



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 31 August 2007

12307/07

LIMITE

JAI 426

USA 51

RELEX 610

AVIATION 139

DATAPROTECT 40

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 this letter is set out in the annex to this note.
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U.S, Department of Homeland Security

Washington, DC 20528

Ambassador Joao Vallera

Ambassador of Portugal

2012 Massachusetts Avenue NW

Washington. DC 20036

Dear Ambassador Vallera.

We are writing to set out our understanding of how documents and information relating to the passenger name record agreement (PNR) negotiations have been handled since those negotiations began. We have both proceeded on the understanding that negotiations are conducted in confidence; and, thus, the record should also be maintained in confidence. For purposes of clarity, we request confirmation of the following procedures:

- The negotiations and negotiating documents are to be held in confidence. Negotiating documents include both those documents passed between the European Union (and/or its individual members) and the United States, and those documents which are internal to either party but discuss the negotiations, such as notes of meetings or strategies. The documents and negotiations are to be provided only to (1) government officials or (2) persons outside government who participate in the party's internal consultation process and who have a need to review or be advised of the information in these documents. In the EU, this is without prejudice to mandatory disclosure of such documents in the course of judicial proceedings.

- Anyone given access to such documents will be alerted that they cannot share the documents with people not authorized to see them. These documents will be held in confidence for at least ten years after entry into force of the agreements.
- While the negotiating documents are held in confidence, both sides may mail, e-mail, fax, or discuss these documents over unsecured lines with the people mentioned above. Both sides must take reasonable steps to ensure that the documents are held in confidence.
- The United States intends to mark such documents as "Foreign Government Information - Modified Handling Authorized" and include a brief instruction following the marking on how the documents will be handled.

The policy underlying this approach is to protect the sensitive internal nature maintain the confidentiality of documents, while at the same time allowing the two parties to develop their negotiating positions and communicate internally and with each other. We look forward to your confirmation of our mutual understanding.

Sincerely,

Paul Rosenzweig,
Act Assistant Secretary for Policy

CC:

Ambassador John Bruton
European Union - Delegation of the European Commission to the United States of America
2300 M Street, NW
Washington, DC 20037