

European Parliament recommendation to the Council on the negotiations for an agreement with the USA on the use of passenger name records (PNR) data to prevent and combat terrorism and transnational crime, including organised crime

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The committee adopted the own-initiative report by Sophia in 't VELD (ALDE, NL) containing a recommendation to the Council on the negotiations for an agreement with the USA on the use of passenger name records (PNR) data to prevent and combat terrorism and transnational crime, including organised crime. The report was tabled under a special procedure provided for in Parliament's rules (Rule 114), which enables MEPs to submit a recommendation to the Council where Parliament has not been consulted on an international agreement.

On 30 May 2006, following a legal case brought by Parliament against the Commission, the European Court of Justice annulled an agreement between the European Community and the US on the processing and transfer of personal data, as well as the 2004 Commission Decision on the adequate protection of those data. Parliament argued that the legal basis (Article 95) was incorrect, that Parliament should have had the power of assent rather than simple consultation, that the agreement was in breach of the principle of proportionality and that the US did not offer adequate data protection. The Court annulled the agreement purely on procedural grounds (i.e. the legal basis) and did not express any views on Parliament's objections against its substance. The agreement will have no legal effect after 30 September 2006, but the Council has decided to negotiate a new, short-term PNR agreement with the US, based on Articles 24 and 38 of the Treaty on European Union, to cover the period between 1 October 2007 and November 2007 (the date originally set for expiry of the current agreement). This legal basis means that the European Parliament will not be formally consulted and that the Court of Justice will not have competence concerning the new agreement (which will have the same substance as the current agreement).

The committee decided to draw up a recommendation to the Council, urging it to ensure in its negotiations that the US offers adequate protection of European passenger data and that sufficient safeguards are in place. For the interim agreement, this would mean:

- ensuring that the agreement only covers the period until November 2007, following which a medium-term agreement should be negotiated with full involvement of Parliament;
- ensuring that the shortcomings already identified in the current agreement are rectified;
- incorporating a shift to a PUSH system (i.e. US officers should request concrete data on a case-by-case basis, instead of being granted access to the full database);
- ensuring that staff who handle the data receive adequate instructions and training.

As regards the content of the medium-term agreement, MEPs called on the Council to provide the EU with a clear and consistent legal framework for data protection and to avoid an artificial division between the "pillars" by implementing the bridging clause under Article 42 of the TEU to ensure that the new agreement is concluded in association with Parliament and is subject to the scrutiny of the Court of Justice. The Council was also urged to limit the amount of data that may be requested and ensure that the new agreement grants European passengers the same level of data protection as enjoyed by US citizens. Lastly, the report recommended that representatives of Parliament be included in the negotiation process as observers and that Parliament should hold a joint session with the US Congress.