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Association of European Airlines

IATA

2 December 2013

AEA – IATA assessment of adopted LIBE compromise amendments on the revision of the Commission's proposed Data Protection Regulation COM (2012)11

Airlines welcome the work done by the European parliament's LIBE committee and appreciate the efforts made to introduce a more risk-based approach, as well as clarifying some of the requirements which will have an impact on airlines.

In particular, airlines welcome the following proposals from the LIBE committee:

- Clarification of the territorial scope (article 3 together with recital 20): this regulation shall only apply to processing activities related to the offering of goods in the Union for controllers not established in the Union.
- Simplifications and clarifications for the conduct of an impact assessment (article 33 together with recitals 70, 71 and 73).
- Suppression of the obligation for prior-authorisation (articles 33 and 34 and recital 74).
- Introduction of a "European Data Protection Seal" (article 39 and recital 77).
- Clarifications of the responsibilities in case of joint controllership (article 24 and recital 62).
- Clarification of the notion of legitimate interest for the prevention or limitation of damages (recital 39a)

However, some concerns remain and AEA and IATA would invite the Council to take the following points into consideration:

- Compromise 14 on the information to the data subject
  - article 14 point 1.g

IATA and AEA fully understand the need to inform the data subjects/passengers whose data are collected and already today airlines have adapted their websites so that the required information is available. IATA and AEA however believe that it would be administratively impossible to make continuous references to (potentially changing) adequacy decisions adopted under chapter V. These decisions are anyway published in the OJEC and it is not for the airlines to inform passengers that they are flying into a country whose data protection regime is not recognised by the EU.

This provision should not be applied to data transfers which are necessary to fulfill a contract with a data subject or if legal obligations have to be fulfilled by the controller.

- Article 17 right to erasure

Even though the clarifications and deletion to the reference of right to be forgotten is welcomed, airlines still believe it is necessary to limit the right to erasure in case legitimate interest of the controller for the safety of its operations.

IATA and AEA understand the reasons behind the introduction of the right to erasure" (which is very relevant for social media websites) but believe that the right should be subject to legitimate exceptions where an airline can demonstrate legitimate reasons for keeping a record of passengers. Such a legitimate reason may exist, for example, where a passenger has been violent on flights or abusive to staff and for the purposes of preventing or detecting fraud.

- article 31 notification in case of data breach

Airlines association welcome the flexibility introduced in the timing of the notification. However, airlines would still suggest that the requirements under article 31 only applies to serious data breaches causing harm to the data subject

The notification requirement as set out under Article 31 can be very burdensome, both for the controllers and for the supervisory authorities. This notification process should only be limited to serious cases potentially causing harm to the data subject.

Therefore, AEA and IATA suggest adding in Article 31 the reference to "serious personal data breach, causing harm to the data subject".

Paragraph 1 of Article 31 should read:

1. In the case of a serious personal data breach, causing harm to the data subject, the controller shall without undue delay notify the personal data breach to the supervisory authority.

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