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Opinion 6/2004 on the implementation of the Commission decision of 14-V-2004 on the adequate protection of personal data contained in the Passenger Name Records of air passengers transferred to the United States' Bureau of Customs and Border Protection, and of the 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.

Adopted on 22nd June 2004

This Working Party was set up under Article 29 of Directive 95/46/EC. It is an independent European advisory body on data protection and privacy. Its tasks are described in Article 30 of Directive 95/46/EC and Article 14 of Directive 97/66/EC.

The secretariat is provided by Directorate E (Services, Intellectual and Industrial Property, Media and Data Protection) of the European Commission, Internal Market Directorate-General, B-1049 Brussels, Belgium, Office No C100-6/136.

Website: www.europa.eu.int/comm/privacy

THE WORKING PARTY ON THE PROTECTION OF INDIVIDUALS WITH REGARD TO THE PROCESSING OF PERSONAL DATA

set up by Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995¹,

having regard to Articles 29 and 30 paragraphs 1 (a) and 3 of that Directive,

having regard to its Rules of Procedure and in particular to articles 12 and 14 thereof,

has adopted the present Opinion:

In its Decision of 14 May 2004², the Commission noted the adequate level of protection provided for personal data in the United States with regard to the processing of air passenger data to be made available by airlines to the American authorities in line with American regulations.

The Commission has only partially taken into account the demands made by the Article 29 Working Party regarding, in particular, the scope of the data to be transferred, their retention period and the way in which they are used (Opinion 4/2003 of 13 June 2003, WP 78, Opinion 6/2002 of 24 October 2002, WP 66). The Article 29 Working Party notes that the European Parliament might call on the European Court of Justice to examine whether the rights of air passengers are violated by this Decision and the Agreement³, and whether the European Parliament's approval of the Agreement should have been sought in view of the restrictions the Agreement places on passengers' rights. Until these issues have been resolved, the Working Party considers the following practical measures to be essential to keep encroachments on passengers' rights as minimal as possible.

1. Airlines should replace the 'pull' method of transferring data with the 'push' method as soon as possible. It is a matter of general data-protection principle that recipients should only be given the data they actually need. In the 'pull' method used until now, recipients are given all data. It is then their duty to filter out and use only the data for which they have authorisation under an agreement. Since all parties agree on the change of method, it is now a matter of making the changeover as quickly as possible. The Commission is called upon to influence the airlines to this effect. The filtering software to be used by the air carriers has to sort out data fields which do not figure in the positive list defined by the international agreement as well as those data of a sensitive nature which are stored in fields contained in the positive list as far as they can be identified by means of a computer program.
2. Air passengers must be adequately informed of the data transfer. Here too, all parties are in agreement. For reasons of clarity it is essential that air passengers always

¹ Official Journal no. L 281 of 23/11/1995, p. 31, available at:
http://europa.eu.int/comm/internal_market/en/media/dataprot/index.htm

² C(2004) 1914

³ Council Decision 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 (2004/496/EC), OJ L 183 of 20.5.2004, p. 83

receive the same information regardless of which airline they use and where they acquire the plane ticket, including through travel agents. The data protection supervisory authorities have made proposals on this topic. The Working Party calls on the Commission to complete its discussions with the American government and the air carriers as soon as possible, so that a suitable, uniform system of air passenger information can be implemented.

3. The Working Party is pleased that the agreed data transfers relate only to air passenger data recorded and saved by the airlines, travel agents and other sales points for the purposes of processing tickets. The agreement does not obligate or authorise airlines to record other data.
4. The agreements between the Community and the United States provide for regular checks that the data protection rules which have been drawn up as a basis for recognition of the level of data protection are being complied with. The Working Party considers these checks to be particularly important. They are essential to analyse the practical consequences of the data transfers and thus to evaluate the extent of any encroachment on data protection. The Working Party is therefore very interested in the design, implementation and evaluation of the checks, and would appreciate to work together with the Commission in this respect.
5. In order to gain a clear and detailed insight into the practical steps involved in flight data transfers, the data protection supervisory authorities are planning to hold a joint event with the airlines in Rome in the near future.

Done at Brussels, on 22th June 2004

For the Working Party

The Chairman

Peter Schaar