EC/United States agreement: processing and transfer of passenger name record data (PNR) by air carriers

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PURPOSE : to conclude 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. PROPOSED ACT : Council Decision (Agreement). CONTENT : throughout 2003, the Commission has been working with the United States of America to try to put in place a sound legal framework for the transfers of PNR data to the United States Department of Homeland Security, Bureau of Customs and Border Protection (CBP). As outlined in the Communication from the Commission to the Council and the Parliament of 16 December 2003 (INI/2004 /2011), this legal framework should take the form of a Decision by the Commission under Article 25 paragraph 6 of the Data Protection Directive (95/46/EC), accompanied by an international agreement between the European Community and the US. The latter is necessary to deal with such legal problems as are not addressed by the adequacy finding. On 23 February 2004, the Council of the European Community authorised the Commission to negotiate such an Agreement with the US and issued a series of negotiating guidelines. The Commission now calls on the Council to conclude the Agreement reached with the US. This is the purpose of the present proposal. The main principles of the proposed Agreement are as follows: - the importance of respecting fundamental rights and freedoms, notably privacy, and the importance of respecting these values, while preventing and combating terrorism and related crimes and other serious crimes that are transnational in nature, including organised crime; - statutes and regulations requiring each air carrier operating passenger flights in foreign air transportation to or from the United States to provide the Department of Homeland Security (DHS), Bureau of Customs and Border Protection (CBP) with electronic access to Passenger Name Record (PNR) data to the extent it is collected and contained in the air carrier's automated reservation/departure control systems; - CBP may electronically access the PNR data from air carriers' reservation/departure control systems ("reservation systems") located within the territory of the Member States of the European Community strictly in accordance with the Decision and for so long as the Decision is applicable and only until there is a satisfactory system in place allowing for transmission of such data by the air carriers; - Air carriers operating passenger flights in foreign air transportation to or from the United States shall process PNR data contained in their automated reservation systems as required by CBP pursuant to US law and strictly in accordance with the Decision and for so long as the Decision is applicable; - CBP shall process PNR data received and treat data subjects concerned by such processing in accordance with applicable U.S. laws and constitutional requirements, without unlawful discrimination, in particular on the basis of nationality and country of residence; - CBP and the European Commission shall jointly and regularly review the implementation of this Agreement; - in the event that an airline passenger identification system is implemented in the European Union which requires air carriersto provide authorities with access to PNR data for persons whose current travel itinerary includes a flight to or from the European Union, DHS shall, in so far as practicable and strictly on the basis of reciprocity, actively promote the cooperation of airlines within its jurisdiction. The Agreement also notes that air carriers with reservation/departure control systems located within the territory of the Member States of the European Community should arrange for transmission of PNR data to CBP as soon as this is technically feasible but that, until then, the US authorities should be allowed to access the data directly, in accordance with the provisions of this Agreement. In addition, it affirms that this Agreement does not constitute a precedent for any future discussions and negotiations between the United States and the European Community, or between either of the Parties and any State regarding the transfer of any other form of data. It takes account of the commitment of both sides to work together to reach an appropriate and mutually satisfactory solution, without delay, on the processing of Advance Passenger Information (API) data from the Community to the United States.