

FOR OFFICIAL USE ONLY - NOT FOR DISTRIBUTION

~~Confidential~~
Department of Homeland Security
US Immigration and Customs Enforcement
Discussion Document
US-EU PNR Dialogue

Purpose:
To provide talking points and background information on the Passenger Name Record (PNR) issue and related developments concerning law enforcement information sharing with the European Union (EU).

b5

Formatted: Bullets and Numbering
Deleted: [b5]
Formatted: Bullets and Numbering
Formatted: Bullets and Numbering
Formatted: Bullets and Numbering
Formatted: Bullets and Numbering
Formatted: Bullets and Numbering
Formatted: Indent Left: 0.5"
Bulleted + Level: 2 - Aligned at: 0.75" + Tab after: 1" + Indent at: 1", Tabs: 0.75", List tab + Not at: 1"

.....
b1

The Agreement was intended to resolve a perceived conflict between EU law which limits personal information collected by commercial entities from being shared with governmental entities and US law which required the collection and dissemination of PNR data.

b1

b1

The PNR Agreement was challenged by the European Parliament as insufficiently protective of EU privacy rights, and on May 30, 2006, the European Court of Justice (ECJ) struck down the Agreement.

The ECJ nullified the agreement on the procedural grounds that it was signed under the wrong EU legal authority - the one that deals with commercial issues rather than the one that deals with law enforcement and public security.

The EU notified the US that it will terminate the current Agreement on September 30, 2006 and has set a goal of establishing a new agreement by this date.

On 7/17 the European Commission provided a proposed replacement text.

Formatted: Indent Left: 0.5"

000906

Devised: Schneider MPR
Declass: 31 Dec 2016

b5

b1

Deleted: [b5]

Formatted: Bullets and Numbering

Formatted: Bullets and Numbering

Formatted: Indent Left: 0.5"

Formatted: Bullets and Numbering

Formatted: Bullets and Numbering

Formatted: Bullets and Numbering

Formatted: Bullets and Numbering

... is committed to working with the Commission and the ... to identify a community-wide arrangement.

[

b5

]

(c):

b1

(c)

b1

(c)

Formatted

b1

Deleted: [b5]

b1

Formatted: Font: Not Italic

Formatted: No bullets or numbering

Formatted: Bullets and Numbering

Formatted: Indent Left: 1.5"

Formatted: Bullets and Numbering

Formatted: Indent Left: 0.5"

Formatted: Bullets and Numbering

Formatted: Indent Left: 0.5"

Formatted: Bullets and Numbering

Formatted: Indent Left: 0.5"

Formatted: Bullets and Numbering

~~Confidential~~

800907

~~SECRET~~

FOR OFFICIAL USE ONLY - NOT FOR DISTRIBUTION

11

(c)

C

b5

U

Formatted: Indent: Left: 0.5"
Formatted: Indent: Left: 0.5"
Bulleted: Level: 1, Aligned: left
Bulleted: Level: 1, Aligned: left
Deleted: 1
Deleted: 1
Deleted: 1

(c)

Background WHAT FOLLOWS IS FOR OFFICIAL USE ONLY - NOT FOR DISTRIBUTION

(c)

Two converging events in Europe -- the recent European Court of Justice decision on the legality of the EU-US PNR Agreement and a draft EU Framework Decision on Exchange of Criminal Data -- have major implications for US law enforcement and security.

(c)

The EU-US PNR Agreement. As noted, in May 2004, after substantial negotiations, the Department of Homeland Security entered into an agreement relating to the sharing of PNR information collected by air carriers flying to the United States from Europe. Central to the Agreement was a set of Undertakings made by Customs and Border Protection (CBP) regarding how it would treat the PNR data transmitted to it. Several of the limitations in those Undertakings significantly restrict US opportunities to use information for investigative and law enforcement purposes.

Deleted: 1

(a)

The most significant of these limitations, from the DHS perspective, are the following.

Deleted: [b5]

(c)

b1

(c)

~~SECRET~~

600908

~~SECRET~~

b1

Deleted:

b5]

Deleted:

The ECJ PNR Case. The European Parliament (EP) filed two suits in the European Court of Justice (ECJ) challenging the information sharing arrangement.

On May 30, 2006, the ECJ issued its opinion in the lawsuits. The opinion did not address the merits of the EU-US PNR Agreement or the role of the Parliament. Rather, the decision turned on the lack of competence of the Commission and Council to enter into the Agreement in the first instance. The EU had based its authority on the so-called "First Pillar," which allows the EU to regulate trade and commercial matters. The ECJ held (as the US had argued earlier) that the requirement that PNR data be sent to the US was a law enforcement and national security matter. Such transfers, the court held, were excluded from the data protection directive

~~SECRET~~

~~CONFIDENTIAL~~

600909

FOR OFFICIAL USE ONLY - NOT FOR DISTRIBUTION

(c/FBI-100)°

b1

(c) ° DHS is committed to working with the Commission and the Finnish Presidency to identify a community wide arrangement.

(c) °

(c) °

[b5]

(c) °

(c) °

(c) °

b1

(c) °

(c) °

(c) °

(c) °

001580

(U) • C b5 3

(U) • **Background** (WHAT FOLLOWS IS BACKGROUND ONLY - NOT FOR DISSEMINATION):

(U) Two converging events in Europe – the recent European Court of Justice decision on the legality of the EU-US PNR Agreement and a draft EU Framework Decision on Exchange of Criminal Data -- have major implications for US law enforcement and security.

(U) **The EU-US PNR Agreement.** As noted, in May 2004, after substantial negotiations, the Department of Homeland Security entered into an agreement relating to the sharing of PNR information collected by air carriers flying to the United States from Europe. Central to the Agreement was a set of Undertakings made by Customs and Border Protection (CBP) regarding how it would treat the PNR data transmitted to it. Several of the limitations in those Undertakings significantly restrict US opportunities to use information for investigative and law enforcement purposes.

(U) • The most significant of these limitations, from the DHS perspective, are the following

(c) •

b1

(c) •

(c) •

3

001581

(S)

(S)

b1

(S)

(U) **The ECJ PNR Case.** The European Parliament (EP) filed two suits in the European Court of Justice (ECJ) challenging the information sharing arrangement.

(U) On May 30, 2006, the ECJ issued its opinion in the lawsuits. The opinion did not address the merits of the EU-US PNR Agreement or the role of the Parliament. Rather, the decision turned on the lack of competence of the Commission and Council to enter into the Agreement in the first instance. The EU had based its authority on the so-called "First Pillar," which allows the ~~EU to regulate trade and commercial matters.~~ The ECJ held (as the US had argued earlier) that the requirement that PNR data be sent to the US was a law enforcement and national security matter. Such transfers, the court held, were excluded from the data protection directive governing commercial data exports. If they are to be regulated, the court implied, it would have to be done under the "Third Pillar."

(U) That is what the EU proposes to do. It has obtained authority from its Member States to erect substantially the same agreement on a new foundation. In order to meet the European Court of Justice deadline the Commission will seek to codify its position over the next couple of weeks and then will call for agreement on the new arrangement by September 30.

(c)

b1

(u) Article 15 of the draft Framework Directive, which would have the force of law within the European Union, lays out procedural rules for information sharing between individual EU member states.¹

(s)

b1

(C/FSI-)
(400)

(c)

(u) For example, the Draft Decision contains provisions on time limits for retention of shared data, ensuring the accuracy of shared data, logging and audit trails, as well as restrictions limiting further use of the data to the original purpose for which it was first transmitted. In effect, it borrows heavily from the PNR Agreement and the Undertakings.

~~FOR OFFICIAL USE ONLY - NOT FOR DISTRIBUTION~~

(C/Fgij)
M001

b1

Department of Homeland Security
US Immigration and Customs Enforcement
Discussion Document
US-EU PNR Dialogue

Purpose:
(u) To provide talking points and background information on the Passenger Name Record (PNR) issue and related developments concerning law enforcement information sharing with the European Union (EU).

(u) [b5] Deleted the PNR agreement and

(u) (c)(f)(g) (u) b1
o The Agreement was intended to resolve a perceived conflict between EU law (which limits personal information collected by commercial entities from being shared with governmental entities) and US law (which required the collection and dissemination of PNR data).

(u) (c)(f)(g) (u) b1
o The PNR Agreement was challenged by the European Parliament as insufficiently protective of EU privacy rights, and on May 30, 2006, the European Court of Justice (ECJ) struck down the Agreement.
o The ECJ nullified the agreement on the procedural grounds that it was signed under the wrong EU legal authority - the one that deals with commercial issues rather than the one that deals with law enforcement and public security.

(u) o The EU notified the US that it will terminate the current Agreement on September 30, 2006 and has set a goal of establishing a new agreement by this date.

(u) (c)(f)(g) (u) b1

002682

Derived: Schneider Mfe
Declass: 31 Dec 2031

(4)

~~SECRET~~

(167)

(c)

(c)

(c)

(c)

b1

(c)

(c)

(c)

(c)

Background

(c) Two converging events in Europe – the recent European Court of Justice decision on the legality of the EU-US PNR Agreement and a draft EU Framework Decision on Exchange of Criminal Data -- have major implications for US law enforcement and security.

(c) The EU-US PNR Agreement. As noted, in May 2004, after substantial negotiations, the Department of Homeland Security entered into an agreement relating to the sharing of PNR information collected by air carriers flying to the United States from Europe. Central to the

(u) Agreement was a set of Undertakings made by Customs and Border Protection (CBP) regarding how it would treat the PNR data transmitted to it.¹ Several of the limitations in those Undertakings significantly restrict US opportunities to use information for investigative and law enforcement purposes.

(u) The most significant of these limitations, from the DHS perspective, are the following:

(c)

(c)

b1

(c)

(c)

(c)

(c) b1

(c)

(u) **The ECJ PNR Case.** The European Parliament (EP) filed two suits in the European Court of Justice (ECJ) challenging the information sharing arrangement.

On May 30, 2006, the ECJ issued its opinion in the lawsuits. The opinion did not address the merits of the EU-US PNR Agreement or the role of the Parliament. Rather, the decision turned on the lack of competence of the Commission and Council to enter into the Agreement in the first instance. The EU had based its authority on the so-called "First Pillar," which allows the EU to regulate trade and commercial matters. The ECJ held (as the US had argued earlier) that the requirement that PNR data be sent to the US was a law enforcement and national security matter. Such transfers, the court held, were excluded from the data protection directive governing commercial data exports. If they are to be regulated, the court implied, it would have to be done under the "Third Pillar."

(u) That is what the EU proposes to do. It has obtained authority from its Member States to erect substantially the same agreement on a new foundation. In order to meet the European Court of Justice deadline the Commission will seek to codify its position over the next couple of weeks and then will call for agreement on the new arrangement by September 30.

(u) **EU Proposals on Sharing Law Enforcement Information.** The PNR negotiations will be closely intertwined with a broader effort to establish restrictive, EU-wide rules for information sharing in the area of law enforcement. Last October the EU put forward two draft documents that concern data sharing and protection in the law enforcement context. They consist of a draft Framework Directive of the European Parliament and Council on the retention of data and a proposed Council decision on the protection of personal data in criminal matters. [65]

(u) ² This concern is consistent with Executive Order 13388 and the President's Memorandum issued on December 16, 2006 to Heads of Executive Departments and Agencies on "Guidelines and Requirements in Support of Information Sharing Environment."

SECRET

FOR OFFICIAL USE ONLY - NOT FOR DISTRIBUTION

(u)

[

b5

]

(u)

Article 15 of the draft Framework Directive, which would have the force of law within the European Union, lays out procedural rules for information sharing between individual EU member states.³

(S)

(S) (u) (b) (1)

b1

(S) (u) (b) (1)

(u)

³ For example, the Draft Decision contains provisions on time limits for retention of shared data, ensuring the accuracy of shared data, logging and audit trails, as well as restrictions limiting further use of the data to the original purpose for which it was first transmitted. In effect, it borrows heavily from the PNR Agreement and the Undertakings.

(S) (u) (b) (1)

b1

002686

SECRET

SECRET

FOR OFFICIAL USE ONLY - NOT FOR DISTRIBUTION

Department of Homeland Security
US Immigration and Customs Enforcement
Discussion Document
US-EU PNR Dialogue

Purpose:

(u) To provide talking points and background information on the Passenger Name Record (PNR) issue and related developments concerning law enforcement information sharing with the European Union (EU).

Formatted: Bullets and Numbering
Deleted: the PNR agreement and
Formatted: Bullets and Numbering
Formatted: Bullets and Numbering
Formatted: Bullets and Numbering
Formatted: Bullets and Numbering
Formatted: Indent: Left: 0.5",
Bulleted + Level: 2 + Aligned at:
0.75" + Tab after: 1" + Indent at:
1", Tabs: 0.75", List tab + Not at 1"

(u) [b5]

(effg) mod

(u) b1
o The Agreement was intended to resolve a perceived conflict between EU law (which limits personal information collected by commercial entities from being shared with governmental entities) and US law (which required the collection and dissemination of PNR data).

[b5]

(effg) mod

(u) b1
• The PNR Agreement was challenged by the European Parliament as insufficiently protective of EU privacy rights, and on May 30, 2006, the European Court of Justice (ECJ) struck down the Agreement.
o The ECJ nullified the agreement on the procedural grounds that it was signed under the wrong EU legal authority - the one that deals with commercial issues rather than the one that deals with law enforcement and public security.

[b5] (u)

(u) • The EU notified the US that it will terminate the current Agreement on September 30, 2006 and has set a goal of establishing a new agreement by this date.

o On 7/17 the European Commission provided a proposed replacement text.

6-1-05 mod b1

SECRET

Derived: Schneider MFR

002687

(5)

Declass: 31 Dec 2031

165

SECRET

FOR OFFICIAL USE ONLY - NOT FOR DISTRIBUTION

b1

(S) (U) (M) (F) (S) (U) (M) (F) (S)

o DHS is committed to working with the Commission and the Finnish Presidency to identify a community wide arrangement.

(S)

(U)

(M)

(F)

b5

[

]

(S)

b1

(S)

b1

(C)

(C)

b1

(C)

(C)

(C)

(C)

Formatted: Bullets and Numbering
Formatted: Bullets and Numbering
Formatted: Indent: Left: 0.5",
Tabs: 0.75", List tab + Not at 1"
Formatted: Bullets and Numbering
Formatted: Bullets and Numbering
Formatted: Bullets and Numbering

SECRET

SECRET

FOR OFFICIAL USE ONLY - NOT FOR DISTRIBUTION

o c b5
Background (u)

Formatted: Indent: Left: 0.5",
Bulleted + Level: 2 + Aligned at:
0.75" + Tab after: 1" + Indent at:
1", Tabs: 0.75", List tab + Not at 1"
Deleted: <#> ¶
¶
¶

(u) Two converging events in Europe - the recent European Court of Justice decision on the legality of the EU-US PNR Agreement and a draft EU Framework Decision on Exchange of Criminal Data - have major implications for US law enforcement and security.

(u) The EU-US PNR Agreement. As noted, in May 2004, after substantial negotiations, the Department of Homeland Security entered into an agreement relating to the sharing of PNR information collected by air carriers flying to the United States from Europe. Central to the Agreement was a set of Undertakings made by Customs and Border Protection (CBP) regarding how it would treat the PNR data transmitted to it.¹ Several of the limitations in those Undertakings significantly restrict US opportunities to use information for investigative and law enforcement purposes.

(u) The most significant of these limitations, from the DHS perspective, are the following (WHAT FOLLOWS IS BACKGROUND ONLY - NOT FOR DISSEMINATION):

(c)

(c) b1

(c)

(c)

(c) b1

SECRET

002689

~~SECRET~~

~~FOR OFFICIAL USE ONLY - NOT FOR DISTRIBUTION~~

(c)

b1

(c)

(c)

(u) **The ECJ PNR Case.** The European Parliament (EP) filed two suits in the European Court of Justice (ECJ) challenging the information sharing arrangement.

(u)

On May 30, 2006, the ECJ issued its opinion in the lawsuits. The opinion did not address the merits of the EU-US PNR Agreement or the role of the Parliament. Rather, the decision turned on the lack of competence of the Commission and Council to enter into the Agreement in the first instance. The EU had based its authority on the so-called "First Pillar," which allows the EU to regulate trade and commercial matters. The ECJ held (as the US had argued earlier) that the requirement that PNR data be sent to the US was a law enforcement and national security matter. Such transfers, the court held, were excluded from the data protection directive

(u)

⁴ This concern is consistent with Executive Order 13388 and the President's Memorandum issued on December 16, 2006 to Heads of Executive Departments and Agencies on "Guidelines and Requirements in Support of Information Sharing Environment."

~~SECRET~~

002630

~~SECRET~~

~~FOR OFFICIAL USE ONLY - NOT FOR DISTRIBUTION~~

(u) That is what the EU proposes to do. It has obtained authority from its Member States to erect substantially the same agreement on a new foundation. In order to meet the European Court of Justice deadline the Commission will seek to codify its position over the next couple of weeks and then will call for agreement on the new arrangement by September 30.

(u) EU Proposals on Sharing Law Enforcement Information. The PNR negotiations will be closely intertwined with a broader effort to establish restrictive, EU-wide rules for information sharing in the area of law enforcement. Last October the EU put forward two draft documents that concern data sharing and protection in the law enforcement context. They consist of a draft Framework Directive of the European Parliament and Council on the retention of data and a proposed Council decision on the protection of personal data in criminal matters. <

b5

3

(u) Article 15 of the draft Framework Directive, which would have the force of law within the European Union, lays out procedural rules for information sharing between individual EU member states.³

(S)

b1

(clg mod)

(u) ³ For example, the Draft Decision contains provisions on time limits for retention of shared data, ensuring the accuracy of shared data, logging and audit trails, as well as restrictions limiting further use of the data to the original purpose for which it was first transmitted. In effect, it borrows heavily from the PNR Agreement and the Undertakings.

(clg mod)

b1

~~SECRET~~

002691

~~SECRET~~

~~FOR OFFICIAL USE ONLY - NOT FOR DISTRIBUTION~~

(c/fir-
msd)

(c/fj
mont)

b1

~~SECRET~~

002592

(c)

(c)

(c)

(c)

b1

(c)

(c)

(c)

(c)

Department of Homeland Security
US Immigration and Customs Enforcement
Discussion Document
US-EU PNR Dialogue

Purpose:

(u) To provide talking points and background information on the Passenger Name Record (PNR) issue and related developments concerning law enforcement information sharing with the European Union (EU).

(u) [b5]

b1

(clfy. mod.)

(u) ○ The Agreement was intended to resolve a perceived conflict between EU law (which limits personal information collected by commercial entities from being shared with governmental entities) and US law (which required the collection and dissemination of PNR data).

(clfy. mod.)

b1

(u) • The PNR Agreement was challenged by the European Parliament as insufficiently protective of EU privacy rights, and on May 30, 2006, the European Court of Justice (ECJ) struck down the Agreement.

(u) ○ The ECJ nullified the agreement on the procedural grounds that it was signed under the wrong EU legal authority – the one that deals with commercial issues rather than the one that deals with law enforcement and public security.

(u) • The EU notified the US that it will terminate the current Agreement on September 30, 2006 and has set a goal of establishing a new agreement by this date.

(clfy. mod.)

b1

Derived: Schneider MFR
Declass: 31 Dec 2031

~~SECRET~~

002694

286.1

169

Deleted: and that

Deleted: is allowed to

(c)
(c)
(c)
(c)

b1

Formatted: Indent: Left: 0.5"

(c)
(c)
(c)
(c)

(c)
b1

(c)
b1

Background

- (u) Two converging events in Europe – the recent European Court of Justice decision on the legality of the EU-US PNR Agreement and a draft EU Framework Decision on Exchange of Criminal Data -- have major implications for US law enforcement and security.
- (u) The EU-US PNR Agreement. As noted, in May 2004, after substantial negotiations, the Department of Homeland Security entered into an agreement relating to the sharing of PNR information collected by air carriers flying to the United States from Europe. Central to the Agreement was a set of Undertakings made by Customs and Border Protection (CBP) regarding

SECRET

FOR OFFICIAL USE ONLY - NOT FOR DISTRIBUTION

(c)

b1

Deleted:

(u) The most significant of these limitations, from the DHS perspective, are the following:

(c)

(c)

b1

(c)

(c)

SECRET

002696

(c)

b1

(c)

Deleted:

(u) **The ECJ PNR Case.** The European Parliament (EP) filed two suits in the European Court of Justice (ECJ) challenging the information sharing arrangement.

(u) On May 30, 2006, the ECJ issued its opinion in the lawsuits. The opinion did not address the merits of the EU-US PNR Agreement or the role of the Parliament. Rather, the decision turned on the lack of competence of the Commission and Council to enter into the Agreement in the first instance. The EU had based its authority on the so-called "First Pillar," which allows the EU to regulate trade and commercial matters. The ECJ held (as the US had argued earlier) that the requirement that PNR data be sent to the US was a law enforcement and national security matter. Such transfers, the court held, were excluded from the data protection directive governing commercial data exports. If they are to be regulated, the court implied, it would have to be done under the "Third Pillar."

(u) That is what the EU proposes to do. It has obtained authority from its Member States to erect substantially the same agreement on a new foundation. In order to meet the European Court of Justice deadline the Commission will seek to codify its position over the next couple of weeks and then will call for agreement on the new arrangement by September 30.

(u) **EU Proposals on Sharing Law Enforcement Information.** The PNR negotiations will be closely intertwined with a broader effort to establish restrictive, EU-wide rules for information sharing in the area of law enforcement. Last October the EU put forward two draft documents that concern data sharing and protection in the law enforcement context. They consist of a draft Framework Directive of the European Parliament and Council on the retention of data and a proposed Council decision on the protection of personal data in criminal matters. C

b5

3

SECRET

FOR OFFICIAL USE ONLY - NOT FOR DISTRIBUTION

(W) Article 15 of the draft Framework Directive, which would have the force of law within the European Union, lays out procedural rules for information sharing between individual EU member states.³

(S)

b1

(C/K) (Mod)

Deleted:

(C/K) (Mod)

(4)

³ For example, the Draft Decision contains provisions on time limits for retention of shared data, ensuring the accuracy of shared data, logging and audit trails, as well as restrictions limiting further use of the data to the original purpose for which it was first transmitted. In effect, it borrows heavily from the PNR Agreement and the Undertakings.

SECRET

002698

Department of Homeland Security
US Immigration and Customs Enforcement
Discussion Document
US-EU PNR Dialogue

Purpose:

(u) To provide talking points and background information on the Passenger Name Record (PNR) issue and related developments concerning law enforcement information sharing with the European Union (EU).

(u) [b5]

(c/s) (u) (u)

b1

(u) ○ The Agreement was intended to resolve a perceived conflict between EU law (which limits personal information collected by commercial entities from being shared with governmental entities) and US law (which required the collection and dissemination of PNR data).

(c/s) (u) (u)

pr b1

(u) ● The PNR Agreement was challenged by the European Parliament as insufficiently protective of EU privacy rights, and on May 30, 2006, the European Court of Justice (ECJ) struck down the Agreement.

(u) ○ The ECJ nullified the agreement on the procedural grounds that it was signed under the wrong EU legal authority – the one that deals with commercial issues rather than the one that deals with law enforcement and public security.

(u) ● The EU notified the US that it will terminate the current Agreement on September 30, 2006 and has set a goal of establishing a new agreement by this date.

○ On 7/17 the European Commission provided a proposed replacement text.

Derived: Schneider MFR
Declass: 31 Dec 2031

287.1

002699

1
~~SECRET~~

170

(c/si)

b1

(u) ○ DHS is committed to working with the Commission and the Finnish Presidency to identify a community wide arrangement.

(u) ○

(u) ○

[

b5

]

(c)

(c)

b1

(c)

(c)

(c)

(c)

(c) a b 1

• **Background** (WHAT FOLLOWS IS BACKGROUND ONLY - NOT FOR DISSEMINATION):

(u) Two converging events in Europe – the recent European Court of Justice decision on the legality of the EU-US PNR Agreement and a draft EU Framework Decision on Exchange of Criminal Data -- have major implications for US law enforcement and security.

(u) **The EU-US PNR Agreement.** As noted, in May 2004, after substantial negotiations, the Department of Homeland Security entered into an agreement relating to the sharing of PNR information collected by air carriers flying to the United States from Europe. Central to the Agreement was a set of Undertakings made by Customs and Border Protection (CBP) regarding how it would treat the PNR data transmitted to it. Several of the limitations in those Undertakings significantly restrict US opportunities to use information for investigative and law enforcement purposes.

(u) The most significant of these limitations, from the DHS perspective, are the following

•
(c)

b 1

•
(c)

•
(c)

002701

(c)

(c)

b1

(c)

(c)

(u) **The ECJ PNR Case.** The European Parliament (EP) filed two suits in the European Court of Justice (ECJ) challenging the information sharing arrangement.

(u)

On May 30, 2006, the ECJ issued its opinion in the lawsuits. The opinion did not address the merits of the EU-US PNR Agreement or the role of the Parliament. Rather, the decision turned on the lack of competence of the Commission and Council to enter into the Agreement in the first instance. The EU had based its authority on the so-called "First Pillar," which allows the EU to regulate trade and commercial matters. The ECJ held (as the US had argued earlier) that the requirement that PNR data be sent to the US was a law enforcement and national security matter. Such transfers, the court held, were excluded from the data protection directive governing commercial data exports. If they are to be regulated, the court implied, it would have to be done under the "Third Pillar."

(u)

That is what the EU proposes to do. It has obtained authority from its Member States to erect substantially the same agreement on a new foundation. In order to meet the European Court of Justice deadline the Commission will seek to codify its position over the next couple of weeks and then will call for agreement on the new arrangement by September 30.

~~SECRET~~

FOR OFFICIAL ~~USE~~ ONLY - NOT FOR DISTRIBUTION

(u) EU Proposals on Sharing Law Enforcement Information. The PNR negotiations will be closely intertwined with a broader effort to establish restrictive, EU-wide rules for information sharing in the area of law enforcement. Last October the EU put forward two draft documents that concern data sharing and protection in the law enforcement context. They consist of a draft Framework Directive of the European Parliament and Council on the retention of data and a proposed Council decision on the protection of personal data in criminal matters. \leftarrow

b5

\rightarrow

(u) Article 15 of the draft Framework Directive, which would have the force of law within the European Union, lays out procedural rules for information sharing between individual EU member states.¹

(S)

b1

(c/si)
(Mod)

(c/si)
(Mod)

(u) ¹ For example, the Draft Decision contains provisions on time limits for retention of shared data, ensuring the accuracy of shared data, logging and audit trails, as well as restrictions limiting further use of the data to the original purpose for which it was first transmitted. In effect, it borrows heavily from the PNR Agreement and the Undertakings.

eted: [b5]
Formatted: Bullets and Numbering
Formatted: Bullets and Numbering
Formatted: Indent: Left: 0.5",
Tabs: 0.75", List tab + Not at 1"
Formatted: Bullets and Numbering
Formatted: Bullets and Numbering
Formatted: Bullets and Numbering

DHS is committed to working with the Commission and the Finnish Presidency to identify a community wide arrangement.

(S)
(S)
(S)
(S)
(S)
(S)
(S)
(S)

[

b5

]

(C)

(C) b1

(S)
(S)
(S)
(S)
(S)
(S)

b1

(C)
(C)
(C)

Formatted: Font: Not Italic
Formatted: No bullets or numbering
Formatted: Bullets and Numbering
Formatted: Indent: Left: 0.5"
Formatted: Bullets and Numbering
Formatted: Indent: Left: 0.5"
Formatted: Bullets and Numbering
Formatted: Indent: Left: 0.5"
Formatted: Bullets and Numbering
Formatted: Indent: Left: 0.5"
Formatted: Bullets and Numbering

(c)

b1

Background

Formatted: Indent: Left: 0.5"
Formatted: Indent: Left: 0.5",
Bulleted + Level: 2 + Aligned at:
0.75" + Tab after: 1" + Indent at:
1", Tabs: 0.75", List tab + Not at 1"
Deleted: < >
Deleted: <

(u) Two converging events in Europe - the recent European Court of Justice decision on the legality of the EU-US PNR Agreement and a draft EU Framework Decision on Exchange of Criminal Data -- have major implications for US law enforcement and security.

(u) The EU-US PNR Agreement. As noted, in May 2004, after substantial negotiations, the Department of Homeland Security entered into an agreement relating to the sharing of PNR information collected by air carriers flying to the United States from Europe. Central to the Agreement was a set of Undertakings made by Customs and Border Protection (CBP) regarding how it would treat the PNR data transmitted to it. Several of the limitations in those Undertakings significantly restrict US opportunities to use information for investigative and law enforcement purposes.

(u) The most significant of these limitations, from the DHS perspective, are the following.

b1

(c)
(c)

(c)A

b1

(c)

(c)

(c)

b1

(c)

(c)

(c)

b1

(u) **The ECJ PNR Case.** The European Parliament (EP) filed two suits in the European Court of Justice (ECJ) challenging the information sharing arrangement.

(u) On May 30, 2006, the ECJ issued its opinion in the lawsuits. The opinion did not address the merits of the EU-US PNR Agreement or the role of the Parliament. Rather, the decision turned on the lack of competence of the Commission and Council to enter into the Agreement in the first instance. The EU had based its authority on the so-called "First Pillar," which allows the EU to regulate trade and commercial matters. The ECJ held (as the US had argued earlier) that the requirement that PNR data be sent to the US was a law enforcement and national security matter. Such transfers, the court held, were excluded from the data protection directive

SECRET

(S)
mod

b1

002709

SECRET

SECRET

(c)

(c)

b1

(c)

(c)

(c)

(c)

(c)

(c)

002710

SECRET

Department of Homeland Security
US Immigration and Customs Enforcement
Discussion Document
US-EU PNR Dialogue

Purpose:

(u) To provide talking points and background information on the Passenger Name Record (PNR) issue and related developments concerning law enforcement information sharing with the European Union (EU).

(u) [b5]

Formatted: Bullets and Numbering
Deleted: the PNR agreement and
Formatted: Bullets and Numbering
Formatted: Bullets and Numbering
Formatted: Bullets and Numbering
Formatted: Bullets and Numbering
Formatted: Indent: Left: 0.5",
Bulleted + Level: 2 + Aligned at:
0.75" + Tab after: 1" + Indent at:
1", Tabs: 0.75", List tab + Not at 1"

(c)(f)(g)(h)(i)(j)(k)(l)(m)(n)(o)(p)(q)(r)(s)(t)(u)(v)(w)(x)(y)(z)

(u) b1
.....
o The Agreement was intended to resolve a perceived conflict between EU law (which limits personal information collected by commercial entities from being shared with governmental entities) and US law (which required the collection and dissemination of PNR data).

(u) b1
USG 1
[b5]

(u) b1
o The PNR Agreement was challenged by the European Parliament as insufficiently protective of EU privacy rights, and on May 30, 2006, the European Court of Justice (ECJ) struck down the Agreement.

(u) b1
[b5]

(u) o The ECJ nullified the agreement on the procedural grounds that it was signed under the wrong EU legal authority - the one that deals with commercial issues rather than the one that deals with law enforcement and public security.

(u) o The EU notified the US that it will terminate the current Agreement on September 30, 2006 and has set a goal of establishing a new agreement by this date.

o On 7/17 the European Commission provided a proposed replacement text.

(c)(f)(g)(h)(i)(j)(k)(l)(m)(n)(o)(p)(q)(r)(s)(t)(u)(v)(w)(x)(y)(z) b1

Derived: Schneider MFR
Declass: 31 Dec 2021

288(a)

002711

CONFIDENTIAL

172

(S) (u) (p)

DHS is committed to working with the Commission and the Finnish Presidency to identify a community wide arrangement.

(S) (u) (p)
(S) (u) (p)
(S) (u) (p)
(S) (u) (p)

b5

]

(S)

b1

(S) (u) (p)
(S) (u) (p)
(S) (u) (p)
(S) (u) (p)
(S) (u) (p)
(S) (u) (p)
(S) (u) (p)

b1

(S) (u) (p)
(S) (u) (p)
(S) (u) (p)
(S) (u) (p)

o c b5

Formatted: Indent: left: 0.5",
Bulleted + Level: 2 + Aligned at:
0.75" + Tab after: 1" + Indent at:
1", Tabs: 0.75", List tab + Not at 1"
Deleted: <#>

(u) Two converging events in Europe -- the recent European Court of Justice decision on the legality of the EU-US PNR Agreement and a draft EU Framework Decision on Exchange of Criminal Data -- have major implications for US law enforcement and security.

(u) The EU-US PNR Agreement. As noted, in May 2004, after substantial negotiations, the Department of Homeland Security entered into an agreement relating to the sharing of PNR information collected by air carriers flying to the United States from Europe. Central to the Agreement was a set of Undertakings made by Customs and Border Protection (CBP) regarding how it would treat the PNR data transmitted to it.¹ Several of the limitations in those Undertakings significantly restrict US opportunities to use information for investigative and law enforcement purposes.

(u) | The most significant of these limitations, from the DHS perspective, are the following (WHAT FOLLOWS IS BACKGROUND ONLY - NOT FOR DISSEMINATION):

(c)

b1

(c)

(c)

(c) b1

Department of Homeland Security
US Immigration and Customs Enforcement
Discussion Document
US-EU PNR Dialogue

Purpose:

(U) To provide talking points and background information on the Passenger Name Record (PNR) issue and related developments concerning law enforcement information sharing with the European Union (EU).

(u)

[b5]

b1

(u) (c/s) Mod

o The Agreement was intended to resolve a perceived conflict between EU law (which limits personal information collected by commercial entities from being shared with governmental entities) and US law (which required the collection and dissemination of PNR data).

(u) (c/s) Mod

b1

(u) • The PNR Agreement was challenged by the European Parliament as insufficiently protective of EU privacy rights, and on May 30, 2006, the European Court of Justice (ECJ) struck down the Agreement.

(u) o The ECJ nullified the agreement on the procedural grounds that it was signed under the wrong EU legal authority - the one that deals with commercial issues rather than the one that deals with law enforcement and public security.

(u) • The EU notified the US that it will terminate the current Agreement on September 30, 2006 and has set a goal of establishing a new agreement by this date.

(u) (c/s) Mod

b1

002714

Derived: Schneider MFE
Declass: 31 Dec 2031
285.1

SECRET

173

(c)

(c)

(c)

b1

(c)

(c)

(c)

(c)

(c)

Background

- (u) Two converging events in Europe - the recent European Court of Justice decision on the legality of the EU-US PNR Agreement and a draft EU Framework Decision on Exchange of Criminal Data -- have major implications for US law enforcement and security.
- (u) **The EU-US PNR Agreement.** As noted, in May 2004, after substantial negotiations, the Department of Homeland Security entered into an agreement relating to the sharing of PNR

(u) information collected by air carriers flying to the United States from Europe. Central to the Agreement was a set of Undertakings made by Customs and Border Protection (CBP) regarding how it would treat the PNR data transmitted to it.¹ Several of the limitations in those Undertakings significantly restrict US opportunities to use information for investigative and law enforcement purposes.

(u) The most significant of these limitations, from the DHS perspective, are the following:

(c)

(c)

b1

(c)

(c)

(c)

(c)

(c)

b1

(c)

- (u) **The ECJ PNR Case.** The European Parliament (EP) filed two suits in the European Court of Justice (ECJ) challenging the information sharing arrangement.

On May 30, 2006, the ECJ issued its opinion in the lawsuits. The opinion did not address the merits of the EU-US PNR Agreement or the role of the Parliament. Rather, the decision turned on the lack of competence of the Commission and Council to enter into the Agreement in the first instance. The EU had based its authority on the so-called "First Pillar," which allows the EU to regulate trade and commercial matters. The ECJ held (as the US had argued earlier) that the requirement that PNR data be sent to the US was a law enforcement and national security matter. Such transfers, the court held, were excluded from the data protection directive governing commercial data exports. If they are to be regulated, the court implied, it would have to be done under the "Third Pillar."

(u)

- (u) That is what the EU proposes to do. It has obtained authority from its Member States to erect substantially the same agreement on a new foundation. In order to meet the European Court of Justice deadline the Commission will seek to codify its position over the next couple of weeks and then will call for agreement on the new arrangement by September 30.

(u)

EU Proposals on Sharing Law Enforcement Information. The PNR negotiations will be closely intertwined with a broader effort to establish restrictive, EU-wide rules for information sharing in the area of law enforcement. Last October the EU put forward two draft documents that concern data sharing and protection in the law enforcement context. They consist of a draft Framework Directive of the European Parliament and Council on the retention of data and a proposed Council decision on the protection of personal data in criminal matters. [b5]

(u)

² This concern is consistent with Executive Order 13388 and the President's Memorandum issued on December 16, 2006 to Heads of Executive Departments and Agencies on "Guidelines and Requirements in Support of Information Sharing Environment."

~~SECRET~~

FOR OFFICIAL USE ONLY - NOT FOR DISTRIBUTION

(u) [

b5

]

(u) Article 15 of the draft Framework Directive, which would have the force of law within the European Union, lays out procedural rules for information sharing between individual EU member states.³

(S)

b1

(c)(g)
Mod

(c)(g)
Mod

(u) ³ For example, the Draft Decision contains provisions on time limits for retention of shared data, ensuring the accuracy of shared data, logging and audit trails, as well as restrictions limiting further use of the data to the original purpose for which it was first transmitted. In effect, it borrows heavily from the PNR Agreement and the Undertakings.

(c)(g)
Mod

b1

5
~~SECRET~~

002718

Department of Homeland Security
US Immigration and Customs Enforcement
Discussion Document
US-EU PNR Dialogue

Purpose:

To provide talking points and background information on the Passenger Name Record (PNR) issue and related developments concerning law enforcement information sharing with the European Union (EU).

(u) [Redacted] b5

Formatted: Bullets and Numbering
Deleted: the PNR Agreement
Formatted: Bullets and Numbering
Formatted: Bullets and Numbering
Formatted: Bullets and Numbering
Formatted: Bullets and Numbering
Formatted: Indent: Left 0.5in

(u) (c/s) (p) (u)

b1

The Agreement was intended to resolve a perceived conflict between EU law (which limits personal information collected by commercial entities from being shared with governmental entities) and US law (which required the collection and dissemination of PNR data).

(u) (c/s) (p) (u)

b1

(u) (c/s) (p) (u)

b1

The PNR Agreement was challenged by the European Parliament as insufficiently protective of EU privacy rights, and on May 30, 2006, the European Court of Justice (ECJ) struck down the Agreement.

(u)

[Redacted]

(u) (c/s) (p) (u)

The ECJ nullified the agreement on the procedural ground that it was signed under the wrong EU legal authority - the one that deals with commercial issues rather than the one that deals with law enforcement and public security.

(u)

(u)

b5

(u) (c/s) (p) (u)

The EU notified the US that it will terminate the current Agreement on September 30, 2006 and has set a goal of establishing a new agreement by this date.

(u)

[Redacted]

On 7/17 the European Commission provided a proposed replacement text.

Formatted: Indent: Left 0.5in

(u) (c/s) (p) (u)

b1

Denise Schneider MGR
Declass: 31 Dec. 2031

348

002719

SECRET

179

b1

(S)
(S)
(S)
(S)

DHS is committed to working with the Commission and the Finnish Presidency to identify a community wide arrangement.

[b5]

(S)

(S)

b1

(S)

b1

(S)

(S)

(S)

(S)

(S)

(S)

(S)

(S)

(S)

C 65

Formatted: Indent Left: 0.5"
Bulleted + Level: 2 + Aligned at
Left + Tabular: 17.4. Indent at:
0.5" Tabular: 17.4. Indent at:
0.5" Tabular: 17.4. Indent at:
0.5"
Deleted:

Background

(S) Two converging events in Europe - the recent European Court of Justice decision on the legality of the EU-US PNR Agreement and a draft EU Framework Decision on Exchange of Criminal Data -- have major implications for US law enforcement and security.

(S) **The EU-US PNR Agreement.** As noted in May 2004, after substantial negotiations, the Department of Homeland Security entered into an agreement relating to the sharing of PNR information collected by air carriers flying to the United States from Europe. Central to the Agreement was a set of Undertakings made by Customs and Border Protection (CBP) regarding how it would treat the PNR data transmitted to it. Several of the limitations in those Undertakings significantly restrict US opportunities to use information for investigative and law enforcement purposes.

(S) The most significant of these limitations, from the DHS perspective, are the following (WHAT FOLLOWS IS BACKGROUND ONLY - NOT FOR DISSEMINATION):

(c)

b1

(c)

(c)

(c)

(c)

(c)

b1

(c)

(c)

(S) The ECJ PNR Case. The European Parliament (EP) filed two suits in the European Court of Justice (ECJ) challenging the information sharing arrangement.

(S) On May 30, 2006, the ECJ issued its opinion in the lawsuits. The opinion did not address the merits of the EU-US PNR Agreement or the role of the Parliament. Rather, the decision turned on the lack of competence of the Commission and Council to enter into the Agreement in the first instance. The EU had based its authority on the so-called "First Pillar," which allows the EU to regulate trade and commercial matters. The ECJ held (as the US had argued earlier) that the requirement that PNR data be sent to the US was a law enforcement and national security matter. Such transfers, the court held, were excluded from the data protection directive

(S) ² This concern is consistent with Executive Order 13388 and the President's Memorandum issued on December 16, 2006 to Heads of Executive Departments and Agencies on "Guidelines and Requirements in Support of Information Sharing Environment."

governing commercial data exports. If they are to be regulated, the court implied, it would have to be done under the "Third Pillar."

(u) That is what the EU proposes to do. It has obtained authority from its Member States to erect substantially the same agreement on a new foundation. In order to meet the European Court of Justice deadline the Commission will seek to codify its position over the next couple of weeks and then will call for agreement on the new arrangement by September 30.

(u) EU Proposals on Sharing Law Enforcement Information. The PNR negotiations will be closely intertwined with a broader effort to establish restrictive, EU-wide rules for information sharing in the area of law enforcement. Last October the EU put forward two draft documents that concern data sharing and protection in the law enforcement context. They consist of a draft Framework Directive of the European Parliament and Council on the retention of data and a proposed Council decision on the protection of personal data in criminal matters. C

b5 >

(u) Article 15 of the draft Framework Directive, which would have the force of law within the European Union, lays out procedural rules for information sharing between individual EU member states.³

(s)

b1

(c/f; -)
Mod

(u) ³ For example, the Draft Decision contains provisions on time limits for retention of shared data, ensuring the accuracy of shared data, logging and audit trails, as well as restrictions limiting further use of the data to the original purpose for which it was first transmitted. In effect, it borrows heavily from the PNR Agreement and the Undertakings.

(c/f; -)
Mod

b1

~~FOR OFFICIAL USE ONLY - NOT FOR DISTRIBUTION~~

(cls)
Med

(cls)
Med

b1

~~SECRET~~

002724

(c)

(c)

(c)

b1

(c)

(c)

(c)

(c)

(c)

and submit responses to the DC proposal.

002725

~~SECRET~~

~~FOR OFFICIAL USE ONLY - NOT FOR DISTRIBUTION~~

Department of Homeland Security
US Immigration and Customs Enforcement
Discussion Document
US-EU PNR Dialogue

Purpose:

- (u) To provide talking points and background information on the Passenger Name Record (PNR) issue and related developments concerning law enforcement information sharing with the European Union (EU).

(u)

[b5]

b1

(u) (off) (mod)

(u)

- o The Agreement was intended to resolve a perceived conflict between EU law (which limits personal information collected by commercial entities from being shared with governmental entities) and US law (which required the collection and dissemination of PNR data).

(u) (off) (mod)

b1

(u)

- The PNR Agreement was challenged by the European Parliament as insufficiently protective of EU privacy rights, and on May 30, 2006, the European Court of Justice (ECJ) struck down the Agreement.

(u)

- o The ECJ nullified the agreement on the procedural grounds that it was signed under the wrong EU legal authority - the one that deals with commercial issues rather than the one that deals with law enforcement and public security.

(u)

- The EU notified the US that it will terminate the current Agreement on September 30, 2006 and has set a goal of establishing a new agreement by this date.

002726

Derived: Schneider Mfe
Declass: 31 Dec 2031

~~SECRET~~

175

~~SECRET~~

~~FOR OFFICIAL USE ONLY - NOT FOR DISTRIBUTION~~

(c/f)
(mod)

b1

(u) ○ DHS is committed to working with the Commission and the Finnish Presidency to identify a community wide arrangement.

(u) [b5]

(c)

(c) b1

(c)

(c)

(c)

(c)

(c)

002727

~~SECRET~~

SECRET

FOR OFFICIAL USE ONLY - NOT FOR DISTRIBUTION

(a)

b1

• **Background** (WHAT FOLLOWS IS BACKGROUND ONLY - NOT FOR DISSEMINATION):

(a) Two converging events in Europe -- the recent European Court of Justice decision on the legality of the EU-US PNR Agreement and a draft EU Framework Decision on Exchange of Criminal Data -- have major implications for US law enforcement and security.

(a) **The EU-US PNR Agreement.** As noted, in May 2004, after substantial negotiations, the Department of Homeland Security entered into an agreement relating to the sharing of PNR information collected by air carriers flying to the United States from Europe. Central to the Agreement was a set of Undertakings made by Customs and Border Protection (CBP) regarding how it would treat the PNR data transmitted to it. Several of the limitations in those Undertakings significantly restrict US opportunities to use information for investigative and law enforcement purposes.

(a) The most significant of these limitations, from the DHS perspective, are the following

(c)

b1

(c)

(c)

SECRET

SECRET

~~FOR OFFICIAL USE ONLY - NOT FOR DISTRIBUTION~~

(a)

(c)

b1

(a)

(c)

(u) **The ECJ PNR Case.** The European Parliament (EP) filed two suits in the European Court of Justice (ECJ) challenging the information sharing arrangement.

(u) On May 30, 2006, the ECJ issued its opinion in the lawsuits. The opinion did not address the merits of the EU-US PNR Agreement or the role of the Parliament. Rather, the decision turned on the lack of competence of the Commission and Council to enter into the Agreement in the first instance. The EU had based its authority on the so-called "First Pillar," which allows the EU to regulate trade and commercial matters. The ECJ held (as the US had argued earlier) that the requirement that PNR data be sent to the US was a law enforcement and national security matter. Such transfers, the court held, were excluded from the data protection directive governing commercial data exports. If they are to be regulated, the court implied, it would have to be done under the "Third Pillar."

(u) That is what the EU proposes to do. It has obtained authority from its Member States to erect substantially the same agreement on a new foundation. In order to meet the European Court of Justice deadline the Commission will seek to codify its position over the next couple of weeks and then will call for agreement on the new arrangement by September 30.

002729

SECRET

~~SECRET~~

~~FOR OFFICIAL USE ONLY - NOT FOR DISTRIBUTION~~

(u) **EU Proposals on Sharing Law Enforcement Information.** The PNR negotiations will be closely intertwined with a broader effort to establish restrictive, EU-wide rules for information sharing in the area of law enforcement. Last October the EU put forward two draft documents that concern data sharing and protection in the law enforcement context. They consist of a draft Framework Directive of the European Parliament and Council on the retention of data and a proposed Council decision on the protection of personal data in criminal matters. [

b5

→

(u) Article 15 of the draft Framework Directive, which would have the force of law within the European Union, lays out procedural rules for information sharing between individual EU member states.¹

(S)

(c/si-)
read

b1

(c/si-)
read

(u) ¹ For example, the Draft Decision contains provisions on time limits for retention of shared data, ensuring the accuracy of shared data, logging and audit trails, as well as restrictions limiting further use of the data to the original purpose for which it was first transmitted. In effect, it borrows heavily from the PNR Agreement and the Undertakings.

Department of Homeland Security
US Immigration and Customs Enforcement
Discussion Document
US-EU PNR Dialogue

Purpose:

To provide talking points and background information on the Passenger Name Record (PNR) issue and related developments concerning law enforcement information sharing with the European Union (EU)

Formatted: Bullets and Numbering
Deleted: the PNR agreement and
Formatted: Bullets and Numbering
Formatted: Bullets and Numbering
Formatted: Bullets and Numbering
Formatted: Bullets and Numbering
Formatted: Indent: Left: 0.5",
Bulleted: Level 2 + Aligned at
0.75" + Tab after: 1" + Indent at
1", Tabs: 0.75", List tab + Not at

(u) [b5]

b1

(cls) (u)

(u)

b1

(u) []

(cls) (u)

(u)

(u)

(u)

(u)

(u) []

b5

The EU notified the US that it will terminate the current Agreement on September 30, 2006 and has set a goal of establishing a new agreement by this date.

Turner, Schneider MFE
Declars: 31 Dec 2031

002781

176

[65]

Formatted: Indent: Left: 0.5
Bulleted: Level: 2, Indent: 0.5
Bulleted: Level: 1, Indent: 0.5
Deleted: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100

Background

(c) Two converging events in Europe -- the recent European Court of Justice decision on the legality of the EU-US PNR Agreement and a draft EU Framework Decision on Exchange of Criminal Data -- have major implications for US law enforcement and security.

(c) **The EU-US PNR Agreement.** As noted, in May 2004, after substantial negotiations, the Department of Homeland Security entered into an agreement relating to the sharing of PNR information collected by air carriers flying to the United States from Europe. Central to the Agreement was a set of Undertakings made by Customs and Border Protection (CBP) regarding how it would treat the PNR data transmitted to it. Several of the limitations in those Undertakings significantly restrict US opportunities to use information for investigative and law enforcement purposes.

(c) The most significant of these limitations, from the DHS perspective, are the following

(c)

b1

(c)

(c)

002733

(c)

(c)

b1

(c)

(c)

(c) **The ECJ PNR Case.** The European Parliament (EP) filed two suits in the European Court of Justice (ECJ) challenging the information sharing arrangement.

(c) On May 30, 2006, the ECJ issued its opinion in the lawsuits. The opinion did not address the merits of the EU-US PNR Agreement or the role of the Parliament. Rather, the decision turned on the lack of competence of the Commission and Council to enter into the Agreement in the first instance. The EU had based its authority on the so-called "First Pillar," which allows the EU to regulate trade and commercial matters. The ECJ held (as the US had argued earlier) that the requirement that PNR data be sent to the US was a law enforcement and national security matter. Such transfers, the court held, were excluded from the data protection directive

(c) ¹ This concern is consistent with Executive Order 13388 and the President's Memorandum issued on December 16, 2006 to Heads of Executive Departments and Agencies on "Guidelines and Requirements in Support of Information Sharing Environment."

002734

- (S) governing commercial data exports. If they are to be regulated, the court implied, it would have to be done under the "Third Pillar."
- (S) That is what the EU proposes to do. It has obtained authority from its Member States to erect substantially the same agreement on a new foundation. In order to meet the European Court of Justice deadline the Commission will seek to codify its position over the next couple of weeks and then will call for agreement on the new arrangement by September 30.
- (S) **EU Proposals on Sharing Law Enforcement Information.** The PNR negotiations will be closely intertwined with a broader effort to establish restrictive, EU-wide rules for information sharing in the area of law enforcement. Last October the EU put forward two draft documents that concern data sharing and protection in the law enforcement context. They consist of a draft Framework Directive of the European Parliament and Council on the retention of data and a proposed Council decision on the protection of personal data in criminal matters. C

b5

- (S) Article 15 of the draft Framework Directive, which would have the force of law within the European Union, lays out procedural rules for information sharing between individual EU member states.³

(S)

b1

(S) (c) (1) (b) (i) (ii) (iii)

- (S) For example, the Draft Decision contains provisions on time limits for retention of shared data, ensuring the accuracy of shared data, logging and audit trails, as well as restrictions limiting further use of the data to the original purpose for which it was first transmitted. In effect, it borrows heavily from the PNR Agreement and the Undertakings.

(S) (c) (1) (b) (i) (ii) (iii)

b1

~~FOR OFFICIAL USE ONLY - NOT FOR DISTRIBUTION~~

(cfsi)
msd

(cfsi)
msd

b1

michael.scardaville

7/27/2006 6:19:00 PM

(c)

(c)

(c)

b1

(c)

(c)

(c)

(c)

(c)



Homeland Security

[b 2]

Deleted: June 26, 2006

Memorandum

TO: [b 5]
FROM: [b 5]
RE: Passenger Name Records and Law Enforcement Information Sharing - Negotiations With The European Union

Purpose

(U)

To provide you with background information on the Passenger Name Record (PNR) issue and related developments concerning law enforcement information sharing with the European Union (EU) in preparation for a mid-July "run-DC."

Summary

(U)

Before September 11, the government knew very little about the people getting on planes bound for the United States. After the attacks, airlines were required to provide information about their U.S.-bound passengers. This information - name, contact information, and the like - was drawn from information supplied to the airline as part of the reservation process. DHS uses the information to screen for no-fly violators and terrorist suspects before the plane takes off, protecting against midflight hijackings and bombings.

(U)

For flights between Europe and the U.S., the data must be [b 5] has long prohibited the export of personal data to countries whose legal protections are not "adequate" in the view of European data protection authorities. While the U.S. has many privacy laws, it does not have an overarching data protection regime that matches every aspect of European law. It has therefore been condemned as inadequate by European standards, and commercial data transfers to the U.S. have long been restricted. European airlines feared (with reason) that European data protection agencies would view the PNR transfers in the same light and would impose fines and other penalties on airlines that provided the PNR data to the U.S. Government.

(U)

To ease these fears, in May 2004, the United States entered into an agreement with the EU regarding the transmission of PNR data from European air carriers to the USG. The Agreement declares US law "adequate" by European standards as long as the US adheres to numerous detailed prescriptions set by EU negotiators. [b 5]

Deleted: [b 5]
Deleted: [b 5]

002332

NOT 32
Derived from: Schneider MFL
Bechluss. 26 June 2004

(17)

The PNR Agreement was challenged by the European Parliament, which contended that the Agreement was insufficiently protective of EU privacy rights. On May 30 the European Court of Justice (ECJ) struck down the Agreement, not on substantive grounds but on procedural ones. Under EU law, commercial issues are within the competence of the EU and fall under the "First Pillar" authority – the authority that the EU had relied on in entering the Agreement. The ECJ held that the US wanted PNR data for law enforcement and public security reasons. Law enforcement and public security are not completely outside the EU's authority, but they fall within the "Third Pillar," where the authority of EU central institutions (the Commission, Parliament and Court of Justice) is more limited and more authority is left to the Member States.

Deleted:
Deleted:
Deleted: [b3]

(U)

(U)

The EU now plans to seek authority from the Member States to renegotiate the PNR Agreement under the Third Pillar. The Commission has portrayed this as a technical change that would put the same agreement back in place, albeit under a different legal authority.

(C)

b1

Background

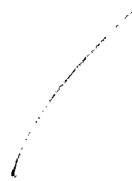
(U)

Two converging events in Europe – the recent European Court of Justice decision on the legality of the EC-US PNR Agreement and a draft EU Framework Decision on Exchange of Criminal Data -- have major implications for US law enforcement and security.

(C)

b1

002333



(c)

b1

(U)

The most significant of these similarities from our perspective are the following:

(c)

(c)

b1

(c)

(c)

(c)

Formatted: Space After: 5 pt
Deleted:

(U)

PNR can also be used and transferred to address significant health risks under Paragraph 34. As noted below, despite this authorization the EU's Article 29 Working Party has concluded that CDC's plans to retain PNR data for health-related purposes violates EU law.



(c)

(c)

b1

(c)

(s)

(u)

The ECJ PNR Case. The Agreement was no less controversial in Brussels. Disturbed over what it viewed as an attack on personal privacy and its own authority the European Parliament (EP) filed two suits in the European Court of Justice (ECJ) challenging the information sharing arrangement.

~~(c)~~ (c)

b1

(u)

¹ This concern is consistent with Executive Order 13388 and the President's Memorandum issued on December 16, 2006 to Heads of Executive Departments and Agencies on "Guidelines and Requirements in Support of Information Sharing Environment."

002335

(c)

b1

(u)

That is what the EU proposes to do. It is seeking authority to erect substantially the same agreement on a new foundation. In order to meet the European Court of Justice deadline, the Commission will seek to codify its position over the next couple of weeks and then will call for agreement on the new arrangement by September 30.

(c)

b1

(u)

EU Proposals on Sharing Law Enforcement Information. If that were all that is at stake, this would be an interesting diplomatic and legal problem for DHS. But it is not. The PNR negotiations will be closely intertwined with a broader effort ~~to~~ ^{to} ~~share~~ ^{share} ~~information~~ ^{information} ~~with~~ ^{with} ~~the~~ ^{the} ~~US~~ ^{US} ~~and~~ ^{and} ~~other~~ ^{other} ~~countries~~ ^{countries}.

Last October the EU put forward three draft documents that concern data sharing and protection in the law enforcement context. They consist of a draft directive of the European Parliament and Council on the retention of data, a proposed Council decision on the protection of personal data in criminal matters, and - ~~to~~ ^{to} ~~share~~ ^{share} ~~information~~ ^{information} ~~with~~ ^{with} ~~the~~ ^{the} ~~US~~ ^{US} ~~and~~ ^{and} ~~other~~ ^{other} ~~countries~~ ^{countries} - a proposed Council decision on the exchange of law enforcement data between member states and third parties.

(c)

b1

(u)

Acting under the First Pillar, the EU has also entered into a PNR sharing agreement with Canada. In light of the EU's determination that the US Undertakings provided "adequate" privacy protections, the EU-Canada agreement authorizes Canada to share PNR data received from the EU with the US. Even though the ECJ has struck down the EU-US agreement, the EU contends that its similar agreement with Canada remains in effect. Some Canadian government sources are concerned, however, that the absence of an "adequacy" finding (which is a First Pillar concept) may now have the effect of prohibiting US-Canada information sharing derived from EU-originated flights.

Deleted:

002336

(C)

(S)

b1

Deleted: the [redacted]

(C)

(C)

(U)

For example, the Draft Decision contains provisions on time limits for retention of shared data, ensuring the accuracy of shared data, logging and audit trails, as well as restrictions limiting further use of the data to the original purpose for which it was first transmitted. In effect, it borrows heavily from the PNR Agreement and the Undertakings

C/FGI
MOD

b1

(U)

The adequacy finding granted to the U.S. was specific to the transfer of PNR data and only extended to its transmission to CBP. The May 30th decision of the ECJ also annuls this decision by the Commission on the grounds that the Commission did not have the legal authority to grant it.

002337

(c)

Communicable Diseases.

b5

reaction to another US initiative relating to avian flu. If air passengers are exposed to a pandemic strain of avian flu, the government will need to locate all of the passengers and crew, quickly. So the Centers for Disease Control has proposed a rule requiring airlines to retain PNR for up to 60 days for that purpose. The top data protection authorities of Europe, known as the "Article 29 Working Party," have now decided that this sort of data retention violates EU privacy directives. If given effect, the Working Party's opinion would place air carriers at legal jeopardy because of inconsistent legal regimes. It reflects a widespread EU view that privacy trumps even the critical public health interests of the United States.

Deleted:

Analysis & Recommendation

(c)

(c)

b1

(c)

* If adopted, the Draft Decision could conflict with a number of binding and non-binding information sharing arrangements that the United States has signed. For example, we have signed a 2003 Mutual Legal Assistance Agreement (MLAT) with the European Union and a 2001 information sharing agreement with Europol (the EU-level police agency); with respect to member states, we signed a 2003 MLAT with Germany, which builds on numerous other MLATs already in force with other EU member states. The United States also has many executive agreements and memoranda of understanding with member states under which critical information is currently being shared. Under EU law, directives supersede bilateral treaties and agreements and member states must conform their existing agreements with the directive.

(u)

* Unlike in 2003, this risk is present now because the Court has conclusively ruled that the transfer of PNR data is a law enforcement matter. While European integration has been the greatest in areas associated with the Common Market, law enforcement and public security is a relatively new area of activity at the community level and many responsibilities still fall to the EU Member States. The ECJ firmly placed PNR in the area of law enforcement and public security, and as result, any actions taken in this area are likely to set precedents for further community involvement in other law enforcement matters.

(u)

002338

(c)

(c)

b1

(s)

(c)

b1

(c)

Conclusion

(u)

The USG has a paramount interest in ensuring that law enforcement and border control information continues to flow to the United States. In creating the Information Sharing Environment we are working to break down walls that restrict the sharing of information between Federal agencies.

(u)

The PNR Agreement that the US signed with the EU in 2004 is an example of the old-style artificial limitation. We entered into the PNR Agreement based upon the EU's argument that the export of

002339

commercial information was subject to special restrictions under EU law. The European Court of Justice has now held that the information is law enforcement information, not commercial information, so that the rationale for the agreement has now dissolved.

(u)

(C)
(B)

b1

(S)

002340



Homeland Security

Deleted: June 26, 2006

b2

Memorandum

TO: [b5]

FROM: [b5]

RE: Passenger Name Records and Law Enforcement Information Sharing - Negotiations With The European Union

Purpose

(u) To provide you with background information on the Passenger Name Record (PNR) issue and related developments concerning law enforcement information sharing with the European Union (EU) in preparation for a mid-July "un-DC."

Summary

(u) Before September 11, the government knew very little about the people getting on planes bound for the United States. After the attacks, airlines were required to provide information about their U.S.-bound passengers. This information - name, contact information, and the like - was drawn from information supplied to the airline as part of the reservation process. DHS uses the information to screen for no-fly violators and terrorist suspects before the plane takes off, protecting against midflight hijackings and bombings.

(u) For flights between Europe and the U.S., the data must be made available from Europe. EU law has long prohibited the commercial export of personal data to countries whose legal protections are not "adequate" in the view of European data protection authorities. While the U.S. has many privacy laws, it does not have an overarching data protection regime that corresponds to every aspect of European law. It has therefore been viewed as "inadequate" by European standards, and commercial data transfers to the U.S. have long been restricted. European airlines feared (with reason) that European data protection agencies would view the PNR transfers in the same light and would impose fines and other penalties on airlines that provided the PNR data to the U.S. Government.

(u) To ease these fears, in May 2004, the United States entered into an agreement with the EU regarding the transmission of PNR data from European air carriers to the USG. The Agreement is accompanied by a determination that [b5] "adequate" by European standards as long as the US adheres to numerous detailed prescriptions worked out with EU negotiators (but unilaterally implemented by DHS). [b5]

002341

178

Derived from: Schnitzer MFR
Declassify on: Sept. 13, 2021



(u) L

65

]

(u)

The PNR Agreement was also controversial in Europe. It was challenged by the European Parliament as insufficiently protective of EU privacy rights. On May 30 the European Court of Justice (ECJ) struck down the Agreement. But it chose a ground that was highly procedural – the equivalent under US law of the Supreme Court ducking a Fourth Amendment challenge by finding a law invalid because it exceeded Congress’s Commerce Clause power. Under EU law, commercial issues fall within the jurisdiction of the EU as part of its “First Pillar” authority. This is the authority that the EU relied on in entering the Agreement. The ECJ, however, held that the US wanted PNR data for law enforcement and public security reasons. Law enforcement and public security are only partly within the EU’s authority: they fall under the “Third Pillar,” where the authority of EU central institutions (the Commission, Parliament and Court of Justice) is more limited and more authority is left to the Member States. Because the agreement was entered under the wrong authority, the Court ruled it invalid but delayed the effective date of its decision until September 30 in the hope that the jurisdictional problem could be quickly solved. To cure the problem, the EU plans to seek authority from the Member States to renegotiate the PNR Agreement under the Third Pillar. The Commission has portrayed this as a technical change that would put the same agreement back in place, albeit under a different legal authority.

(c)

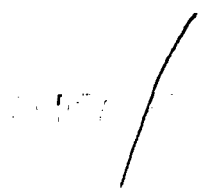
b1

(c)

(s)

(u) ¹ CBP can share PNR data with other law enforcement agencies, on a case-by-case basis and only for the purpose of combating terrorism and serious transnational crimes.

002342



(S)

b1

Background:

(u)

Two converging events in Europe - the recent European Court of Justice decision on the legality of the EC-US PSR Agreement and a draft EU framework Decision on Exchange of Criminal Data -- have major implications for US law enforcement and security.

(c)

b1

(u)

The most significant of these limitations and their consequences are the following:

.

(c)

b1

.

(c)

(c)

b1

✓

(c)

(c)

b1

(c)

(c)

(5)

³ (u) PNR can also be used and transferred to address significant health risks under Paragraph 34. As noted below, despite this authorization the EU's Article 29 Working Party has concluded that CDC's plans to retain PNR data for health-related purposes violates EU law.

⁴ (u) This concern is consistent with Executive Order 13388 and the President's Memorandum issued on December 16, 2006 to Heads of Executive Departments and Agencies on "Guidelines and Requirements in Support of Information Sharing Environment."

002344

✓

(S)

b1

(u)

The ECJ PNR Case. The Agreement was no less controversial in Brussels. Disturbed over what it viewed as an attack on personal privacy and its own authority, the European Parliament (EP) filed two suits in the European Court of Justice (ECJ) challenging the information sharing arrangement.

(u)

b1

That is what the EU proposes to do. It is seeking authority to erect substantially the same agreement on a new foundation. In order to meet the European Court of Justice deadline, the Commission will seek to codify its position over the next couple of weeks and then will call for agreement on the new arrangement by September 30.

(u)

(PGI-
MDD)

b1

(S)

b1

(c)

~~EU Proposals on Sharing Law Enforcement Information.~~ If that were all that is at stake, this would be an interesting diplomatic and legal problem for DHS. But it is not. The PNR negotiations will be closely intertwined with a broader effort [b5

[Last October the EU put forward two draft documents that concern data sharing and protection in the law enforcement context. They consist of a draft Framework Directive of the European Parliament and Council on the retention of data and a proposed Council decision on the protection of personal data in criminal matters. [b5] would regulate the exchange of law enforcement data between Member States and third countries like the US.

(u)

(c)

b1

(s)

⁷ For example, the Draft Decision contains provisions on time limits for retention of shared data, ensuring the accuracy of shared data, logging and audit trails, as well as restrictions limiting further use of the data to the original purpose for which it was first transmitted. In effect, it borrows heavily from the PNR Agreement and the Undertakings.

(u)

(S)

cc)

b1

cc)

Communicable Diseases. C

b5

(a)

European reaction to another U.S. initiative relating to avian flu. If air passengers are exposed to a pandemic strain of avian flu, the government will need to locate all of the passengers and crew quickly. So the Centers for Disease Control has proposed a rule requiring airlines to retain PNR for

FGI-
MOD

b1

(u)

The adequacy finding granted to the U.S. was specific to the transfer of PNR data and only extended to its transmission to CBP. The May 30th decision of the ECJ also annuls this decision by the Commission on the grounds that the Commission did not have the legal authority to grant it.

(u)

If adopted, the Draft Decision could conflict with a number of binding and non-binding information sharing arrangements that the United States has signed. For example, we have signed a 2003 Mutual Legal Assistance Agreement (MLAT) with the European Union and a 2001 information sharing agreement with Europol (the EU level police agency) with respect to member states. We signed a 2003 MLAT with Germany, which builds on numerous other MLATs already in force with other EU member states. The United States also has many executive agreements and memoranda of understanding with member states under which critical information is currently being shared. Under EU law, directives supersede bilateral treaties and agreements and member states must conform their existing agreements with the directive.

002347

up to 60 days for that purpose. The top data protection authorities of Europe, known as the "Article 29 Working Party," have now decided that this sort of data retention violates EU privacy directives. If given effect, the Working Party's opinion would place air carriers legal jeopardy because of inconsistent legal régimes. It reflects a widespread EU view that privacy trumps even the critical public health interests of the United States.¹¹

Analysis & Recommendation

(c)

(c)

b1

(c)

(s)

(u)

¹¹ Conversely, Paragraph 34 of the Undertakings allows for the exchange of PNR for public health purposes and neither the Commission or the Article 29 Committee have challenged the DHS-HHS MOU.

¹² Unlike in 2003, this risk is present now because the Court has conclusively ruled that the transfer of PNR data is a law enforcement matter. While European integration has been the greatest in areas associated with the Common Market, law enforcement and public security is a relatively new area of activity at the community level and many responsibilities still fall to the EU Member States. The ECJ firmly placed PNR in the area of law enforcement and public security, and as result, any actions taken in this area are likely to set precedents for further community involvement in other law enforcement matters.

(u)

/

(S)

b1

(c)

(S)

Conclusion

(u)

The USG has a paramount interest in ensuring that law enforcement and border control information continues to flow to the United States. In creating the Information Sharing Environment we are working to break down walls that restrict the sharing of information between Federal agencies.

(u)

The PNR Agreement that the US signed with the EU in 2004 is an example of the old-style artificial limitation. We entered into the PNR Agreement based upon the EU's argument that the export of commercial information was subject to special restrictions under EU law. The European Court of Justice has now held that the information is law enforcement information, not commercial information. so that the rationale for the agreement has now dissolved.

(c)

b1

/

(c)
(3)

b1

002350



Department of Homeland Security

[b2]

Memorandum

Deleted: June 28, 2006
Deleted: June 27, 2006
Deleted: June 26, 2006

TO: [b5]
FROM: [b5]
RE: Passenger Name Records and Law Enforcement Information Sharing - Negotiations With The European Union

Purpose

To provide you with background information on the Passenger Name Record (PNR) issue and related developments concerning law enforcement information sharing with the European Union (EU) in preparation for a mid-July "un-DC."

Summary

Before September 11, the government had limited information regarding passenger travel to and from the United States, and such information was received on a voluntary basis. After the attacks, airlines were required by law to provide information about their passengers on flights to and from the U.S. [

[b5]

For flights between Europe and the U.S., the data must be made available from Europe. EU law has long prohibited the commercial export of personal data to countries whose legal protections are not "adequate" in the view of European data protection authorities. While the U.S. has many privacy laws, it does not have an overarching data protection regime that corresponds to every aspect of European law. It has therefore been viewed as "inadequate" by European standards, and commercial data transfers to the U.S. have long been restricted. European airlines feared (with reason) that European data protection agencies would view the PNR transfers in the same light and would impose fines and other penalties on airlines that provided the PNR data to the U.S. Government.

To ease these fears and provide a legal basis under European law for such transfers, in May 2004, the United States entered into an agreement with the European Commission regarding the transmission of PNR data from European air carriers to the U.S. The Agreement is accompanied

Deleted: [b5]
Deleted: [b5]
Deleted: [b5]
Deleted: [b5]
Deleted: [b5]
Deleted: [b5]

Comment: [b5 b6]

Comment: [b5 b6]

Deleted: [b5]

179

002351

Derived from: Schneider MFR
Declassify on: Nov. 15, 2022

(u) [b5]
by a determination that CBP's protection of PNR is "adequate" by European standards as long as the US adheres to numerous detailed prescriptions (see "Understandings") worked out with EC negotiators (but unilaterally implemented by DHS).

Deleted: [b5]
Deleted:
Deleted: U
Deleted:
Deleted: [b5]

(u) The PNR arrangement was also controversial in Europe. It was challenged by the European Parliament as insufficiently protective of EU privacy rights. On May 30 the European Court of Justice (ECJ) struck down the Agreement. But it chose a ground that was highly procedural — namely to the US Supreme Court ducking a Fourth Amendment challenge by finding a law invalid because it exceeded Congress's Commerce Clause power. Under EU law, commercial issues fall within the jurisdiction of the EU as part of its "First Pillar" authority. This is the authority that the EU relied on in entering into the Agreement. The ECJ, however, held that the US wanted PNR data for law enforcement and public security reasons. Law enforcement and public security are only partly within the EU's authority; they fall under the "Third Pillar," where the authority of EU central institutions (the Commission, Parliament and Court of Justice) is more limited and more authority is left to the Member States. Because the agreement was entered under the wrong authority, the Court ruled it invalid but delayed the effective date of its decision until September 30 in the hope that the problem could be quickly solved. To cure the problem, the EU plans to seek authority from the Member States to renegotiate the PNR arrangement under the Third Pillar. The Commission has portrayed this as a technical change that would put the same arrangement back in place, albeit under a different legal authority.

Deleted: [b5]
Deleted: [b5]
Deleted: of

(c) [b1]

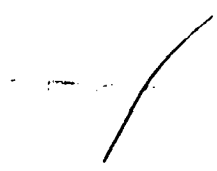
Deleted: [b5]
Deleted:
Deleted:

(c)

Deleted: []
Deleted:
Deleted: [b5]
Deleted:
Deleted: []

(u) ¹ The agreement, and the adequacy finding and unilateral undertakings that underpin it together make up the PNR arrangement.
(u) ² CBP can share PNR data with other law enforcement agencies, on a case-by-case basis and only for purposes relating to combating terrorism and serious transnational crimes.

Deleted: the
Deleted: of
Deleted:



(c)

b1

(s)

Deleted: [redacted]

Background

(u) Two converging events in Europe – the recent European Court of Justice decision on the legality of the EC-US PNR Arrangement and a draft EU Framework Decision on Exchange of Criminal Data – have major implications for US law enforcement and security.

Deleted: [redacted]
Deleted: [redacted]
Deleted: [redacted]
Deleted: [redacted]
Deleted: [redacted]
Deleted: [redacted]
Deleted: [redacted]
Deleted: [redacted]
Deleted: [redacted]
Deleted: [redacted]
Deleted: [redacted]
Deleted: [redacted]

b5

(c)

b1

(u) The most significant of these limitations, from our perspective are the following:

(c)

b1

(c)

b1



(c)

(c)

(c)

b1

(c)

(c)

b1

(c)

(c)

Deleted: [b5]

(u)

⁵ PNR can also be used and transferred to address significant health risks under Paragraph 34, but transfers are restricted by the terms of paragraph 31 and 32. As noted below, despite this authorization the EU's Article 29 Working Party has concluded that CDC's plans to retain passenger data for health-related purposes violates EU law.

Deleted: [b5]

(u)

⁶ This concern is consistent with Executive Order 13388 and the President's Memorandum issued on December 16, 2006 to Heads of Executive Departments and Agencies on "Guidelines and Requirements in Support of Information Sharing Environment."

Deleted:

(u)

Deleted: L65 3

b1

(s)

(u) | The ECJ PNR Case. The Arrangement was no less controversial in Brussels. Disturbed over what it viewed as an attack on personal privacy and its own authority, the European Parliament (EP) filed two suits in the European Court of Justice (ECJ) challenging the PNR arrangement.

Deleted: [65]

(c)

b1

Deleted: U
Deleted:
Deleted:
Deleted: 65
Deleted:

FGI-
MOD

b1

(s)

Deleted: gpc

(u)

That is what the EU proposes to do. It is seeking authority to erect substantially the same arrangement on a new foundation. In order to meet the European Court of Justice deadline, the Commission will seek to codify its position over the next couple of weeks and then will call for agreement on the new arrangement by September 30.

Deleted: [b5]

Deleted: [b5]

b1

(c)

Comment [b5 b6]

EU Proposals on Sharing Law Enforcement Information. If that were all that is at stake, this would be an interesting diplomatic and legal problem for DHS. But it is not. The PNR negotiations will be closely intertwined with a broader effort.

(u)

Last October the EU put forward two draft documents that concern data sharing and protection in the law enforcement context. They consist of a draft Framework Directive of the European Parliament and Council on the retention of data and a proposed Council decision on the protection of personal data in criminal matters. They would regulate the exchange of law enforcement data between Member States and third countries like the US.

(c)

b1

(c)

b1

For example, the Draft Decision contains provisions on time limits for retention of shared data, ensuring the accuracy of shared data, logging and audit trails, as well as restrictions limiting further use of the data to the original purpose for which it was first transmitted.

(u)

Deleted: [b5]
Deleted: 1

002356

(S)

S)

b1

Deleted: [b5] []

(c)

b1

(c) ↓

b1

Deleted: [b5] []

(c)

Deleted: []

c/FBI-
MDO

10

(u)

" The adequacy finding granted to the U.S. was specific to the transfer of PNR data and only extended to its transmission to CBP. The May 30th decision of the ECJ also annuls this decision by the Commission on the grounds that the Commission did not have the legal authority to grant it

(u)

" If adopted, the Draft Decision could conflict with a number of binding and non-binding information sharing arrangements that the United States has signed. For example, we have signed a 2003 Mutual Legal Assistance Agreement (MLAT) with the European Union and a 2002 information sharing agreement with Europol (the EU-level police agency); with respect to member states, we signed a 2003 MLAT with

Deleted: []

Communicable Diseases. Are European institutions really willing to limit information sharing with the US in the face of continuing terrorist threats? One clue to the current climate can be found in the European reaction to another US initiative relating to avian flu. If air passengers are exposed to a pandemic strain of avian flu, the government will need to locate all of the passengers and crew, quickly. So the Centers for Disease Control has proposed a rule requiring airlines to retain ~~PNR data~~ for up to 60 days for that purpose. The top data protection authorities of Europe, known as the "Article 29 Working Party," have now decided that this sort of data retention violates EU privacy directives. If given effect, the Working Party's opinion would place air carriers in legal jeopardy because of inconsistent legal regimes. It reflects a widespread EU view that privacy trumps even critical public health interests.¹³

Deleted: PNR

Deleted: the

Deleted:

Deleted: of the United States

Analysis & Recommendation

(c)

b1

(c)

(c)

Germany. The United States also has many other MLATs, executive agreements and memoranda of understanding with member states under which critical information is currently being shared. Under EU law, directives supersede bilateral treaties and agreements and member states must conform their existing agreements with the directive.

Deleted:

b5

(c)

b1

Unlike in 2003, this risk is present now because the Court has conclusively ruled that the transfer of PNR data is a law enforcement matter. While European integration has been the greatest in areas associated with the Common Market, law enforcement and public security is a relatively new area of activity at the community level and many responsibilities still fall to the EU Member States. The ECJ firmly placed PNR in the area of law enforcement and public security, and as result, any actions taken in this area are likely to set precedents for further community involvement in other law enforcement matters.

(u)

(c)

(c)

b1

(c)

Deleted: []]

Deleted: []]

05

(s)

Deleted: []]

Conclusion



(u) The USG has a paramount interest in ensuring that law enforcement and border control information continues to flow to the United States. In creating the Information Sharing Environment we are working to break down walls that restrict the sharing of information between Federal agencies.

(u) The PNR old-style artificial limitation. We entered into the PNR based upon the E's argument that the export of commercial information was subject to special restrictions under EU law. The European Court of Justice has now held that the information is law enforcement information, not commercial information, so that the rationale for the a has now dissolved.

Deleted: [b5]
Deleted:
Deleted:
Deleted:

(c)

b1

(s)



002360

28



Homeland Security

[b 2

Deleted: June 26, 2006

Memorandum

TO: [b 5]
FROM: [b 5]
RE: Passenger Name Records and Law Enforcement Information Sharing - Negotiations With The European Union

Purpose

(u) To provide you with background information on the Passenger Name Record (PNR) issue and related developments concerning law enforcement information sharing with the European Union (EU) in preparation for a mid-July "un-DC "

Summary

(u) Before September 11, the government knew very little about the people getting on planes bound for the United States. After the attacks, airlines were required to provide information about their U.S.-bound passengers. This information - name, contact information, and the like - was drawn from information supplied to the airline as part of the reservation process. DHS uses the information to screen for no-fly violators and terrorist suspects before the plane takes off, protecting against midflight hijackings and bombings.

(u) For flights between Europe and the U.S., the data must be made available from Europe. EU law has long prohibited the commercial export of personal data to countries whose legal protections are not "adequate" in the view of European data protection authorities. While the U.S. has many privacy laws, it does not have an overarching data protection regime that corresponds to every aspect of European law. It has therefore been viewed as "inadequate" by European standards, and commercial data transfers to the U.S. have long been restricted. European airlines feared (with reason) that European data protection agencies would view the PNR transfers in the same light and would impose fines and other penalties on airlines that provided the PNR data to the U.S. Government.

(u) To ease these fears, in May 2004, the United States entered into an agreement with the EU regarding the transmission of PNR data from European air carriers to the USG. The Agreement is accompanied by a determination that [b 5] "adequate" by European standards as long as the US adheres to numerous detailed prescriptions worked out with EU negotiators (but unilaterally implemented by DHS). [b 5]

180

002361

Derived from: Schneder MF,
Declassify on: Dec 8, 2021

u L

b5

2

(u)

The PNR Agreement was also controversial in Europe. It was challenged by the European Parliament as insufficiently protective of EU privacy rights. On May 30 the European Court of Justice (ECJ) struck down the Agreement. But it chose a ground that was highly procedural – the equivalent under US law of the Supreme Court ducking a Fourth Amendment challenge by finding a law invalid because it exceeded Congress's Commerce Clause power. Under EU law, commercial issues fall within the jurisdiction of the EU as part of its "First Pillar" authority. This is the authority that the EU relied on in entering the Agreement. The ECJ, however, held that the US wanted PNR data for law enforcement and public security reasons. Law enforcement and public security are only partly within the EU's authority; they fall under the "Third Pillar," where the authority of EU central institutions (the Commission, Parliament and Court of Justice) is more limited and more authority is left to the Member States. Because the agreement was entered under the wrong authority, the Court ruled it invalid but delayed the effective date of its decision until September 30 in the hope that the jurisdictional problem could be quickly solved. To cure the problem, the EU plans to seek authority from the Member States to renegotiate the PNR Agreement under the Third Pillar. The Commission has portrayed this as a technical change that would put the same agreement back in place, albeit under a different legal authority.

(c)

b1

(c)

(s)

(u)

¹ CBP can share PNR data with other law enforcement agencies, on a case-by-case basis and only for the purpose of combating terrorism and serious transnational crimes

002362

(S)

b1

Background

(u)

Two converging events in Europe -- the recent European Court of Justice decision on the legality of the EC-US PNR Agreement and a draft EU Framework Decision on Exchange of Criminal Data -- have major implications for US law enforcement and security.

(c)

b1

(u)

The most significant of these limitations, from our perspective are the following:

.

(c)

b1

(c)

.

(c)

b1

002363

(c)

(c)

b1

(c)

(c)

(s)

³ PNR can also be used and transferred to address significant health risks under Paragraph 34. As noted below, despite this authorization the EU's Article 29 Working Party has concluded that CDC's plans to retain PNR data for health-related purposes violates EU law.

⁴ This concern is consistent with Executive Order 13388 and the President's Memorandum issued on December 16, 2006 to Heads of Executive Departments and Agencies on "Guidelines and Requirements in Support of Information Sharing Environment."

(S)

b1

(u)

The ECJ PNR Case. The Agreement was no less controversial in Brussels. Disturbed over what it viewed as an attack on personal privacy and its own authority, the European Parliament (EP) filed two suits in the European Court of Justice (ECJ) challenging the information sharing arrangement.

(c)

b1

(u)

That is what the EU proposes to do. It is seeking authority to erect substantially the same agreement on a new foundation. In order to meet the European Court of Justice deadline, the Commission will seek to codify its position over the next couple of weeks and then will call for agreement on the new arrangement by September 30.

(c)

b1

=/FGI-
MOD

b1

(S)

(c)

b1

(c)

Communicable Diseases. L

b5

(a)

→ European reaction to another US initiative relating to avian flu. If air passengers are exposed to a pandemic strain of avian flu, the government will need to locate all of the passengers and crew, quickly. So the Centers for Disease Control has proposed a rule requiring airlines to retain PNR for up to 60 days for that purpose. The top data protection authorities of Europe, known as the "Article 29 Working Party," have now decided that this sort of data retention violates EU privacy directives. If given effect, the Working Party's opinion would place air carriers legal jeopardy because of

d/fbl-
MOD

b1

(u)

* The adequacy finding granted to the U.S. was specific to the transfer of PNR data and only extended to its transmission to CBP. The May 30th decision of the ECJ also annuls this decision by the Commission on the grounds that the Commission did not have the legal authority to grant it

(u)

¹⁰ If adopted, the Draft Decision could conflict with a number of binding and non-binding information sharing arrangements that the United States has signed. For example, we have signed a 2003 Mutual Legal Assistance Agreement (MLAT) with the European Union and a 2001 information sharing agreement with Europol (the EU-level police agency); with respect to member states, we signed a 2003 MLAT with Germany, which builds on numerous other MLATs already in force with other EU member states. The United States also has many executive agreements and memoranda of understanding with member states under which critical information is currently being shared. Under EU law, directives supersede bilateral treaties and agreements and member states must conform their existing agreements with the directive

002367

(a) inconsistent legal régimes. It reflects a widespread EU view that privacy trumps even the critical public health interests of the United States.¹¹

Analysis & Recommendation

(c)

(c)

b1

(c)

(s)

(u) ¹¹ Conversely, Paragraph 34 of the Undertakings allows for the exchange of PNR for public health purposes and neither the Commission or the Article 29 Committee have challenged the DHS-HHS MOU

(u) ¹² Unlike in 2003, this risk is present now because the Court has conclusively ruled that the transfer of PNR data is a law enforcement matter. While European integration has been the greatest in areas associated with the Common Market, law enforcement and public security is a relatively new area of activity at the community level and many responsibilities still fall to the EU Member States. The ECJ firmly placed PNR in the area of law enforcement and public security, and as result, any actions taken in this area are likely to set precedents for further community involvement in other law enforcement matters.

(S)

(c)

b1

(S)

Conclusion

(u) The USG has a paramount interest in ensuring that law enforcement and border control information continues to flow to the United States. In creating the Information Sharing Environment we are working to break down walls that restrict the sharing of information between Federal agencies.

(u) The PNR Agreement that the US signed with the EU in 2004 is an example of the old-style artificial limitation. We entered into the PNR Agreement based upon the EU's argument that the export of commercial information was subject to special restrictions under EU law. The European Court of Justice has now held that the information is law enforcement information, not commercial information, so that the rationale for the agreement has now dissolved.

(c)

b1

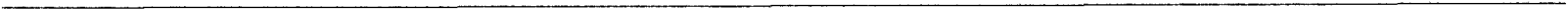
002369

(5)

b1



.



002370



-



Homeland Security

262]

Deleted: June 26, 2006

Memorandum

TO: 265]

FROM: 265]

RE: (U) Passenger Name Records and Law Enforcement Information Sharing - Negotiations With The European Union

Purpose

(U) To provide you with background information on the Passenger Name Record (PNR) issue and related developments concerning law enforcement information sharing with the European Union (EU) in preparation for a mid-July "un-DC".

Summary

(U) [Faint, mostly illegible text]

(U) [Faint, mostly illegible text]

(U) [Faint, mostly illegible text]

Deleted 265]

265]

Derived from: Schneider MFR
Declass. 26 June 2001

002381

(30)

(181)

(u)

[b5]

Deleted: []
Deleted: []
Deleted: []

(u)

... "First Pillar" authority ... the authority that the EU relied on in entering the Agreement. The ECJ held that the US wanted PNR data for law enforcement and public security reasons. Law enforcement and public security are the EU's authority they fall the "Third Pillar," where the authority of EU central institutions (the Commission, Parliament and Court of Justice) is more limited and more authority is left to the Member States.

Deleted: []
Deleted: b5 []
Deleted: []
Deleted: []
Deleted: []

... the EU plans to seek authority from the Member States to renegotiate the PNR Agreement under the Third Pillar. The Commission has portrayed this as a technical change that would put the same agreement back in place, albeit under a different legal authority.

Deleted: []
Deleted: []
Deleted: []
Deleted: []
Deleted: [b5]
Deleted: []

(u)

b1

Deleted: []
Deleted: []
Deleted: []
Deleted: []
Deleted: []
Deleted: []
Deleted: []
Deleted: []

(u)

(u)

CBP can share PNR data with other law enforcement agencies, on a case-by-case basis and only for the purpose of combating terrorism and serious transnational crimes

Deleted: []
Deleted: []
Deleted: []
Deleted: []
Deleted: []
Deleted: []
Deleted: []
Deleted: []

(c)

b1

Deleted: []
Deleted: []
Deleted: []
Deleted: []
Deleted: []
Deleted: []
Deleted: []
Deleted: []

(c)

(c)

b1

Background

(U)

~~Two converging events in Europe — the recent European Court of Justice decision on the legality of the EC-US PNR Agreement and a draft EU Framework Decision on Exchange of Criminal Data -- have major implications for US law enforcement and security.~~

(c)

b1

(U)

The most significant of these limitations, from our perspective are the following:

(c)

b1

(c)

(c)

(c)

b1

(c)

(c)

Deleted: [b5]

Deleted: :

Deleted: [b5]

(s)

Deleted: [b5]

Deleted: T

Deleted: [b5]

Deleted: to

(U) ⁴ PNR can also be used and transferred to address significant health risks under Paragraph 34. As noted below, despite this authorization the ELP's Article 29 Working Party has concluded that CDC's plans to retain PNR data for health-related purposes violates E.O. 13526.

(U) ⁵ This concern is consistent with Executive Order 13526 and the President's Memorandum issued on December 16, 2006 to Heads of Executive Departments and Agencies on "Guidelines and Requirements in Support of Information Sharing Enhancement."

(S)

b1

Formatted: Not Highlight

Deleted:

Deleted:

Deleted:

[b3]

(U)

The ECJ PNR Case. The Agreement was no less controversial in Brussels. Disturbed over what it viewed as an attack on personal privacy and its own authority, the European Parliament (EP) filed two suits in the European Court of Justice (ECJ) challenging the information sharing arrangement.

(S)
(a)

b1

Deleted:

(U)

That is what the EU proposes to do. It is seeking authority to erect substantially the same agreement on a new foundation. In order to meet the European Court of Justice deadline, the Commission will seek to codify its position over the next couple of weeks and then will call for agreement on the new arrangement by September 30.

(U)
- (F&E)
- MOD

b1

Formatted: Font: 11 pt

Formatted: Font: 11 pt

(U)

Acting under the First Pillar, the EU has also entered into a PNR sharing agreement with Canada. In light of the EU's determination that the US Undertakings provided "adequate" privacy protections, the EU-Canada agreement authorizes Canada to share PNR data received from the EU with the US. Even though the ECJ has struck down the EU-US agreement, the EU contends that its similar agreement with Canada remains in effect. Some Canadian government sources are concerned, however, that the absence of an "adequacy" finding (which is a First Pillar concept) may now have the effect of prohibiting US-Canada information sharing derived from EU-originated flights.

002385

b1

(U)

~~(S)~~

(U)

b1

EU Proposals on Sharing Law Enforcement Information. If that were all that is at stake, this would be an interesting diplomatic and legal problem for DHS. But it is not. The PNR negotiations will be closely intertwined with a broader effort [b5]

(U)

[Last October the EU put forward two draft documents that concern data sharing and protection in the law enforcement context. They consist of a draft directive of the European Parliament and Council on the retention of data and a proposed Council decision on the protection of personal data in criminal matters. [b5]

[It would regulate the exchange of law enforcement data between member states and third parties.

(U)

b1

(S)

Formatted: Not Highlight

Deleted: [b5]

Deleted:

Deleted:

Deleted: [b5]

Deleted:

Deleted: T

Deleted: [b5]

Deleted:

Deleted: [b5]

Deleted:

Deleted:

Deleted:

Deleted:

Deleted:

Deleted:

Deleted: the

¹ For example, the Draft Decision contains provisions on time limits for retention of shared data, ensuring the accuracy of shared data, logging and audit trails, as well as restrictions limiting further use of the data to the original purpose for which it was first transmitted. In effect, it borrows heavily from the PNR Agreement and the Undertakings

(U)

(S)

b1

(C)

(C)

(U)

Communicable Diseases. []
 [] reaction to another US initiative relating to avian flu. If air passengers are exposed to a pandemic strain of avian flu, the government will need to locate all of the passengers and crew, quickly. So the

(C/FGI)
MOD

b1

(U)

¹⁰ The adequacy finding granted to the U.S. was specific to the transfer of PNR data and only extended to its transmission to CBP. The May 30th decision of the ECJ also annuls this decision by the Commission on the grounds that the Commission did not have the legal authority to grant it

(U)

¹¹ If adopted, the Draft Decision could conflict with a number of binding and non-binding information sharing arrangements that the United States has signed. For example, we have signed a 2003 Mutual Legal Assistance Agreement (MLAT) with the European Union and a 2001 information sharing agreement with Europol (the EU-level police agency); with respect to member states, we signed a 2003 MLAT with Germany, which builds on numerous other MLATs already in force with other EU member states. The United States also has many executive agreements and memoranda of understanding with member states under which critical information is currently being shared. Under EU law, directives supersede bilateral treaties and agreements and member states must conform their existing agreements with the directive

(C)

Centers for Disease Control, has proposed a rule requiring airlines to retain PNR for up to 60 days for that purpose. The top data protection authorities of Europe, known as the "Article 29 Working Party," have now decided that this sort of data retention violates EU privacy directives. If given effect, the Working Party's opinion would place air carriers at legal jeopardy because of inconsistent legal regimes. It reflects a widespread EU view that privacy trumps even the critical public health interests of the United States.¹²

Deleted:

Analysis & Recommendation

(C)

(C)

b1

(C)

(C)

(C)

(S)

(U)

¹² Conversely, Paragraph 34 of the Undertakings allows for the exchange of PNR for public health purposes and neither the Commission or the Article 29 Committee have challenged the DHS-HHS MOU.

¹³ Unlike in 2003, this risk is present now because the Court has conclusively ruled that the transfer of PNR data is a law enforcement matter. While European integration has been the greatest in areas associated with the Common Market, law enforcement and public security is a relatively new area of activity at the community level and many responsibilities still fall to the EU Member States. The ECJ firmly placed PNR in the area of law enforcement and public security, and as result, any actions taken in this area are likely to set precedents for further community involvement in other law enforcement matters.

(U)

(S)

/

Formatted: Font: Not Italic

(C)

b1

(C)

b1

(C)

Conclusion

(U)

The USG has a paramount interest in ensuring that law enforcement and border control information continues to flow to the United States. In creating the Information Sharing Environment we are working to break down walls that restrict the sharing of information between Federal agencies.

Formatted: Not Highlight

Formatted: Not Highlight

(U)

The PNR Agreement that the US signed with the EU in 2004 is an example of the old-style artificial limitation. We entered into the PNR Agreement based upon the EU's argument that the export of

Formatted: Font: Not Italic

/



(u)

commercial information was subject to special restrictions under EU law. The European Court of Justice has now held that the information is law enforcement information, not commercial information, so that the rationale for the agreement has now dissolved.

(c)
(s)

b1

(s)



Page 2: [1] Deleted

sb

6/26/2006 10:47:00 AM

Before September 11, the government knew very little about the people getting on planes bound for the United States. After the attacks, airlines were required to provide information about their U.S.-bound passengers. This information - name, contact information, and the like - was drawn from information supplied to the airline as part of the reservation process. DHS uses the information to screen for no-fly violators and terrorist suspects before the plane takes off, protecting against midflight hijackings and bombings.

(U)

For flights between Europe and the U.S., the data must be

Page 2: [2] Deleted

sb

6/26/2006 10:48:00 AM

~~EU b5~~ has long prohibited the export of personal data to countries whose legal protections are not "adequate" in the view of European data protection authorities. While the U.S. has many privacy laws, it does not have an overarching data protection regime that matches every aspect of European law. It has therefore been condemned as inadequate by European standards, and commercial data transfers to the U.S. have long been restricted. European airlines feared (with reason) that European data protection agencies would view the PNR transfers in the same light and would impose fines and other penalties on airlines that provided the PNR data to the U.S. Government.

(U)

~~EU b5~~

Page 2: [3] Deleted

sb

6/26/2006 10:50:00 AM

~~EU b5~~

Page 2: [4] Deleted

sb

6/26/2006 10:50:00 AM

May 2004, the United States entered into an agreement with the EU regarding the transmission of PNR data from European air carriers to the USG.

(U)

(U)

Page 2: [5] Deleted

sb

6/26/2006 10:50:00 AM

Page 2: [6] Deleted

sb

6/26/2006 10:50:00 AM

Page 2: [7] Deleted

sb

6/26/2006 10:50:00 AM

(C)

(C)

(C)

b1

Page 2: [8] Deleted

sb

6/26/2006 10:50:00 AM

Page 2: [9] Deleted

sb

6/26/2006 10:50:00 AM

(C)

b1

(U)

¹ CBP can share PNR data with other law enforcement agencies, on a case-by-case basis and only for the purpose of combating terrorism and serious transnational crimes.

002391

insufficiently protective of EU privacy rights

(c)

Page 2: [10] Deleted

sb

6/26/2006 10:50:00 AM

b1

Page 2: [11] Deleted

sb

6/26/2006 10:50:00 AM

(c)

(c)

b1

T

002392



Homeland Security

[b2]

Deleted: June 23, 2006

Memorandum

TO: [b5]

FROM: [b5]

RE: Passenger Name Records and Law Enforcement Information Sharing – Negotiations With The European Union

Purpose

(u) To provide you with background information on the Passenger Name Record (PNR) issue and related developments concerning law enforcement information sharing with the European Union (EU) in preparation for a mid-July "un-DC."

Summary

(u) [b5] May 2004, the United States entered into an agreement with the EU, regarding the transmission of PNR data from European air carriers to the USG.

Deleted: [b5]

Deleted:

(u) [b5] On May 30 the European Court of Justice (ECJ) struck down the Agreement, not on substantive grounds but on procedural ones. Under EU law, commercial issues are within the competence of the EU and fall under the "First Pillar" authority – the authority that the EU had relied on in entering the Agreement.

Deleted: [b5]

[b5] the authority of EU central institutions (the Commission, Parliament and Court of Justice) is more limited [b5]

Deleted: [b5]

(u) The EU now [b5] seek authority from the Member States to renegotiate the PNR Agreement under the Third Pillar. [b5] have portrayed this as a technical change that would put the same agreement back in place, albeit under a different legal authority.

002393

(182)

28

Received from: Schneider MFR
Declassify on: Sept. 13, 2022

(c)

b1

Background

(u)

[

b5

]

Two converging events in Europe - the recent European Court of Justice decision on the legality of the EC-US PNR Agreement and a draft EU Framework Decision on Exchange of Criminal Data -- have major implications [b5

]

(c)

b1

(u)

The most significant of these limitations, from our perspective are the following:

(c)

b1

(c)

(c)

Deleted: b5]

(c)

b1

(c)

(c)

(c)

(c)

(u) ² PNR can also be used and transferred to address significant health risks under Paragraph 34. As noted below, despite this authorization the EU's Article 29 Working Party has concluded that CDC's plans to retain PNR data for health-related purposes violates EU law.

(c)

Deleted: P

The ECJ PNR Case. c

b5

→ in the European Parliament (EP), disturbed over what it viewed as an attack on personal privacy and its own authority, filed two suits in the European Court of Justice (ECJ). c

(u)

[b5]

(c)

b1

(c)

(s)

b1

(u)

This concern is consistent with Executive Order 13388 and the President's Memorandum issued on December 16, 2006 to Heads of Executive Departments and Agencies on "Guidelines and Requirements in Support of the Information Sharing Environment."

(s)

b1

(s) ↓

b1

(S)

b1

(u) [

b5

]

EU Proposals on Sharing Law Enforcement Information. C

b5

(u)

Last October the EU put forward three draft documents that concern data sharing and protection in the law enforcement context. They consist of a draft directive of the European Parliament and Council on the retention of data, a proposed Council decision on the protection of personal data in criminal matters, and - C b5 - a proposed Council decision on the exchange of law enforcement data between member states and third parties.

(c)

b1

(c)

(c)

(c)

b1

(a)

⁵ For example, the Draft Decision contains provisions on time limits for retention of shared data, ensuring the accuracy of shared data, logging and audit trails, as well as restrictions limiting further use of the data to the original purpose for which it was first transmitted. In effect it mirrors, in many ways, existing use and sharing limitations in the PNR Agreement and the Undertakings.

(c)

Deleted:

(c)

b1

Deleted:

(c)

(PGI-
MOD)

(u)

¹ The adequacy finding granted to the U.S. was specific to the transfer of FNR data and only extended to its transmission to CBP. ~~The May 2003 decision of the ECJ in Legros concerned only the Commission on the grounds that they did not have the legal authority to do so.~~

Deleted: is

Deleted: s

Formatted

Deleted:

(u)

² If adopted, the Draft Decision could conflict with a number of binding and non-binding information sharing arrangements that the United States has signed. For example, we have signed a 2003 Mutual Legal Assistance Agreement (MLAA) with the European Union and a 2001 information sharing agreement with Europol (the EU-level police agency); with respect to member states, we signed a 2003 MLAT with Germany, which builds on numerous other MLATs already in force with other EU member states. The United States also has many executive agreements and memoranda of understanding with member states under which

Communicable Diseases.

(u) [

05

]

(c)

b1

Analysis & Recommendation

(c)

Deleted: o

(c)

b1

(c)

Deleted: s

critical information is currently being shared. Under EU law, directives supersede bilateral treaties and agreements and member states must conform their existing agreements with the directive.

¹⁷ Unlike in 2003, this risk is present now because the Court has conclusively ruled that the transfer of PNR data is a law enforcement matter. While European integration has been the greatest in areas associated with the Common Market, law enforcement and public security is a relatively new area of activity at the community level and many responsibilities still fall to the EU Member States. The ECJ firmly placed PNR in the area of law enforcement and public security, and as result, any actions taken in this area are likely to set precedents for further community involvement in other law enforcement matters.

(u)

(c)

(c)

b1

b1

(s)

(c)

(c)

(c)

Formatted

002400

Conclusion

(u) The USG has a paramount interest in ensuring that law enforcement and border control information continues to flow to the United States. In creating the Information Sharing Environment we are working to break down walls that restrict the sharing of information between Federal agencies.

(u) The PNR Agreement that the US signed with the EU in 2004 is an example of the old-style artificial limitation. We entered into the PNR Agreement based upon the EU's argument that it involved commercial information not border EU law. The European Court of Justice has now held that the information is law enforcement information, not commercial information.

cc
(s) b1