

Procedure file

Basic information		
RSP - Resolutions on topical subjects	2011/2873(RSP)	Procedure rejected
Request for an opinion of the Court of Justice on the compatibility of the EU-Australia PNR agreement with the Treaties		
Subject		
1.20.09 Protection of privacy and data protection		
3.20.01 Air transport and air freight		
7.30 Police, judicial and customs cooperation in general		
7.30.20 Action to combat terrorism		
7.30.30 Action to combat crime		
8.30 Treaties in general		
8.40.04 Court of Justice, Court of First Instance		
Geographical area		
Australia		

Key players		
European Parliament		
European Commission	Commission DG Migration and Home Affairs	Commissioner MALMSTRÖM Cecilia

Key events			
27/10/2011	Results of vote in Parliament		
27/10/2011	Decision by Parliament		Summary

Technical information	
Procedure reference	2011/2873(RSP)
Procedure type	RSP - Resolutions on topical subjects
Procedure subtype	Resolution on statement
Legal basis	Rules of Procedure EP 114-p6
Stage reached in procedure	Procedure rejected

Documentation gateway				
Motion for a resolution		B7-0537/2011	19/10/2011	EP

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

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.