



EUROPEAN PARLIAMENT

2009 - 2014

Plenary sitting

12.4.2012

B7-0200/2012

MOTION FOR A RESOLUTION

pursuant to Rule 90(6) of the Rules of Procedure

on seeking an opinion from the Court of Justice on the compatibility with the Treaties of the EU-US Agreement on the use and transfer of Passenger Name Records to the US Department of Homeland Security
(2012/2615(RSP))

Cornelia Ernst

on behalf of the GUE/NGL Group

European Parliament resolution on seeking an opinion from the Court of Justice on the compatibility with the Treaties of the EU-US Agreement on the use and transfer of Passenger Name Records to the US Department of Homeland Security (2012/2615(RSP))

The European Parliament,

- having regard to Article 218 of the Treaty on the Functioning of the European Union (TFEU), and in particular paragraphs 6 and 11 thereof,
- having regard to the draft Council decision on the conclusion of the Agreement between the United States of America and the European Union on the use and transfer of Passenger Name Records to the United States Department of Homeland Security¹,
- having regard to the Agreement between the United States of America and the European Union on the use and transfer of Passenger Name Records to the United States Department of Homeland Security, annexed to the aforementioned draft Council decision²,
- having regard to the Commission communication on the global approach to transfers of Passenger Name Record (PNR) data to third countries (COM(2010)0492),
- having regard to its resolutions of 14 February 2007 on SWIFT, the PNR agreement and the transatlantic dialogue on these issues³, of 22 October 2008 on the evaluation of the Australia-EU PNR agreement⁴, of 5 May 2010 on the launch of negotiations for Passenger Name Record (PNR) agreements with the United States, Australia and Canada⁵, and of 11 November 2010 on the global approach to transfers of passenger name record (PNR) data to third countries⁶,
- having regard to the opinions of the European Data Protection Supervisor of 19 October 2010 on the Communication from the Commission on the global approach to transfers of Passenger Name Record (PNR) data to third countries⁷ and of 9 December 2011 on the proposal for a Council Decision on the conclusion of the Agreement between the United States of America and the European Union on the use and transfer of Passenger Name Records to the United States Department of Homeland Security⁸,
- having regard to Opinion 7/2010 of the Article 29 Data Protection Working Party, adopted

¹ 17433/2011.

² 17434/2011.

³ OJ C 287 E, 29.11.2007, p. 349.

⁴ OJ C 15 E, 21.1.2010, p. 46.

⁵ OJ C 81 E, 15.3.2011, p. 70.

⁶ OJ C 74E, 13.3.2012, p. 8.

⁷ OJ C 357, 30.12.2010, p. 7.

⁸ OJ C 35, 9.2.2012, p. 16.

on 12 November 2010, on the Commission communication on the global approach to transfers of Passenger Name Record (PNR) data to third countries, and to the letter of 6 January 2012 concerning the EU-US Agreement on the use and transfer of Passenger Name Records to the US Department of Homeland Security,

- having regard to Article 16 TFEU and Articles 7 and 8 of the Charter of Fundamental Rights of the European Union,
 - having regard to the recommendation of the Committee on Civil Liberties, Justice and Home Affairs and the opinion of the Committee of Foreign Affairs (A7-0099/2012),
 - having regard to Rule 90(6) of its Rules of Procedure,
- A. whereas a European legal framework allowing airlines to transfer passengers' PNR data was established by Council Decision 2004/496/EC of 17 May 2004 on the conclusion of an Agreement between the European Community 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, Bureau of Customs and Border Protection⁹ (hereinafter 'the Agreement');
- B. whereas the European Court of Justice ruling in Joined Cases C-317/04 and C-318/04 of 30 May 2006 annulled this Council decision for lack of an appropriate legal basis;
- C. whereas, following the entry into force of the Lisbon Treaty on 1 December 2009, the conclusion of new PNR agreements requires Parliament's consent before such agreements can be finally adopted by the Council;
- D. whereas the Commission initialled a new agreement and on 23 November 2011 sent a recommendation to the Council that it conclude the Agreement, which the Council then signed on 14 December 2012; whereas on the same day Parliament received the Council's request for consent;
- E. whereas the clear purpose of the Agreement, as stated in Article 1 thereof, is to lay down conditions in accordance with which PNR data may be transferred, processed and used, and protected;
1. Takes the view that there is legal uncertainty as to whether the draft Agreement complies with EU data protection legislation and thus as to whether it is compatible with the Treaties in this respect; questions, further, the choice of legal basis, i.e. Articles 82(1)(d) and 87(2)(a) TFEU (police and judicial cooperation), rather than Article 16 TFEU (data protection);
 2. Decides to seek an opinion from the Court of Justice on the compatibility of the Agreement with the Treaties;
 3. Instructs its President to forward this resolution to the Council and the Commission for information and to take the necessary measures to obtain such an opinion from the Court

⁹ OJ L 183, 20.5.2004, p. 83.

of Justice.