

WEDNESDAY 2 APRIL 2008

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Present

Dear, L.  
Garden of Frognal., B  
Henig, B.  
Jopling, L. (Chairman)  
Marlesford, L.  
Mawson, L.  
Teverson, L.

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Ludford, B.

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Witnesses: **Ms Sophie in 't Veld**, a Member of the European Parliament, Rapporteur of the LIBE Committee of the European Parliament for the draft PNR Framework Decision, and **Ms Linda van Renssen**, examined.

**Q70 Chairman:** Thank you very much for coming, it is extremely helpful, and also you have brought Linda van Renssen, who I understand is your assistant, is that right?

**Ms in 't Veld:** Yes.

**Q71 Chairman:** Welcome. We are on the record and you may have seen some of the questions which we are interested in asking you, so let me begin. As you know, we are doing a short inquiry into the Framework Decision on PNR and we would be most grateful to get your views and comments. The arrangements for the collection and transmission of PNR data are currently in place in the UK, France and Denmark, and other Member States we understand are likely to follow. Is it your view that this whole operation calls for a harmonised approach through EU legislation?

**Ms in 't Veld:** Yes and no. If there is going to be such a thing as an EU PNR scheme then I think it should be a real European scheme, not least because it is an incredible hassle for the

carriers to have to deal with 27 different schemes. Besides, that was the whole reasoning behind the proposal, that there are certain countries which are doing this; therefore it would be better if we had something harmonised, but that is not actually what the Commission is proposing. However, before we ask this question I still think we need to ask the key question: is it actually necessary? That question still has not been answered and that is the question that we will keep asking in our discussions with the Commission and the Council. I refuse to get lured into a debate on the details when we have not answered that fundamental question.

**Q72 Lord Teverson:** Perhaps we could ask Sophie if she could briefly give us the Parliament's view on that broader issue before we get into these questions, and perhaps also how it views the possible transition into co-decision towards the end of the year.

**Ms in 't Veld:** As you know, the European Parliament was deeply unhappy with the EU/US agreement on the transfer of PNR. Unfortunately, the outcome of the court hearing was such that we basically sidelined ourselves, but I think that many of our fears and suspicions have proved to be true and, inversely, the usefulness of the system has not been proven. We have been asking consistently for evidence of the usefulness (or even the need) for the collection and use of PNR for the stated purpose, because everything always derives from the stated purpose, proportionality and the details of the arrangements. We have not received any evidence. The evidence that is trickling in seems to indicate that the targeted use of PNR, ie, not automated searches but when they are looking for something or someone specific, might be useful in particular for fighting crime, not even necessarily serious crime or organised crime but crime. Fine; we can argue about that, but the stated purpose is always the fight against terrorism and serious crime, so you can only measure the effectiveness against that and the effectiveness of the EU PNR agreement has not been demonstrated in any way. Furthermore, there was a first agreement back in 2004 that was annulled by the court. Then there was another one in 2006 to 2007, an interim one, and there was a final one which was

concluded last year. It has not even been ratified yet. The ink on the agreement is not dry yet and the Americans are seeking bilateral arrangements with the Member States. It turns out that the single evaluation that took place, which was very superficial and where most of the work was done by the then Privacy Officer of the Department of Homeland Security, who was very good, seemed to indicate that they were not actually very strict in implementing the agreement. It is formulated in such a way that they can use the data for all sorts of purposes. They are not really bound to it. We have just been discussing it with Baroness Ludford. The legal status of the whole agreement is totally unclear. That is the kind of agreement that we are concluding. We have another agreement with Canada, which is a different one on a different legal basis, which has not been evaluated. We are going to negotiate one with Australia. South Korea started requiring the transfer of PNR data yesterday and there is no legal base, no agreement, no data protection, and the Commission and Council do not want to conclude an agreement. Why? It is a complete mystery to me. They will not answer. There are even rumours that the Chinese might introduce the collection of PNR before the start of the Olympics. There is no strategy, no vision, and again there is no justification. You know that the European Parliament was extremely critical of it. The term that was used in the resolution that we adopted in July last year was that the agreement that was concluded with the US was "substantially flawed". That is very clear, I would say. Of course, we do not have a position yet on the proposals which are on the table now but the questions are essentially the same. As a matter of fact we have moved on since then. We have a bit more information on what we can and cannot expect, and I have to say that as far as I can judge across the political groups there is deep scepticism about all this. Also, you have to see it in the wider context. We tend to focus very much on what is right in front of us and that is the PNR proposals but, if you look at the wider context, let us start with anything to do with travel and passenger movements. We are talking about the collection of fingerprints, not one

but ten. We are talking about an entry/exit system. We are talking about an electronic travel authorisation scheme, and for all modes of travel, not just air travel. People are beginning to look at train travel, boats, car. I do not know about the UK but in the Netherlands we are introducing a kind of congestion charge system which will register cars. We have a public transport system which will work with a chip card which will register your movements as well. Then, if you look at all the other sectors, it is not only about PNR because then you will say, “Oh, okay, if it is used for the right purposes ---“, but there are telecommunications data, including the contents of our communications, postal data, medical data, bank data, credit card data, there are smart cameras, smart microphones, satellite surveillance, you name it. They are literally working on cameras which can look through walls, so basically they know everything about us. And then you go to back to PNR then and you ask yourself, “Is it actually going to make our lives safer?”, because that is the stated purpose. I do not know. Frankly, I am getting the feeling that citizens are increasingly under surveillance and the right to hold the executive to account is being eroded rapidly. Maybe I should conclude on a more philosophical remark, which seems a bit exaggerated but still it makes me think. Everybody is looking at China now. The government of China, as we know, is obliging companies such as Google and Yahoo to submit their customer records to the authorities for national security purposes. We say, “That is outrageous. They are a dictatorship”. Western governments are obliging Google and Yahoo to submit their customer records for national security purposes and we can no more hold our governments to account than the Chinese can. We still live in a democracy and I would like to keep it that way.

**Q73 Lord Marlesford:** Can I follow up your earlier point about the usefulness of PNR not yet being evaluated as far as we in Europe are concerned, and ask first of all whether the Commission are asking the United States Government (which presumably means the Department of Homeland Security) for an evaluation of the usefulness of PNR, and, secondly,

whether the United States Government are indicating they are going to answer or whether they are being obstructive and saying it is too secret to answer or what? In other words, are you satisfied as the European Parliament that the Commission – presumably it is the Commission – is interrogating the US Government on the matters that you need to know about?

**Ms in 't Veld:** The Commission is not asking such questions. We have asked the Commission repeatedly to carry out the evaluation in such a manner, but there has only been one single evaluation since it entered into force in 2004, and that evaluation looked exclusively at the implementation of the agreement, in other words, were they indeed protecting our data as they had promised? The conclusion was no, or they had only started to implement it during the evaluation but they did not look at the usefulness. The report was not made public initially, and then it was but not the annexes, which contain the interesting bits, and the annexes gave the first indications of what the data are being used for, which was for all sorts of purposes, including, indeed, fighting small-time drug smugglers or other very valid purposes. I am not saying those are not valid purposes but the stated purpose was the fight against terrorism, and no, it is not evaluated against that stated purpose. All the information that we get we get from the other side of the ocean because the Americans are much better at holding their Government to account than we are, and they are asking much more critical questions about these things, so there are, let us say, internal reports.

**Q74 Lord Marlesford:** “They” meaning Congress?

**Ms in 't Veld:** The Americans. For example, there is something called the Government Accountability Office, which is a government agency which assesses policies and which is very good. Some of their reports are very alarming and if you read how effective – or, rather, ineffective – anti-terrorism measures are there will be ample reasons for asking very critical questions. Just yesterday I was reading a report that was done by the Inspector-General of the

Department of Justice on how the FBI is managing the terrorist watch lists. It is a shambles, basically, and very sloppy. Those are not the terms that the Inspector-General uses but read the report. It is very interesting. That is the kind of information that we get. Then we got from this side of the ocean the report from your own Government on the use of PNR, which basically says the same. It says, "It is very useful because we are catching all these criminals". That is very good; criminals should be behind bars, but that is not the stated purpose. Again, the stated purpose can be defined in terms of the subject: is it terrorism or the fight against crime or against infectious disease (which is another one which is now in the agreement with the US), or is it other things? Also, what is the kind of use they are making of the data? Is this for targeted, very concrete investigations into known suspects or known cases or groups of suspects? Are they actually looking for something or do they use the data for random, automated searches such as profiling and data mining? I always come back to purpose. If they say, "We need to violate your privacy for this particular purpose", then you can only measure the effectiveness against that. If they say, "We need these data in order to prevent terrorist attacks", they seem to suggest that by profiling and data mining they can prevent terrorist attacks. I am not a security expert but I have seen no evidence of that. For example, a couple of weeks ago we had somebody from the security of Schiphol Airport (which has its own security issues) and he said that PNR is useful for catching petty criminals and for very targeted specific searches. If you see someone and you think, "Hmm, there's something fishy here", then you may have access to their data, but that is a traditional method of investigation. Why would they need unlimited access to the whole database, data mining, profiling? For what outcome? Why do these data need to be stored for 13 years?

**Q75 Chairman:** We shall come to that. Before we get to it I think you talked about the UK Government and I think you were perhaps referring to a letter which was written to Mr Frattini by Meg Hillier. We will come to that in a moment, but, just going back a little, you

made the point a second ago that Articles 1 and 11 limit the application of this proposal to combating terrorist offences and organised crime. Is it your view that it would be a mistake to use this information for wider law enforcement as well as immigration purposes, or do you think it ought to be confined, if it is to go ahead, to the business of terrorism and organised crime?

***Ms in 't Veld:*** Let me make one thing clear for starters. Nobody in the European Parliament that I know is against the use of personal data for all sorts of security purposes, so using the data for those purposes in principle is okay, but it has to be clear from the very start what the data can and cannot be used for. The thing is that the proposal of Frattini very innocently says, “This is for the fight against terrorism and serious crime”, which is already fairly broad, because we always think it is pretty obvious what that is, but it is not necessarily obvious. If you look, for example, at the definition of “serious crime” in Germany, it is very wide. It includes things that we would not consider to be serious crime. Terrorism as well: does that go as far as a terrorist act? It is using all sorts of different terms that might in some countries include, for example, – what do you call it, Sarah? Apologies – is that what you call it?

**Q76 Baroness Ludford:** We normally use “glorification of terrorism”. It is very controversial, the definition of a terrorist act.

***Ms in 't Veld:*** The thing is that if the data should be used for other purposes that should be said from the start, and if Frattini presents a proposal and says, “Don’t you worry. We’re not like the Bush Government. We will only use this for terrorism and serious crime”. He really tried to reassure the Parliament, but fortunately minutes of secret meetings tend to fall off the photocopier. The first exchange of views that the representatives of the Member States had on the subject immediately opened up Pandora’s box. They said, “We should retain the possibility of using it for all sorts of other purposes. We do not want to be limited to the defined storage periods. We do want to have access to sensitive data”. There is also the

matter of trust, I think. It is like the agreement with the Americans. I did not much like the substance of the agreement but, okay, at some point you can say we have at least agreed on something and they will stick to it and we can trust our allies or our governments to stick to it, but then every time you turn round they do something else. With governments too, if we are ever to adopt such a scheme and, to be perfectly honest, I am still not convinced that we should, the purpose has to be very clear from the start. Otherwise, if a citizen has a problem and wants to go to court, and he says, for example, “My personal data have been used for the wrong purpose”, the purpose has to be clear; otherwise he does not have a case and governments will have complete freedom to arbitrarily use the data for all sorts of purposes.

**Chairman:** Let us talk about the UK experience.

**Q77 Baroness Garden of Frognal:** You have already alluded, I think, to the UK running Project Semaphore for three years, an e-Border system capturing PNR data. The data that they have captured on over 50 million passenger movements have generated over 21,000 alerts and contributed to over 1,700 arrests for serious crimes amongst others. I can pre-empt your reply, I think, but do you consider that this provides any justification for having more data captured than in the API system?

**Ms in 't Veld:** First of all, because I also read the report of the meeting you had with Ms Hillier and Mr Dodd and Mr Norris, I think we have to be very clear what we are talking about. I also met Ms Hillier two months ago, I think. There is still a lack of understanding of what you can and cannot do with PNR. If we catch criminals, yes, that is of course a very valid purpose, but again it has to be very clear from the start what you can and cannot do with personal data. In a democracy citizens have rights and they have a right to know what the government can do to them and what the government cannot do, and unless the purpose is defined in great detail from the start you have no means by which to hold government to account or to complain or whatever. Ms Hillier said at some point when we met, “But it is

very useful. On the basis of PNR we have identified a murderer”, or a rapist or something, “and he is now behind bars”. That is not possible. On the basis of PNR data you cannot identify a person. You identify a person on the basis of API data, and I see in the report of this meeting too that all the categories or data are mixed up. People are not clear about what they actually are. API data are the information contained in your passport and some basic travel information possibly. PNR data collected by the carriers for the purpose of organising travel you cannot use for identification. In many cases, incidentally, they do not even have this information; they only have the information that people have volunteered. I think in the agreement with the Americans we initially had a set of 34 different data which were then merged into 19 but they were still the same data, but on average a PNR file will only contain about ten of those data. For example, if you have no special requests, if you do not pay by credit card, that is all not contained in the file, so they will simply not have that information. It is simply not true that you can identify somebody on the basis of PNR. I do not know about this particular case that she gave me but it shows that they are catching people on the basis of other indications, and that is also what she said in the hearing. The thing is, they have information on somebody or on the actions or movements of groups of people and then they can use PNR data to support their case, but that is a traditional method of investigation. There is no need to set up a massive database of the data of all citizens; there is just no need. Even security people agree on that. I have spoken to public prosecutors in various countries who say the same thing. As somebody put it, “It makes our lives more difficult because if you are looking for a needle in a haystack the last thing you should do is make the haystack bigger”. For a targeted search, where other sources of information are also used, that is one thing and that can be extremely useful in seeking out the bad guys, but this massive, indiscriminate collection and use of data of all people and using methods such as profiling and data mining, no.

**Q78 Lord Dear:** I would like to pick up on that last point. The only justification, it seems to me, for huge data banks is that you can then go in and mine or data-profile, because if you are not doing that you are just holding the material and not using it.

*Ms in 't Veld:* Exactly.

**Q79 Lord Dear:** Thank you for coming. I am sure that everyone agrees with me that your views are tremendously refreshing and not altogether unexpected, and I think I know the answer to the question I am going to pose to you anyway. It is really about motor transport and the difference between air transport and road transport and rail and maritime. There is a suggestion that the UK wants to extend the proposal to allow the collection of all modes of transport, maybe excluding road but perhaps you would comment on that as well. I wondered if you could reinforce the views, and I know you have given them already, that if you only leave it with aircraft and do not apply it to all the other modes of transport it would not be effective and would not be proportionate. You have covered that in generality already.

*Ms in 't Veld:* Again, I am not a technical expert but the proposal for an EU PNR applies only to the regular flights, not to charters, for example, so there are already exceptions built into the proposal. That means that there are already holes in this security measure (or they pretend it is), and yes, there are all these other modes of transport. You could even quite literally follow every single move of people by using satellite surveillance. Google Earth is available to everybody. It is not science fiction; it can be done, but then you really have to ask yourself: what is the purpose? Does it bring what we expect it to bring? That is always the question. I will never take any principle positions but we have to look at what it is that we want to achieve and whether this is the right instrument. I do not think this is the right instrument, for the reasons that you have just stated.

**Q80 Lord Dear:** Could I move on, because this is an allied point about Schengen and we all understand how that works, of course? There is another suggestion that the data should not only be across the Schengen borders into Schengen but movements between Schengen states and indeed even within an individual state. I guess I know what you are going to say but I have to pose the question to you: is this (a) a tenable position and (b) an achievable position, particularly inside an individual country, say, Belgium.

**Ms in 't Veld:** If governments decide that is what they want to do then it will happen, but fortunately public opinion is gradually waking up to these issues and asking the question, “Are we not giving up too much of our freedom for a purpose that is not clear?”. I do not think it is going to come that far. I hope it is not going to come that far.

**Q81 Lord Dear:** Not as far as individual states?

**Ms in 't Veld:** No.

**Q82 Lord Dear:** But movement between Schengen states?

**Ms in 't Veld:** Yes.

**Q83 Lord Dear:** It would fly in the face of Schengen by doing that.

**Ms in 't Veld:** The thing is, with all the measures that we have taken, and again, when we are talking about the security measures, there is always somebody who will get up and say, “But we have to fight terrorists”. First of all, the data which are being collected are being used for all sorts of purposes. For example, the Australians have a system whereby they use the data to screen people who want to adopt a child. They screen people on HIV. That has got nothing to do with terrorism. People have this illusion that the massive collection of data in itself is going to bring greater security, so public opinion has been very tolerant to governments and very often governments themselves do not understand very well how it

works but they think the collection of data might come in handy at some point. I think a real smart terrorist will always find a hole. The holes in these schemes are so obvious from the very start, starting with the exceptions which are already created in the proposal on EU PNR. It reminds me of the other bit of legislation that was passed on data retention whereby, even before the legislation had been adopted, there were websites which explained to people how you could circumvent the measures. I really think we should at some point have the courage to take a step back and say, “Are we creating real security or fake security?”. When we are talking about terrorism, yes, there are people out there who have very bad intentions and it only takes one, so if we take security measures they should be real security measures and not fake security measures.

**Q84 Chairman:** Let me get clear in my mind your attitude to all this and let me put it in a different context. In certain counties in the UK, maybe most counties, I do not know, the police on motorways or dual carriageways will put a van with a device that scans all number plates and a mile or two miles down the road they will have a car or somebody on a bike, and if a number plate comes past which denotes somebody that the police might be interested in, and I am talking about a national crime now, or if it is a stolen car, they will tell whoever it is down the road and they will stop and question whoever it is. Is it your view that that type of police surveillance is wrong and unduly intrusive?

**Ms in 't Veld:** It is interesting because in Germany they had a similar scheme which was just slammed down by the German Constitutional Court. There is a pilot scheme going on in the Netherlands. There is some debate about it in Parliament. I do not think people are terribly aware of it. If you ask me, yes, I think it is wrong. Why should you monitor every single person? If they have cameras taking pictures of people who are speeding and then at the end of the road they are pulled over and they have to pay their fines or their car is confiscated, fine, but why would you have surveillance of every single person on the road?

**Q85 Chairman:** But you have surveillance in terms of speeding with everybody who goes past a camera.

*Ms in 't Veld:* Yes, but then you pay your fine and that is it, but without a clear purpose ---? They have these campaigns where they go out and they are catching people who are speeding but that is a very clear purpose and it is a one-off.

**Lord Dear:** Could I ask another question?

**Chairman:** Lord Dear has a lifetime of experience in police work.

**Q86 Lord Dear:** The same system is in a good many police patrol cars. You do not have to put a camera by the side of the road. A lot of police patrol vehicles have got the cameras themselves because they drive down the motorway, the camera is looking at all the number plates and it will also tell whether the vehicle is insured or not, because now by law, as in most countries, you have to have the vehicle insured against third party risks, and you can tell immediately on a national database, because all the insurance companies now pull the information, whether that vehicle is insured or not, so you are checking everybody against a road traffic offence, which is insurance, serious but not a crime in the accepted sense. You are monitoring everyone for everything but you only stop those where you have pretty well 100 per cent certainty that there is an offence committed. It is not random stopping which would have been the case before, "Can I see your licence?". You only stop the ones who you know pretty certainly have not got one or are involved in crime or it is a stolen car, so the certainty is only on the stop. I wonder if that jars with your philosophy.

*Ms in 't Veld:* Again, everything hinges on the purpose. If they set out to find people who have not paid their insurance --- incidentally, I think it is very important that the public are aware that these things are happening because very often they do not know. Another thing is that, when you are talking about databases, there is no database with 100 per cent accuracy, because in the same pilot scheme that we had in the Netherlands, whereby all licence plates

were photographed, there was a lady who got a speeding ticket or something, and she was very surprised when she got the bill at home because she said, “I was 150 kilometres away from that spot at that particular day and I had my car with me”. It turned out that somebody had fake licence plates, but in the end for her it was an incredible hassle to prove that she was not on the spot, and that is something which is creeping in. Whereas before the burden of proof was on the state or on the authorities to demonstrate that there was a very good reason to investigate somebody, now it is the other way round. People have to explain why they are not guilty. It has not come to the point where that is the situation in court but certainly when you are talking about PNR that is the situation. It is happening to me. Every time I go to the United States they take me out of the queue, I get a stamp on my boarding pass, I am entitled to secondary screening. They ask me all sorts of questions. Last time I was there I had my passport and something that looks like a passport but actually is not. It is some document that is provided by the European Parliament which looks fancy but is completely worthless. The guy was very suspicious, “What is this? Why do you have two passports?”. I said, “It is not really a passport”. “Well, it looks very suspicious to me. What is it?”. I said, “It is from the European Parliament”. “What’s the European Parliament?”. Why do I have to demonstrate that I am innocent? Of course, there is always a grey area because even before the time of electronic databases people would be taken out of the queue and pulled in for questioning simply on the basis of the personal assessment of the border guards.

**Q87 Lord Marlesford:** You have mentioned profiling in a rather adverse way. If you will agree a basic simplified premise that the object of all this stuff is to catch the bad guys and the subsidiary point is to cause minimum hassle to the good guys, that presumably must mean that you profile. If you take an easy example, the customs in any country, red channel, green channel, on the whole when they are looking at people in the green channel they are profiling in all sorts of ways – appearance and all the rest of it – as to who they will pull out and look

at. Are you opposed to profiling as a concept or just some ways in which it is used? What is your worry about profiling?

**Ms in 't Veld:** First of all, it is not very effective. As I said, there is always a degree of profiling even just in the head of the border guards. They have their instincts and they will look at you and say, “Hmm”, but it is not very effective. Again, this is not something that I invent. All this information can be found in the Department of Homeland Security, for example, which I think is a reliable source. They do an annual report on profiling and Congress had a session about it. What they do is they use the same method as marketers. They say if you are driving a Volvo and you spend your summer holidays with ClubMed then you are also very likely to have dinner at so-and-so restaurant. If they have, say, a five per cent match they are happy, but that is not good enough for security purposes. If you look at the effectiveness of the terrorist watch list, for example, there are, I think, close to a million people on the US terrorist watch list. Those people are not all potential terrorists. As a matter of fact, most of them are not. There are many mistakes, there are many duplications. I just referred to this report by the Department of Justice on how the FBI is managing these watch lists. There are so many mistakes that they are just not reliable. Again, the Government Accountability Office found that the customs and border protection is so busy screening those people on the watch list that real wanted criminals manage to get into the country unseen. As an instrument it is not precise enough. It is just not good enough.

**Q88 Lord Mawson:** Do you know whether the profiling of passengers under the Framework Decision would raise constitutional concerns in any Member States?

**Ms in 't Veld:** I know that there are constitutional objections in Germany but I think that is more to do with things like storage periods and purpose than profiling itself, although it may well be that it is also the profiling. I do not know about other countries.

**Q89 Lord Mawson:** The UK believes that sensitive personal data are useful and would like the processing of sensitive personal data to be allowed under the Framework Decision, subject to specific data protection safeguards. What is your view? What safeguards do you think would be needed?

**Ms in 't Veld:** There are hardly any safeguards at the moment. Again, if you are looking for, let us say, a known suspect; you have a concrete investigation. If you follow all the right procedures or you have a court order or whatever, as policemen, for example, you have to demonstrate that there is reason to believe that this person has done something. Okay; then you have a reason for investigation and in that case, yes, the authorities should get access to information and if necessary also to sensitive information. Should these data be collected systematically? No. That is the other thing. Any security measure that we take has to be accompanied by a strengthening of citizens' rights. In the hearing you had with Minister Hillier she says that there is a data protection framework in place. There is not. The Council is trying to agree on a framework for data protection but it has not yet agreed one and it is a very bad arrangement. It has been criticised heavily by the data protection authorities. There are some Member States which are not happy with it. The European Parliament is not happy with it. I will give you a very clear example of why it is flawed, and it is precisely on the use of sensitive data. There is a paragraph saying, "The use of sensitive data is not allowed – only in exceptional circumstances". Who decides? Who monitors? What exceptional circumstances? That goes to the whole Framework Decision on data protection in the Third Pillar. It leaves it completely open, so instead of strengthening the legal protection of citizens it has weakened it and it gives far too much discretion to the authorities. If we say a certain category of data can be used for certain purposes, then at the same time citizens have to be protected against abuse and mistakes and leaking by the authorities.

**Q90 Lord Teverson:** I think in a way you have just answered my question. What I am very interested to understand is, who is the champion of this? Is it Frattini? Is it the Commission that wanted this in the first place or is it particular Member States, in your view?

*Ms in 't Veld:* A bit of everything really. Frattini himself is very keen on this and even if the Commission put forward a proposal as the college I do not think any of his colleagues are really looking into the details. Of course, there are certain Member States who are pushing for this, not least the UK, and the reasoning that was given to us was, "Certain Member States are using this anyway, so it is better if we have it for the whole of Europe".

**Q91 Lord Teverson:** What Member States other than the UK are particularly interested in this proposal?

*Ms in 't Veld:* I get the impression that in this case it is mainly the UK and France, although even within Member States it may differ. For example, the German Minister for the Interior, Mr Schäuble, is very keen on any security measure, whereas his colleague at the Ministry of Justice fundamentally disagrees.

**Q92 Chairman:** Is that a function of the coalition in Germany?

*Ms in 't Veld:* I think Schäuble personally is very much a hawk, if you want, but Germany as a whole has a very strong tradition of civil rights.

**Q93 Chairman:** You could have fooled me!

*Ms in 't Veld:* Okay, since the Second World War. Let me rephrase that: they have a very good reason for being very critical when it comes to these things, and, interestingly, so do the United States. They take many measures which have a kind of extraterritorial impact, which would never be accepted by their own citizens.

**Q94 Lord Teverson:** You mentioned yourself that increasing numbers of third countries are likely to request the provision of PNR and I personally was not aware of that. We are interested in where you think that will go in terms of global collection and processing of PNR. Where is all this going to go? I presume in some ways the EU is quite pivotal to what might happen there. Is there a possibility, because it has been championed by an individual or only one or two states, that it might not get anywhere, or is this going to happen?

**Ms in 't Veld:** I am an optimist, so --- In a way the standard has already been set by the US. They have simply imposed it on us and push and push and push, because if you look at what they were asking for in 2003 and where we are now there is already considerable widening of the scope. Yes, the EU is pivotal and, of course, if you look at an organisation such as ICAO, for example, they are trying to come up with proposals for a global standard because they want to have influence but they are also a bit worried about the course that this is all taking.

**Q95 Lord Teverson:** You are in a way saying that this is probably good if we are very clear what it is for and we only use it for what it is for, and if it is effective to do what we say it is going to do.

**Ms in 't Veld:** Yes, and with the legal safeguards in place.

**Q96 Lord Teverson:** Yes. What I would be very interested to understand from you is, from your point of view within open societies how do we determine whether this is effective or not? I do not want to get too much back into the American system, but is it possible to show that it is effective or not from the point of view of parliamentary scrutiny, whether it be national or European?

**Ms in 't Veld:** Let me put it this way. If the people who are proposing this are so convinced that it is useful then I am sure they have all the supporting evidence, I would say, in my

limited logic. It is just that they have never produced it and every time you get the same argument, “Oh, no, we cannot tell you that for security purposes”.

**Q97 Lord Teverson:** Is that a valid argument? Can that be an valid argument?

**Ms in 't Veld:** It is not a valid argument. It is never a valid argument in a democracy. In a democracy if the executive cannot be held to account then we have a serious problem. Of course, you do not have to print it in the newspaper but there are all sorts of mechanisms in any democratic state for controlling the government and even in sensitive security matters. All we have asked for, for example, is facts and figures which would not give away any operational details, “How many bad guys did you catch, how many attacks were prevented and how many false positives were there?”. That they should be able to answer without giving away details. We could even accept that they would do it in a closed meeting, but all you get are horror stories by Mr Chertoff which impress his audience, but, sorry, we are legislators. If I put my stamp of approval as a Member of Parliament on the law then I want to be absolutely sure that it has a solid justification, and we just never get any proper evidence. Mr Frattini says, “I believe that it is necessary”. If the Government proposes to spend 20 million on infrastructure works, would you say, “I accept it as a Member of Parliament” if they say, “We believe it is useful”?

**Q98 Lord Teverson:** Well, they did build the Dome in East London, so I am afraid we failed.

**Ms in 't Veld:** The other thing is that we all seem to believe that these systems are infallible. We seem to have blind faith both in government and in technology, which is rubbish. For example, ask Symantec, which is a company which makes security protection systems for computers, for the figures on how that security works in practice. The worst offenders, when it comes to leaking personal data from databases, are public authorities and the education

sector is the worst with 30 per cent of their databases. On average it was 25 per cent but I have heard that it is just going up. We all know the stories. I think you had your CD Roms and we had our USB sticks there in all these companies or sites of public authorities which all of a sudden turn out to be accessible to everybody or can be hacked. There is no 100 per cent security. As a matter of fact they are very sloppy, so that would be another thing where I would need better guarantees.

**Chairman:** I think you have made it very clear what your personal attitude toward this is but let us just now turn to the wider aspect of the politics of the Parliament as a whole.

**Baroness Henig:** Obviously, if the Treaty of Lisbon were in force at this point in time this measure would need co-decision and I wondered what steps the Council has thus far taken to involve the European Parliament more closely, because it is likely that as and when serious moves are made on this there will be a system of co-decision in place.

**Q99 Chairman:** As well as, if I might say, your assessment of how the Parliament will respond to these proposals. You have made your personal position very clear.

**Ms in 't Veld:** To start with the last question, of course people will express their views. There is a wide range of different tones of voice but all in all, as I just told you, the resolution that has been passed by the European Parliament last year on the EU/US agreement is crystal clear and this was supported with near unanimity in the European Parliament. So far we have not started to work on the text of the EU proposals but what I hear from all the political groups so far is that they all share the same scepticism, the same doubts; they all have the same questions. The spokesperson of the EPP group, which is the Conservative Christian Democrat Group, which always tends to be a bit more law-and-order, is saying the same thing. They say, "We want evidence first and we are not getting it". The more the Commission is refusing to give it the more they dig their heels in. I do not know if you share this assessment.

**Q100 Baroness Ludford:** Yes.

*Ms in 't Veld:* This is the position so far. We do not know where it will go.

**Q101 Baroness Ludford:** I am not sure what the whole EPP position will be. The Spanish party tends to be pretty hard-line, and some of the Germans.

*Ms in 't Veld:* Okay, but the spokesperson of the EPP is a German. That is one question. The other question was, what has the Council done so far? Nothing. Here is a little anecdote. When we were talking about the EU/US agreement last year – this was under the Finnish Presidency – the Finnish Minister for Justice, I believe, came to our committee and reported on the PNR file, and she said, “And we have been in close contact with the rapporteur”, which was me. I thought, “I have never seen this woman before in my life”. They have done nothing. At an informal level we have pretty good contacts with the Commission but, no, we do not get information, as I said, other than through the grapevine. The funny thing is, of course, that one way or another we will get co-decision because if it is carried over into 2009, and it is very likely that it will be because there does not seem to be a great deal of consensus within the Council, then it will be co-decision in any case. The Legal Service of the Council itself has argued that the current legal base is the wrong one, that it should have a kind of double base for two parts of the proposal and one part should be on the basis of transport policies, which is then also co-decision. One way or another we will get co-decision but they do not seem to be fully aware of that yet.

**Q102 Baroness Henig:** It sounds therefore as if there are going to be interesting times ahead.

*Ms in 't Veld:* Yes.

**Q103 Baroness Henig:** Maybe even quite stormy times ahead.

*Ms in 't Veld:* Yes. At the start I mentioned how many categories of data there were. Basically, any database is accessible by government agencies these days, but this particular one, even if it is only one small subject, has become very much a symbol of the whole debate.

**Q104 Baroness Ludford:** I would say: with the exception of the UK Government, which in the person of Meg Hillier is indeed on a charm offensive, which to me is rather reminiscent of the Home Secretary at the time, Charles Clarke, under the UK Presidency in the second half of 2005 on the Data Retention Directive.

*Ms in 't Veld:* That is true, but there have been these work sessions with representatives of the Member States and we said, “Why do you not invite us, maybe the rapporteur, maybe the representatives of the other political groups? As they are work sessions anyway it does not matter”. “Ah, no, no, we never do that”. Okay.

**Q105 Lord Marlesford:** My question follows on neatly from that because I gather your committee is visiting England to see the Joint Border Operations Centre near Heathrow.

*Ms in 't Veld:* Yes, it so seems.

**Q106 Lord Marlesford:** What do you expect to get out of that? When are you going?

*Ms in 't Veld:* We have no idea. I read about it in this report yesterday. I do not know, but I am very keen on going. In our committee we had the guy I referred to earlier from Schiphol security who gave us a bit of background on how these things work in practice, and I imagine what we will see, or what I hope we will see, is indeed how they use the data.

**Q107 Lord Marlesford:** But there has not been a joined-up invitation yet. It has come via us, has it?

**Ms in 't Veld:** Yes. When we met with Ms Hillier we said, “Oh, yes, that would be a really good idea”, but there has not been a formal invitation. I am sure that everybody will be very happy to go.

**Baroness Ludford:** I met the Director of European and International Affairs, Christophe Prince, at the Border and Immigration Agency, who was in my office this morning and he said that and I said, “Yes, when we have the invitation”, and he took on board the fact that we had not actually had an invitation.

**Q108 Chairman:** We got an invitation direct from the horse’s mouth, as it were. I call it that politely. She is, incidentally, an extremely impressive lady, we thought.

**Ms in 't Veld:** And very nice too.

**Q109 Chairman:** Yes. They do not always go together but we were very impressed with her. I wonder if any of my colleagues have any other questions they would like to ask as a follow-up to this. No? Sophie, is there anything more you would like to add?

**Ms in 't Veld:** Yes, there are three small points that I would like to add. One is on the API that I mentioned earlier, which is the basic information which is used for identifying people. There is a European directive on that as well which has been implemented so far by five Member States, or there may be six by today, but the implementation rate is very low. You would think that if it is all so urgent for security purposes they would make bigger haste with this. Secondly, again on the effectiveness, I would like to remind everybody that in all the high profile cases of terrorist attacks the information necessary was available. Just last week there was a report on how the Dutch Intelligence Service had handled the case of the murder of Theo van Gogh. It turned out that they had everything they needed. They could have prevented it and they did not because their risk analysis was wrong because they did not share information because of bureaucratic cock-ups – because, because, because. Take 9/11 – they

were already watching these people. Madrid – they had the information on who these individuals were but it turned out that the countries were not exchanging information, so it is not as if the problem has always been that there was insufficient information or that they did not have sufficient powers. It is also how you use those powers and that brings me back to the report on the terrorist watch list and the way the FBI manages it. Those are really key issues and it is not about criticising the FBI, but if we are collecting personal data of people and saying that they will be used for greater security but then we see that our agencies are still not working together, still not exchanging information, then the accuracy of data and watch lists leaves room for improvement, let me put it that way. Those questions are also key.

**Q110 Lord Mawson:** I have spent many years on a housing estate and one watched these endless systems passing through, which were massively ineffective, and generally I found that when you wanted information it was about talking to one or two of the right people whom you got to know as people. One wonders whether with many of these large systems part of the problem is that people are relying on systems, processes and structures rather than trusting people and relationships and so you end up in these sorts of difficulties.

**Ms in 't Veld:** Yes. The trend is that government agencies or public authorities do not set up new databases. What they do is get access to databases which have been created for commercial purposes, whether it is airline companies or Google or your insurance company or your telecoms provider or your internet provider, you name it. Of course, they do not create databases for the purposes of law enforcement and security, so for them the accuracy of certain data is not particularly relevant. Many mistakes are made when the data are fed into the system. For example, when we were talking about the Data Retention Directive somebody from a telecoms provider said, “All we need are the data of a person to be able to send that person a bill”, so whether his or her name is actually the name in his or her passport, whether the street address is the right one, they do not really care as long as they can find the

person and they pay the bill. Many people will get a telephone subscription, for example, and give an email address or a credit card number or whatever. Two years down the road they have changed their email address and they have got a different credit card but they have never bothered to change the information because it was not relevant, so all these databases are not terribly reliable.

**Q111 Lord Dear:** Just as a matter of interest, all our terrorists were home-grown and born and bred third generation in our own country. They may never have moved out.

*Ms in 't Veld:* Exactly.

**Q112 Lord Dear:** So looking at travel for them was pretty fruitless.

*Ms in 't Veld:* Yes, and terrorists these days are very smart. Well, fortunately, they are not that smart. I have been doing a bit of reading on failed and prevented terrorist attacks and in many cases they are incredibly stupid, fortunately, but, as I have said, it only takes one who succeeds, and they are finding their way around things. For example, they will meet in a place far away from the city where their telephones cannot be traced because there is no network. They are probably not going to travel by plane. They are not going to send their money via international bank transfer. They will make their phone calls from a phone booth. Okay, you do not go completely undetected but you can stay below the radar. I have one last point, which is a bit of a technicality, going back to data protection. The data protection systems that we have are completely inadequate, never mind the fact that the Framework Decision has not been adopted yet, but there is another interesting thing. If you look at these minutes (which we are not supposed to have) of the meeting in early February on the first working session and exchange of views between the Member States' representatives, it is interesting what they say about data protection. They say, "There is a small problem because the current Data Protection Directive", which applies to the First Pillar, ie, to businesses,

“would cover the collection of PNR data by the carriers”. If and when the Framework Decision on data protection in the Third Pillar is adopted that would cover the use and exchange between Member States of those personal data. However, the transfer of data from the carriers to the government agencies is not covered by any data protection arrangement, and it says in the minutes, “but we will find ad hoc solutions to that”. If you listen to Frattini and all the other advocates of these measures they always say, “But we need to find the right balance between security and privacy”. It is a non-statement; it is completely meaningless. If you then look at what they say to each other when they believe nobody is watching it is very frightening, I think.

**Baroness Ludford:** I think you are going to meet Peter Hustinx, who is the European Data Protection Supervisor. He said something I thought was very interesting. He said that the normal rule of law – I am paraphrasing his opinion on this proposal from memory – is that you apply criminal justice to someone on the basis of that person’s own behaviour, whereas the essence of these data collection systems which are going to partly be used for profiling and data mining is that you are doing something to someone on the basis of other people’s behaviour because the behavioural profile that you are then going to apply to pick people out is based on other people’s behaviour. It is slightly philosophical; I was not sure it was a legal point, but you are undermining the rule of law, which is that only a person’s own behaviour gets them in trouble. Also, in the Framework Decision proposal itself, again from memory, I think it says that PNR data cannot be the basis for enforcement action. I would invite you if I may to try and test what “enforcement action” means. If it is used for secondary screening, if it is going to become a flag in a database on someone, is that enforcement action? What exactly do the terms mean? You do get big legal problems about what happens to people on the basis of being picked out as a result of profiling and then what happens to them compared to, if you like, the strict rule of law.

**Chairman:** It has just been pointed out to me that the document does say that passenger information units and the competent authorities “shall not take any enforcement action solely on the basis of automated processing of PNR data”.

**Q113 Baroness Ludford:** Again, what does “solely” mean?

*Ms in 't Veld:* In this respect I was quite shocked to read in the report of your meeting with Ms Hillier, “... we have arrested and prosecuted drug traffickers on the basis of their travel patterns and their travel history, not on the fact that their name has appeared on our watch list ...”. I think, again, that if you decide to introduce systems like this there need to be watertight legal safeguards for civil rights and there are not.

**Q114 Chairman:** We are most grateful. We have gone through all our questions. You have given us very full answers. You have applied your personal opinions liberally into them, for which we are particularly grateful and which is why we wanted to talk to you, and this will help us enormously in producing a report which we shall be agreeing by the end of this month and producing it, hopefully, by the end of May.

*Ms in 't Veld:* I am looking forward to it.

**Q115 Chairman:** Thank you very much for coming.

*Ms in 't Veld:* Thank you for the invitation.