



Brussels, 26 November 2007

Minister of Justice  
Dr. Alberto Costa  
Cabinet of the Minister  
Praça do Comercio  
1149-019 Lisboa  
Portugal

Dear Minister Dr. Costa,

As of 1 December 2007, European air carriers will be required to transfer passenger data to the Korea Customs Service according to Notification No. 2006-33 enacted on 13 July 2006. The list of 22 required data elements as attached to the Notification does not only include advance passenger information (API-data) but also PNR data stored in the reservation and departure control systems of the airlines.

According to the “Procedures of PNR Provisions and Actions” issued by Korea Customs, the data will be used among others for combating and preventing international terrorism and drug smuggling.

Details regarding the method of data transfer and the data protection regime are not clear.

In this context it has to be stressed that Korea does not offer an adequate level of data protection in the meaning of Art. 25(2) of Directive 95/46/EC and no adequacy decision is foreseen by the Commission in the near future.

You might be aware that in the case of the US which also demands PNR data for law enforcement purposes and which is also a third country without an adequate level of data protection, the EU concluded a respective agreement in June 2007. Another agreement regulating the transfer of passenger data to Canada entered into force in March 2006.

In the case of Korea I consider it indispensable that the transfer of passenger data is put on a firm legal basis which spells out the duties of the receiving country and the rights of data subjects in accordance with accepted data protection standards. Korea should not become a

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](http://ec.europa.eu/justice_home/fsj/privacy/index_en.htm)

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precedent for other countries that are also contemplating the use of passenger data without a proper international legal framework in place.

I call, therefore, on the Council to look into this matter and to start negotiations with the Korean Government with the aim of concluding an agreement which serves as a legal basis for the transfer of PNR data to Korea Customs. Without such a legal basis the competent Data Protection Authorities (DPAs) across Europe will not be able to approve the data transfer to Korea. Any situation where air carriers face pressure from the Korean government to transmit PNR data on the one hand and pressure from European DPAs on the other hand not to give in to Korean demands must be avoided.

In light of this development which I consider worrying I also want to remind that the Art. 29 Working Party has always stressed the need for a global solution as to the transfer of passenger data to third countries. Such a global solution has to be found together with international bodies such as ICAO and IATA and is more necessary than ever. For this reason the Art. 29 Working Party has actively supported a resolution on global standards adopted by the 29<sup>th</sup> International Conference of Data Protection in Montreal on 28 September 2007 which I enclose for your information.

I look forward to hearing from you.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Peter Schaar'.

Peter Schaar  
Chairman

Copies of this letter have been sent to Commissioner Mr. Frattini and to the LIBE Committee.