



CONSEIL DE
L'UNION EUROPÉENNE

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PE 165
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USA 8
RELEX 356
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NOTE

du: Secrétariat Général
aux: Délégations

Objet: Séance plénière du Parlement européen, 19 avril 2012, Strasbourg
Accord entre les États-Unis d'Amérique et l'Union européenne sur l'utilisation et le transfert des données des dossiers passagers au ministère américain de la sécurité intérieure

Débat prioritaire

En ouverture du débat, le rapporteur, Mme in 't Veld (ALDE, NL), a affirmé qu'il était révélateur que l'accord avec les USA ne puisse être largement soutenu par le Parlement européen. Elle a indiqué que la déclaration de la Commission était à cet égard sans effet, car elle ne contenait pas de nouveaux éléments et ne liait pas les USA. Mme in 't Veld a en outre fait part de sa réticence à déférer l'accord à la Cour de justice de l'UE et a critiqué en particulier le maintien du système "pull" et l'absence de recours juridictionnel.

Au nom du Conseil, M. Bødskov a affirmé que, si l'accord n'était pas parfait, il contenait toutefois des garanties nouvelles et améliorées et constituait le meilleur résultat possible, obtenu notamment grâce à l'engagement du Parlement européen. Il a considéré que, en soutenant cet accord, le Parlement européen améliorerait la protection des citoyens et des compagnies européennes tout en démontrant l'unité de l'UE.

Au nom de la Commission, Mme Malmström a invité le Parlement à approuver l'accord, tout en reconnaissant que celui-ci n'était pas pleinement satisfaisant. Elle a souligné en particulier que des améliorations majeures avaient été apportées par rapport à l'accord existant et à celui soumis en mai à la commission LIBE, notamment s'agissant de la durée de rétention, des recours juridictionnels et de la limitation du système "pull". Mme Malmström a en outre indiqué que, en cas de rejet de l'accord, les compagnies aériennes européennes seraient contraintes de transmettre les données concernées aux autorités américaines en dehors de tout cadre juridique.

S'exprimant au nom de son groupe politique, M. Voss (PPE, DE) a indiqué partager nombre des critiques formulées par le rapporteur, mais a considéré que l'accord obtenu était le meilleur possible et a par conséquent appelé le Parlement à l'approuver. M. Moraes (S&D, UK) a relevé que son groupe était divisé et annoncé que, à titre personnel, il voterait pour l'accord, en raison notamment des progrès obtenus sur des points tels que la durée de rétention et du fait qu'un accord commun était préférable à 27 accords différents. Mme Weber (ALDE, RO) a affirmé que l'accord violait la législation de l'UE, renvoyant à cet égard à l'avis du CEPD, et qu'il créerait des problèmes pour les petites compagnies tenues d'investir dans la mise en place du système "push". M. Albrecht (Verts/ALE, DE) a fait référence à la jurisprudence de la Cour européenne des droits de l'homme et de la Cour constitutionnelle allemande et appelé à voter contre l'accord. M. Kirkhope (ECR, UK) a considéré que l'accord obtenu était positif, appelé à ne pas ignorer la sensibilité des USA en la matière et annoncé que son groupe voterait en faveur de l'accord. M. Batten (EFD, UK) et M. Zijlstra (NI, NL) ont considéré que l'accord ne devait pas être conclu au niveau de l'UE, mais à celui des États membres.

Dans le cadre des interventions à titre individuels, une majorité des députés membres des groupes PPE et S&D ont indiqué qu'ils soutenaient l'accord, soulignant notamment que celui-ci constituait un pas en avant par rapport au cadre juridique actuel et qu'il était préférable à la conclusion d'accords par les États membres. Mmes Sippel (S&D, DE) et Guillaume (S&D, FR) ont toutefois indiqué qu'elles voteraient contre l'accord, car il ne répondait pas aux préoccupations du Parlement européen. M. Coelho (PPE, PT) a pour sa part indiqué qu'il s'abstiendrait, en déplorant en particulier l'absence de valeur juridique de l'accord aux USA et la persistance du système "pull", alors que M. Engel (PPE, LU) a rejeté l'accord au motif qu'il donnait un cadre à la mise en œuvre de pratiques américaines.

Les intervenants membres du groupe ALDE se sont divisés entre partisans et opposants à l'accord. Mme Griesbeck (ALDE, FR) a en particulier déploré l'absence de réciprocité et de proportionnalité de l'accord, alors que Mme Ludford (ALDE, UK) a qualifié de positive la déclaration de la Commission. Les intervenants du groupe Verts/ALE ont pris position contre l'accord, alors que Mme Foster (ECR, UK) a soutenu l'accord, relevant notamment que les données couvertes étaient limitées.

Mme Malmström a souligné que l'accord avait pour seul objectif la lutte contre la criminalité et le terrorisme, que le système "push" serait désormais la norme, que des recours juridiques seraient possible et, enfin, que l'accord interdisait le "profiling".

M. Bødskov a pris note des inquiétudes suscitées par l'accord, mais a souligné que celui-ci ne marquait pas la fin du dialogue transatlantique, puisque qu'il ferait l'objet d'une évaluation.

En conclusion du débat, Mme in 't Veld a souligné qu'elle contestait l'utilisation des données couvertes par l'accord à des fins autres que la lutte contre la criminalité et le terrorisme. Elle a considéré que les droits fondamentaux et la législation de l'UE n'étaient pas négociables et averti du risque que l'accord constitue un précédent dans les relations de l'UE avec d'autres États tiers.

Lors du vote qui a suivi le débat, le Parlement a approuvé la conclusion de l'accord (409 votes pour, 226 votes contres, 33 abstentions)

EU-US PNR agreement
Commissioner Malmström
Plenary Session of the
European Parliament in Strasbourg
on 19/04/2012

Consent to the EU-US PNR Agreement

Speaking Points

- I am pleased to be here today for this important debate on the new EU-US PNR Agreement.
- The Commission recommends Parliament to give its consent to the new Agreement, for three reasons: (1) law enforcement authorities **need** PNR data to address the security threats the US is facing; (2) the Agreement is a **major improvement** on the existing EU-US PNR Agreement from 2007 which Parliament asked the Commission to re-negotiate; and (3) it is difficult to see any **alternatives** which would better serve the interests of EU passengers and air carriers.
- **First**, on the **necessity** of using PNR data, the Commission services have presented evidence to interested Members of the LIBE Committee on several occasions. It shows that PNR data plays a very important role in the fight against serious transnational crimes, such as trafficking in human beings and in illicit drugs, and also against terrorism.
- For example, PNR data has played a pivotal role in cracking some recent cases of terrorism. Let me mention only those from headlines across all newspapers: the Mumbai plotter David Headley, the New York City subway bomb plotter Najibullah, and the Time Square bomber Faisal Shahzad. We all read about atrocities these people committed or planned.

- **Secondly**, the Agreement represents a **major improvement on the existing EU-US PNR Agreement from 2007**. The new Agreement is also a clear step forward from the draft Agreement that the Commission presented to the LIBE Committee in May last year. Those improvements owe a lot to the clear and consistent messages from Parliament. After a pause in the negotiations after May last year, we did a good collective job in pushing the US to make further concessions.
- This is also a constructive example of Lisbon Treaty powers serving EU citizens better. Pre-Lisbon, Parliament's firm position would have counted for less.
- Our good collective work brought an agreement with more clarity, stronger reciprocity, and better protection of passengers' rights to privacy in the agreement, without undermining the effectiveness of the PNR system and the contribution it makes to security on both sides of the Atlantic. It now meets the key concerns you expressed in **your resolution** from May 2010, and it fully respects EU **fundamental rights**, including the principle of proportionality.
- Let me briefly present the main achievements of the negotiations, on each of the points in your resolution from May 2010:
 - The Agreement is now **one single text**, with **legally binding** provisions, written in proper Treaty language.
 - The Agreement strengthens **reciprocity** and security in the EU by obliging the US to **share leads** (analytical information) **derived from PNR data** with law enforcement authorities in the EU.
 - The Agreement also has a **strict limitation on the purposes for which PNR data may be used**. I know that this issue has raised concerns among some Members. I therefore wish to make the following declaration on behalf of the Commission:

“[The European Commission considers that] the Agreement sets forth a precise description of purpose and scope, clarifying the purposes for which PNR will be collected and used. The definitions of terms and the detailed description of the uses of PNR in Article 4 ensure that the purpose limitation of the Agreement is in line with relevant EU laws on the protection of personal data and privacy:

The purposes for which PNR will be collected and used are limited to the prevention, detection, investigation and prosecution of terrorist offences and certain transnational crimes. The Agreement provides, for the first time, detailed definitions of the terms terrorist offences and transnational crimes in Article 4(1).

The Agreement allows, in Article 4(2), for the potential use of PNR, on a case-by-case basis, for the protection of vital interests of any individual or if ordered by a court. These uses are, both by nature and through experience gained through the Joint Reviews of the previous Agreements, very exceptional.

In Article 4(3), the Agreement clarifies how PNR may become relevant when passengers travel to or from the U.S. In this regard, the Agreement merely clarifies that PNR may, in accordance with its purpose and scope, be processed to identify persons who may require further examination. This does not constitute an additional purpose for the processing of PNR data.

Article 4(4) explains that the Agreement is without prejudice to domestic law enforcement, judicial powers, or proceedings, where other violations of law or indications thereof are detected in the course of the use and processing of PNR. This provision aims to clarify that domestic powers are not affected by the Agreement where another offence is detected in the course of using PNR. This clarification does not affect or extend the purposes for the use of PNR.

In the context of the joint review and evaluation mechanism set out in Article 23 of the Agreement and without prejudice to other matters that may be raised through this mechanism, the European Commission will seek detailed information and pay particular attention to the respect of the provisions of Article 4 of the Agreement. More specifically the European Commission will:

review the respect of the uses of PNR under Article 4(1) of the Agreement;

request information on any cases for which PNR has been used either for the protection of vital interests of any individual and where ordered by a court under Article 4(2) of the Agreement;

review the way in which Article 4(3) and (4) are being implemented.

The European Commission commits to keep the European Parliament fully informed of these and other aspects and to present a full report to the European Parliament and to the Council, as foreseen by Article 23(3), without delay at the end of the first joint review and of other subsequent reviews.

In the event that, following a joint review, the European Parliament expressed in a resolution its views on the presence of serious deficiencies in the application of the agreement and called for the suspension or the termination of the Agreement, the Commission commits to consider the European Parliament's political request with the utmost attention while deciding on whether to make a proposal in full respect of procedures and competences defined by article 218 TFEU.”

- Having said this about the scope of the agreement, let me return to the other points of your resolution from may 2010:
- The Agreement reduces the [retention] period during which PNR data may be stored by US authorities **from 15 to 10 years** for serious transnational crime. Only for terrorist offences can the data be used for 15 years, as under the existing 2007 PNR Agreement. And, as an important new element: PNR data will be **depersonalised already six months after it is sent** by air carriers, making those data elements which can be linked to an individual passenger invisible.
- There are also important new **provisions on data protection**. In particular, to prevent illegal profiling, the Agreement prohibits ‘automated decisions’ affecting passengers – a human being must always take the final decision. New rules on data security are included to prevent data from being lost or disclosed to the public.
- The Agreement clarifies and strengthens passengers’ right to **access, correct and where relevant delete** their PNR data stored in US databases. It also contains a detailed provision on **administrative and judicial redress** under US law.

- The rules on sharing (**onward transfers**) of PNR data by the US with third countries, have been tightened: this can happen only on case-by-case basis, not in bulk, and only for the specific purposes of the EU-US PNR Agreement itself.
- On the **method** by which PNR data is transferred to the US, the Agreement is very clear: *all* air carriers must transfer data by the “**push method**” within two years. The aviation industry has reassured the Commission that air carriers are prepared to make the necessary investments within that time-frame. "Pull" of data by the US authorities will not be *entirely* prohibited, but the conditions are very precisely defined, and limited to exceptional cases.
- Finally, there are provisions to **ensure that the agreement is correctly applied** in practice. The use of PNR data will subject to independent oversight by several entities, from within and outside the US Department of Homeland Security. We will have regular joint reviews and a full evaluation after four years. In order to make the joint reviews effective, records (logs) of all processing of PNR data will be kept. There are also clear rules on resolution of disputes between the EU and the US, and on suspension and termination of the agreement.
- I recognise that some Members still have questions and reservations. I am ready to respond to them today, but let us be clear on one thing: **all international agreements involve some give and take**. What is important to remember is that the Commission presented to Parliament (the LIBE Committee) in May of last year a draft agreement. You, as well as the Member States, made clear that certain improvements were needed. We have achieved those improvements, on scope and purpose limitation, on retention periods, and on other points. We now have an agreement that fully respects EU law.

- This brings me to my **third and final point** – the absence of any **better alternative** to the new Agreement. It is clear that further negotiations with the US are not a real option. So, what would happen if you withhold your consent today? What would be the consequences of having no agreement with the US on PNR?
 - First, in political terms, we would do considerable harm to the **transatlantic relationship** – I expect this will be a major concern for this House. At the same time, the EU Institutions would lose influence over US policy on the use of PNR data: in the absence of any agreement, the US would have little incentive to limit its use of the data in line with EU data protection concerns.
 - Second, we would leave air carriers in an unacceptable situation. The **US would continue to require air carriers to transfer PNR data**. But there would be no legal basis in the EU for the transfer of the data. Air carriers would therefore face a choice between, on the one hand, fines or loss of landing rights in the US if they do not provide the data and, on the other hand, fines by the EU Data Protection Authorities and possible law suits by passengers if they do provide the data.
 - Finally, and most importantly, we would fail to protect to the interests of the more than 48 million [*2006 figure*] passengers flying from the EU to US every year. In the absence of an agreement, there would be **no binding international rules at all to protect passengers’ privacy**. One cannot exclude that Member States would seek to negotiate their own **bilateral agreements with the US**. But I do not see any possibility that the Member States could, bilaterally, obtain better protection of passengers’ rights than what the European Institutions have collectively negotiated.
- For all these reasons, I invite you to endorse the new Agreement.