

ARTICLE 29 Data Protection Working Party



Brussels, 06 February 2015

Mr Dimitris Avramopoulos
Commissioner for Migration, Home Affairs
and Citizenship
European Commission
By E-mail:
Dimitris.AVRAMOPOULOS@ec.europa.eu

Subject: Re: PNR obligations Mexico

Dear Commissioner Avramopoulos,

Several members of the Article 29 Working Party have been approached by their national airline representatives regarding the obligations imposed by the government of Mexico to transfer Passenger Name Record (PNR) data of all their passengers flying from the European Union to a destination in Mexico. This obligation was due to enter into force from 1 January 2015, but has now been postponed until 1 April 2015.

The Working Party would like to stress that there is currently no legal basis available in the European legal framework to transfer PNR data to the Mexican authorities. For the transfer of PNR data to be legal, a separate legal instrument providing sufficient safeguards as regards data protection should be concluded between the European Union and the Mexican authorities. Such a legal framework shall in any case need to be in accordance with the European Charter of Fundamental Rights and Directive 95/46/EC. The Working Party furthermore is of the opinion that due account needs to be given to the considerations of the Court of Justice of the European Union in the data retention decision of April 2014.

The Working Party urges the Commission to actively provide appropriate solutions meeting both the requirements of European law as well as the demands from the Mexican authorities, in order to ensure that European airlines will not have to act in contravention of either legal system. I would be grateful if you would keep the Working Party up to date on the steps you will take in order to assure legal transfer of PNR data to Mexico. If such steps were not to be taken on time, the Working Party recalls that Data Protection Authorities will have to consider suspending the transfers according to their national competences and the EU law.

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 (Fundamental rights and Union citizenship) of the European Commission, Directorate General Justice, Freedom and Security, B-1049 Brussels, Belgium, Office No MO59 02/34

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

Finally, let me stress that the concerns raised in this letter will mutatis mutandis also apply to obligations from other non-adequate third countries to receive PNR data from flights originating in the EU; therefore we highlight the necessity to harmonise the safeguards of all PNR agreements.

Yours sincerely,

On behalf of the Article 29 Working Party,

Isabelle FALQUE-PIERROTIN
Chairwoman