Request for an opinion of the Court of Justice on the compatibility of the EU-Australia PNR agreement with the Treaties

2011/2873(RSP) - 27/10/2011

The European Parliament rejected, in plenary, the motion for a resolution tabled by Cornelia ERNST (GUE/NGL, DE) *et al* on seeking an opinion from the Court of Justice on the compatibility with the Treaties of the Agreement between the European Union and Australia on the processing and transfer of EU-sourced Passenger Name Record (PNR) data by air carriers to the Australian Customs and Border Protection Service.

To recall, (see NLE/2011/0126), the scope of the Agreement defines the conditions under which such data may be transferred and used, and the manner in which the data shall be protected.

For the Members concerned, they take 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. They question, further, **the choice of legal basis**, i.e. Articles 82(1)(d) and 87(2)(a) TFEU (police and judicial cooperation), and not Article 16 TFEU (data protection).

If the purpose were police-judicial cooperation, then the EU could theoretically decide against the collection of PNR data by Australia. But this is a sovereign decision by a third country. Therefore, it is not EU policy as it is not for the EU to decide. The chosen legal base is clearly not the correct one.