



EUROPEAN COMMISSION

Brussels, 15/12/2009
C/2009/10252

Dear Mr President,

On behalf of the European Commission I would like to thank you for the Resolution 71/2009 of the Assembleia da República on the Passenger Name Record (PNR) Framework Decision. The Commission takes due note of the conclusions contained therein but would like to underline that the proposal of the Commission has already been adopted in 2007 and that discussion within the Council and the European Parliament have been on-going since then.

The main objective of the proposal of the European Commission is increasing the internal security of the EU through reinforced police cooperation under Title VI of the Treaty on the European Union. The fight against terrorism and crime and the protection of the internal security of the EU cannot be sufficiently achieved by the Member States acting alone. Because of the nature of the terrorist and transnational organised crime threats, as evidenced by the Organised Crime Threat Assessment published by Europol, investigations carried out by the competent authorities of the Member States are largely dependent on international and trans-border cooperation.

The harmonisation of the collection and processing of PNR data by Member States is a consequence of the main objective, albeit an important one. Several Member States already collect and use PNR data for law enforcement purposes while many others are in the process of establishing PNR systems. Research has shown that the various systems have diverging provisions. Harmonisation of such provisions is essential in the interest of law enforcement cooperation, passenger rights and the protection of interests of the air travel industry.

On the basis of the above, it is the position of the Commission that its proposal fully respects the subsidiarity principle.

The Commission also believes that the proposal complies with the proportionality principle. The scope of the proposal is limited to those elements which require a harmonised EU approach - including the definition of the tasks of the PNR Units, the data elements which need to be collected, the purposes for which the information may be used, the communication of the data between the PNR units of the Member States, and the technical conditions for such communication. The proposed action is a Framework

Jaime José MATOS DA GAMA
President of the Assembly of the Republic
Palácio de S. Bento
P – 1249-068 Lisboa

Decision which leaves as much scope as possible to the national decision makers. Also, the choice for a decentralised system means that the Member States have the choice of how and where they set up their PNR system, and to decide themselves on the technical aspects of it. The harmonisation aspects are limited to those strictly necessary, such as the technical aspects of the communication systems needed to exchange the data with other Member States.

In the resolution the opinions of the European Data Protection Supervisor and the Art.29 Working Party on Data Protection, as well as the resolution of the European Parliament, are also mentioned.

As regards the opinions of the European Data Protection Supervisor and the Art.29 Working Party, the Commission notes that these opinions were issued during the consultation stages and their comments were largely taken into consideration at the stage of the adoption of the proposal by the Commission.

Finally, the resolution of the European Parliament is an important contribution to the negotiations for the PNR proposal. However, an *in camera* hearing was organised by the European Parliament Civil Liberties Committee in May 2008 at which experts from various Member States and third countries were invited to present their positions on PNR. The European Parliament had the opportunity to hear evidence and be given examples of the usefulness of PNR in the law enforcement activities.

I am looking forward to further developing our policy dialogue in the future.

Yours sincerely

Margot WALLSTRÖM
Vice-President of the European Commission