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PROPOSAL FOR A RECOMMENDATION TO THE COUNCIL

pursuant to Rule 114(1) of the Rules of Procedure

by Sophia in 't Veld

on behalf of the ALDE Group

on the Agreement between the European Union and Australia on the processing and transfer of European Union-sourced passenger name record (PNR) data by air carriers to the Australian customs service

European Parliament recommendation to the Council on the Agreement between the European Union and Australia on the processing and transfer of European Union-sourced passenger name record (PNR) data by air carriers to the Australian customs service

The European Parliament,

- having regard to Articles 2, 6, 24, 29 and 38 of the Treaty on European Union which are the legal foundation for a European area of freedom, security and justice and for international negotiations with third countries and organisations as far as judicial police cooperation in penal matters is concerned,
- having regard to the Council Decision 2008/651/CFSP/JHA of 30 June 2008 on the signing, on behalf of the European Union, of an Agreement between the European Union and Australia on the processing and transfer of European Union-sourced passenger name record (PNR) data by air carriers to the Australian Customs Service, and to the Agreement itself ([1]),
- having regard to Rule 114(1) of its Rules of Procedure,

1. Addresses to the Council the following observations and recommendations:

On procedural aspects

- (a) considers that the procedure followed for the conclusion of the Agreement lacks democratic legitimacy, as at no stage is there any meaningful democratic scrutiny or parliamentary approval; notes that Council routinely chooses this procedure for the conclusion of international agreements that affect fundamental rights of European citizens;
- (b) maintains its doubts on the legal basis chosen by the Council for an international agreement which is only focused on a third state's internal security needs and which has no added value as far as the security of the EU, of its Member States or of EU citizens is concerned; reserves therefore its right to intervene before the Court of Justice if the legitimacy of this agreement is raised by a third party;

On data protection

- (c) welcomes the fact that the Australian Privacy Act applies unabridged to EU citizens, but is concerned about any exceptions and exemptions that may leave EU citizens with incomplete legal protection;
- (d) with regard to the rights of the data subjects, the agreement provides that Australia shall provide a system, accessible by individuals regardless of their nationality or country of residence, for individuals to exercise their rights; with a view to informing passengers, the willingness of Customs to inform the public regarding the processing of PNR data should

be welcome;

- (e) believes that an exchange of diplomatic notes is an unacceptable method for amending the list of departments and agencies that may have access to PNR data;
 - (f) taking into account the categories of data transferred to Customs, it can be deplored that the data elements requested are the same categories of data as in the 2007 US agreement (the 34 data fields were grouped in 19 categories of data, giving the impression that the amount of transferable data had been markedly reduced, which was actually not the case); such a wide collection of data is not justified and must be considered disproportionate;
2. Invites the Member States and the national parliaments which are currently examining this Agreement and/or the one with the US (BE, CZ, NL, ES, HU, PL) to take into account the observations and recommendations raised above;
 3. Reminds the Council that in the event of entry into force of the Treaty of Lisbon all the PNR agreements should be reviewed by associating the European Parliament on a fair basis;
 4. Instructs its President to forward this resolution to the Council, the Commission, the governments and parliaments of the Member States and to the Australian Government and Parliament.

[1] OJ L 213 of 8/08/08 pages 47-57. See: <http://eur-lex.europa.eu/JOIndex.do?year=2008&serie=L&textfield2=213&Submit=Search&ihmlang=en>