 103(2) of its Rules of Procedure,

- A. whereas the declared purpose of the PNR agreement is to provide a legal basis for the transfer of EU PNR data to the US on the one hand, and to ensure an adequate protection of personal data and procedural safeguards for European citizens on the other,
- B. whereas the PNR agreement fails to meet the second objective, as it is substantively flawed as regards legal certainty, data protection and legal redress for EU citizens, in particular by open and vague definitions and multiple possibilities for exceptions,
- C. whereas adequate protection of the privacy and civil liberties of individual citizens and data quality controls are necessary if the sharing of data and information is to be a valuable and reliable tool in the fight against terrorism,
- D. concerned that the EU weakened its negotiating position by remaining unclear about its own demands and by repeatedly stating that it had a weak negotiating position without looking for tools to strengthen it,

General

1. Strongly regrets the lack of democratic oversight of any kind, the PNR agreement, prompted by US requirements, having been negotiated and agreed without any involvement of the European Parliament and leaving insufficient opportunity for national parliaments to exercise any influence over the negotiating mandate, to thoroughly assess the proposed agreement, or to propose modifications to it;
2. Is concerned at the persistent lack of legal certainty as regards the consequences and scope of the obligations imposed on the airlines as well as the legal relationship between the PNR agreement and the DHS letter;
3. Criticises the failure of the PNR agreement to offer an adequate level of protection of PNR data, and regrets the lack of clear and proportionate provisions as regards the sharing of information and retention and supervision by data protection authorities; is concerned about the numerous provisions that are to be implemented at the discretion of the DHS;

As regards the legal framework

4. Is concerned that the DHS's handling, collection, use and storage of PNR data is not founded on a proper agreement, but only on non-binding assurances that can be unilaterally changed by the DHS at any given moment and that do not convey any rights or benefits on any person or party;
5. Regrets the lack of clear purpose limitation given in the DHS letter, which notes that the PNR data may be used for the fight against terrorism and related crimes, but also for a range of unspecified additional purposes, notably 'for the protection of the vital interests of the data subject or other persons, or in any criminal judicial proceedings, or as otherwise required by law';
6. Welcomes the willingness of the DHS to move to the PUSH system no later than 1 January 2008 in principle, but regrets the fact that the shift – already foreseen in the 2004 PNR agreement – has been delayed for years, even if the condition of technical feasibility has long since been met; believes that the PUSH system for all carriers should be a *sine qua non* for any PNR transfer; stresses that the concurrent existence of the 'PUSH' and 'PULL' systems could lead to a distortion of competition between EU carriers;
7. Insists that the joint periodical review by the DHS and the EU must be comprehensive and take place annually and that the results must be published; insists that the review includes an assessment of the effectiveness of the measures in terms of greater security; regrets the fact that the review does not foresee any involvement of national or European data protection supervisors, which was provided for under the previous PNR agreement;
8. Insists that passengers must be properly informed of the use of their data and their rights, especially the right to redress and the right to be informed on what basis a traveller is stopped and that this obligation rests with the airlines; believes that the DHS and the Commission must take responsibility for the information provided to passengers and proposes that the 'Short notice for travel between the European Union and the United States' suggested by the Article 29 Working Party (WP 132) be made available to all passengers;

As regards data protection

9. Welcomes the provision that the US Privacy Act will be extended administratively to EU citizens;
10. Regrets the fact that the DHS reserves the right to introduce exemptions under the Freedom of Information Act;
11. Deplores the fact that the length of retention of PNR data will be extended from 3.5 years to 15 years, as well as this being retroactively applied to data collected under the previous PNR agreements; strongly criticises the fact that after the 15-year retention period, composed of a 7-year 'active' and an 8-year 'dormant' period, there is no guarantee that the data will be definitively deleted;
12. Takes note of the reduction in data fields from 34 to 19, but points out that the reduction is largely cosmetic due to the merging and renaming of data fields instead of actual deletion;
13. Notes with concern that sensitive data (i.e. personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, and data concerning the health or sex life of the individual), will be made available to the DHS and that these data may be used by the DHS in exceptional cases;
14. Is concerned that data will be kept for seven years in 'active analytical databases', leading to a significant risk of massive profiling and data mining, which is incompatible with basic European principles and is a practice still under discussion in the US Congress;

As regards sharing of information

15. Regrets the failure of the agreement to define precisely which US authorities may access the PNR data;
16. Strongly opposes the provision that third countries in general may be given access to PNR data if adhering to DHS-specified conditions, and that third countries may exceptionally, in unspecified emergency cases, be given access to PNR data without assurances that the data will be handled according to the DHS level of data protection;

As regards a European PNR system

17. Notes that the agreement makes reference to a possible future PNR system at the level of the EU or in one or more of its Member States, and the provision that any PNR data in such a system may be made available to the DHS;
18. Demands that the Commission clarify the state of play with regard to an EU PNR system, including making available the feasibility study it has pledged to undertake;

19. Repeats the concerns expressed by the Article 29 Working Party as regards the use of PNR data for law enforcement purposes, notably calling on the Commission to substantiate:
 - (a) the operational need and purpose of collecting PNR data at the point of entry into EU territory;
 - (b) the added value of collecting PNR data in the light of the already existing control measures at the point of entry into the EU for security purposes, such as the Schengen system, the Visa Information System, and the API system;
 - (c) the use that is foreseen for PNR data, in particular whether it is for identifying individuals in order to ensure air security, for identifying who enters the territory of the EU, or for general negative or positive profiling of passengers;
20. Insists that the European Parliament be involved in all relevant developments, pursuant to Articles 71(1)(c) and 251 of the EC Treaty;
21. Reserves the right to bring an action before the Court of Justice in respect of both the legal basis and the content of the international agreement in order to seek verification of its legality and, in particular, the compatibility thereof with the protection of fundamental rights;

o
o o

22. Instructs its President to forward this resolution to the Council, the Commission, the Governments and Parliaments of the Member States, and the US Congress.