

# EUROPEAN PARLIAMENT

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*Session document*

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## **MOTION FOR A RESOLUTION**

further to the Commission statement

pursuant to Rule 37(2) of the Rules of Procedure

by xx

on behalf of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

on transfer of personal data by airlines to the US immigration service

**European Parliament resolution on transfer of personal data by airlines to the US immigration service**

*The European Parliament,*

- having regard to Directive 95/46/EC of 24 October 1995 on the protection of personal data<sup>1</sup> and to Council Regulation (EEC) No 2299/89 of 24 July 1989 on a code of conduct for computerised reservation systems<sup>2</sup>,
- A. whereas, in the wake of 11 September 2001, the US has carried out a root-and-branch overhaul of its legislation with a view to tightening internal security, including security in the area of transport, adopting (on 19 November 2001) the Aviation and Transportation Security Act (ATSA)<sup>3</sup> and (on 5 May 2002) the Enhanced Border Security and Visa Entry Reform Act of 2002 (EBSV)<sup>4</sup>, as well as other related measures, affecting, for transatlantic flights alone, between 10 and 11 m passengers per annum,
- B. whereas at first the US Administration confined itself to asking airlines to supply data on passengers and crew (Passenger Manifest Information) (*endnote i*)<sup>1</sup> using the Advanced Passenger Information System (APIS); whereas, however, it has subsequently, on interpretative grounds only, imposed, under threat of severe penalties, direct access to computerised reservation systems and, in particular, to the Passenger Name Record (PNR), which can be linked up not only with identification data but with other information of the most various kinds<sup>5</sup>, including sensitive information as defined in Article 8 of Directive 95/46/EC,
- C. sharing the doubts and concerns that have been expressed by the national authorities<sup>6</sup> concerning the legitimacy of this demand, including its legitimacy under US law, given that the nature of reservation system data may vary from one airline to another, may concern non-transatlantic flights, may not be directly related to the transport contract, and may end up turning the databases into de facto 'data-mining' territory for the US Administration,

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<sup>1</sup> OJ L 181, 23.11.1995, p. 31

<sup>2</sup> OJ L 220, 29.7.1989, p. 1

<sup>3</sup> Aviation and Transportation Security Act of 19 November 2001 (107-71), Interim Rules of the Department of the Treasury (Customs) – Passenger and Crew Manifests Required for Passenger Flights in Foreign Air Transportation to the United States (Federal Register, 31 December 2001), and Passenger Name Record Information Required for Passengers on Flights in Foreign Air Transportation to or from the United States (Federal Register, 25 June 2002).

<sup>4</sup> This act updates the relevant provisions of the Immigration and Nationality Act.

<sup>5</sup> PNR number, date of reservation, travel agency, information appearing on the ticket, financial data (credit card number, expiry date, billing address, etc), itinerary and PNR history; the latter may include details of past journeys, but also religious or ethnic data (choice of meal, etc), affiliation to a particular group, residence data and contact information (email address, address of a friend, workplace, etc), medical data (medical assistance required; oxygen; vision, hearing or mobility problems; any other problem needing to be disclosed in the interests of the proper operation of the flight), and other data (e.g. membership of frequent flyer schemes).

<sup>6</sup> See own-initiative opinion 6/2002 of the group set up under Article 29 of Directive 95/46/EC, at: [http://www.europa.eu.int/comm/internal\\_market/fr/dataprot/wpdocs/wpdocs-2002.htm](http://www.europa.eu.int/comm/internal_market/fr/dataprot/wpdocs/wpdocs-2002.htm)

- D. expressing its doubts as to whether these data will be protected (*endnote ii*)<sup>ii</sup> in an 'adequate' fashion<sup>7</sup> once they have been transferred to databases such as the Interagency Border Inspection System (IBIS) or the Computer-Assisted Passenger Prescreening System (CAPPS), managed by the transport services (*endnote iii*)<sup>iii</sup>, the Chimera system (*endnote iv*)<sup>iv</sup>, managed by the immigration services, or the new databases and computer applications of a specialised nature (*endnote v*)<sup>v</sup> now being developed by the US Administration,
- E. noting that the new legislation proposed by the US Immigration services<sup>8</sup> would make it possible to go beyond the limits of the existing transmission system (known as US EDIFACT) via a more detailed format (UN EDIFACT) which would permit inclusion of the passenger's address in the US and of the number, date and place of issue of his visa (as required by Section 402 of the EBSV), as well as more clearly defining the effective scope of the PNR by limiting it to a set of predetermined data,
1. Expresses its frustration at the Commission's delay in submitting proposals to Parliament and the Council on a set of problems which have been highly visible for more than fifteen months and affect not only data protection but also the smooth running of other Community policies (transport and immigration) and Union policies (police and judicial cooperation and the fight against terrorism and organised crime);
  2. Expresses its disappointment at the failure of the Commission, as the guardian of the Treaties and Community law, to assume its responsibilities in full in that:
    - it needs to verify whether there is a real basis in US law to justify access to reservation systems' data or whether this is an over-broad interpretation on the part of the present Administration<sup>9</sup>; calls, furthermore, on the Commission to take advantage of the debates under way in the US on the new APIS and PNR legislation with a view to securing a pledge from the US authorities that this new legislation will take account of the data protection requirements of Community law;
    - it is continuing to postpone the verification of the US legislation required under Article 25 of Directive 95/46/EC; this delay has created obvious problems for the airlines, which are caught between a rock (if they follow Community law, they are liable to US sanctions) and a hard place (if they give in to the US authorities' demands, they fall foul of the data protection authorities); in addition, it creates difficulties for the national data protection authorities, which are obliged to enforce the Community rules;
    - last but not least, it is failing to provide information to the public, who should be the first to know what is being done with information about them;

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<sup>7</sup> Cf. Article 25 of Directive 95/46/EC

<sup>8</sup> Federal Register, 3 January 2003 (Vol. 68, No 2)

<sup>9</sup> Cf. the possibility of reorganising the reservation systems by separating out data not strictly related to the travel contract.

3. Regrets the adoption on 19 February 2003 of a joint declaration by EU and US officials, given that this text lacks any legal basis but could be interpreted as an indirect invitation to the national authorities to disregard Community law;
4. Believes that if negotiations are to be launched they should be based, on the one hand, on the Community's powers in the field of air transport, which, as far as transatlantic links are concerned, affect between 10 and 11 m passengers per annum, and for which the Commission is preparing to negotiate an 'open skies' accord, and, on the other, on its powers in the sphere of immigration policy; is, furthermore, surprised that these issues have not been considered in the context of the agreements on judicial and police cooperation, which have now reached an advanced stage;
5. Calls on the political representatives of the Community and the US with competence in the matter to examine the problems raised in this resolution; reserves the right to examine the action taken before the next EU-US summit;
6. Instructs its President to forward this resolution to the Commission, the Council, the Governments and Parliaments of the Member States, the Permanent Representation of the United States to the European Union, and the US Congress.

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<sup>i</sup> 'Section 44909 is amended by adding at the end the following: (c) **FLIGHTS IN FOREIGN AIR TRANSPORTATION TO THE UNITED STATES.** (1) **IN GENERAL.** Not later than 60 days after the date of enactment of the Aviation and Transportation Security Act, each air carrier and foreign air carrier operating a passenger flight in foreign air transportation to the United States shall provide to the Commissioner of Customs by **electronic transmission a passenger and crew manifest** containing the information specified in paragraph (2). Carriers may use the Advanced Passenger Information System (APIS) established under section 431 of the Tariff Act of 1930 (19 U.S.C. 1431) to provide the information required by the preceding sentence. (2) **INFORMATION.** A passenger and crew manifest for a flight required under paragraph (1) shall contain the following information: (A) The **full name** of each passenger and crew member. (B) The **date of birth and citizenship** of each passenger and crew member. (C) The **sex** of each passenger and crew member. (D) The **passport number and country of issuance** of each passenger and crew member if required for travel. (E) The **United States visa number or resident alien card number** of each passenger and crew member, as applicable. (F) **Such other information as the Under Secretary, in consultation with the Commissioner of Customs, determines is reasonably necessary to ensure aviation safety.** (3) **PASSENGER NAME RECORDS.**—The carriers shall make passenger name record information available to the Customs Service upon request. (4) **TRANSMISSION OF MANIFEST.**—Subject to paragraph (5), a passenger and crew manifest required for a flight under paragraph (1) **shall be transmitted to the Customs Service in advance of the aircraft landing in the United States** in such manner, time, and form as the Customs Service prescribes. (5) **TRANSMISSION OF MANIFESTS TO OTHER FEDERAL AGENCIES.**—Upon request, information provided to the Under Secretary or the Customs Service under this subsection may be shared with other Federal agencies for the purpose of protecting national security.'

<sup>ii</sup> (EBSV page 6) On 'Chimera' system: '... The plan under this subsection shall establish conditions for using the information described in subsection (b) received by the Department of State and Immigration and Naturalization Service (A) **to limit the redissemination of such information;** (B) **to ensure that such information is used solely to determine whether to issue a visa to an alien or to determine the admissibility or deportability of an alien to the United States, except as otherwise authorized under Federal law;** (C) **to ensure the accuracy, security, and confidentiality of such information;** (D) **to protect any privacy rights of individuals who are subjects of such information;** (E) **to provide data integrity through the timely removal and destruction of obsolete or erroneous names and information;** and (F) in a manner that protects the sources and methods used to acquire intelligence information as required by section 103(c)(6) of the National Security Act of 1947 (50U.S.C. 403–3(c)(6)).'

<sup>iii</sup> 'The Secretary of Transportation shall ensure that the Computer-Assisted Passenger Prescreening System, or any successor system (i) is used to evaluate all passengers before they board an aircraft; and (ii) includes

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procedures to ensure that individuals selected by the system and their carry-on and checked baggage are adequately screened.' (ATSA page 637)

<sup>iv</sup> '...The Immigration and Naturalization Service shall fully integrate all databases and data systems maintained by the Service that process or contain information on aliens. The fully integrated data system shall be an interoperable component of the electronic data system described in paragraph (2). **REQUIREMENT FOR INTEROPERABLE DATA SYSTEM.**—Upon the date of commencement of implementation of the plan required by section 201(c), the President shall develop and implement an interoperable electronic data system to provide current and immediate access to information in databases of Federal law enforcement agencies and the intelligence community that is relevant to determine whether to issue a visa or to determine the admissibility or deportability of an alien (also known as the "Chimera system") (EBSV page 6).'

<sup>v</sup> See the list of Transportation Security Board duties, according to which: '...The Board shall ... (3) .... facilitate the sharing of intelligence, security, and law enforcement information affecting transportation among Federal agencies and **with carriers and other transportation providers** as appropriate; (4) **explore the technical feasibility of developing a common database of individuals who may pose a threat to transportation or national security...**' (ATSA page 605).