



PETER HUSTINX
SUPERVISOR

Dr. Wolfgang Schäuble
Minister for the Interior
Alt-Moabit 101
D-10559 Berlin

Brussels, 27 June 2007
PH/SM/ab D(2007)1367 C2007-0351

Subject: New PNR Agreement with the United States of America

Dear Dr Schäuble,

As you explained yesterday afternoon in the meeting of the LIBE Committee of the European Parliament, a new agreement on the transfer of PNR data with the United States is close to completion. It is in connection with this that I am writing to you to express a concern, which also relates to what has been reported on the substance on the outcome of the negotiations on a new regime for exchange of passenger information with the USA.

The EDPS is not party to the negotiations, nor otherwise involved in them but I closely follow the developments. I do appreciate how difficult these negotiations are. I also commend the efforts of Council and Commission to ensure that the data protection rights of European citizens are respected as purpose of these negotiations. I furthermore agree with you that it is very important to reach an agreement on the level of the European Union in order to avoid bilateral arrangements with national airlines.

In addition to your presentation yesterday, I have noted that summary records of a meeting between the EU ambassadors on the PNR-dossier (ref: 10994/07) have been published on the internet. These records indicate that agreement between the EU and the USA has been reached on a number of issues. It is my role as EDPS to ensure that data protection rights are respected in all policies of the EU. As such, I am writing to inform you that if the final agreement with the USA is similar to that which has been reported, then I believe that European data protection rights will be at risk.

The main areas of grave concern are:

- The extension of the time that passenger data are kept - effectively from 3,5 to 15 years in all cases - introducing a concept of "dormant" data, that is without legal precedent;
- Data on EU citizens will be readily accessible to a broad range of US agencies and there is no limitation to what US authorities are allowed to do with the data;
- The absence of a robust legal mechanism that enables EU citizens to challenge misuse of their personal information;
- The US wants to avoid a binding agreement by exchange of letters.

Postal address: rue Wiertz 60 - B-1047 Brussels

Offices: rue Montoyer 63

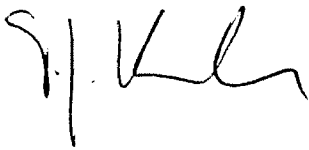
E-mail : edps@edps.europa.eu - Website: www.edps.europa.eu

Tel.: 02-283 19 00 - Fax : 02-283 19 50

EU citizens expect the EU institutions to protect every right laid down in the European Charter of Fundamental Rights. If the EU does not lead the way in developing the importance of fundamental rights, including the protection of personal data, how can we expect the rest of the world to follow? It is for this reason that I write to express my concern because I have serious doubts whether the outcome of these negotiations will be fully compatible with European fundamental rights, which both the Council and the Commission have stated are non negotiable.

I look forward to hearing from you.

Yours sincerely,



Peter HUSTINX

Cc: Mr Franco Frattini, Vice President of the European Commission
Mr Jean-Marie Cavada, Chairman of the Committee for Civil Liberties, Justice and Home Affairs of the European Parliament
Ms Sophie In 't Veld, Rapporteur in the European Parliament on PNR
Mr Javier Solana, Secretary General of the Council of the European Union
Mr Álvaro Mendonça E Moura, Ambassador Extraordinary and Plenipotentiary Permanent Representative of Portugal



EUROPEAN COMMISSION
DIRECTORATE-GENERAL JUSTICE, FREEDOM AND SECURITY

Director General

Brussels, 03 JUL. 2007
DG JLS/JF/jm D(2007)8630

Mr Hustinx
European Data Protection
Supervisor
rue Wiertz 60
B-1047 Brussels

Dear Mr Hustinx,


This is a response to your widely publicised letter of 27 June 2007 (ref. C2007-0351) to Minister Schäuble.

I regret that you did not wait until you had seen the text approved by Dr Schäuble, Mr Frattini and Mr Chertoff before reacting. I attach it for your information, but please note that it has not yet been approved by the Council.

You would have been able to avoid a number of misapprehensions about what you call "main areas of grave concern":

- there is an increase from 3.5 to 7 years of the time data are kept on an active database; the further period of 8 years, for which data are moved to dormant, non-operational status, was already provided for in the previous agreements and undertakings for PNR data that had been manually accessed during the initial 3.5-year period. In the new agreement and assurances all data are moved to dormant status after 7 years and may be accessed only under strict conditions and in response to an identifiable case, threat or risk;
- data available to US counter terrorism and law enforcement agencies are specifically provided for the purposes set out in the agreement and accompanying assurances;
- there are now the same administrative redress mechanisms available for US and EU citizens;
- there is a binding international agreement based on firm assurances; if the latter are not fulfilled, the former can be suspended.

I trust that you will give this letter due attention and the same publicity as you afforded to your own.


Jonathan FAULL