

The European Parliament claims that the Court should:

- annul Council Decision 2004/496/EC of 17 May 2004 ⁽¹⁾;
- order the defendant to pay all of the costs.

Pleas in law and main arguments

The European Parliament puts forward five pleas in support of its action.

The first two pleas challenge the legal basis of the contested decision. First, the Parliament submits that recourse to Article 95 EC is not justified, having regard in particular to the Court's recent case-law on the interpretation of that provision; indeed, Article 95 cannot be the basis for Community power to conclude the agreement, since it relates to the processing of data excluded from the scope of Directive 95/46 on the protection of personal data. Secondly, the agreement entails amendment of that directive adopted under the procedure referred to in Article 251 EC, and could therefore be concluded only after the assent of the Parliament had been obtained.

In its third plea, the Parliament takes the view that the agreement infringes fundamental rights, in particular the right to protection of personal data with regard to essential aspects of that right, and that it also constitutes an unjustifiable interference with private life, which is incompatible with Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The fourth plea concerns infringement of the principle of proportionality, in particular on account of the fact that the agreement provides for the transfer of an excessive amount of passenger data and those data are stored by the American authorities for too long.

Finally, the Parliament also pleads the lack of a sufficient statement of reasons for a measure having such specific characteristics, and infringement of the principle of cooperation in good faith provided for in Article 10 EC, having regard to the very unusual circumstances surrounding the adoption of the contested decision, which took place during the procedure before the Court of Justice for request for opinion 1/04 on the aspects which clearly posed questions of a legal nature.

⁽¹⁾ Council Decision 2004/496/EC of 17 May 2004 on the conclusion of an Agreement between the European Community and the United States of America on the processing and transfer of PNR data by Air Carriers to the United States Department of Homeland Security, Bureau of Customs and Border Protection (OJ L 183 of 20.5.2004, p. 83)

Action brought on 27 July 2004 by the European Parliament against the Commission of the European Communities

(Case C-318/04)

(2004/C 228/67)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 27 July 2004 by the European Parliament, represented by H. Duintjer Tebbens and A. Caiola, acting as Agents, with an address for service in Luxembourg.

The European Parliament claims that the Court should:

- annul under Article 230 EC Commission Decision 2004/535/EC of 14 May 2004 ⁽¹⁾;
- order the Commission of the European Communities to pay all of the costs.

Pleas in law and main arguments

The European Parliament puts forward four pleas in support of its action, namely, misuse of powers by the Commission, breach of the fundamental principles of Directive 95/46/EC, breach of fundamental rights and breach of the principle of proportionality.

In respect of misuse of powers, the Parliament argues that the Commission's decision was adopted *ultra vires*, without complying with the provisions laid down in the basic directive 95/46/EC on the protection of personal data and in breach of, *inter alia*, the first indent of Article 3(2) of Directive 95/46 on the exclusion of activities which fall outside the scope of Community law.

The European Parliament stresses in addition the following aspects: the CBP (United States Bureau of Customs and Border Protection) is not a third country within the meaning of Article 25 of Directive 95/46, the decision on adequacy authorises transfers to other US governmental authorities as well as to third countries, the decision entails infringement of Article 13 of Directive 95/46 on exemptions from and restrictions on the principles on the processing of personal data (exemptions and restrictions reserved to the Member States), and on the basis of the decision, the CBP has direct access to PNR (Passenger Name Record) data, not provided for by the directive. In the light of the interdependence between the decision on adequacy and the agreement between the European Community and the United States, the decision must be considered a measure which is not appropriate for the objective pursued, namely to provide for transfers of PNR data.

In its second plea, the European Parliament takes the view that the Commission's decision on adequacy also infringes the fundamental principles of Directive 95/46. In particular, the purpose of the processing referred to in the decision is incompatible with the purpose of the initial processing; there is no legal processing obligation; the principles of the basic directive are infringed as regards the processing of sensitive data, the right of access and related rights; the right to judicial protection is not guaranteed and the authorisation to transfer to other US authorities and other countries is incompatible with Directive 95/46.

Thirdly, the European Parliament maintains that the Commission's decision on adequacy infringes fundamental rights, in particular the right to private life and the right to protection of personal data laid down in Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as applied by the Court of Justice and the European Court of Human Rights.

The Parliament's fourth plea alleges that the decision on adequacy also infringes the principle of proportionality, in particular on account of the fact that an excessive amount of PNR data can be transferred and those data can be kept by the US authorities for too long.

(¹) Commission Decision 2004/535/EC of 14 May 2004 on the adequate protection of personal data contained in the Passenger Name Record of air passengers transferred to the United States Bureau of Customs and Border Protection (OJ 2004 L 235, p. 11).

Action brought on 23 July 2004 by the Commission of the European Communities against the French Republic

(Case C-319/04)

(2004/C 228/68)

An action against the French Republic was brought before the Court of Justice of the European Communities on 23 July 2004 by the Commission of the European Communities, represented by G. Rozet, acting as Agent, with an address for service in Luxembourg.

The Commission of the European Communities claims that the Court should:

- declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 1999/63/EC of 21 June 1999 concerning the Agreement on the organisation of working time of seafarers concluded by the European Community Shipowners' Asso-

ciation (ECSA) and the Federation of Transport Workers' Unions in the European Union (FST) - Annex: European Agreement on the organisation of working time of seafarers (¹), or, in any event, by failing to notify the Commission of those provisions, the French Republic has failed to fulfil its obligations under Article 3(1) of that directive;

- order the French Republic to pay the costs.

Pleas in law and main arguments

The time-limit for transposition of the directive expired on 30 June 2002.

(¹) OJ L 167, 2.7.1999, p. 33.

Action brought on 27 July 2004 by the Commission of the European Communities against the Grand Duchy of Luxembourg

(Case C-320/04)

(2004/C 228/69)

An action against the Grand Duchy of Luxembourg was brought before the Court of Justice of the European Communities on 27 July 2004 by the Commission of the European Communities, represented by D. Martin, acting as Agent, with an address for service in Luxembourg.

The Commission of the European Communities claims that the Court should:

- declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (¹), the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive;
- order the Grand Duchy of Luxembourg to pay the costs.

Pleas in law and main arguments

The time-limit for transposition of the directive expired on 19 July 2003.

(¹) OJ L 180, 19.7.2000, p. 22.