



*Garante per la protezione  
dei dati personali*

*Il Presidente*

Rome 06.02.2004

Mr. President,

Enclosed you will find the Opinion on the Adequate Protection of Personal Data Contained in the PNR of Air Passengers to be Transferred to the USA, which was adopted unanimously by the Article 29 Data Protection Working Party at its meeting on the 29<sup>th</sup> January 2004. Though noting some improvements over the previous versions of the Undertakings issued by the US Administration, the Working Party is of the opinion that the conditions for an adequacy finding are not fulfilled.

Several considerations underlie this conclusion, starting from the circumstance that the Undertakings do not give rise to any obligations on the US side, that the list of the data to be transferred remains excessive and disproportionate, which also applies to the data retention period, that it is indispensable to further specify and limit the purposes for which the data may be transferred, that use of the transferred data in connection with the CAPPS II is not to be regarded as admissible, that no adequate safeguards are afforded by the mechanisms for transferring the data to other sectors in the Administration, and that the safeguards for passengers' rights remain far from sufficient.

I would like to point out that the Working Party has not taken any prejudicially hostile stance with regard to the requests for transferring airline passenger data in order to fight terrorism. This is shown by the fact that, in the presence of the safeguards required under EC Directive 95/46, the Working Party has immediately issued a favourable opinion concerning the transfer of such data to Australian authorities. As additional proof of the circumstance that the requests made by the Working Party do reflect largely shared views, let me also stress that, for instance, the US Congress discussing the renewal of the Patriot Act highlighted exactly the need for limiting the envisaged measures to terrorism and terrorism-related offences, and that some major civil rights associations such as the American Civil Liberties Union, Privacy International, European Digital Rights Initiative, Foundation for Information Policy Research, and Statewatch have published a report that harshly criticizes the approach followed by the Commission.

I trust that the Commission will take account of the considerations made in Opinion 2/2004 of the Article 29 Data Protection Working Party.

Yours Sincerely,

Stefano Rodotà

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