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MOTION FOR A RESOLUTION

further to oral question to the Commission B5-0277/2003

pursuant to Rule 42 (5) 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

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 42(5) of its Rules of Procedure,
- A. having regard to its resolution of 13 March 2003 on the US authorities' access to data taken from electronic reservation systems (PNR in the APIS system), concerning all passengers on transatlantic flights,
- B. whereas since 11 September 2001 the USA has put into place various measures to strengthen border controls, and whereas, in particular, as of 1 October 2003 only passengers with a 'machine readable passport' will be able to enter without a visa and passengers in the near future will be required to have a passport containing biometric data,
- C. having regard to 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 adequate protection of data in conformity with the provisions of Directive 95/46/EC as well as the principles established by the European Convention on Human Rights and the Charter of Fundamental Rights,
- D. having regard to the information provided by the Commission and to 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 obtaining and storing data remains unclear and is not restricted to fighting terrorism; consequently, there is a risk that the data could be used for other purposes, including transfer to other services of the US administration or to third parties,
 - (b) the number of data required (39 different PNR elements) seems excessive and is under all circumstances out of proportion 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 seem not only insufficient, but also do not represent any obligations, nor can they be invoked before a court either by the European Union or by passengers, who, in

¹ (Note: Under Article 6(1)(a) of EC Regulation (EEC) No 2299/89 on computer reservation systems, individual data have to be taken off-line within 72 hours of the completion of the booking (i.e.: flight arrival) and can be archived for a maximum of three years, and access to the data is 'allowed only for billing-dispute reasons'.)

addition, are not offered any other efficient means of extra-judicial appeal to any independent authorities,

- E. convinced that there is an imperative and urgent need to give passengers, airlines and reservation systems clear indications as soon as possible on which measures are to be taken in response to the demands made by the US authorities,
- F. having regard to Article 232 of the EC Treaty, that provides for the possibility of the EP bringing an action before the Court of Justice for failure to act, in breach of the Treaty,
- G. having regard to the recommendations made by the International Conference of Data Protection and Privacy Commissioners (Sydney, 16-19 September 2003) to the effect that international transfers of data should be made within the framework of international agreements defining:
 - (a) the conditions necessary for ensuring data protection,
 - (b) the clear targets that justify the collection of data,
 - (c) a specific and not excessive number of data,
 - (d) strict limits on the storage period,
 - (e) the provision of adequate information to the persons concerned, and
 - (f) mechanisms to correct possible errors, as well as independent control authorities,
- 1. Welcomes in principle the fact that the dialogue with the US is taking place at the highest political level; calls nevertheless on the Commission to ensure genuine cooperation between the Commissioners involved, notably Mrs de Palacio, Mr Bolkestein, Mr Vitorino and Mr Patten, so as to fully cover all aspects of the negotiations with the USA;
- 2. Calls on the Commission therefore, in accordance with Article 232 of the EC Treaty, immediately to take appropriate measures to enforce Regulation (EEC) No 2299/89, in particular Article 11 thereof, within two months of the adoption of this resolution;

Therefore invites the Commission

- 3. To immediately determine, within the limits outlined by the Article 29 (Directive 95/46/EC) Working Party, what data could legitimately be transferred by airlines and/or computerised information systems to third parties and under what conditions, 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 provided with full and accurate information before purchasing 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;
- 4. To deny airlines and computerised reservation systems any access and/or transfer if it is not in accordance with the principles laid down in paragraph 3 or if the airlines and computerised reservation systems are in apparent defiance of the obligations stemming from Directive 95/46/EC and Regulation (EEC) No 2299/89;
- 5. To begin immediate negotiations on an international agreement under the appropriate legal basis (Article 300 of the EC Treaty) and with due regard to EC legislation (Directive 95/46/EC);
- 6. To evaluate EU-US police cooperation in the fight against terrorism and serious crime with regard to its efficacy and its respect for fundamental rights and, furthermore, to examine the compatibility between these two aims;
- 7. To examine the compatibility with Directive 95/46 EC of any other projects, such as the introduction in the EU of passports with electronic chips on which biometric and other data can be stored in an easily accessible way;
- 8. To take the necessary steps to facilitate the implementation of computer-based filter systems for controlled access to passenger data like the Secured Short-Term PNR Store project developed by Austrian Airlines and the Austrian Data Protection Authority and which is supported by the other AEA airlines;
- 9. Urges that a direct contact group be established between Members of the European Parliament and Members of the US Congress, in order to exchange information and discuss the strategy on ongoing and upcoming issues;
- 10. Instructs its President to forward this resolution to the Council and Commission, the governments and parliaments of the Member States and the United States Congress.