

Basic information	
2008/2187(INI) INI - Own-initiative procedure	Procedure completed
Evaluation of the Australia-EU PNR agreement Subject 1.20.09 Protection of privacy and data protection 3.20.15.02 Air transport agreements and cooperation Geographical area Australia	

Key players			
European Parliament	Committee responsible		Rapporteur
	LIBE Civil Liberties, Justice and Home Affairs		IN 'T VELD Sophia (ALDE)
	Committee for opinion		Rapporteur for opinion
	AFET Foreign Affairs		The committee decided not to give an opinion.
European Commission	Commission DG		Commissioner
	Justice and Consumers		BARROT Jacques

Key events			
Date	Event	Reference	Summary
28/08/2008	Non-legislative basic document published	B6-0383/2008	Summary
04/09/2008	Committee referral announced in Parliament		
07/10/2008	Vote in committee		Summary
14/10/2008	Committee report tabled for plenary	A6-0403/2008	
20/10/2008	Debate in Parliament		
22/10/2008	Decision by Parliament	T6-0512/2008	Summary
22/10/2008	Results of vote in Parliament		
22/10/2008	End of procedure in Parliament		

Technical information	
Procedure reference	2008/2187(INI)
Procedure type	INI - Own-initiative procedure
Legal basis	Rules of Procedure EP 134o-p3
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/6/66216

Documentation gateway				
European Parliament				
Document type	Committee	Reference	Date	Summary
Non-legislative basic document		B6-0383/2008	28/08/2008	Summary
Committee draft report		PE412.032	28/08/2008	
Committee report tabled for plenary, single reading		A6-0403/2008	14/10/2008	
Text adopted by Parliament, single reading		T6-0512/2008	22/10/2008	Summary
European Commission				
Document type	Reference		Date	Summary
Commission response to text adopted in plenary	SP(2008)7292		12/02/2009	

Evaluation of the Australia-EU PNR agreement

2008/2187(INI) - 28/08/2008 - Non-legislative basic document

PURPOSE: European Parliament recommendation to the Council on the Agreement between the EU and Australia on the processing and transfer of EU-sourced passenger name record (PNR) data by air carriers to the Australian customs service.

CONTENT: this proposal has been tabled pursuant to Rule 114(1) of the European Parliament's Rules of Procedure by Sophia in 't Veld on behalf of the ALDE Group. The main points of the recommendation are as follows:

On procedural aspects: Parliament considers that the procedure followed for the conclusion of the Agreement lacks democratic legitimacy, as at no stage is there any meaningful democratic scrutiny or parliamentary approval. It notes that Council routinely chooses this procedure for the conclusion of international agreements that affect fundamental rights of European citizens. Furthermore, Parliament maintains its doubts on the legal basis chosen by the Council for an international agreement which is only focused on a third state's internal security needs and which has no added value as far as the security of the EU, of its Member States or of EU citizens is concerned. It reserves therefore its right to intervene before the Court of Justice if the legitimacy of this agreement is raised by a third party.

On data protection: Parliament welcomes the fact that the Australian Privacy Act applies unabridged to EU citizens, but is concerned about any exceptions and exemptions that may leave EU citizens with incomplete legal protection.

With regard to the rights of the data subjects, the agreement provides that Australia shall provide a system, accessible by individuals regardless of their nationality or country of residence, for individuals to exercise their rights. With a view to informing passengers, the willingness of Customs to inform the public regarding the processing of PNR data should be welcome.

Members believe 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. Furthermore, taking into account the categories of data transferred to Customs, Parliament felt it deplorable the data elements 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.

Parliament invites the Member States and the national parliaments which are currently examining this Agreement and/or the one with the United States (BE, CZ, NL, ES, HU, PL) to take into account these observations and recommendations.

Lastly, it reminded the Council that in the event of entry into force of the Treaty of Lisbon all the PNR agreements should be reviewed by associating the European Parliament on a fair basis.

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 into 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.