

European Commission and US Customs deal

# **US authorities gain access to international air travellers' personal data**

**Peter Reydt**  
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In a deal struck between the European Commission and United States Customs authorities, basic data protection rights of travellers into, from or through the US have been virtually eliminated. Under the agreement, signed on February 18 and effective from March 5, the US authorities have gained direct access to airline reservation databases in the European Union to download the personal data of all passengers and crew stored as a PNR (Passenger Name Record).

The measures represent a further undermining of civil liberties brought about after the September 11 terrorist attacks through legislation such as the Homeland Security Act and the Enhanced Border Security and Visa Reform Act. Such measures have meant that US Customs is now part of the newly formed Department of Homeland Security—an arrangement through which the Bush administration has sought to consolidate a repressive state apparatus against the American people. Now the US is seeking to extend this to citizens from overseas.

US Customs informed the EC in January that security legislation required that it demand “submission of arrival and departure manifests electronically in advance of an aircraft or vessel’s arrival in or departure from the United States.” Airlines failing to comply would face fines of \$1,000 per person for each violation.

The January 28 meeting of the Working Party on Aviation was told that US demands “put airlines in the Community in a difficult position,” as they were incompatible with European legislation on data protection, computerised reservation systems and cross-border movement. Nevertheless the European Commission gave into the threats that US Customs

might withdraw the right of airlines to provide travel to America unless its demands were met.

According to the joint statement of the European Commission and US Customs: “The Commission side emphasised its full solidarity with the US objective of preventing and combating terrorism and underlined the need for practicable solutions that would provide legal certainty for all concerned.”

This legal certainty for the airlines exists in the European Commission looking the other way when its own data protection directives are violated (such data protection does not exist in the US).

“The Commission side considered that EU data protection authorities may not find it necessary to take enforcement actions against airlines complying with the US requirements,” the joint statement reads.

A formal arrangement still has to be sanctioned by EU governments and the European Parliament, so the joint statement is not yet binding and has no force in EU law. But in gaining access to PNR data contained in the automated reservation/departure control systems of air carriers, US Customs can access detailed information on travellers and crew and trace the movement of any person. The PNR contains data such as name and nationality, date of birth, telephone number, religious or ethnic information (choice of meals, etc.), affiliation to a particular group, data relating to place of residence or means of contacting an individual (email address, details of a friend, place of work, etc.).

This data is to be held on the centralised database jointly operated by the US Customs and Immigration Naturalisation Service and shared with other federal agencies. There will be no guarantees against misuse or

restrictions as to whom it may be passed on to within the US.

The fact that the EU authorities so easily give away the data protection rights of its citizens shows its total contempt for civil liberties. The measurements implemented are another step in the direction of unhindered spying on any individual around the world. It is an extension of the APIS (Advance Passenger Information System) which already is operated by Australia and New Zealand and supported by other countries like Canada, Mexico, Spain and the United Kingdom.

There were already proposals for the implementation of APIS in the EU. Former British home secretary Jack Straw had previously raised plans to introduce the system in the UK but had to back down in the face of fierce opposition from airlines and civil liberty groups. The Spanish delegation to the Council of the European Union's Working Party is currently pushing for a similar proposal to combat "terrorism and illegal immigration".



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