Press Release
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ARTICLE 29 DATA PROTECTION WORKING PARTY

Following the conclusion of the new long-term PNR agreement between the EU and the US, the Art. 29 Data Protection Working Party has issued today an opinion analysing the privacy impact of the transfer of passenger data to the US on fundamental rights and freedoms and in particular the passengers' rights to data protection. The opinion concludes that the safeguards of the new agreement are markedly lower than those of the previous deal and serious questions and shortcomings remain unaddressed. The level of data protection of the new agreement must be considered unsatisfactory.

The Art. 29 Working Party is clearly disappointed that the new PNR agreement signed by the EU and the US in July 2007 does not even preserve the level of data protection of the previous agreement, which was already considered weak. Minor improvements such as the extension of privacy safeguards to non-US citizens and the promotion of information notices by DHS do not outweigh the markedly lower level of data protection. Accepted data protection standards such as those enshrined in Convention 108 of the Council of Europe or the EU Data Protection Directive are not fully respected. In addition, the new deal leaves open serious questions and shortcomings.

In its detailed opinion the Working Party criticises in particular the following points.

- The number of transferable data elements has been increased and includes information on third parties other than the data subject.
- The purposes for which data can be transferred are not sufficiently specified and wider than those recognised by data protection standards.
- Sensitive data elements not included in the list of transferable data elements have to be filtered out by DHS, but may be used by US authorities in exceptional cases. Sensitive data are defined as information revealing the racial or ethnic origin, political opinions, religious beliefs, trade union membership and details concerning health or sex life. In general, their use is prohibited by EU law.

- The retention period has been extended from 3.5 years to 15 years, and this may even be extended further.
- Onward transfers to domestic and foreign agencies are easier and no longer subject to

stringent data protection safeguards.
- A joint review no longer foresees the input by independent supervisory authorities.

Although the new agreement provides for a transfer of PNR data in an active "push system" by 1 January 2008 at the latest, much remains at the discretion of DHS and it is not clear under which conditions the transition from "pull" to "push" will eventually be worked out. Further clarification is also needed on the exceptional cases where DHS has access to additional passenger data other than those mentioned in the list of transferable data after that transition. This applies likewise to the amount of "pushes" of passenger data held in the reservations systems of the airlines which remains at the discretion of DHS. A privacy enhancing solution must be found in a mutually accepted and economically viable way which does not discriminate against others, in particular EU carriers.

It is also considered worrying that the agreement does not create or confer any rights to data subjects and any change in US legislation might unilaterally affect the level of data protection as foreseen in the accompanying DHS letter.

The Working Party acknowledges that the new deal provides for a legal basis for the transfer of passenger data and that any legal uncertainties for passengers, air carriers and supervisory authorities alike could be avoided, but it regrets not being consulted during the preparation of the agreement and on the many and varied issues the new agreement leaves unaddressed. This is all the more true as the members of the Working Party are the supervisory authorities as regards data protection compliance by the air carriers which will need to implement the accord in close co-operation with the EU data protection authorities.

Given the unsatisfactory level of data protection of the new deal the Working Party would have certainly wished for another outcome of the negotiations. For the benefit of all transatlantic passengers it will now seek written clarification from the Commission on all open issues and expects to be involved in any follow-up activities.

The opinion can be found on the website of the Art. 29 Working Party (see below).

Background information

The Article 29 Working Party on the Protection of Individuals with regard to the Processing of Personal Data is an independent advisory body on data protection and privacy, set up under Article 29 of the Data Protection Directive 95/46/EC. It is composed of representatives from the national data protection authorities of the EU Member States, the European Data Protection Supervisor and the European Commission. Its tasks are described in Article 30 of Directive 95/46/EC and Article 15 of Directive 2002/58/EC. The WP is competent to examine questions covering the application of the national measures adopted under the data protection directives in order to contribute to the uniform application of the directives. It carries out this task by issuing recommendations, opinions and working documents.
http://ec.europa.eu/justice_home/fsj/privacy/workinggroup/index_en.htm

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