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**Opinion 5/2006 on the ruling by the European Court of Justice of 30 May 2006 in
Joined Cases C-317/04 and C-318/04 on the transmission of Passenger Name
Records to the United States**

Adopted on 14 June 2006

This Working Party was set up under Article 29 of Directive 95/46/EC. It is an independent European advisory body on data protection and privacy. Its tasks are described in Article 30 of Directive 95/46/EC and Article 15 of Directive 2002/58/EC.

The secretariat is provided by Directorate C (Civil Justice, Rights and Citizenship) of the European Commission, Directorate General Justice, Freedom and Security, B-1049 Brussels, Belgium, Office No LX-46 01/43.

Website: http://ec.europa.eu/justice_home/fsj/privacy/index_en.htm

OPINION 5/2006 OF THE WORKING PARTY ON THE PROTECTION OF INDIVIDUALS WITH REGARD TO THE PROCESSING OF PERSONAL DATA

on the ruling by the European Court of Justice of 30 May 2006 in Joined cases C-317/04 and C-318/04 on the transmission of Passenger Name Records to the United States

The ruling by the European Court of Justice of May 30 2006¹ annuls both the Commission Decision on the adequacy finding and the Council Decision on the conclusion of the PNR Agreement. The ruling obliges the Community Institutions to terminate the Agreement with the United States on the transfer of passenger data at the latest by 30 September 2006. For that reason any transfer of passenger data to the US would be without a legal basis in European law after the termination of the Agreement. National legislation may require actions to be taken such as the complete suspension of data flows to the US authorities.

In the light of this situation, the Article 29 Working Party adopts the following Opinion and urges the competent European Institutions to take due note of the following:

- In order to avoid a legal gap as from 1 October 2006 for the transfer of passenger data and to ensure that the rights and freedoms of passengers continue to be protected, the Article 29 Working Party considers a timely adoption of a new agreement with the US on EU level crucial. In order to achieve a harmonised and consistent EU approach, bilateral agreements between the US and the EU Member States should be avoided.
- Such an agreement must at least preserve and integrate the current level of data protection as laid down in the US Undertakings so as to make them binding and, in addition, should take into account the critical considerations voiced by the Article 29 Working Party in its previous Opinions on PNR including the reduction of data elements.
- Such an agreement should be based on a push system since all technical requirements are in place.
- A strict purpose limitation is necessary for the transfer of PNR data comprising the onward transfer of these data.
- The Working Party expects that the mechanism of an annual joint review will be maintained in line with the current agreement.

¹ Joined cases C-317/04 and C-318/04.

- A new agreement should not have a longer duration than the terminated one, i.e. November 2007.

The Working Party assumes that the national data protection authorities and the EDPS are heard and consulted. It offers any possible assistance to come to a new agreement that meets the above-mentioned requirements.

For the middle-long term the Working Party considers it necessary to develop a more coherent approach towards the exchange of passenger data to ensure on a global level both air traffic security and the respect of human rights.

Finally the Court ruling shows once more the difficulties arising from the artificial division between the pillars and the need for a consistent cross pillar data protection framework.

Done in Brussels, on 14 June 2006

For the Working Party
The Chairman
Peter SCHAAR