


Procedure file

Basic information		
INI - Own-initiative procedure	2004/2011(INI)	Procedure completed
Protection of personal data contained in the passenger name records (PNRs) transferred to the US Bureau of Customs and Border Protection		
Subject		
1.20.09 Protection of privacy and data protection		
3.20.01 Air transport and air freight		
6.40.11 Relations with industrialised countries		
Geographical area		
United States		

Key players			
European Parliament			
Council of the European Union			
Council configuration	Meeting	Date	
General Affairs	2562	23/02/2004	

Key events			
10/03/2004	Non-legislative basic document published	N5-0001/2004	
11/03/2004	Committee referral announced in Parliament		
18/03/2004	Vote in committee		Summary
31/03/2004	Results of vote in Parliament		
31/03/2004	Decision by Parliament	T5-0245/2004	Summary
31/03/2004	End of procedure in Parliament		

Technical information	
Procedure reference	2004/2011(INI)
Procedure type	INI - Own-initiative procedure
Legal basis	Rules of Procedure EP 112-p2
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/5/20699

Documentation gateway					
Document attached to the procedure		COM(2003)0826	16/12/2003	EC	Summary
Non-legislative basic document		N5-0001/2004	11/03/2004	EC	

Text adopted by Parliament, topical subjects	T5-0245/2004 OJ C 103 29.04.2004, p. 0453-0665 E	31/03/2004	EP	Summary
Commission response to text adopted in plenary	SP(2004)1798/2	29/04/2004	EC	
Commission response to text adopted in plenary	SGQ6/09179	27/07/2006	EC	

Protection of personal data contained in the passenger name records (PNRs) transferred to the US Bureau of Customs and Border Protection

PURPOSE: to propose a common European Union approach regarding the transfer of passenger data ('Passenger Name Record' or PNR).

CONTENT: In the aftermath of the terrorist attacks of 11 September 2001, the United States passed legislation in November 2001, requiring that air carriers operating flights to, from or through the United States provide the United States' Customs with electronic access to the data contained in their automated reservation and departure control systems, known as Passenger Name Records (PNR). Whilst recognising the legitimate security interests involved, the Commission informed the US authorities as early as in June 2002 that these requirements could conflict with Community and Member States' legislation on data protection and with some provisions of the Regulation on computerised reservation systems (CRSs). The US authorities postponed the entry into force of the new requirements, but finally refused to waive the imposition of penalties on non-complying airlines beyond 5 March 2003. Several major EU airlines have been providing access to their PNR since then. On 18 February 2003, the Commission and the US administration issued a joint statement outlining the first undertakings that US Customs had given regarding data protection and seeking to bring the way the US use and protect PNR data closer to EU standards. In the meantime, other third countries, including Canada and Australia, have requested or are considering requesting access to PNR data. Some Member States are also examining the possibility of using PNR data for aviation and border security purposes. For its part, the European Parliament invited the Commission to take a number of actions with regard to the transfer of PNR data to the US in order to ensure that European data protection concerns are being taken into account. The Commission agrees with European Parliament that a solution of the problems arising from third country and in particular US demands for PNR data is urgently required and this solution must: - be legally sound; - ensure the protection of citizens' personal data and privacy, but also their physical security; - stand four-square with the need to fight terrorism and international organised crime; - end legal uncertainty for airlines - European and non-European, as well as to facilitate legitimate travel. However, the EU's approach cannot be limited to responding to the initiatives of others. For these reasons, in this document, the Commission is proposing a comprehensive and balanced approach to the full range of issues raised in particular by US legislation requiring the transfer of PNR, but also responding to the wider needs outlined above needs to give due weight to all of the following considerations: the fight against terrorism and international crime, the right to privacy and the protection of fundamental civil rights, the need for airlines to be able to comply with diverse legal requirements at an acceptable cost, the broader EU-US relationship, the security and convenience of air travellers, border security concerns, the truly international, indeed world-wide, scope of these issues. Any one-sided approach or any approach that fails to draw all these strands together will be unbalanced and unsustainable. At the same time, the search for a truly comprehensive solution must not delay or stand in the way of finding a legal solution to the problem of current PNR transfers to the US - not to mention growing pressure on those EU airlines not yet giving the US access to their PNR. The Commission's multi-track approach thus consists of the following main components: 1) a legal framework for existing PNR transfers to the US taking the form of a Decision by the Commission under Article 25 paragraph 6 of the Data Protection Directive (95/46/EC) accompanied by a "light" bilateral international agreement. 2) complete, accurate and timely information for passengers. A concerted effort - involving the Commission, airlines, travel agents, CRSs and data protection authorities, and possibly the authorities of the third countries concerned - has been set in hand to ensure that passengers are fully and accurately informed before purchasing their tickets about the uses made of their PNR data and give their consent to its transfer. 3) Replacing "pull" (direct access by US authorities to airlines' databases) with a "push" method of transfer, combined with appropriate filters. The Commission's technical discussions with the industry are well advanced. The Commission will recommend the rapid implementation of a "push system" in a framework of an EU policy. 4) The development of an EU position on the use of travellers' data, including PNR, for aviation and border security. 5) The creation of a multilateral framework for PNR Data Transfer within the International Civil Aviation Organisation (ICAO). Within a short period, the Commission proposes to deliver this legal framework in the form of an adequacy finding in accordance with Article 25(6) of the data protection directive, accompanied by an international agreement with the US on the basis of Article 300(3) first paragraph of the Treaty (see CNS/2004/0064). The European Parliament will be consulted on both elements of this solution. The Commission will also pursue energetically its co-operation with airlines and their representative organisations, as well as with CRSs to ensure that passengers are fully and accurately informed before purchasing their tickets about the uses that are made of their PNR data and are thus able to make an informed choice. The Commission will strongly encourage operators to obtain systematically the consent of passengers to their data being transferred, to the extent practicable, but believes that it is necessary to establish a legal framework which does not rely solely on consent. The Commission recalls its right of initiative to propose the regulation of consent at the EU level if operators fail to implement effective solutions within a reasonable timeframe. It reaffirms its strong support for the swift implementation of "push" technology accompanied by appropriate filters for the transmission of PNR data to third countries. It believes that a centralised or grouped approach has clear advantages over an airline by airline approach, in terms of both efficiency and costs. It will continue to explore possible options with the industry as a matter of priority. If necessary, it is prepared to take the appropriate initiatives to secure funding from within existing resources of the Community budget to support the development of such a system. The Commission aims to identify the way forward before mid-2004 at the latest. One option for consideration could be to implement a push system within the framework of an EU approach to the use of travellers' data for border and aviation security purposes.?

Protection of personal data contained in the passenger name records (PNRs) transferred to the US Bureau of Customs and Border Protection

The committee adopted the resolution drawn up by Johanna BOOGERD-QUAAK (ELDR, NL) on the draft Commission decision noting the adequate level of protection provided for personal data contained in the Passenger Name Records (PNR) transferred to the United States. MEPs objected to the following points in the draft agreement which the Commission had worked out with the US on the obligations for

European air carriers: the number of PNR items the US wants to obtain (34); the purposes for which the data might be used (not only for fighting terrorism, but also for fighting "serious crime"); the lack of redress mechanisms for people who are denied entry to the US on the basis of the information in the PNR records; the lack of opportunities for passengers to correct errors in their personal data; the fact that a "pull" instead of a "push" system is used to obtain the data, meaning that the US does not have to ask for the data but has immediate access to it; and the number and kind of agencies that have access to the personal data. The report pointed out that there was no specific EU legislation for using PNR data for public security purposes and that, in the USA, the protection of privacy was not regarded as a fundamental right (in the USA, only US citizens are granted the right to data protection). Commenting on the draft Commission decision, MEPs said that the "undertakings" on which it was based were unreliable in substantive terms, since the option was kept open of amending the rules at any given time. In view of the importance of this issue, they urged the Commission to reach a proper international agreement with the US that would offer genuine guarantees for passengers or, at the very least, the same protection as provided for US citizens. They recommended that such an agreement should stipulate: the guarantees to be offered to passengers in order to enable them to correct their data; the list of serious crimes for which an additional request for information could be made; the list of authorities and agencies which would share the data and the data protection conditions to be respected; the data retention period; and the right to appeal to an independent authority and redress mechanisms in the event of infringements of passengers' rights. Pending a permanent legislative solution or the conclusion of an international agreement, the committee called upon the Member States to require immediate compliance with EU and domestic privacy laws and to require airlines and travel agencies to obtain passengers' consent for the transfer of data. Furthermore, MEPs urged the Commission to block the 'pull' system and to apply the 'push' system. The Commission was also asked to withdraw the draft decision and to submit to Parliament a new adequacy-finding decision. MEPs warned the Commission that they reserved the right to appeal to the Court of Justice should the Commission continue without taking account of Parliament's demands. ?

Protection of personal data contained in the passenger name records (PNRs) transferred to the US Bureau of Customs and Border Protection

The European Parliament adopted the resolution, by 229 votes for, 202 against and 19 abstentions, drawn up by Johanna BOOGERD-QUAAK (ELDR, NL) on the draft Commission decision noting the adequate level of protection provided for personal data contained in the Passenger Name Records (PNR) transferred to the United States. (Please refer to the document dated 17/03/04). It should also be noted that the Parliament reserves the right to appeal to the Court of Justice should the draft decision be adopted by the Commission. It reminds the Commission of the requirement for cooperation between institutions which is laid down in Article 10 of the Treaty and calls upon it not to take, during the election period, any decision such as the one with which this resolution is concerned.?