

ORDER OF THE COURT (Grand Chamber)

17 March 2005^{*}

In Case C-317/04,

ACTION for annulment under Article 230 EC, brought on 27 July 2004,

European Parliament, represented by R. Passos and N. Lorenz, acting as Agents,
with an address for service in Luxembourg,

applicant,

v

Council of the European Union, represented by M. Bishop and M. Giorgi Fort,
acting as Agents,

defendant,

* Language of the case: French.

supported by:

Commission of the European Communities, represented by P. Kuijper, A. van Solinge and C. Docksey, with an address for service in Luxembourg,

United Kingdom of Great Britain and Northern Ireland, represented by M. Bethell, acting as Agent, with an address for service in Luxembourg,

THE COURT (Grand Chamber),

composed of V. Skouris, President, P. Jann, C.W.A. Timmermans, A. Rosas and A. Borg Barthet, Presidents of Chamber, R. Schintgen, N. Colneric (Rapporteur), S. von Bahr, J.N. Cunha Rodrigues, M. Ilešič, J. Malenovský, J. Klučka and U. Lohmus, Judges,

Advocate General: P. Léger,

Registrar: R. Grass,

after hearing the Advocate General,

makes the following

Order

- 1 By its application, the European Parliament seeks annulment of 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 ['Passenger Name Record'] data by Air Carriers to the United States Department of Homeland Security, Bureau of Customs and Border Protection (OJ 2004 L 183, p. 83).

- 2 By application lodged at the Court Registry on 21 October 2004, the European Data Protection Supervisor ('the Supervisor'), represented by H. Hijmans, acting as Agent, sought leave to intervene in Case C-317/04 in support of the form of order sought by the Parliament.

- 3 That application for leave to intervene was submitted on the basis of Article 47(1)(i) of Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ 2001 L 8, p. 1), and also of Article 93 of the Rules of Procedure.

4 Article 47(1) of Regulation No 45/2001 is worded as follows:

‘The European Data Protection Supervisor may:

...

- (h) refer the matter to the Court of Justice of the European Communities under the conditions provided for in the Treaty;

- (i) intervene in actions brought before the Court of Justice of the European Communities.’

Observations submitted to the Court

5 The Supervisor submits that Article 286(2) EC, which provides that the Council of the Union is to establish an independent supervisory body responsible for monitoring the application of Community acts on the protection of individuals with regard to the processing of personal data, was implemented by Regulation No 45/2001.

- 6 The Supervisor maintains that the terms of reference conferred by virtue of that regulation also tend to ensure that, in the field of the processing of personal data, freedoms and fundamental rights are observed in all the policies of the Community.
- 7 Since the Supervisor does not appear on the list in Article 7(1) EC as an institution of the Community and since, accordingly, neither that provision nor Article 40 of the Statute of the Court of Justice can serve as a legal basis for his application, the Supervisor's intervention is based on Article 47(1)(i) of Regulation No 45/2001.
- 8 Any other interpretation of that provision would, he submits, have the effect either of invalidating that provision as contrary to the Statute of the Court of Justice or of depriving the right conferred on the Supervisor of any actual content.
- 9 The only limit on the Supervisor's right to intervene derives from the task entrusted to him. In the present case, the Supervisor maintains that the dispute concerns Community actions in the field of the processing of personal data. The Council acted within the framework of the external policy of the Community. Furthermore, it follows from the pleas put forward by the Parliament that the actions of the institutions concerned have a real, or at least a presumed, impact on the application of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281, p. 31).
- 10 On 25 November 2004 the Council submitted written observations on the Supervisor's application for leave to intervene; it claimed in those observations that the application should be dismissed as inadmissible or, in the alternative, as unjustified.

- 11 The Council claims that Article 47(1)(i) of Regulation No 45/2001, which is a provision of secondary law, cannot derogate from Article 40 of the Statute of the Court of Justice, which has the value of primary law on the same basis as the EC Treaty itself.
- 12 In the alternative, the Council maintains that it cannot be considered that the Supervisor has a sufficient interest in the result of the case, within the meaning of the second paragraph of Article 40 of the Statute of the Court of Justice. The Supervisor's task is, in the Council's submission, to supervise the processing of personal data by a Community institution or body, whereas the present case relates to the adoption of a legislative measure concerning the processing of data by airline companies, in particular the transfer to the United States authorities of the PNR data stored in their reservation systems, data which are not in any event processed by a Community institution or body.
- 13 On 23 November 2004, the Parliament submitted written observations on the Supervisor's application for leave to intervene; it claimed in those observations that the application appears to be lawful in the light of the task entrusted to the Supervisor, as described in particular in Article 41(2) of Regulation No 45/2001.

The application for leave to intervene

- 14 The application for leave to intervene was submitted on the basis of Article 47(1)(i) of Regulation No 45/2001, which provides that the Supervisor may intervene in actions brought before the Court of Justice.

- 15 That regulation was adopted on the basis of Article 286(2) EC, which provides that the Council is to establish an independent supervisory body responsible for monitoring the application to Community institutions and bodies of acts on the protection of individuals with regard to the processing of personal data and the free movement of such data and is to adopt any other relevant provisions as appropriate. In adopting Article 47(1)(i) of Regulation No 45/2001, the Council did not exceed the powers conferred on it by Article 286(2) EC, since that measure is intended to ensure the practical effect of that provision of the Treaty.
- 16 Admittedly, as the Supervisor himself observes, his right to intervene is circumscribed within the limits deriving from the task entrusted to him.
- 17 However, the fact that the present case relates to a legislative measure concerning the processing of personal data by airline companies does not imply that the situation does not come within the Supervisor's task.
- 18 In accordance with the second subparagraph of Article 41(2) of Regulation No 45/2001, the Supervisor is to be responsible not only for monitoring and ensuring the application of the provisions of that regulation and any other Community act relating to the protection of the fundamental rights and freedoms of natural persons with regard to the processing of personal data by a Community institution or body, but also for advising Community institutions and bodies on all matters concerning the processing of personal data. That advisory task does not cover only the processing of personal data by those institutions or organs. For those purposes, the Supervisor carries out the duties provided for in Article 46 of that regulation and exercises the powers conferred on him by Article 47 of the regulation.

19 It follows from all of the foregoing that the Supervisor's application for leave to intervene must be upheld.

Costs

20 As the Supervisor's application for leave to intervene is granted, the costs relating to that intervention are reserved.

On those grounds, the Court (Grand Chamber) hereby orders:

1. **The European Data Protection Supervisor is granted leave to intervene in Case C-317/04 in support of the form of order sought by the European Parliament.**
2. **A period shall be prescribed within which the European Data Protection Supervisor is to submit the pleas in law in support of the form of order which he seeks.**
3. **A copy of all the procedural documents shall be served on the European Data Protection Supervisor.**
4. **The costs associated with the intervention by the European Data Protection Supervisor are reserved.**

[Signatures]