

## II

(Acts whose publication is not obligatory)

## COUNCIL

## COUNCIL DECISION

of 17 May 2004

**on the conclusion of an Agreement between the European Community and the United States of America on the processing and transfer of PNR data by Air Carriers to the United States Department of Homeland Security, Bureau of Customs and Border Protection**

(2004/496/EC)

THE COUNCIL OF THE EUROPEAN UNION,

HAS DECIDED AS FOLLOWS:

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof, in conjunction with the first sentence of the first subparagraph of Article 300 (2) thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) On 23 February 2004 the Council authorised the Commission to negotiate, on behalf of the Community, an Agreement with the United States of America on the processing and transfer of PNR data by Air Carriers to the United States Department of Homeland Security, Bureau of Customs and Border Protection.
- (2) The European Parliament has not given an Opinion within the time-limit which, pursuant to the first subparagraph of Article 300(3) of the Treaty, the Council laid down in view of the urgent need to remedy the situation of uncertainty in which airlines and passengers found themselves, as well as to protect the financial interests of those concerned.
- (3) This Agreement should be approved,

*Article 1*

The Agreement between the European Community and the United States of America on the processing and transfer of PNR data by Air Carriers to the United States Department of Homeland Security, Bureau of Customs and Border Protection is hereby approved on behalf of the Community.

The text of the Agreement is attached to this Decision.

*Article 2*

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Agreement on behalf of the European Community.

Done at Brussels, 17 May 2004.

*For the Council*  
*The President*  
B. COWEN

**A REEMEN****between the European Community and the United States of America on the processing and transfer of PNR data by air carriers to the United States Department of Homeland Security, Bureau of Customs and Border Protection**

THE EUROPEAN COMMUNITY AND THE UNITED STATES OF AMERICA,

RECOGNISING the importance of respecting fundamental rights and freedoms, notably privacy, and the importance of respecting these values, while preventing and combating terrorism and related crimes and other serious crimes that are transnational in nature, including organised crime,

HAVING REGARD to US statutes and regulations requiring each air carrier operating passenger flights in foreign air transportation to or from the United States to provide the Department of Homeland Security (hereinafter 'DHS'), Bureau of Customs and Border Protection (hereinafter 'CBP') with electronic access to Passenger Name Record (hereinafter 'PNR') data to the extent it is collected and contained in the air carrier's automated reservation/departure control systems,

HAVING REGARD to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and in particular Article 7(c) thereof,

HAVING REGARD to the Undertakings of CBP issued on 11 May 2004, which will be published in the Federal Register (hereinafter 'the Undertakings'),

HAVING REGARD to Commission Decision C (2004) 1799 adopted on 17 May 2004, pursuant to Article 25(6) of Directive 95/46/EC, whereby CBP is considered as providing an adequate level of protection for PNR data transferred from the European Community (hereinafter 'Community') concerning flights to or from the US in accordance with the Undertakings, which are annexed thereto (hereinafter 'the Decision'),

NOTING that air carriers with reservation/departure control systems located within the territory of the Member States of the European Community should arrange for transmission of PNR data to CBP as soon as this is technically feasible but that, until then, the US authorities should be allowed to access the data directly, in accordance with the provisions of this Agreement,

AFFIRMING that this Agreement does not constitute a precedent for any future discussions and negotiations between the United States and the European Community, or between either of the Parties and any State regarding the transfer of any other form of data,

HAVING REGARD to the commitment of both sides to work together to reach an appropriate and mutually satisfactory solution, without delay, on the processing of Advance Passenger Information (API) data from the Community to the US,

HAVE AGREED AS FOLLOWS:

- (1) CBP may electronically access the PNR data from air carriers' reservation/departure control systems ('reservation systems') located within the territory of the Member States of the European Community strictly in accordance with the Decision and for so long as the Decision is applicable and only until there is a satisfactory system in place allowing for transmission of such data by the air carriers.

