

Joined Cases C-317/04 and C-318/04

European Parliament

v

Council of the European Union and Commission of the European Communities

(Protection of individuals with regard to the processing of personal data — Air transport — Decision 2004/496/EC — Agreement between the European Community and the United States of America — Passenger Name Records of air passengers transferred to the United States Bureau of Customs and Border Protection — Directive 95/46/EC — Article 25 — Third countries — Decision 2004/535/EC — Adequate level of protection)

Opinion of Advocate General Léger delivered on 22 November 2005 I - 4724
Judgment of the Court (Grand Chamber), 30 May 2006 I - 4795

Summary of the Judgment

1. *Approximation of laws — Directive 95/46 — Scope*
(*European Parliament and Council Directive 95/46, Art. 3(2); Commission Decision 2004/535*)

2. *International agreements — Conclusion — EEC-United States Agreement on the processing and transfer of Passenger Name Records of air passengers to the United States Bureau of Customs and Border Protection*

(Art. 95 EC; European Parliament and Council Directive 95/46, Arts 3(2) and 25; Council Decision 2004/496)

1. Decision 2004/535 on the adequate protection of personal data contained in the Passenger Name Record of air passengers transferred to the United States Bureau of Customs and Border Protection relates to personal-data processing operations concerning public security and the activities of the State in areas of criminal law, operations which are excluded from the scope of Directive 95/46 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, by virtue of the first indent of Article 3(2) of that directive.

and is not necessary for the supply of services by those operators.

(see paras 56-59)

The fact that the personal data are collected by private operators for commercial purposes and it is they who arrange for their transfer to a third country does not alter such a conclusion, inasmuch as their transfer falls within a framework established by the public authorities that relates to public security,

2. Decision 2004/496 on the conclusion of an Agreement between the European Community and the United States of America on the processing and transfer of PNR (Passenger Name Record) data by Air Carriers to the United States Department of Homeland Security, Bureau of Customs and Border Protection, cannot have been validly adopted on the basis of Article 95 EC, read in

conjunction with Article 25 of Directive 95/46 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

State in areas of criminal law, are excluded from the scope of Directive 95/46 by virtue of the first indent of Article 3(2) of that directive.

The agreement relates to data processing operations which, since they concern public security and the activities of the

(see paras 67-69)