



**New EU-US PNR Agreement: with no improvement of guarantees, the agreement must be rejected by the European Parliament!**

*Bruxelles, January 25th 2012*

**AEDH would like to draw MEPs' attention to the new EU-US agreement and the lack of guarantees concerning the protection of personal data and privacy, regarding passengers travelling to and from the United States, and the transmitting of their data to the American authorities (PNR).**

The agreement does not conform to protection criteria as defined by European legislation and Convention 108 of the Council of Europe. It relies on trust placed in the American authorities, and particularly in the DHS<sup>i</sup>, on a subjective appreciation concerning the efficiency of its own protection of personal data system. It is not founded on shared rules, or on a system of effective judicial appeals.

In general principle, AEDH wishes to point out that such processing of passenger data is unacceptable, and is incompatible with the principles of proportionality and purpose, as personal and commercial data concerning countless individuals is processed for security purposes. Misuse on this scale cannot comply with the principle of absolute necessity. It is disproportionate, whether it be in the context of the fight against terrorism, and more so in the fight against cross border offences, punishable by a minimum sentence of three years in prison!

Throughout the agreement, AEDH cannot be content with the reference to the American system as the adequate system of guarantees, in which "the DHS has demonstrated its independence<sup>ii</sup>", and where it is "deemed to ensure an adequate level of data protection". If this system incorporates so many protective properties, why then is such an agreement required? The fact that the DHS "does not provide the public with PNR data except [...] when required to do so under US law<sup>iii</sup>" proves this has not happened. Underlying the agreement, therefore, is the idea that derogations may be made from the principles elaborated within the agreement, simply by the implementation of U.S. law. Nothing therefore remains of adequate levels of protection<sup>iv</sup> of personal data and privacy, in reference to European law<sup>v</sup>.

AEDH is equally concerned with data filtering not taking place at source<sup>vi</sup>, with the very broad definition of terrorism<sup>vii</sup> and the low level of offences concerned<sup>viii</sup>, with the undermining of the sensitive personal data protection system via a simple reference to US legislation<sup>ix</sup>, with the masking of data as opposed to simple destruction following the dormant period<sup>x</sup>, and with an appeal system only possible from within the United States, making it practically impossible for EU residents. Identifying data will be kept for 15 years; data made anonymous will be kept for an unspecified amount of time, with no real possibility to lodge an appeal outside of the United States of America<sup>xi</sup>.

AEDH wishes to underline the absurdity of such a system, in which PNR data is collected in order to prevent individuals deemed to be dangerous from entering the United States, and in

which all passenger data is kept for a long time following the arrival of the flight, despite no danger having been posed to the United States.

AEDH shares and endorses the concerns raised by the European Data Protection Supervisor (EDPS) in an opinion issued on the 13<sup>th</sup> December 2011, and hopes that as an independent authority, the EDPS will be heard.

The European Parliament has challenged successive PNR agreements since 2004, and the agreement of 2007, signed without the consent of the Parliament, remains provisional. MEPs should not be distracted by small amounts of progress. These agreements offer no more guarantee of data protection today than they did in the past.

AEDH therefore asks that MEPs withhold approval of this agreement; that civil society organisations as well as citizens and residents of Europe oppose it, since the agreement does not ensure the protection of personal data and privacy to which they have the right.

**Contact :**

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<sup>i</sup> United States Department of Homeland Security

<sup>ii</sup> *Agreement between the United States of America and the European Union on the use and transfer of passenger name records to the United States Department of Homeland Security* (23.11.2011), Art.14

<sup>iii</sup> *Ibid*, Art.19

<sup>iv</sup> *Ibid*, Art.10, par. 4

<sup>v</sup> *Ibid*, Art.19

<sup>vi</sup> *Ibid*, Art.3

<sup>vii</sup> *Ibid*, Art.4, par. 1a.i.2: “conduct that appears to be intended to –“

<sup>viii</sup> *Ibid*, Art.4 par.1b: crimes punishable by three years of imprisonment

<sup>ix</sup> *Ibid*, Art.6 par. 4 : “sensitive data may be retained for the time specified in U.S. law for the purposes of a specific investigation, prosecution or enforcement action”

<sup>x</sup> *Ibid*, Art.8 par. 4

<sup>xi</sup> *Ibid*, Art. 13