

## **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**

THE EUROPEAN UNION AND THE UNITED STATES OF AMERICA,

DESIRING to prevent and combat terrorism and transnational crime effectively as a means of protecting their respective democratic societies and common values,

RECOGNISING that, in order to safeguard public security and for law enforcement purposes, rules should be laid down on the transfer of PNR data by air carriers to the [Department of Homeland Security (hereinafter 'DHS'). For the purposes of this Agreement, DHS means the Bureau of Customs and Border Protection, U.S. Immigration and Customs Enforcement and the Office of the Secretary and the entities that directly support it, but does not include other components of DHS such as the Citizenship and Immigration Services, Transportation Security Administration, United States Secret Service, the United States Coast Guard, and the Federal Emergency Management Agency.

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

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 DHS with electronic access to Passenger Name Record (hereinafter 'PNR') data to the extent they are collected and contained in the air carrier's automated reservation/departure control systems (hereinafter "reservation systems"),

HAVING REGARD to Article 6 paragraph 2 of the Treaty on European Union on respect for fundamental rights, and in particular to the related right to the protection of personal data,

HAVING REGARD to relevant provisions of the Aviation Transportation Security Act of 2001, the Homeland Security Act of 2002, the Intelligence Reform and Terrorism Prevention Act of 2004 and Executive Order 13388 regarding cooperation between agencies of the United States government in combating terrorism,

HAVING REGARD to the Undertakings as published in the US Federal Register<sup>1</sup> and implemented by DHS,

NOTING that the European Union should ensure that air carriers with reservation systems located within the European Union arrange for transmission of PNR data to DHS 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 or negotiations between the United States and the European Union, or between either of the Parties and any State regarding the processing and transfer of PNR or 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 European Union to the United States,

NOTING that in reliance on this Agreement, the EU confirms that it will not hinder the transfer of PNR data between Canada and the United States and that the same principle will be applied in any similar agreement on the processing and transfer of PNR data.

**HAVE AGREED AS FOLLOWS:**

(1) In reliance upon DHS's continued implementation of the Undertakings as interpreted in the light of subsequent events, the European Union shall ensure that air carriers operating passenger flights in foreign air transportation to or from the United States of America shall process PNR data contained in their reservation systems as required by DHS.

(2) Accordingly, DHS will electronically access the PNR data from air carriers' reservation systems located within the territory of the Member States of the European Union until there is a satisfactory system in place allowing for transmission of such data by the air carriers.

(3) DHS shall process PNR data received and treat data subjects concerned by such processing in accordance with applicable US laws and constitutional requirements, without unlawful discrimination, in particular on the basis of nationality and country of residence.

(4) The implementation of this Agreement shall be jointly and regularly reviewed.

(5) In the event that an airline passenger information system is implemented in the European Union or in one or more of its Member States that requires air carriers to provide authorities with access to PNR data for persons whose travel itinerary includes a flight to or from the European Union, DHS shall, in so far as practicable and strictly on

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<sup>1</sup> Vol. 69, No 131, p.41543

the basis of reciprocity, actively promote the cooperation of airlines within its jurisdiction.

(6) For the purpose of the application of this Agreement, DHS is deemed to ensure an adequate level of protection for PNR data transferred from the European Union concerning passenger flights in foreign air transportation to or from the United States.

(7) This Agreement shall enter into force on the first day of the month after the date on which the Parties have exchanged notifications indicating that they have completed their internal procedures for this purpose. This Agreement shall apply provisionally as of the date of signature. Either Party may terminate or suspend this Agreement at any time by notification through diplomatic channels. Termination shall take effect thirty (30) days from the date of notification thereof to the other Party. This Agreement shall expire upon the date of application of any superseding agreement and in any event, no later than 31 July 2007, unless extended by mutual written agreement.

This Agreement is not intended to derogate from or amend legislation of the United States of America or the European Union or its Member States. This Agreement does not create or confer any right or benefit on any other person or entity, private or public.

This Agreement is drawn up in duplicate in the English language. It shall also be drawn up in the Czech, Danish, Dutch, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Slovak, Slovenian, Spanish and Swedish languages, and the Parties shall approve these language versions. Once approved, the versions in these languages shall be equally authentic.

FOR THE UNITED STATES OF AMERICA

Date:

\_\_\_\_\_  
Secretary Michael Chertoff  
Department of Homeland Security

FOR THE EUROPEAN UNION

Date: