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**NOTE**

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from : General Secretariat of the Council  
to : Delegations

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Subject: Summary of the plenary session of the European Parliament, held in Brussels on 10 November 2010  
**Statement by the Council and the Commission – EU external strategy on Passenger Name Records (PNR)**

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Minister Turtelboom delivered a speech pointing out that the Council would have to give its opinion on the three mandates submitted by the Commission and that discussions were already ongoing since October. She said that the Council shared the view that a high level of data protection would be needed to be ensured, and ultimately to be guaranteed by the bilateral partners. Ms Turtelboom also spoke about the issues of profiling, proportionality and automatic/real time treatment of data. She further clarified that PNR could only be used by the aviation companies. Ms Turtelboom gave assurances that the Council would take due account of the Parliament's concerns.

Ms Malmström, on behalf of the Commission, delivered the speech set out in the Annex.

For the political groups, the following speakers took the floor:

- Mr Voss (EPP, DE) regretted that the Parliament had not been properly involved and indicated that consequently a second "Swift scenario" could not be excluded. His view was that a general approach was lacking and he made several recommendations to the Commission and the Council.
- Ms Sippel (S&D, DE) said that global terrorism required international cooperation. However, the conditions for the exchange of data must be decided at the highest political level. She also suggested that the transfer of data should be dealt with by the EU in order to avoid splitting channels, which would water down EU standards.
- Ms In't Veld (ALDE, NL) put particular emphasis on the need to speak with one single voice. She insisted on full compliance with the principles of proportionality and necessity. Her view was that the issue of "profiling" would need further discussion.
- Mr Albrecht (Greens/EFA, DE) expressed concern and advised taking the Parliament's opinion into account. He said that the EU should be in charge and considered "profiling" as legally not defensible.
- Mr Bradbourn (ECR, UK) said that the PNR issue was a key component of security. He pointed out the need to avoid government/agency abuses, which would require some safeguards in the agreements.
- Mr Tavares (GUE/NGL, PT) recalled the "Swift" incident, underlining the need to defend citizens' rights and to involve the Parliament in negotiations from the very beginning.
- Mr Paška (EFD, SK) said that transfer of data should be done on the basis of a single agreement. The latter should be balanced and cover all existing agreements.
- Mr van der Stoep (NI, NL) defined several conditions, such as reciprocity and transfer of data only for security purposes.

Regarding the statements by individual Members, a large majority pointed out the need to find the right balance between security and human rights/fundamental freedoms, although some were more demanding on the protection of fundamental freedoms, explicitly rejecting "profiling". Some Members stressed the need to pursue a global approach and the need to guarantee reciprocity. The issue of possible abuses and related legal protection/procedures was also raised.

In her final statement, Ms Turtelboom said it would be up to the Council to find the right balance between security and fundamental freedoms and subsequently establish a clear mandate to be followed by the Commission. She was of the opinion that an independent entity should be responsible for citizens' claims. Ms Malmström concluded that PNRs were essential and that clear rules were needed. She said that the Commission was open to discussion with the Parliament.

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**Speech by Ms Malmström, on behalf of the Commission - Brussels, 10 November 2010**

Madam President, on 21 September the Commission issued a package of proposals on the exchange of passenger name records data with third countries and that consisted of a communication on EU external PNR strategy with some principles, as you requested in your resolution from May earlier this year. There were also three recommendations on negotiating directives for new PNR agreements with Canada, Australia and the US. I would like to thank the authors of the May resolution for the excellent team work we have had and the very constructive cooperation on this file and your constructive way of finding solutions to move forward within the new institutional framework.

The objective of the communication is to establish for the first time a set of criteria and principles that would guide us in our external relations concerning PNR. We can use that as a method for communicating with third countries, but also define our own policy with that. The communication will of course seek to achieve coherence with the EU PNR that will be presented at a later stage.

The directive has not been adopted, that is the mandate has not been adopted by the Council yet, but the mandates of course follow the structure of the general communication.

The issue of profiling was raised by the Belgian Presidency as well. Risk assessment is an issue that I know comes up very often in the discussions and that is why I have chosen to raise it immediately. The concept of profiling is not in itself defined in any legal instrument, but that does not mean that we do not have laws on it. The data protection instruments address it, but call it 'Prohibition of Automated Processing': that means that EU data protection legislation prevents any individual from being subject to a decision which produces legal effects concerning him or her, or significantly affects him or her, and which is based solely on the automated processing of data. It is not prohibited to process data in an automated matter, but decisions which legally affect individuals must not be taken in automated manner.

The PNR communication highlights these principles and lays down efficient and effective measures to safeguard the interest of data subjects. In particular, any automated decision should be verified by a human being and allow the data subject to explain his or her point of view. This means that the final decision taken towards a person can never be taken in a fully automated manner. In this way, the communication seeks to ensure that the processing of data does not go beyond what is legitimate and that the processes comply with fundamental rights including our current data protection rules.

You have also requested the Commission to clarify the state of play on bilateral agreements and memoranda of understanding relating to the Visa Waiver programme. I will try to enlighten you a little bit on this. In August 2007 the US passed the implementing recommendations of the 9/11 Commission Act and a section of this covers the modernisation of the Visa Waiver programme. The terms and conditions of this law affect all EU members, independent of whether they are in the Visa Waiver programme or not.

On the EU side, this act led to a twin-track approach agreed by the Council in March 2008. The EU track concerns the negotiations between the EU and the US regarding conditions for access to the US and indeed to the Visa Waiver programme. That falls under EU competences – repatriation of own nationals, enhanced travel document security and airport security. This resulted in an EU-US agreement confirming that the EU satisfies these conditions.

We also had the bilateral track: bilateral negotiations between the EU and between the US and Member States to satisfy US conditions for access to the Visa Waiver programme which fall under the Member States' competence as opposed to EU competence. That is cooperation with the US on serious crime, counter-terrorism initiatives and information-sharing in these areas.

Under this bilateral track a number of Member States initially signed a memorandum of understanding with the US. This memorandum was not intended to be in itself a legal base for any exchange of data. They confirmed a willingness of the parties to negotiate agreements on passenger information, screening information on known or suspected terrorists, information to combat terrorism and serious crime, and information, migration and border security matters.

According to the information that the Commission has just gathered from the Member States, eight Member States have signed such a memorandum of understanding with the US.

After the signature of these memoranda, the US and some Member States have negotiated two types of agreements. First, agreements on enhancing cooperation in preventing and combating serious crime: that concerns cooperation on matching of fingerprints and DNA samples. Fourteen Member States have identical agreements with the US.

Secondly, agreements on the exchange of screening information concerning known or suspected terrorists: these concern exchange of specific information about individuals who are suspected or known terrorists, namely their full name, their date of birth, passport and citizenship. Ten Member States have such agreements. But let me add that none of these bilateral agreements cover PNR data. The exchange of PNR data only takes place under the EU-US agreement.

Following the entry into force of the Lisbon Treaty and the abolition of the former pillar structure, all conditions for the US Visa Waiver programme now fall under EU competence. The Commission is right now evaluating whether the twin-track approach agreed in 2008 should be updated following the entry into force of the Lisbon Treaty. I will of course keep you fully informed about this.

The Parliament resolution also refers to the EU-US cooperation on one-stop aviation security. This is the responsibility of Vice-President Kallas who is Transport Commissioner. He has been pursuing negotiations with the US transportation security administration to exempt US-originating passengers at EU airports from rescreening. This should improve efficiency at EU airports without compromising security. Vice-President Kallas has kept the Committee on Transport and Tourism of this House informed about these issues.

It is important to underline that this issue is very much distinct from PNR. The one-stop cooperation aviation security is not about transfer of personal data and it does not concern information processing with respect to the pursuit of suspected criminals or terrorists, so as such we will not raise it in the PNR negotiations.

To conclude – and I am sorry to be a bit long but I think this needed to be clarified – I would like to note that the Council will, as the President-in-Office from the Belgian Presidency said, adopt the negotiating mandates very soon. I am committed as always to keeping you informed about the progress in all the negotiation stages. It has already been decided that we will conduct negotiations in parallel with all three countries, but they will not necessarily be completed at the same time.

I know that this is of particular interest to your House and I therefore remain at your disposal to discuss this now and with the relevant committees and with the other Members whenever you wish to do so.

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