

# Resolution on the proposal for a Council framework decision on the use of passenger name record (PNR) for law enforcement purposes

2008/2650(RSP) - 20/11/2008 - Text adopted by Parliament, single reading

Following the debate which took place during the sitting of 20 October 2008, the European Parliament adopted by 512 votes to 5, with 19 abstentions, a resolution tabled by the Committee on Civil Liberties, Justice and Home Affairs on the proposal for a Council framework decision on the use of Passenger Name Record (PNR) for law enforcement purposes.

**On procedural aspects:** Parliament takes the view that law enforcement authorities should be provided with all the tools they need to carry out their tasks adequately, including access to data. It 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. Effective safeguards for privacy and legal protection must be put in place. This is a precondition for lending the necessary political legitimacy to a measure which citizens may view as an inappropriate intrusion into their privacy. Members regret that the formulation and justification of the Commission's proposal have left so many legal uncertainties with respect to compatibility with the ECHR and the Charter of Fundamental Rights, as well as its legal basis, which has raised questions as to the appropriate role for Parliament in the legislative procedure. Under these conditions **Parliament must reserve its formal opinion** under the formal consultation procedure until the concerns raised in this resolution are properly addressed and the minimum information necessary is provided.

Members maintain their strong reservations as to the necessity for and added value of the proposal for the establishment of an EU PNR scheme and the safeguards which it contains. They share the view of the Fundamental Rights Agency (FRA) that the mere availability of commercial databases does not automatically justify their use for law enforcement purposes. Moreover, the same or even better results could be obtained by improving mutual legal assistance between law enforcement authorities.

Parliament invites the Council to take into account the recommendations in this resolution and to justify the conditions of pressing social need which could make this new EU intervention 'necessary', as required under Article 8 of the ECHR. These are the minimum conditions of support for the introduction of an EU PNR scheme. Parliament states that it is ready to contribute and participate in this work at all levels.

It goes on to recall 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. The Commission is asked to examine carefully which legal basis is appropriate.

Possible future legislation establishing an EU PNR scheme as a new framework for EU police cooperation should contain provisions for periodic evaluation of its implementation, application, usefulness and breaches of safeguards. National parliaments, the EDPS, the Article 29 Working Party and the FRA should be invited to play a role in both review and evaluation. Parliament considers, therefore, that the new legislation should include a **sunset clause**.

**Subsidiarity:** Parliament notes with concern that the need for Community action has not yet been sufficiently demonstrated. It questions the claim by the Commission that the 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. It considers that the Commission's proposal does not harmonise national systems (as they are non-existent), but merely creates the obligation for all Member States to set up such a system.

**Proportionality:** Members deplore the fact that the purpose of this envisaged police cooperation measure is not limited to issues such as combating terrorism and organised crime. They are concerned that, in essence, the proposal gives law enforcement authorities access to all data without a warrant. Parliament points out that the Commission has not demonstrated the need for new law enforcement powers, or that this goal cannot be achieved with less far reaching measures. It criticises the fact that there is no information as to how existing law enforcement powers fall short of what is needed, and where and when the authorities have demonstrably lacked the powers they needed for the stated purpose.

Parliament adds that there is no evidence to substantiate the Commission's claim that the EU has been able to assess the value of PNR data and to realise its potential for law enforcement purposes. It points out that any information so far provided by the US is anecdotal and the US has never conclusively proven that the massive and systematic use of PNR data is necessary in the fight against terrorism and serious crime. The preliminary conclusions from the UK system for the use of PNR data refer to law enforcement purposes other than counterterrorism, which fall outside the scope of the Commission's proposal, and to the use of PNR on a case-by-case basis in the context of ongoing investigations, on the basis of a warrant and with due cause. So far they provide no evidence of the usefulness of the mass collection and use of PNR data for counterterrorism purposes.

**Purpose limitation:** Parliament stresses that the principle of purpose limitation is one of the basic principles of data protection. It deplores the lack of precise purpose limitation and considers that such protection is even more important as regards secret surveillance measures, given the heightened risk 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. Furthermore, Parliament reiterates its concerns regarding the measures outlining an indiscriminate use of PNR data for profiling and for the definition of risk assessment parameters.

**Protection of personal data:** the adoption of an adequate data protection framework under the third pillar is an absolute precondition for any EU PNR scheme, as are specific rules for the transfer and use of PNR data that are not covered by the EU data protection framework under the first and third pillars.

**Details of implementation:** as regards storage periods, the Commission fails to justify the proposed retention period. Parliament considers, however, that for the purpose of developing risk indicators and establishing patterns of travel and behaviour, anonymised data should be sufficient. Members reiterate that data transfers should be made using the PUSH method alone and that third countries should not have direct access to PNR data in EU reservation systems. Passengers must be informed in full and in an accessible manner of the details of the scheme and of their rights.

**Consequences for carriers:** airlines should not be required to collect any data additional to those which they are collecting for their commercial purposes. Parliament considers that air carriers should not be made responsible for verifying whether records are complete and accurate, nor should any sanctions be applied in respect of incomplete or incorrect data. It calls for a clear evaluation of the costs involved in an EU PNR scheme, and considers that any additional costs should be borne by the requesting parties.

**Intermediaries/ Passenger Information Units (PIUs):** the resolution calls for a clear definition of the role and powers of the PIUs, in particular in terms of democratic accountability and in order to lay down appropriate data protection rules. The role of PIUs must 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 inquiry.