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Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

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DRAFT MOTION FOR A RESOLUTION

further to the Commission statement

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

by Johanna L.A. Boogerd-Quaak

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

on transfer of personal data by airlines in the case of transatlantic
flights: state of negotiations with the USA

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European Parliament resolution on transfer of personal data by airlines in the case of transatlantic flights: state of negotiations with the USA

The European Parliament,

- having regard to Rule 37(2) of the Rules of Procedure,
- A. recalling its resolution of 13 March 2003 on the US authorities' access to data taken from electronic reservation systems (PNR of the APIS system) concerning all passengers on transatlantic flights,
- B. taking into account the verifications carried out by the Commission within the last few months, at the bureaucratic as well as the political level, with regard to whether the measures taken and planned by the US authorities ensure an adequate protection of the data, in conformity of the provisions of Directive 95/46 as well as the principles established by the European Charter of Fundamental Rights, and the Charter of Human Rights,
- C. taking into account the information provided by the Commission as well as the fact that it is currently not possible to consider the data protection provided by the US authorities to be adequate, because:
 - a) the objective that would justify the obtaining and storage of data remains unclear and seems not to be restricted to fighting terrorism or other serious crimes; consequently, there is a risk that the data could be used for other purposes, including transferring the data to other services of the US administration or to third parties
 - b) the number of data required (39 different PNR elements) seems excessive and are under all circumstances out of proportion compared to the aim pursued,
 - c) the retention of data (6/7 years) seems unjustified, in particular with regard to data concerning persons that do not present any risk to the country's security¹
 - d) the undertakings envisaged by the US administration do not only seem insufficient, but do not represent any obligations, nor can they be invoked in a trial neither by the European Union nor by the passengers, who, in addition, are not offered any other efficient means of extra-judicial appeal to any independent authorities,
- D. convinced that there is a necessary and urgent need to give passengers, airlines and reservation systems as soon as possible clear indications on which measures

¹ (Note: Under Article 6.1.a. of the EC Regulation 2299/89 on computer reservations systems, individual data has to be taken off-line within 72 hours of the completion of the booking (i.e.: flight arrival), can be archived for a maximum of three years and access to the data is "allowed only for billing-dispute reasons").

are to be taken toward the demands by the US authorities;

E. taking into the recommendations by the International Conference for Data Protection and Privacy Commissioners (Sydney, 16-19 September 2003), suggesting that an international transfer of data should be done within the frame of international agreements, defining:

a) the conditions necessary for ensuring data protection; b) the clear targets that justify the collection of data; c) a defined and not excessive number of data; d) strict limits of the storage period; e) an adequate information of persons concerned, and f) mechanisms to correct possible errors, as well as independent authorities of control;

Therefore, invites the Commission

1. To immediately determine (on the basis of the suggestions put forward by the Article 29 Working Party of Directive 95/46/EC) what data could legitimately be transferred by airlines and/or computerised information systems to third parties, provided that:
 - a) there is no discrimination against non-US passengers and no retention of data beyond the length of a passenger's stay on US territory,
 - b) passengers are notified upon purchase of their ticket and give their informed consent regarding the transfer of such data to the USA,
 - c) passengers have access to a swift and efficient appeals procedure, should any problems arise;
2. To complete, by 1 December 2003, its checks on the US authorities' data-protection rules and conditions and, if those rules and conditions prove unsatisfactory, to:
 - a) deny airlines and computerised reservation systems any access and/or transfer which is not in accordance with the principles laid down in paragraph 1, or if they are in apparent defiance of the obligations stemming from Directive 95/46/EC and Regulation (EEC) 2299/89,
 - b) begin immediate negotiations on an international agreement under the appropriate legal basis (Article 300 of the EC Treaty) and with due regard to EU legislation (Directive 95/46/EC),
 - c) as far as the prevention of organised crime is concerned, to immediately establish the way forward for a transatlantic "Schengen-like" area under the control of a common US/EU authority to exchange data on persons that could be dangerous (ex. art. 96 Schengen Convention).
3. Instructs its President to forward this resolution to the Council and Commission .