



**COUNCIL OF
THE EUROPEAN UNION**

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NOTE

from: General Secretariat of the Council
to: Delegations

Subject: European Parliament plenary meeting of 26 October 2011
EU-Australia agreement on the processing and transfer of PNR data

The rapporteur, Ms In't VELD (ALDE/NL), welcomed the excellent cooperation between the three institutions and highlighted the main features of her recommendation. She referred to the European Parliament's criteria for giving its consent to agreements with third countries on the transfer of PNR data, as set out in the resolutions of 5 May 2010 and 11 November 2011. Most of these criteria were met except in certain areas such as profiling, the justification of the necessity and proportionality of the mass collection and storage of data, and the long detention period. She proposed that the appropriate legal basis for the Agreement should be, at least primarily, Art 16 TFEU (on data protection) and that the Commission should confirm its commitment on cooperation between the EU institutions through an exchange of letters between the Presidents of the two institutions. As major positive elements she mentioned the definition of purpose and the "push only" method. She proposed that the European Parliament give its consent to the agreement and reject the GUE motion to consult the ECJ.

Commissioner MALMSTROM explained that the agreement met very high standards both in terms of respecting EP criteria and data protection and gave some details to demonstrate this. On interinstitutional cooperation she confirmed the Commission's commitment, adding that a decision to suspend an international agreement was taken by the Council upon proposal of the Commission but that a letter from the EP would be an important element in any such initiative.

Subsequent interventions by Members highlighted the split of opinion in the European Parliament on the agreement. S&D, EPP, ALDE and ECR Members were in favour of the report whereas Greens, NI and GUE were opposed mainly on the grounds that the agreement did not respect fundamental rights.

Members speaking in favour such as Mr KIRKHOPE (ECR/UK), Ms SIPPEL (S&D/DE), Mr VOSS (EPP/DE), and Ms LUDFORD (ALDE/UK) mentioned that although the agreement has a number of weaknesses, such as the long data retention period and the lack of definition on profiling, they considered the agreement to set an example for further similar agreements with Canada and the US. Ms HANKISS (EPP/HU) emphasised that it was a reciprocal agreement and that the EU would also receive data to fight against terrorism and international crime. Others welcomed the well defined scope and the use of the "push only" method as important positive points in the agreement.

Mr ALBRECHT (Greens/DE) said he opposed the agreement since it did not meet the criteria set out by the EP. He considered that the mass collection and processing of personal data was against the fundamental rights of EU citizens and that this has been underlined by various court rulings in the Member States, as well as the European Court of Human Rights. He was supported by other Greens, GUE Members and NI such as Ms ERNST (GUE/DE) and Mr MOLZER (NI/AT), who, together with Mr TAVARES (Greens/PT), argued that the principle that passengers should only be investigated when they were suspect was contradicted by the agreement.

Replying to questions from Members Ms MALMSTROM informed the plenary that she had had several "in camera" meetings with LIBE to demonstrate the necessity of the agreement, that there was no legal definition of profiling and that therefore the Commission had adopted a descriptive approach, that the Commission had indeed consulted the Agency for fundamental Rights which had replied that assessing an international agreement did not fall within its competence and that even without an agreement Australia was entitled to collect passenger data without any procedural arrangements to protect fundamental rights. She explained that negotiating an international agreement could never give a 100% satisfactory result since both parties needed to compromise, but that a review procedure was foreseen.

The rapporteur concluded by addressing those Members which were opposed to the agreement. She said that MEPs were politicians and not activists, even if sometimes they had to face difficult choices. She considered that a "no" vote lacked any real value since there was no concrete alternative, and that the agreement was only a first step in a long process to reverse the trend of unregulated data collection.

On 27 October 2011, the European Parliament rejected with a large majority a motion for a resolution from GUE to consult the ECJ on this agreement (Rule 90(6) of the EP internal rules of procedure).

Subsequently EP consent to the agreement was given with 463 votes in favour, 96 votes against and 11 abstentions.