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TEXTS ADOPTED

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**P8\_TA(2014)0058**

**Seeking an opinion from the Court of Justice on the compatibility with the Treaties of the Agreement between Canada and the European Union on the transfer and processing of Passenger Name Record data**

**European Parliament resolution of 25 November 2014 on seeking an opinion from the Court of Justice on the compatibility with the Treaties of the Agreement between Canada and the European Union on the transfer and processing of Passenger Name Record data (2014/2966(RSP))**

*The European Parliament,*

- having regard to Article 218 of the Treaty on the Functioning of the European Union (TFEU), in particular paragraphs 6 and 11 thereof,
- having regard to the draft Council decision on the conclusion, on behalf of the Union, of the Agreement between Canada and the European Union on the transfer and processing of Passenger Name Record data (12652/2013),
- having regard to the Agreement between Canada and the European Union on the transfer and processing of Passenger Name Record data (12657/2013),
- having regard to the Commission communication on the global approach to transfers of Passenger Name Record (PNR) data to third countries (COM(2010)0492),
- having regard to its resolutions of 5 May 2010 on the launch of negotiations for Passenger Name Record (PNR) agreements with the United States, Australia and Canada<sup>1</sup> and of 11 November 2010 on the global approach to transfers of Passenger Name Record (PNR) data to third countries<sup>2</sup>,

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<sup>1</sup> OJ C 81 E, 15.3.2011, p. 70.

<sup>2</sup> OJ C 74 E, 13.3.2012, p. 8.

- having regard to the opinion of the European Data Protection Supervisor of 19 October 2010 on the Commission communication on the global approach to transfers of Passenger Name Record (PNR) data to third countries<sup>1</sup>,
  - having regard to the opinion of the European Data Protection Supervisor of 30 September 2013 on the proposals for Council decisions on the conclusion and the signature of the Agreement between Canada and the European Union on the transfer and processing of Passenger Name Record data<sup>2</sup>,
  - having regard to Opinion 7/2010 of the Article 29 Data Protection Working Party, adopted on 12 November 2010, on the Commission communication on the global approach to transfers of Passenger Name Record (PNR) data to third countries,
  - having regard to Article 16 TFEU and to Articles 7, 8 and 52(1) of the Charter of Fundamental Rights of the European Union,
  - having regard to the Court of Justice judgment of 9 March 2010 in Case C-518/07, *Commission v Federal Republic of Germany*,
  - having regard to the Court of Justice judgment of 8 April 2014 in Joined Cases C-293/12 and C-594/12, in which the Data Retention Directive was declared invalid,
  - having regard to Rule 108(6) of its Rules of Procedure,
- A. whereas the European Union concluded an agreement with Canada in 2005 on the processing of Passenger Name Record (PNR) data on the basis of a set of commitments by the Canada Border Services Agency (CBSA) in relation to the application of its PNR programme; whereas with the expiry of the relevant Commission decision on 22 September 2009, the European legal basis for the transmission of PNR data to the CBSA ceased to exist;
  - B. whereas the CBSA unilaterally undertook to assure the EU that the commitments would continue in force and effect until a new agreement applied; whereas this was communicated to all the Member States and their data protection authorities;
  - C. whereas, following the entry into force of the Lisbon Treaty on 1 December 2009, the conclusion of new PNR agreements requires the consent of the European Parliament before they can be adopted by the Council;
  - D. whereas on 2 December 2010 the Council adopted a decision, together with a negotiating directive, authorising the Commission to open negotiations on behalf of the EU for an agreement with Canada on the transfer and processing of Passenger Name Record data;
  - E. whereas on 18 July 2013 the Commission proposed to the Council to take a decision on the conclusion of the agreement;
  - F. whereas on 30 September 2013 the European Data Protection Supervisor issued its opinion on the agreement, questioning the necessity and proportionality of PNR schemes and of bulk transfers of PNR data to third countries, as well as the choice of legal basis;

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<sup>1</sup> OJ C 357, 30.12.2010, p. 7.

<sup>2</sup> OJ C 51, 22.2.2014, p. 12.

- G. whereas on 5 December 2013 the Council decided to ask Parliament for its consent to the conclusion of the agreement;
  - H. whereas the agreement was signed on 25 June 2014;
  - I. whereas on 7 July 2014 the Council requested Parliament's consent to the conclusion of the agreement;
  - J. whereas on 8 April 2014 the Court of Justice, in its judgment in Joined Cases C-293/12 and C-594/12, declared the Data Retention Directive to be invalid;
  - K. whereas the purpose of the agreement, as stated in Article 1 thereof, is to lay down conditions in accordance with which PNR data may be transferred and used and to stipulate how data will be protected;
1. Takes the view that there is legal uncertainty as to whether the draft agreement is compatible with the provisions of the Treaties (Article 16 TFEU) and the Charter of Fundamental Rights of the European Union (Articles 7, 8 and 52(1)) as regards the right of individuals to protection of personal data; questions, further, the choice of legal basis, i.e. Articles 82(1)(d) and 87(2)(a) TFEU (police and judicial cooperation) rather than Article 16 TFEU (data protection);
  2. Decides to seek an opinion from the Court of Justice on the compatibility of the agreement with the Treaties;
  3. Instructs its President to forward this resolution to the Council and the Commission for information and to take the necessary measures to obtain such an opinion from the Court of Justice.