

EU/USA agreement: processing and transfer of passenger name record (PNR) data by air carriers (2007 PNR agreement)

2009/0187(NLE) - 18/07/2007 - Document attached to the procedure

This Agreement between the European Union and the United States concerns the processing and transfer of passenger name record (PNR) data by air carriers to the United States Department of Homeland Security (DHS) (“2007 PNR Agreement”).

The main objective of this Agreement is to ensure that EU airlines comply with international conventions, U.S. statutes, and regulations requiring each air carrier operating passenger flights in foreign air transportation to or from the United States to make PNR data available to DHS to the extent they are collected and contained in the air carrier's automated reservation/departure control systems, and comparable requirements implemented in the EU. The EU should ensure that air carriers with reservation systems located within the EU make available PNR data to DHS and comply with the technical requirements for such transfers as detailed by DHS.

The Agreement comprises an exchange of letters which gives assurances as regards the protection of data transferred by the EU to DHS.

On a technical level: DHS will electronically access the PNR 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 the transmission of such data by the air carriers. DHS shall process PNR data received and treat data subjects concerned by such processing in accordance with applicable U.S. laws, constitutional requirements, and without unlawful discrimination, in particular on the basis of nationality and country of residence. DHS's letter sets forth these and other safeguards. DHS will immediately transition to a push system for the transmission of data by such air carriers no later than 1 January, 2008 for all such air carriers that have implemented such a system that complies with DHS's technical requirements. DHS will electronically access the PNR 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 the transmission of such data by the air carriers.

It is also provided that DHS and the EU will periodically review the implementation of this Agreement, the DHS letter, and U.S. and EU PNR policies and practices with a view to mutually assuring the effective operation and privacy protection of their systems.

Data protection: by this Agreement, DHS shall not undertake data protection measures in its PNR system that are more stringent than those applied by European authorities for their domestic PNR systems. DHS shall not ask European authorities to adopt data protection measures in their PNR systems that are more stringent than those applied by the U.S. for its PNR system. If its expectation is not met, DHS reserves the right to suspend relevant provisions of the DHS letter while conducting consultations with the EU with a view to reaching a prompt and satisfactory resolution.

For the application of this Agreement, **DHS is deemed to ensure an adequate level of protection for PNR data transferred from the European Union.**

This Agreement will apply provisionally as of the date of signature, pending its conclusion.

DHS Letter: this Agreement includes an exchange of letters between the EU and DHS which is intended to explain how the United States Department of Homeland Security (DHS) handles the collection, use and storage of Passenger Name Records (PNR). It provides the **assurances** and reflects the policies which DHS applies to PNR data derived from flights between the U.S. and European Union (EU PNR) under U. S. law.

This letter develops the following issues:

Purpose for which PNR is used: DHS uses EU PNR **strictly** for the purpose of preventing and combating: (1) terrorism and related crimes; (2) other serious crimes, including organized crime, that are transnational in nature; and (3) flight from warrants or custody for crimes described above. PNR may be used where necessary for the protection of the vital interests of the data subject or other persons, or in any criminal judicial proceedings, or as otherwise required by law.

Sharing of PNR: DHS shall treat EU PNR data as sensitive and confidential in accordance with U.S. laws and, at its discretion, provides PNR data only to other domestic government authorities with law enforcement, public security, or counterterrorism functions, in support of counterterrorism, transnational crime and public security related cases. Access shall be strictly and carefully limited to the cases described above in proportion to the nature of the case. **EU PNR data is only exchanged with other government authorities in third countries after consideration of the recipient's intended use(s) and ability to protect the information.**

Types of Information Collected: most data elements contained in PNR data can be obtained by DHS upon examining an individual's airline ticket and other travel documents (PNR record locator code, date of reservation, names, etc) pursuant to its normal border control authority, but the ability to receive this data electronically significantly enhances DHS's ability to focus its resources on high risk concerns, thereby facilitating and safeguarding bona fide travel. To the extent that sensitive EU PNR data (i.e. personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, etc), as specified by the PNR codes and terms which DHS has identified in consultation with the European Commission, are included in the above types of EU PNR data, DHS shall employ an automated system which filters those sensitive PNR codes and terms and shall not use this information. Unless the data is accessed for an exceptional case, DHS shall promptly delete the sensitive EU PNR data.

Access and Redress: DHS shall also maintain a system accessible by individuals, regardless of their nationality or country of residence, for providing redress to persons seeking information about or correction of PNR.

Data retention: DHS shall retain EU PNR data in an active analytical database for **seven years**, after which time the data will be moved to dormant, non-operational status. Data in dormant status will be retained for **eight years** and may be accessed only with approval of a senior DHS official designated by the Secretary of Homeland Security and **only in response to an identifiable case, threat, or risk**. It is expected that EU PNR data shall be deleted at the end of this period.

Transmission: the exchange of letters recalls that DHS is prepared to move as expeditiously as possible to a "push" system of transmitting PNR from airlines operating flights between the EU and the U.S. to DHS. Thirteen airlines have already adopted this approach. The responsibility for initiating a transition to "push" rests with the carriers, who must make resources available to migrate their systems and work with DHS to comply with DHS's technical requirements. DHS will immediately transition to such a system for the transmission of data by such air carriers no later than 1 January 2008. Under normal circumstances DHS will receive an **initial transmission of PNR data 72 hours before a scheduled departure** and afterwards will receive updates as necessary to ensure data accuracy.

Reciprocity: as provided in the Agreement itself, reciprocity measures stipulate that DHS does not ask European authorities to adopt data protection measures in their PNR systems that are more stringent than those applied by the U.S. for its PNR system. In order to foster police and judicial cooperation, DHS will encourage the transfer of analytical information flowing from PNR data by competent US authorities to police and judicial authorities of the Member States concerned and, where appropriate, to Europol and Eurojust. DHS expects that the EU and its Member States will likewise encourage their competent authorities to provide analytical information flowing from PNR data to DHS and other US authorities concerned.

Review: DHS and the EU will periodically review the implementation of this Agreement, the DHS letter, and U.S. and EU PNR policies and practices with a view to mutually assuring the effective operation and privacy protection of their systems.

It should be noted 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.