Will PNR be a humiliating déjà vu for EU policymakers?

Written by Birgit Sippel on 30 May 2017 in Opinion

One year after Parliament voted through the EU PNR directive, Birgit Sippel explains why the text never should have been adopted.

As Parliament's S&D group shadow rapporteur on the EU PNR directive, I have been closely involved in the negotiations on the PNR file. Following long discussions, the majority of my group approved the compromise text, a choice I have always respected.

I fought for a PNR that could be compatible with fundamental rights, by not indiscriminately subjecting all passengers to this profiling measure, and using a more targeted approach instead. In the end, I did not succeed, which is why I could not support the report.

It has been more than a year since the text was adopted, and I still have serious doubts as to the
I find it interesting - though not really surprising - to see those member states that were so vocal in calling for this directive are now so slow in fully implementing it. It's unclear if all member states will have transposed the directive by May 2018, jeopardising the functioning of the whole system.

It's easy to constantly demand new security measures in order to be seen to be taking the fight against terrorism seriously. However, actually implementing a surveillance measure with huge implications for privacy is another thing - as are the costs.

Meanwhile, in countries where the implementation process has started, for example in Germany, hardly any thorough debate is taking place.

Belgium has broadened the scope of the directive to include trains, which is very worrisome, for example with regard to cross-border train traffic between Belgium and Germany.

Putting into place at home what you have agreed to in Brussels is a basic principle of EU law - but it's also common knowledge that member states often shy away from this obligation.

There are many shortcomings that I could elaborate on as regards the implementation of this directive, but doing so would divert from the real problem. The EU PNR directive is a disproportionate surveillance measure of everyone travelling by plane. It should never have been adopted.

In 2014, two years before the adoption of the PNR text, the European Court of Justice (ECJ) stated that the EU data retention directive - which at the time of its adoption was presented as the answer to the Madrid and London attacks - was not in line with the European Charter of Fundamental Rights. It indiscriminately targeted all citizens without any differentiation, for example based on a geographical location or a particular period of time. Additionally, the French data retention regime was not able to prevent the recent terrorist attacks.

The ECJ's jurisprudence was one of the reasons why, in November 2014, the European Parliament referred a draft text on the exchange of PNR data with Canada to the ECJ for a fundamental rights check. The ECJ has not yet issued its final decision. But in September 2016, advocate general Paolo Mengozzi presented his legal analysis.

Only a few months after the adoption of the EU PNR directive, he came to the conclusion that the EU-Canada PNR, in its current form, is illegal. If the court follows his legal reasoning, the draft EU-Canada PNR text will not enter into force.
The decision on the EU-Canada PNR is hugely important, because, if this text falls, I am certain we will also see the EU PNR text quashed. A lot of the criticism that was voiced with respect to the EU-Canada PNR also applies to the EU PNR directive, such as the data retention period or the profiling rules.

A negative decision on the EU PNR directive would actually represent a humiliating déjà vu of the ECJ's data retention judgement: the need for the EU's highest court to make our decision-makers aware of the fact that a highly praised security measure, which was bullied through the institutions, was again a very bad choice, knocking down our very basic fundamental rights.

Instead of always looking for new measures, it is more important to make sure that relevant information is shared in a timely and effective manner in the fight against organised crime and terrorism, not to subject everyone to indiscriminate surveillance.

About the author

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