Share Data -- and Protect Rights

By Sophie in't Veld
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In his op-ed of Aug. 29, "A Tool We Need to Stop the Next Airliner Plot," Homeland Security Secretary Michael Chertoff claimed that the fight against terrorism is being hampered by European privacy concerns about the U.S. government's use of data collected on airline passengers. This is a very serious allegation that calls for a reaction and some qualification.

Europeans are no less concerned about the threat of terrorism than our American friends, not least since several attacks have occurred on our own continent since Sept. 11, 2001 (Madrid, London, the murder of filmmaker Theo van Gogh in Holland) and many more have been prevented. But we are also very aware that one aim of terrorists is to undermine our democracy, the rule of law and our human rights. We should never grant them the pleasure of achieving that goal.

Many Europeans have only recently acquired freedom and democracy, having lived for decades under authoritarian regimes. Therefore we are extremely aware of how precious democracy is. Due democratic process -- holding the executive to account, maintaining proportionality, transparency, the possibility of judicial review and respect for the rule of law, including international agreements -- is of the essence.

But the first question that must be answered about any anti-terrorism measure is this: Does it help make our world safer? Since Sept. 11 a host of measures have been taken in the fight against terrorism, often in a rush and in a climate of fear. It is high time for an in-depth evaluation of the results: Are the measures effective in terms of increased security? How many bad guys did we catch? How many plots were prevented? How many innocent citizens were held by mistake? Do we need further measures, or can some of them be revoked or adapted?

Asking critical questions, and insisting on proper safeguards and proportionality, are vital parts of the democratic process. Arguing
that democracy, the rule of law and civil liberties get in the way of the fight against terrorism is nonsense. On the contrary, they are our best defense against those who want to destroy our society.

No one will deny that data collection and information sharing are necessary in the fight against terrorism. But such measures should not go beyond what's needed to achieve that purpose, and any restriction on the freedom and privacy of citizens must be accompanied by safeguards against mistakes and abuse, and by provision for proper means of redress.

In the case of the European Union-United States Passenger Name Record (PNR) agreement, neither condition has been met. The United States requires 34 items of data from travelers to the United States. E.U. citizens are not covered by American privacy laws, as U.S. citizens are, so they have little protection in this regard. The United States was not willing to make any promises to provide such protection but agreed only to “undertakings” in this area. It's hardly surprising that the European Parliament was not reassured.

It can be done differently, as shown by the PNR agreement between the European Union and Canada. Canada requires only 25 data items, and the protection of personal data that applies to Canadian citizens has been extended to cover E.U. citizens traveling to Canada.

In general, for the purpose of identifying certain individuals, the so-called APIS data (name, passport number, etc.) are sufficient. In practice, the carriers do not provide all 34 items requested by the United States but only the eight to 10 available to them. The need for further data has not been convincingly demonstrated. There may be a case for it, but as I understand democracy, it is up to the authorities to prove they need personal data, not to parliaments or individual citizens to prove that they don't.

A very critical report by the privacy officer of the Department of Homeland Security and an evaluation of the implementation of the E.U.-U.S. agreement show that implementation by the United States has been slow and inadequate. At the time of the evaluation, passengers did not receive any information about the PNR program and their rights. Contrary to what was agreed to, the United States has so far failed to switch from the so-called PULL system (whereby the United States has direct access to the computer systems of the European carriers) to the PUSH system (whereby the carriers forward the data). There are serious questions regarding the use of data for purposes other than the ones agreed on and over the forwarding of data to third parties.

Secretary Chertoff states that the United States does not do ethnic profiling. To my knowledge no Western nation has admitted to ethnic profiling as an official policy, but we all know it happens in practice. So-called “trusted traveler” programs are essentially that. What chance has, say, a 25-year-old man with a beard, wearing a turban or having a Muslim appearance (whatever that may be) of being a “trusted traveler”?

Europeans are eager to work with their American friends and allies to eliminate the scourge of terrorism. But friends and allies work together on the basis of mutual respect, trust and shared
values. Issues such as Guantanamo Bay, Abu Ghraib, illegal rendition flights and secret detention camps, the SWIFT spying scandal and the unsatisfactory implementation of the PNR agreement have done much harm to the traditional trust between the transatlantic partners. If we want to beat the terrorists, it is essential that trust be restored. That will not be achieved by tough language between the parties but through respect and willingness to seek compromises.

I am convinced that together we can find ways to protect our democracy and freedom while preserving our hard-won civil rights. Only in that scenario do the terrorists lose.

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