EU/Australia agreement: processing and transfer of EU-sourced passenger name record (PNR) data by air carriers to the Australian Customs Service

2009/0186(NLE) - 18/01/2010 - Document attached to the procedure

This document sets out the Agreement between the EU and Australia on the processing and transfer of European Union-sourced passenger name record (PNR) data by air carriers to the Australian Customs Service.

The Agreement states that information sharing is an essential component of the fight against terrorism and related crimes and other serious crimes, including organised crime, that are transnational in nature, and that in this context, the use of passenger name record (PNR) data is an important tool.

This Agreement lays down rules governing the transfer of passenger name records (PNR) data held by air carriers in the EU to the Australian Customs Service on flights from the EU to Australia. Under the terms of the Agreement the Australian Customs Service ("Customs") will process PNR data provided by EU carriers for flights 72 hours in advance of the flight.

The main provisions are as follows:

"Passenger Name Record data" (PNR data) means the record of each passenger's travel requirements which contains all information necessary for the processing of reservations and their control by the booking and participating airlines as contained in Air carriers' reservation systems.

Scope: Australia shall ensure that Customs processes EU-sourced PNR data in accordance with this Agreement. In turn, the EU shall ensure that Air carriers are not prevented from complying with Australian law regarding the transfer of EU-sourced PNR data to Customs.

Adequacy: compliance with this Agreement by Customs shall, within the meaning of relevant EU data-protection law, constitute an adequate level of protection for EU-sourced PNR data transferred to Customs for the purpose of this Agreement.

Purpose limitation for EU-sourced PNR data: Customs will process EU-sourced PNR data and other personal information derived therefrom strictly for the purpose of preventing and combating:

- terrorism and related crimes;
- serious crimes, including organised crime, that are transnational in nature;
- flight from warrants or custody for crimes described above.

EU-sourced PNR data may also be processed on a case-by-case basis where necessary for the protection of the vital interests of the data subject or other persons, in particular as regards the risk of death or serious injury to the data subjects or others, or a significant public health risk, in particular as required by internationally recognised standards, such as the World Health Organisation's International Health Regulations (2005).

In addition, EU-sourced PNR data may also be processed on a case-by-case basis where such processing is specifically required by court order or Australian law for the purpose of supervision and accountability of public administration, including requirements under the Freedom of nformation Act 1982 and other pieces of legislation detailed in the Agreement.

Transfer of EU sourced PNR data: under normal circumstances, Customs shall require an initial transmission of EU-sourced PNR data at 72 hours before scheduled departure and shall require a maximum of only five routine transmissions of EU-sourced PNR data in respect of any particular flight. Irrespective of the 72-hour time frame, Customs may in addition require ad hoc pushes where necessary to assist in responding to specific threats to a flight, set of flights, route or other circumstances associated with the purpose defined in the Agreement. In exercising this discretion, Customs will act judiciously and proportionately.

Protection of personal data of individuals: Australia is obliged, under the Agreement, to provide a system, accessible by individuals regardless of their nationality or country of residence, for seeking access to, and correction of, their own personal information. The protections afforded to EU-sourced PNR data stored by Australian Government agencies under the Privacy Act 1988 (Cth) shall apply regardless of the nationality or country of residence of the individual. Customs shall process EU-sourced PNR data received and treat individuals concerned by such processing strictly in accordance with the data-protection standards set out in this Agreement and applicable Australian laws, without discrimination, in particular on the basis of nationality or country of residence.

Notification to individuals and public: Customs shall make publicly available, including to members of the travelling public, information regarding the processing of PNR data, including general information regarding the authority under which the data will be collected, the purpose of the data's collection, the protection that will be afforded to the data, the manner and extent to which the data may be disclosed, the procedures available for redress and contact information for persons with questions or concerns.

Data retention: Customs shall retain EU-sourced PNR data for no more than **three-and-a-half years** after the date of receipt of the PNR data by Customs, after which time the data may be archived for two further years. Archived PNR data may be accessed only on a case-by-case basis for investigative purposes.

Suspension of data flows: the competent authorities in EU Member States may exercise their existing powers to suspend data flows to Customs in order to protect individuals with regard to the processing of their personal data where there is a substantial likelihood that the standards of protection set out in the Agreement are being infringed, there are reasonable grounds for believing that Customs is not taking or will not take adequate and timely steps to settle the case at issue and the continuing transfer would create an imminent risk of grave harm to data subjects.

The competent authorities in EU Member States shall make reasonable efforts in the circumstances to provide Customs with notice and an opportunity to respond, as follows: any suspension shall be preceded by notification which allows a sufficient period of time during which time Customs and the relevant competent authorities in the EU Member States shall endeavour to achieve resolution. The EU must notify Australia of any such resolution. Any suspension shall cease as soon as the standards of protection are assured to the satisfaction of Australia and of the relevant competent authorities in the EU Member States and Australia notifies the EU accordingly.

Disclosure of EU-sourced PNR data: disclosure within the Australian Government: the Annex to the Agreement states that customs shall only disclose EU-sourced PNR data for the purpose stated in the Agreement within Australia to the Australian Government departments and agencies listed in the Schedule to this Annex, the functions of which are directly related to Article 5 (Purpose limitation) of the Agreement. The Schedule may be amended, **by exchange of diplomatic notes** between the Parties, to

include any successor departments or agencies and any new departments and agencies established after the commencement of the Agreement

Disclosure to Third Country Governments: Customs shall disclose EU-sourced PNR data only to specific third country government authorities the functions of which are directly related to the purpose stated in the Agreement. Any such disclosure must be on a case-by-case basis and when necessary for the purpose of preventing or combating the offences listed above.

Types of EU-sourced PNR data collected: the following comprise the types of data: (i) PNR locator code; (ii) date of reservation/ issue of ticket; (iii) date(s) of intended travel; (iv) name(s); (v) available frequent flier and benefit information (i.e., free tickets, upgrades, etc.); (vi) other names on PNR, including number of travellers on PNR; (vii) all available contact information (including originator information); (viii) all available payment/billing information (not including other transaction details linked to a credit card or account and not connected to the travel transaction); (ix) travel itinerary for specific PNR; (x) travel agency/travel agent; (xi) code share information; (xii) split/divided information; (xiii) travel status of passenger (including confirmations and check-in status); (xiv) ticketing information, including ticket number, one way tickets and Automated Ticket Fare Quote; (xv) all Baggage information; (xvi) seat information, including seat number; (xvii) general remarks including Other Supplementary Information (OSI), Special Service Information (SSI) and Special Service Request (SSR) information; (xviii) any collected Advance Passenger Processing (APP) or Advance Passenger Information (API) data;

(xix) all historical changes to the PNR data listed in numbers (i) to (xviii).

Lastly, the Agreement contains clauses on the joint review of implementation, dispute settlement, amendment and review of the Agreement; termination and non-derogation.