

Basic information

2013/0250(NLE)

NLE - Non-legislative enactments
Decision

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

Subject

1.20.09 Protection of privacy and data protection
3.20.01 Air transport and air freight
6.40.11 Relations with industrialised countries
7.30 Police, judicial and customs cooperation in general

Geographical area

Canada

Awaiting committee decision

Key players

European
Parliament

Committee responsible

LIBE

Civil Liberties, Justice and Home Affairs

Rapporteur

Appointed

Former committee responsible

LIBE

Civil Liberties, Justice and Home Affairs

Former rapporteur

Appointed

LIBE

Civil Liberties, Justice and Home Affairs

LIBE

Civil Liberties, Justice and Home Affairs

IN 'T VELD Sophia (Renew)

04/09/2019

Committee for opinion

TRAN

Transport and Tourism

Rapporteur for opinion

Appointed

Former committee for opinion

AFET

Foreign Affairs


Former rapporteur for opinion

Appointed


TRAN

Transport and Tourism

	AFET Foreign Affairs		
	AFET Foreign Affairs	The committee decided not to give an opinion.	
	TRAN Transport and Tourism		
	TRAN Transport and Tourism		
Council of the European Union	Council configuration	Meetings	Date
	Justice and Home Affairs (JHA)	3279	2013-12-06
European Commission	Commission DG	Commissioner	
	Migration and Home Affairs	MALMSTRÖM Cecilia	

Key events			
Date	Event	Reference	Summary
18/07/2013	Preparatory document	COM(2013)0528 	Summary
07/07/2014	Legislative proposal published	12652/2013	Summary
14/07/2014	Committee referral announced in Parliament		
21/10/2019	Resumption of business from the previous parliamentary term		
13/11/2024	Resumption of business from the previous parliamentary term		

Technical information	
Procedure reference	2013/0250(NLE)
Procedure type	NLE - Non-legislative enactments
Procedure subtype	Consent by Parliament
Legislative instrument	Decision
Legal basis	Treaty on the Functioning of the European Union TFEU 082-p1 Treaty on the Functioning of the European Union TFEU 218-p6a Treaty on the Functioning of the European Union TFEU 087-p2
Stage reached in procedure	Awaiting committee decision
Committee dossier	LIBE/10/00038

Documentation gateway				
Council of the EU				
Document type	Reference	Date	Summary	
Document attached to the procedure	12657/2013	23/06/2014		
Legislative proposal	12652/2013	07/07/2014	Summary	
European Commission				
Document type	Reference	Date	Summary	
Preparatory document	COM(2013)0528 	18/07/2013	Summary	
National parliaments				
Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	PT_PARLIAMENT	COM(2013)0528	06/03/2014	
Other institutions and bodies				
Institution/body	Document type	Reference	Date	Summary
EDPS	Document attached to the procedure	N7-0062/2014 OJ C 051 22.02.2014, p. 0012	30/09/2013	Summary

Additional information		
Source	Document	Date
National parliaments	IPEX	
European Commission	EUR-Lex	

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

2013/0250(NLE) - 18/07/2013

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 adding 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 homogeneously 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.

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

2013/0250(NLE) - 30/09/2013 - Document attached to the procedure

Opinion of the European Data Protection Supervisor on the proposals for Council decisions on the conclusion and the signature of the agreement between Canada and the European Union on the transfer and processing of passenger name record data.

On 19 July 2013, the European Commission adopted the proposals for Council decisions on the conclusion and the signature of the agreement between Canada and the European Union on the transfer and processing of passenger name record (PNR) data. The EDPS also had the opportunity to provide his advice before the adoption of the proposals.

Proportionality: the EDPS **questions the necessity and proportionality** of PNR schemes and of bulk transfers of PNR data to third countries. According to the jurisprudence, not only the reasons put forward by the public authority to justify any such restriction should be relevant and sufficient, but it should also be demonstrated that other **less intrusive methods are not available**. To date, the EDPS has not seen convincing elements showing the necessity and proportionality of the massive and routine processing of data of non-suspicious passengers for law enforcement purposes but he notes the data protection safeguards provided in the agreement.

Legal basis: the EDPS questions the necessity and proportionality of PNR schemes and of the bulk transfers of PNR data to third countries. He also questions the choice of the legal basis and recommends that the proposals be based on **Article 16 of the TFEU**, in conjunction with Article 218(5) and Article 218(6)(a) of the TFEU.

The EDPS is also concerned about the limited availability of independent administrative redress and full judicial redress for EU citizens not present in Canada and questions the appropriateness of an executive agreement to achieve them. He also recommends requiring confirmation that no other Canadian authority can directly access or request PNR data to the carriers covered by the agreement.

Provisions of the PNR agreement with Canada: according to the EDPS, the agreement should:

- completely exclude the processing of sensitive data,
- provide for deletion or anonymisation of the data immediately after analysis and **30 days after reception** as a maximum and, in any case, reduce and justify the proposed retention period, which has been extended in comparison with the previous PNR agreement with Canada,
- limit the categories of PNR data to be processed,
- explicitly mention that overall oversight will be carried out by an independent authority,
- further narrow down and clarify the concepts defining the purposes of the agreement,
- clarify which types of 'lawful' discrimination would be possible,
- provide for an obligation to notify data breaches to the European Commission and to data protection authorities,
- complete the provisions on transparency,
- extend the prohibition of deciding solely on the basis of automated processing to all decisions affecting passengers on the basis of the agreement,
- specify to which authorities in Canada PNR data can be further transferred, adding the **requirement of prior judicial authorisation or of the existence of an immediate threat**, providing for an obligation of including adequate data protection safeguards in agreements or arrangements with other recipient countries or authorities and for their notification to the European Commission and to EU data protection authorities,
- name the relevant authorities and laying down dissuasive sanctions for non-compliance with the agreement,
- specify which are the **mechanisms available to persons not resident in Canada to seek judicial review** under Canadian law,
- clarify if the right to judicial review could be exercised even if the relevant decision or action has not been communicated to the individual concerned, in particular if provisions of the agreement other than those related to access and rectification/notation are infringed,
- specify to which 'other remedy which may include compensation' the agreement refers,
- specify the frequency of reviews of the implementation of the agreement, their content and explicitly including EU data protection authorities in the EU review team.

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

2013/0250(NLE) - 07/07/2014 - Legislative proposal

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: on 2 December 2010, the Council adopted a Decision, together with negotiation directives, authorising the Commission to open negotiations on behalf of the European Union with Canada for the transfer and use of Passenger Name Record (PNR) data to prevent and combat terrorism and other serious transnational crime.

In accordance with a Council Decision, the Agreement between Canada and the European Union on the transfer and processing of Passenger Name Record data has been signed, subject to its conclusion at a later date.

The Agreement should now be approved.

CONTENT: with this proposed Decision, the Council is invited to approve, subject to Parliament's consent, the Agreement between Canada and the European Union on the transfer and processing of Passenger Name Record data is hereby approved on behalf of the Union.

For details of the background and the content of the Agreement, please refer to the summary of the initial legislative proposal from 18/07/2013.

Fundamental rights: the draft Agreement respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, in particular the right to private and family life, the right to the protection of personal data and the right to effective remedy and fair trial. The Agreement should be applied in accordance with those rights and principles.

Territorial provisions: in accordance with Protocol No 21 on the Position of the United Kingdom and Ireland in respect of the area of Freedom, Security and Justice, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, those Member States have notified their wish to take part in the adoption of this Decision. On the other hand, Denmark is not taking part in the adoption of this Decision and is not bound by the Agreement or subject to its application.

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

2013/0250(NLE) - 18/07/2013 - Preparatory document

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.

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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.

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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.

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