Resolution on the launch of negotiations for passenger name record (PNR) agreements with the United States, Australia and Canada

2010/2657(RSP) - 05/05/2010 - Text adopted by Parliament, single reading

Following the debate which took place during the sitting of 21 April 2010, the European Parliament adopted a resolution on the launch of negotiations for Passenger Name Record (PNR) agreements with the United States, Australia and Canada.

The resolution had been tabled by the ALDE, S&D, EPP, Greens/ALE and ECR and GUE/NGL groups.

Parliament **decided to postpone the vote on the request for consent on the agreements** with the US and Australia until it has explored the options for arrangements for the use of PNR that are in line with EU law and meet the concerns expressed by Parliament in earlier resolutions on PNR (see resolutions of 20 November 2008 and 17 September 2009). It asks the European Commission, in accordance with Article 218 of the Treaty on the Functioning of the European Union, to provide Parliament with all the relevant information and background documents, particularly the specific information asked for in its EU PNR resolution as mentioned above.

Parliament considers that any new legislative instrument must be preceded by a Privacy Impact Assessment, and a proportionality test demonstrating that existing legal instruments are not sufficient. It calls in particular for an analysis of:

- the use of API data (collected in accordance with Directive 2004/82/EC on the obligation of carriers to communicate passenger data-the API Directive) within the EU and by third countries as a possible less intrusive means of passenger data collection and use;
- data collected by the US and Australia in their respective systems for Electronic Travel Authorisation, and
- PNR data which may be available from sources not covered by international agreements, such as computer reservation systems located outside the EU; calls on the Commission to consult all stakeholders, including air carriers.

It calls for a coherent approach on the use of PNR data for law enforcement and security purposes, establishing a single set of principles to serve as a basis for agreements with third countries. Members invite the Commission to present, no later than mid-July 2010, a proposal for such a single model and a draft mandate for negotiations with third countries, stating that **the model should meet the following minimum requirements**:

- PNR data may only be used for law enforcement and security purposes in cases of organised and transnational serious crime or terrorism of a cross-border nature, on the basis of the legal definitions laid down in Council Framework Decision 2002/475/JHA on combating terrorism and in Council Framework Decision 2002/584/JHA on the European arrest warrant;
- the use of PNR data for law enforcement and security purposes must be in line with European data protection standards, in particular regarding purpose limitation, proportionality, legal redress, limitation of the amount of data to be collected and of the length of storage periods;

- in no circumstances may PNR data be used for data mining or profiling; no 'no-fly' decision or decision to investigate or prosecute may ever be taken on the sole results of such automated searches or browsing of databases; use of data must be limited to specific crimes or threats, on a case-by-case basis;
- in the case of the transfer of PNR data of EU citizens to third countries, the terms of such transfers shall be laid down in a binding international treaty, providing legal certainty and equal treatment for EU citizens and companies;
- the onward transfer of data by the recipient country to third countries shall be in line with EU standards on data protection, to be established by a specific adequacy finding; this will apply equally to any possible onward transfer of data by the recipient country to third countries;
- PNR data may only be provided on the basis of the PUSH method;
- results will immediately be shared with the relevant authorities of the EU and of the Member States.

Parliament underlines the importance of legal certainty for EU citizens and airlines, as well as the need for harmonised standards for the latter. It also believes that appropriate mechanisms for independent review and judicial oversight and democratic control must be provided for in any new agreement. Members ask the Commission to request, as soon as possible, that the European Union Agency for Fundamental Rights provide a detailed opinion on the fundamental rights dimension of any new PNR agreement.

Lastly, Parliament asks the Commission and the Presidency to ensure that Parliament is given full access to the negotiation documents and directives at all stages of the procedure, in line with Article 218(10) of the Treaty on the Functioning of the EU, and that national parliaments are given access upon request.