



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 31 August 2007

12305/07

LIMITE

**JAI 425
USA 50
RELEX 609
AVIATION 138
DATAPROTECT 39**

"I/A" ITEM NOTE

from : Presidency
to : Coreper/Council

prev. doc.: 12015/07 JAI 397 USA 48 RELEX 583 AVIATION 135 DATAPROTECT 36

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), set out in out in 11595/07 JAI 371 USA 42 RELEX 546 AVIATION 122 DATAPROTECT 32. The following Member States indicated that, in order for the Council to conclude this Agreement, they would have to comply with the requirements of their constitutional procedures in accordance with Article 24(5) TEU : BE, CZ, DE, ES, LV, LT, HU, MT, NL, PL, FI.

2. On 23 July 2007, Mr Luis Amado, the President of the Council, signed the Agreement on behalf of the European Union. On 26 July, Mr Michael Chertoff, Secretary for the US Department for Homeland Security, signed the Agreement, on behalf of the United States of America. Pursuant to the declaration made on behalf the European Union, the Agreement will be implemented provisionally by the Member States in good faith, in the framework of their existing national laws.
3. 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, to set out the US understanding of the confidentiality of negotiation documents. A copy of this letter is set out in 12307/07 JAI 426 USA 51 RELEX 610 AVIATION 139 DATAPROTECT 40
4. Regarding public access to documents exchanged in the course of those negotiations, the European Union, in as far any such documents are held by the Council and/or the Commission, is obliged to apply, on a case-by-case basis, its legislation regarding access to documents. Article 4, paragraph 1(a), third indent of 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 obliges the institutions to refuse access to a document where disclosure would undermine the protection of the public interest as regards international relations. Therefore the Presidency proposes to reply to the above-mentioned letter from Mr Paul Rosenzweig, Acting Assistant Secretary for Policy at the US Department for Homeland Security, by referring to the applicable EU legislation in this matter.
5. In view of the above, COREPER is requested to invite the Council to approve the draft letter set out in the Annex to 12309/07 JAI 427 USA 52 RELEX 611 AVIATION 140 DATAPROTECT 41, to be sent by the Presidency, on behalf of the European Union, in reply to the above-mentioned letter from Mr Paul Rosenzweig, Acting Assistant Secretary for Policy at the US Department for Homeland Security.