



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 31 August 2007

12309/07

LIMITE

JAI 427

USA 52

RELEX 611

AVIATION 140

DATAPROTECT 41

NOTE

from :	Presidency
to :	Coreper/Council
prev.doc.:	12305/07 JAI 425 USA 50 RELEX 609 AVIATION 138 DATAPROTECT 39
Subject :	Agreement between the European Union and the United States of America on the processing and transfer of passenger name record (PNR) data by air carriers to the United States Department of Homeland Security (DHS) - Letter on confidentiality of negotiation documents

1. On 23 July 2007, the Council adopted a Decision authorising the Presidency to sign the Agreement between the European Union and the United States of America on the processing and transfer of passenger name record (PNR) data by air carriers to the United States Department of Homeland Security (DHS). The Agreement was signed, on 23 July 2007, by Mr Luis Amado, the President of the Council, on behalf of the European Union and, on 26 July 2007 by Mr Michael Chertoff, Secretary for the US Department for Homeland Security, on behalf of the United States of America.

2. On 30 July 2007, Mr Paul Rosenzweig, Acting Assistant Secretary for Policy at the US Department for Homeland Security, sent a letter to the Presidency, with copy the Commission, setting out the views of the United States as regards the confidentiality of negotiation documents. A copy of that letter is set out in the annex to 12307/07 JAI 426 USA 51 RELEX 610 AVIATION 139 DATAPROTECT 40. The Presidency proposes to reply to Mr Rosenzweig's letter by way of the letter set out in the annex to this note.

Mr Paul Rosenzweig
US Department of Homeland Security
Washington DC 20528

Dear Assistant Secretary Rosenzweig,

In reply to your letter of 30 July 2007 regarding the US understanding of the confidentiality of negotiation documents relating to the Agreement between the European Union and the United States of America on the processing and transfer of passenger name record (PNR) data by air carriers to the United States Department of Homeland Security (DHS), I would like to state the following.

The European Union shares your understanding regarding the confidentiality of the negotiation process. Before setting out the EU handling of documents, I think it is first important to clarify following. The negotiations of the above Agreement were conducted by the Member State holding the Presidency of the Council, supported by the General Secretariat of the Council and assisted by the European Commission. The European Union only has legal obligations regarding documents held by its institutions (in this case the Council and the Commission).

With regard to any documents in the possession of EU institutions, Regulation No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding the public access to European Parliament, Council and Commission documents applies. This Regulation also covers e-mails.

Article 4, paragraph 1(a), third indent of the Regulation obliges the institutions to refuse public access to a document where disclosure would undermine the protection of the public interest as regards international relations.

Under this Regulation, any request for access to a document must be examined and replied to on a case-by-case basis. This also applies with regard to any future request for access to a document related to the PNR negotiations. Obviously, such a request will always be evaluated in good faith, keeping in mind the US expectations regarding the confidentiality of negotiations documents, as expressed in your letter of 30 July 2007, and with due regard for the applicable EU legislation.

Regarding the internal handling of negotiation documents within the institutions, the normal duty of confidentiality shall apply.

To the extent that the documents concerned are only held by the authorities of the Member States that conducted the negotiations and not by an EU institution, public access and confidentiality is solely a matter regulated by the laws of those Member States.

Yours faithfully,

João Vallera
Ambassador of Portugal
2012 Massachusetts Avenue NW
Washington, DC 20036
