EUROPEAN PARLIAMENT

2004



2009

Committee on Civil Liberties, Justice and Home Affairs

PROGRAMME

Public Seminar

PNR/SWIFT/Safe Harbour: ARE TRANSATLANTIC DATA PROTECTED?

(Transatlantic relations and data protection)

Monday 26 March 2007

15:00 - 18:30

Brussels Hemicycle

(Paul-Henri Spaak Building)

OJ\658892EN.doc PE 386.369v02-00

EN EN

Introduction

On the 14th of February the European Parliament adopted with a large majority a resolution on SWIFT and PNR which states "...it is necessary to define with the US a common and shared framework to safeguard the necessary guarantees that are needed in the special EU-US partnership in the fight against terrorism, which could also deal with all aspects concerning the free movement of persons between the EU and the US and considers that, in this perspective, contacts should be strengthened between Parliament and Congress".

In order to strengthen the transatlantic dialogue a LIBE delegation will contact the responsible committees of Congress to evaluate possible improvements of the current context. The Seminar intends to take stock of the factual and legal situation which identifies the transfer of personnel data to the USA for security reasons, particularly in the framework of:

- data of airline passengers (PNR)
- data related to financial transfers (SWIFT)
- data exchanged between private parties (Safe Harbour).

The Seminar will open (I) with a general presentation of both, the constitutional and legal context of data processed in Europe¹, and in the USA, as well as the applicable principles on the international level for transfer of personal data (principles of the OECD of 1980).

Afterwards panels will (II and III) will examine the PNR case and the SWIFT and Safe Harbour case. The objective is to collect as many facts and data as possible from the participants, concerning:

- the information given to the users and on the applicable contractual rules
- the amount of data collected for security reasons by the US authorities
- the problems which have arisen following the collection of data, and issues linked to processing these data
- the use and the dissemination of personal data
- how does the joint EU and US review work (see the PNR Agreement)
- rules on the redress mechanism (compensation)
- whether these data are still necessary and proportionate for the purpose of fighting terrorism?

During the debate we will also examine improvements which could be made to the internal EU and US legislation, as well as to the current forms of transatlantic cooperation with the goal of

- providing European citizens in the USA with the same legal protection as enjoyed by American citizens (the same way US citizens enjoy the same right of EU citizens when in Europe)
- who strengthening the judicial and police cooperation by the US and the EU and its Member States

We would like to invite to this Seminar the representatives from: the Council, the Commission and the US administration; national and European data protection authorities meeting in the Directive 95/46, Art. 29 Working Party²; economic actors and representatives from European and civil society concerned with PNR, SWIFT and Safe Harbour.

The Seminar is also open to representatives from the European as well as National Parliaments and Ministries of the Member States, considering their essential role in this domain.

To provide structure to the discussions the participants are invited to take account of some relevant questions which were raised in the recent European Parliament Resolution³.

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PRESS CONFERENCE (14h15-15h00)

Press Conference given by Mr. Jean-Marie CAVADA, Chairman of the Committee on Civil Liberties, Justice and Home Affairs and Mr. Peter SCHAAR, Chairman of Article 29 Data Protection Working Party

OPENING REMARKS (15h00-15h05)

INTRODUCTION

Welcome by Mr. Jean-Marie CAVADA, Chairman of the Committee on Civil Liberties, Justice and Home Affairs (5 min.)

PANEL SESSION I (15h05 - 16h10)

EU-US DATA PROTECTION LEGAL FRAMEWORK AND INTERNATIONAL PRINCIPLES ON EXCHANGING PERSONAL DATA

The legal context of data processed for security reasons in the USA and in Europe and the principles applied to the international transfer of data (OECD principles of 1980) Prof. Stefano $RODOTA^4$ (5-7 min.)

Chairman of Art. 29 WP, Professor of Law, Professor of civil Law, University of Rome.

What are the possible limitations of the combined Member States' Constitutional prerogatives and EU level requirements, and what are the possible means of cooperation between legislative and judiciary authorities in the field of data protection?

Prof. Spiros SIMITIS⁵ (5-7 min.)

Professor of Law, Johann Wolfgang Goethe Universität Frankfurt am Main

What are the limits set by the OECD Principles of 1980^6 and the Convention 108^7 of the Council of Europe, and by EC and EU law regarding transfer of personal data to third countries, particularly to the US?

Prof. Francesca BIGNAMI⁸ (5-7 min.)

Professor of Law, DUKE University, Durham USA

An analysis of the 'Privacy Act' (actual state and possible evolution); role of the Privacy officers in Federal Departments and foreseen proposals to establish an independent authority to oversee its implementation.

Prof. Marc ROTENBERG¹⁰ (5-7 min.)

Executive Director of the Electronic Privacy Information Center (EPIC) in Washington, DC (teaches information privacy law).

The Privacy Act and the data protection granted to non US citizens.

Questions and answers

PANEL SESSION II (16h10-17h20)

PASSENGER DATA (CURRENT AND FUTURE PNR AGREEMENTS)

Mr. Peter SCHAAR (5-7 min.)

Chairman of Article 29 Data Protection Working Party, Directorate-General Justice, Freedom and Security, Data Protection Unit

Presentation of the position of the Art. 29 Working Party, on PNR^{11}

Mr. Arnaud CAMUS, AEA representative (5-7 min.)

Problems encountered by airlines in relation to processing the passenger data.

Mr. Ben SIMMONS, Amadeus (5-7 min.)

Problems encountered by Amadeus in relation to data transfers/data security.

Dr. Gus HOSEIN¹², Senior Fellow, Privacy International (5-7 min.)

Are US Airlines/passengers treated differently to their European counterparts in relation to PNR?

*Mr. Barry STEINHARDT*¹³, *Director, ACLU Technology and Liberty Project (5-7 min.)*Concerns related to PNR and ATS, see the open letter sent to the EU Institutions¹⁴

Questions and answers

PANEL SESSION III (17h20 - 18h00)

SWIFT AND SAFE HARBOUR

Co-chairing Mrs. Pervenche BERÈS and Mr. Jean-Marie CAVADA

Prof. Yves POULLET¹⁵ (5-7 min.)

Professor at the University of Namur and Liege, Dean of the Faculty of Law of Namur, Director of the CRID

The framework of the treatment of data by multinationals in the EU and US. Possible legal conflicts in the treatment of personal data.

Mr. Peter SCHAAR Chairman (of the Art. 29 WP) (5-7 min.)

Presentation of the position of Art. 29 Working Party, on SWIFT and on exchange of data in the international framework.

SWIFT: Ms. Blanche PETRE (5-7 min.)

Presentation of SWIFT's understanding of their obligations under EU and US law.

European Bank Federation: Mr. Thorsten HÖCHE and Mr. Sébastien De BROUWER (5-7 min.)

Obligations and contracts between banks, customers and the impact on SWIFT services.

Questions and answers

CONCLUDING REMARKS BY: (18h00 - 18h30)

EDPS: Peter HUSTINX

The position of EDPS on the transfer of personal data in the PNR, SWIFT and Safe Harbour context

the Council Presidency: Mr Wolfgang SCHÄUBLE (to be confirmed) Presentation on the actual state of negotiations with US Administration.

the Commission: Mr Franco FRATTINI (to be confirmed)
Presentation on its position on the subject outlined above
Closing remarks of President Jean-Marie CAVADA

ANNEX

PRACTICAL GUIDELINES FOR THE DEBATE

Presentations will be limited to 5-10 minutes (see programme for details).

During the discussion, so as to make it possible for the highest possible number of parliamentarians to intervene, speaking time will be limited to 2 minutes per contribution or question.

The floor will be given to Members in the order in which requests are received.

Speakers wishing to supplement their speeches may do so in writing by submitting documents (preferably in English or French) in advance to the secretariat (email: <u>ip-libe@europarl.europa.eu</u>). These documents will be circulated during the meeting.

IMPORTANT NOTICE FOR THOSE WISHING TO ATTEND THE HEARING

This seminar is open to the public. However, for security reasons, participants who do not have a European Parliament access badge must obtain a pass in advance. Those wishing to obtain such a pass should contact the seminar secretariat (<u>ip-libe@europarl.europa.eu</u>) before 21 March 2007. It is essential to provide us with your full name, address <u>and</u> date of birth. Without this information, the Security Service will not provide entry passes.

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ENDNOTES

¹ The general Directive 95/46 on Data Protection is accessible at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31995L0046:EN:HTML The specific Directive 2002/58 on Data Protection in the electronic communications http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32002L0058:EN:HTML The EC Regulation 45/2001, applicable to the EC Institution is accessible at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001R0045:EN:HTML
² The opinions of the WP 29 are available:

http://ec.europa.eu/justice_home/fsj/privacy/workinggroup/wpdocs/2007_en.htm

The latest EP resolution on the PNR, Swift Case is at http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2007-0039+0+DOC+XML+V0//EN&language=EN

- ⁴ Profile at: http://www.mediamente.rai.it/mmold/english/bibliote/biografi/r/rodota.htm
- ⁵ Profile of Professor Spiros Simitis:

Recent artcles: http://www.habeasdata.org/Interview-with-Spiros-Simitis

- 6 http://www.oecd.org/document/18/0,2340,en 2649 34255 1815186 1 1 1 1,00.html
- http://conventions.coe.int/Treaty/en/Treaties/Html/108.htm
- ⁸ See also http://www.law.duke.edu/fac/bignami/bibliography.html,

http://eprints.law.duke.edu/archive/00001603/

- The US Privacy Act of 74 is accessible at: http://www.usdoj.gov/oip/privstat.htm
- Marc Rotenberg Executive Director of the Electronic Privacy Information Center (EPIC) http://www.epic.org/
- ¹¹ Presentation of the Position of the Article 29 Working Party from their internal working session (09h00-13h30, March 26, 2007)
- Gus Hosein Profile at: http://www.lse.ac.uk/people/i.r.hosein@lse.ac.uk/
- Prof Steinhardt profile at: http://www.aclu.org/about/staff/13282res20020211.html
- The open letter is accessible at http://www.privacyinternational.org/issues/policylaundering/ats/cavada.pdf
- 15 Yves Poullet profile at :

http://www.e-administration.be/index.php?action=article&id article=54007&id rubrique=6709