EUROPEAN PARLIAMENT

2004 *2009*

Committee on Civil Liberties, Justice and Home Affairs

PE415.229v01-00

10.11.2008

AMENDMENTS
1 - 31

Draft motion for a resolution
Sophia in 't Veld
(PE415.025v01-00)

on the Council framework decision on the use of Passenger Name Record (PNR) for law enforcement purposes

AM_Com_NonLegRE

Amendment 1
Martine Roure, Jan Marinus Wiersma

Draft motion for a resolution
Paragraph -1 (new)

Draft motion for a resolution	*Amendment*
	-1. Acknowledges the need for stronger cooperation at European level and internationally in the fight against terrorism and serious crime; recognises that the collection and processing of data can be a valuable tool for law enforcement purposes;

Or. en

Amendment 2
Martine Roure, Jan Marinus Wiersma

Draft motion for a resolution
Paragraph -1 a (new)

Draft motion for a resolution	*Amendment*
	-1a. Is therefore not in principle opposed to additional measures to provide the investigatory bodies and law enforcement authorities of the Member States with access to data that allow them to more effectively fight serious crime and counter terrorist threats; emphasises, however, that since such measures have a considerable impact on the personal life of Union citizens, their justification in terms of necessity, proportionality, and usefulness in achieving their stated objectives needs to be convincingly substantiated, and stresses that effective safeguards for privacy and legal protection must be put in place; believes

that this is a precondition to achieve the necessary political legitimacy for a measure which citizens may view as an inappropriate intrusion into their privacy;

Or. en

Amendment 3
Martine Roure, Jan Marinus Wiersma

Draft motion for a resolution
Paragraph -1 b (new)

Draft motion for a resolution	*Amendment*
	-1b.) Maintains its strong reservations as to the necessity for and the added value of the proposal for the establishment of an EU PNR system and the safeguards which it contains, notwithstanding the explanations and clarifications given by the Commission and the Council so far, both orally and in writing; furthermore observes that many of the questions raised by the European Parliament, the Article 29 Working Party and the Working Party on Police and Justice, the European Data Protection Supervisor, and the Agency for Fundamental Rights (FRA), have not been satisfactorily answered;

Or. en

Amendment 4
Martine Roure, Jan Marinus Wiersma

Draft motion for a resolution
Paragraph 1

Draft motion for a resolution	*Amendment*
1. ***Deeply*** regrets that the ***current*** Commission proposal ***is so vaguely formulated and poorly justified that it***	1. Regrets that the ***formulation and justification of the*** Commission proposal ***left so many legal uncertainties with***

does not meet the minimum conditions of legal certainty required by the Treaties for a legislative procedure and association of the European Parliament. Notes that the same concerns on the lack of legal certainty of the proposal:	***respect to compatibility with the ECHR and the Charter of Fundamental Rights, but also its legal basis, which raised questions concerning the appropriate role in the*** legislative procedure of the European Parliament; notes that the same concerns on the lack of legal certainty of the proposal:
- are raised in the opinions expressed by the Fundamental Rights Agency, the European Data Protection Supervisor and the Article 29 Working Party and the Working Party on Police and Justice	- are raised in the opinions expressed by the Fundamental Rights Agency, the European Data Protection Supervisor and the Article 29 Working Party and the Working Party on Police and Justice,
- ***obliged*** the Council ***to restart from scratch the evaluation*** of the possible scope and impact of a future European initiative in this domain, and to collect ***all the*** information ***missing in the Commission proposal***;	- ***required*** the Council ***to undertake a substantial review*** of the possible scope and impact of a future European initiative in this domain, and to collect ***and incorporate significant amounts of additional*** information***, including the above-mentioned opinions***;

Or. en

Amendment 5
Emine Bozkurt

Draft motion for a resolution
Paragraph 1 - indent 2

Draft motion for a resolution	*Amendment*
-obliged the Council to restart from scratch the evaluation of the possible scope and impact of a future European initiative in this domain, and to collect all the information missing in the Commission proposal;	- obliged the Council to restart from scratch the evaluation of the possible scope and impact of a future European initiative in this domain, ***without widening the scope either in geographical or substantive terms,*** and to collect all the information missing in the Commission proposal;

Or. en

Amendment 6
Martine Roure, Jan Marinus Wiersma

Draft motion for a resolution
Paragraph 2

Draft motion for a resolution	*Amendment*
2. Considers that under these conditions the European Parliament has not received the minimum set of informations necessary according to the Treaty to express a formal opinion on the Commission proposal.	***deleted***

Or. en

Amendment 7
Martine Roure, Jan Marinus Wiersma

Draft motion for a resolution
Heading (new) (after paragraph 2)

Draft motion for a resolution	*Amendment*
	Purpose Limitation

Or. en

Amendment 8
Martine Roure, Jan Marinus Wiersma

Draft motion for a resolution
Paragraph 2 a (new)

Draft motion for a resolution	*Amendment*
	2a. Stresses that the principle of purpose limitation is one of the basic principles of data protection; in particular, Council of Europe Convention 108 for the Protection of Individuals with regard to Automatic Processing of Personal Data states that personal data shall be 'stored for specified and legitimate purposes and not used in a

	way incompatible with those purposes' (Article 5(b)); derogations from this principle are allowed only insofar as they are provided for by law and constitute a necessary measure in a democratic society in the interests of, inter alia, the 'suppression of criminal offences' (Article 9(2)); the case-law of the European Court of Human Rights has made it clear that these derogations shall be proportionate, precise and foreseeable, pursuant to Article 8(2) of the ECHR;

Or. en

Amendment 9
Martine Roure, Jan Marinus Wiersma

Draft motion for a resolution
Paragraph 3

Draft motion for a resolution	*Amendment*
3. Share the ***Fundamental rights Agency*** view that the mere fact that commercial data are collected by private companies and could be useful also for security purposes is not a sufficient ***reasons*** to exploit them ***if the same or even better results could be obtained by improving the mutual legal assistance between law enforcements authorities***;	3. Shares the ***FRA'S*** view that the mere fact that commercial data are collected by private companies and could be useful also for security purposes is not a sufficient ***reason*** to exploit them;

Or. en

Amendment 10
Martine Roure Jan Marinus Wiersma

Draft motion for a resolution
Paragraph 3 a (new)

Draft motion for a resolution	*Amendment*
	3a. Deplores the lack of precise purpose

limitation which is an essential safeguard in the imposition of restrictive measures, and such protection is even more important as regards secret surveillance measures, owing to the heightened risks of arbitrariness in such circumstances; as the stated purposes and definitions are imprecise and open-ended, they should be strictly specified to avoid exposing the EU PNR scheme to legal challenge;

Or. en

Amendment 11
Martine Roure, Jan Marinus Wiersma

Draft motion for a resolution
Paragraph 3 b (new)

Draft motion for a resolution	*Amendment*
	3b. Recalls that in the event of any extension of the scope of the proposal, the Commission and the Council should clarify in detail in respect of each stated purpose what use will be made of the PNR data and why existing law enforcement powers are not sufficient; for each specific purpose the appropriate legal base must be established;

Or. en

Amendment 12
Martine Roure Jan Marinus Wiersma

Draft motion for a resolution
Paragraph 3 c (new)

Draft motion for a resolution	*Amendment*
	Proportionality
	3c. Recalls that Article 8 of the ECHR and Article 52 of the Charter of

Fundamental Rights require that such a massive infringement of the right to the protection of personal data be legitimate and justified by a pressing social need, provided for by law and proportionate to the end pursued, as well as necessary and genuine in a democratic society;

Or. en

Amendment 13
Martine Roure, Jan Marinus Wiersma

Draft motion for a resolution
Paragraph 3 d (new)

Draft motion for a resolution	*Amendment*
	3d. Reiterates its concerns regarding the measures outlining an indiscriminate use of PNR data for profiling and for the definition of risk assessment parameters; recalls that any kind of profiling based on ethnicity, nationality, religion should be expressly banned as incompatible with the prohibition of any discrimination as defined in the Treaties and in the Charter of Fundamental Rights;

Or. en

Amendment 14
Martine Roure, Jan Marinus Wiersma

Draft motion for a resolution
Paragraph 3 e (new)

Draft motion for a resolution	*Amendment*
	3e. Believes that EU data protection rules strictly limit the use of profiling based on personal data (Article 8 of the Charter of Fundamental Rights and the ECHR); reiterates therefore that, when deemed necessary, profiling based on PNR data

should only be intelligence-led, based on individual cases and factual parameters;

Or. en

Amendment 15
Martine Roure, Jan Marinus Wiersma

Draft motion for a resolution
Paragraph 3 f (new)

Draft motion for a resolution	*Amendment*
	3f. Reiterates that PNR data may be very useful and supportive as additional evidence in a specific investigation into known suspects and associates; however, it is not yet proven that PNR data are useful for massive automated searches and analysis on the basis of risk criteria or patterns (i.e. profiling or data mining) seeking potential terrorists;

Or. en

Amendment 16
Martine Roure Jan Marinus Wiersma

Draft motion for a resolution
Paragraph 3 g (new)

Draft motion for a resolution	*Amendment*
	Protection of Personal Data
	3g. Stresses that the adoption of a framework decision on data protection in the third pillar is a precondition for any EU PNR scheme, and that a possible EU PNR system should also set strict and specific data protection rules in order to fill any gap between first pillar and third pillar data protection rules, in particular to define clearly which data protection rules apply to Passenger Information

Units (PIUs) and to insure the traceability of all access, transfer and use of PNR data;

Or. en

Amendment 17
Martine Roure, Jan Marinus Wiersma

Draft motion for a resolution
Paragraph 3 h (new)

Draft motion for a resolution	*Amendment*
	3h. Requests a prohibition of the use of sensitive data; notes with concern that it is impossible for airlines to filter sensitive data before their transfer to PIUs, and therefore asks for the definition of strict conditions for the treatment of these data by PIUs, as defined by the FRA in its opinion;

Or. en

Amendment 18
Martine Roure, Jan Marinus Wiersma

Draft motion for a resolution
Paragraph 3 i (new)

Draft motion for a resolution	*Amendment*
	3i. Requests a clear definition of the role and powers of the PIUs, in particular in terms of transparency, democratic accountability and in order to lay down appropriate data protection rules; requests that the role of PIUs be limited to the transfer of data to competent authorities in order to ensure that risk assessments may only be carried out by competent authorities and in the context of an enquiry; asks for clarification of the responsibility of data protection

authorities in cases where Member States cooperate to set up a joint PIU;

Or. en

Amendment 19
Martine Roure, Jan Marinus Wiersma

Draft motion for a resolution
Paragraph 3 j (new)

Draft motion for a resolution	*Amendment*
	3j. Reiterates that passengers must be informed in full and in an accessible manner of the details of the scheme and of their rights and that Member State authorities are responsible for providing this information; suggests that the example of the "denied boarding" information in airports should be used; considers it essential to define a right of access, rectification and appeal for passengers;

Or. en

Amendment 20
Martine Roure, Jan Marinus Wiersma

Draft motion for a resolution
Paragraph 3 k (new)

Draft motion for a resolution	*Amendment*
	Consequences for Carriers
	3k. Notes that air carriers collect PNR data for commercial purposes and that data are not systematically collected to complete all PNR fields; insists that the airlines should not be required to collect data which are additional to those which they are collecting for their commercial purposes; air carriers should not be made

responsible for verifying whether the records are complete and accurate; demands a clear evaluation of the costs involved in an EU PNR system so that any additional cost is borne by the requesting parties;

Or. en

Amendment 21
Martine Roure, Jan Marinus Wiersma

Draft motion for a resolution
Paragraph 3 l (new)

Draft motion for a resolution	*Amendment*
	Transfer to Third Countries
	3l. Requests that transfer of EU PNR data to third countries be possible only after the conclusion of an EU Agreement and after the assessment of the appropriate level of data protection in that country;

Or. en

Amendment 22
Martine Roure, Jan Marinus Wiersma

Draft motion for a resolution
Heading (new) (before paragraph 4)

Draft motion for a resolution	*Amendment*
	Final Recommendations

Or. en

Amendment 23
Martine Roure, Jan Marinus Wiersma

Draft motion for a resolution
Paragraph 4

Draft motion for a resolution	*Amendment*
4. Invites the Council if it ***intend*** to continue the examination of the Commission text to take in account the recommendations ***set in annex of this resolution*** and to duly justify the conditions of pressing social need which could make this new EU intervention "necessary" as it is required by Article 8 of the ECHR.;	4. Invites the Council if it ***intends*** to continue the examination of the Commission text to take in account the ***above*** recommendations and to duly justify the conditions of pressing social need which could make this new EU intervention "necessary" as it is required by Article 8 of the ECHR; ***considers these to be the minimum conditions of support for the introduction of an EU PNR system; is ready to contribute and participate in this work at all levels;***

Or. en

Amendment 24
Martine Roure, Jan Marinus Wiersma

Draft motion for a resolution
Paragraph 5

Draft motion for a resolution	*Amendment*
5. Considers ***that only if and when*** the current EU and Schengen security cooperation mechanisms and tools aimed to ensure the aviation security, to protect the external borders, and to fight ***the*** terrorism ***would had be proven as inadequate to the stated purposes, additional general instruments of passengers surveillance such an*** EU-PNR ***could be studied***;	5. ***Reiterates its calls for a clarification of the relationship between a possible EU-PNR system and other measures such as Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data, the proposed Entry-Exit scheme, the Electronic System for Travel Authorisation, biometrics in passports and travel documents, SIS, VIS, Regulation (EC) No. 2320/2002 of the European Parliament and of the Council of 16 December 2002 establishing common rules in the field of civil aviation security, and national border protection schemes; notes with regret that the implementation of some of these measures is considerably delayed and*** considers that ***a full and systematic evaluation of*** the current EU and Schengen security cooperation

mechanisms and tools aimed to ensure the aviation security, to protect the external borders, and to fight terrorism ***could help establish the added value of the proposed*** EU-PNR;

Or. en

Amendment 25
Philip Bradbourn

Draft motion for a resolution
Paragraph 6 a (new)

Draft motion for a resolution	*Amendment*
	6a. Recalls that the Court of Justice of the European Communities has already challenged the EU-US PNR Agreement on the grounds that its legal basis is wrong; calls therefore on the Commission to examine carefully which legal basis is appropriate;

Or. en

Amendment 26
Philip Bradbourn

Draft motion for a resolution
Paragraph 8 a (new)

Draft motion for a resolution	*Amendment*
	8a. Emphasises in this context that each Member State bears the initial responsibility for the collection of those PNR data and its own data protection rules; stresses that safeguards are mandatory when those PNR data are transmitted, exchanged or transferred to or between other Member States; is therefore of the opinion that access to PNR data exchanged between Member

States should be strictly limited to only those authorities that deal with border control, counter terrorism and organised crime; other law enforcement agencies may be granted access subject to judicial approval;

Or. en

Amendment 27
Philip Bradbourn

Draft motion for a resolution
Annex, paragraphe 1

Draft motion for a resolution	*Amendment*
1. Notes with concern that the need for Community action has not been demonstrated; in this context, questions the claim by the Commission that the stated aim of the proposal is harmonisation of national schemes, when only a few Member States have a system for the use of PNR data for law enforcement and other purposes, or plans for such a scheme. Therefore the EC proposal does not harmonise national systems (as they are non existent), but it merely creates the obligation for all Member States to set up a system;	1. Notes with concern that the need for Community action has not ***yet*** been demonstrated ***sufficiently***; in this context, questions***,*** the claim by the Commission that the stated aim of the proposal is harmonisation of national schemes, when only a few Member States have a system for the use of PNR data for law enforcement and other purposes, or plans for such a scheme. Therefore the EC proposal does not harmonise national systems (as they are non existent), but it merely creates the obligation for all Member States to set up a system;

Or. en

Amendment 28
Philip Bradbourn

Draft motion for a resolution
Annex, paragraph 3

Draft motion for a resolution	*Amendment*
3. Recalls that Article 8 of the ECHR demands that necessity can only be	3. Recalls that Article 8 of the ECHR demands that necessity can only be

demonstrated if the proposed measures are justified by a pressing social need and when they are in conformity with the principles of proportionality and subsidiarity;	demonstrated if the proposed measures are justified by a pressing social need and when they are in conformity with the principles of proportionality and subsidiarity; ***deplores in this context the lack of a purpose limitation for this envisaged police cooperation measure to issues such as counter terrorism and organised crime;***

Or. en

Amendment 29
Philip Bradbourn

Draft motion for a resolution
Annex, paragraph 9

Draft motion for a resolution	*Amendment*
9. Deplores the lack of precise purpose limitation which is an essential guarantee in the imposition of restrictive measures, and such protection is even more important as regards secret surveillance measures, due to the heightened risks of arbitrariness in such circumstances. As the stated purpose is not clear, therefore the EU PNR scheme could be open to legal challenge;	9. Deplores the lack of precise purpose limitation ***to e.g. counter terrorism and organised crime,*** which is an essential guarantee in the imposition of restrictive measures, and such protection is even more important as regards secret surveillance measures, due to the heightened risks of arbitrariness in such circumstances. As the stated purpose is not clear, therefore the EU PNR scheme could be open to legal challenge.

Or. en

Amendment 30
Sophia in 't Veld

Draft motion for a resolution
Annex, paragraph 10

Draft motion for a resolution	*Amendment*
10. Expresses its surprise over the fact that the Commission seems to be confused as to	10. Expresses its surprise over the fact that the Commission seems to be confused as to

what can and cannot be done with PNR data. PNR data may be very useful as supportive, additional evidence in a specific investigation on known suspects and associates. However, PNR data are ***useless*** for massive automated searches and analysis on the basis of risk criteria or patterns (i.e. profiling or data mining) seeking *potential* terrorists[1];	what can and cannot be done with PNR data. PNR data may be very useful as supportive, additional evidence in a specific investigation on known suspects and associates. However, ***there is no evidence that*** PNR data are ***useful*** for massive automated searches and analysis on the basis of risk criteria or patterns (i.e. profiling or data mining) seeking *potential* terrorists[1];

Or. en

Amendment 31
Sophia in 't Veld

Draft motion for a resolution
Annex, paragraph 11

Draft motion for a resolution	*Amendment*
11.Stresses, furthermore, that European data protection rules ***prohibit*** profiling on the basis of personal data (Article 8 of the European Charter of Fundamental Rights and the European Convention of Human Rights);	11. Stresses, furthermore, that European data protection rules ***place restrictions on the application of*** profiling on the basis of personal data (Article 8 of the European Charter of Fundamental Rights and the European Convention of Human Rights);

Or. en

[1] CRS report for the American Congress "Data Mining and Homeland Security: An Overview by Jeffrey Seifert; "Effective Counter-terrorism and the Limited Role of Predicative Data Mining by CATO Institute; "Protecting Individual Privacy in the Struggle Against Terrorists: A Framework for Program Assessment"; "No dream ticket to security" by Frank Kuipers, Clingendael Institute, August 2008