

Evaluation of the Australia-EU PNR agreement

2008/2187(INI) - 22/10/2008 - Text adopted by Parliament, single reading

The European Parliament adopted by 610 votes to 29 with 47 abstentions, a recommendation of 22 October 2008 to the Council on the conclusion of 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 own-initiative report had been tabled for consideration in plenary by Sophia in 't VELD (ALDE, NL) on behalf of the Committee on Civil Liberties.

The main aspects of the proposed recommendation are as follows:

Procedural aspects: Parliament considers that the procedure followed for the conclusion of the Agreement lacks democratic legitimacy, as at no stage there was any meaningful democratic scrutiny or Parliamentary approval. Despite its repeated requests, Parliament has at no point been informed or consulted on the adoption of the mandate, conduct of the negotiations or the conclusion of the Agreement. Accordingly, it considers that the procedure followed by the Council does not comply with the principles of loyal cooperation.

Parliament remains in doubt as to the legal basis chosen by the Council for an international agreement which is focused purely on the internal security needs of a third State and which has no added value as far as the security of the EU, of its Member States or of EU citizens is concerned.

Parliament therefore reserves its right to intervene before the Court of Justice of the European Communities in the event of the legitimacy of the Agreement being called into question by a third party.

The Council and the Commission are invited to fully involve Parliament and national parliaments in the adoption of a mandate for negotiations and the conclusion of any future agreements on the transfer of personal data, particularly the current talks with South Korea on the transfer of PNR data.

Scope and purpose: MEPs note that throughout the text a wide range of purposes is mentioned and that different terms are used side by side. They consider therefore that the purpose limitation is totally inadequate, making it impossible to establish if the measures are justified and proportional.

The Agreement fails to meet EU and international data protection standards, or comply with Article 8 of the ECHR, which requires a precise purpose limitation. MEPs consider that this leaves the Agreement open to legal challenge.

Data protection: MEPs welcome the fact that the Australian Privacy Act will apply unabridged to EU citizens, but are concerned about any exceptions and exemptions that may leave EU citizens with incomplete legal protection. They believe that the Agreement should be fully compliant not only with Australian data protection laws, but also and primarily with EU laws.

Parliament welcomes the decision to disclose data in bulk only when it is anonymous as well as the willingness of the Australian Customs Service to inform the public regarding the processing of PNR data. Parliament remarks that in the event of a dispute arising between the parties to the Australian Agreement, there is provision for a conflict resolution mechanism, and the EU data protection authorities may exercise

their existing powers to suspend data flows to protect individuals with regard to the processing of their personal data where there is a substantial likelihood that the provisions of the Agreement are being infringed.

MEPs note that no data shall be stored, but that a retention period of 5.5 years is mentioned in the Annex, point 12. They consider that although this period is shorter than in the agreements with the US, the proportionality of a retention period of 5.5 years cannot be established, as the purposes for which passenger data are being stored are insufficiently specified.

They also insist 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.

Lastly, MEPs deplore the fact that, taking into account the categories of data transferred to Customs, the data 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. The Member States and the national Parliaments which are currently examining this Agreement and/or the one with the US (Belgium, the Czech Republic, the Netherlands, Spain, Hungary, Poland) are invited to take in account these observations and recommendations. MEPs also remind the Council that in the event of the entry into force of the Treaty of Lisbon, Parliament should be associated on a fair basis with the review of all the PNR agreements.