



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 27 September 2010

13986/10

LIMITE

**JAI 766
DATAPROTECT 68
AVIATION 137
RELEX 792**

NOTE

from:	Presidency
to:	Coreper/Council
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Subject:	EU external strategy on Passenger Name Record (PNR) data - Handling of draft negotiation mandates for PNR Agreements with Canada, the United States of America and Australia

The European Union (and the European Community) has signed three agreements providing for the processing and transfer of Passenger Name Record (PNR) data by air carriers to the authorities of third countries: Canada¹ the United States of America² and Australia³. The latter two Agreements are being applied on a provisional basis, but have not yet been concluded.

¹ OJ L 91, 29.3.2006, p. 53, OJ L 91, 29.3.2006, p. 49 and OJ L 82, 21.3.2006, p. 15.

² OJ L 204, 4.8.2007, p. 16. 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) was signed on 23 and 26 July 2007, subject to its conclusion at a later date. It is applied provisionally as from 26 July 2007.

³ OJ L 213, 8.8.2008 p. 49. The Agreement between the European Union and Australia on the processing and transfer of European Union-sourced passenger name record (PNR) data by air carriers to the Australian Customs Service was signed on 30 June 2008, subject to its conclusion at a later date. It is applied provisionally as from 30 June 2008.

On 18 December 2009 the Commission submitted to the Council, for these two Agreements, a proposal for a Decision on the conclusion of the latter two Agreements. On 25 January 2010, the Council, in accordance with Article 218(6) TFEU, decided to forward the draft decisions on conclusion as well as the text of both Agreements to the European Parliament for its consent.

On 5 May 2010, the European Parliament adopted a resolution on the launch of negotiations for passenger name record (PNR) Agreements with the United States, Australia and Canada.¹ In this resolution, the Parliament decides to postpone the vote on the request for consent on the agreements with the US and Australia until the Commission “has explored the options for arrangements for the use of PNR that are in line with EU law and meet the concerns expressed by Parliament in earlier resolutions on PNR”;

The Parliament also called for “a coherent approach on the use of PNR data for law enforcement and security purposes, establishing a single set of principles to serve as a basis for agreements with third countries” and invited the Commission to present a proposal for such a single model and a draft mandate for negotiations with third countries. The Commission Communication “On the global approach to transfers of Passenger Name Record (PNR) data to third countries”² meets this call.

On 23 September 2010, the Council received three recommendations from the Commission to authorise the opening of negotiations for Agreements between the European Union and Australia, Canada and the United States of America for the transfer and use of Passenger Name Record (PNR) data to prevent and combat terrorism and other serious transnational crime³.

The Presidency intends to have the adoption of these three negotiation mandates handled by Coreper, with the assistance of the JHA Counsellors.

¹ P7_TA(2010)0144.

² 13954/10 JAI 764 DATAPROTECT 67 AVIATION 134 RELEX 789.

³ 13931/10 JAI 761 USA 108 DATAPROTECT 64 AVIATION 128 RELEX 785; 13932/10 JAI 762 AUS 14 DATAPROTECT 65 AVIATION 129 RELEX 786; 13933/10 JAI 763 CDN 12 DATAPROTECT 66 AVIATION 130 RELEX 787.

Before starting an in-depth discussion on the content of the draft negotiation mandates, the Presidency would like to submit the following questions regarding the handling of these files to the Council:

1) The Commission Communication states that all PNR Agreements with third countries should respect certain general criteria. It also underlines that “[i]n the interest of ensuring an as uniform as possible treatment of passengers and reducing the costs on the industry, it is important that the content and standards of future agreements with third countries are as similar as possible”. The content of the proposed negotiating directives is identical for the three recommendations. In the same vein, the Presidency submits that the Council should act in a consistent manner regarding the content of the three draft negotiation mandates: any amendment to the negotiating directives should be made to all three negotiation mandates so that the content of the negotiating directives to be adopted with regard to each of the three countries will be identical. This does not detract from the fact that during the negotiations, the Commission may have to differentiate the wording of the three Agreements as a result of the different legal and institutional setup of the countries concerned. The Presidency proposes that the Council adopt the three negotiation mandates at the same time.

2) The Presidency proposes that the Council give clear indications to the Commission as to the order in which the negotiations with the three countries are to be handled. In this regard the Presidency sees two major approaches:

- a) Starting and conducting the negotiations with all three countries at the same time.
- b) Bearing in mind the particularly sensitive nature of the negotiations with the United States and the fact that the EP’s criticism has been especially aimed at the current EU-US PNR Agreement, the negotiations with the US should be handled as a matter of priority before entering into negotiations with Australia and Canada with which the current Agreements are considered as very data-protection-friendly. In that context, it may, however, be necessary to consider whether to handle the negotiations with the United States concurrently with negotiations with Canada, as the adequacy decision underlying the latter Agreement has expired.

The Presidency invites delegations to express their views on the above mentioned approaches.