EU/Canada Agreement: transfer and processing of passenger name record (PNR) data

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PURPOSE: to conclude an Agreement between Canada and the European Union on the transfer and processing of Passenger Name Record data.

PROPOSED ACT: Council Decision.

ROLE OF THE EUROPEAN PARLIAMENT: Council may adopt the act only if Parliament has given its consent to the act.

BACKGROUND: Canadian legislation empowers the Canada Border Services Agency to ask each air carrier operating passenger flights to and from Canada to provide it with electronic access to Passenger Name Record (PNR) data prior to the passenger arriving or leaving Canada. The requests of the Canadian authorities are based on Canadian legislation which aims at obtaining PNR data electronically in advance of a flight's arrival and therefore significantly enhances the Canada Border Services Agency's ability to conduct efficient and effective advance risk assessment of passengers and to facilitate bona fide travel, thereby enhancing the security of Canada.

The European Union, in cooperating with Canada in the fight against terrorism and other serious transnational crime, views the transfer of PNR data to Canada as fostering international police and judicial cooperation.

Air carriers are under an obligation to provide the Canada Border Services Agency with access to certain PNR data to the extent it is collected and contained in the air carrier's automated reservation and departure control systems.

The data protection laws of the EU do not allow European and other carriers operating flights from the EU to transmit the PNR data of their passengers to third countries which do not ensure an adequate level of protection of personal data without adducing appropriate safeguards.

A solution is therefore required that will provide the legal basis for the transfer of PNR data from the EU to Canada as a recognition of the necessity and importance of the use of PNR data in the fight against terrorism and other serious transnational crime, whilst providing legal certainty for air carriers. In addition, this solution should be applied homogenously throughout the European Union in order to ensure legal certainty for air carriers and respect of individuals' rights to the protection of personal data as well as their physical security.

It should be noted that this Agreement follows on from a request from the European Parliament to renegotiate the Agreement on the basis of improved criteria (see EP resolution 5 May 2010).

On 21 September 2010, the Council received a recommendation from the Commission to authorise the opening of negotiations for an Agreement between the European Union and Canada for the transfer and use of PNR data.

On 11 November 2010, the European Parliament adopted a resolution on the recommendation from the Commission to the Council to authorise the opening of negotiations.

On 2 December 2010, the Council adopted a Decision, together with a negotiation directive, authorising the Commission to open negotiations on behalf of the European Union. Following negotiations between the parties, the Agreement was initialled on 6 May 2013.

IMPACT ASSESSMENT: no impact assessment was undertaken.

LEGAL BASIS: Articles 82(1)(d) and 87(2)(a), in conjunction with Article 218(6)(a) of the Treaty on the Functioning of the European Union (TFEU).

CONTENT: under this proposal, the Commission proposes to the Council to adopt a decision approving the conclusion of the Agreement between Canada and the European Union on the transfer and processing of Passenger Name Record data.

The text of the Agreement is attached to the proposal.

Safeguards offered by the draft Agreement: the Agreement secures several important safeguards for those persons whose data will be transferred and processed. In particular, the purpose of processing of PNR data is **strictly limited to preventing, detecting, investigating and prosecuting terrorist offences** and serious transnational crime.

Retention period: the retention period of the PNR data is limited and the data will be depersonalised after a period of 30 days.

Right to access information: individuals are provided with the right to access, correction, redress and information. The data will be transferred using exclusively the 'push' method, under which air carriers transfer (‘push') the required PNR data to the Canada Border Services Agency, thus allowing air carriers to retain control of what data is provided.

Use of data: the use of sensitive data is limited to very exceptional cases and subject to strict conditions and effective safeguards, including the approval by the President of the Canada Border Services Agency and the deletion of the data after a very short timeframe. Oversight of Canada's compliance with these rules shall be exercised by the Privacy Commissioner of Canada and the Recourse Directorate of the Canada Border Services Agency.

BUDGETARY IMPLICATION: the proposal has no implication for the EU budget.