



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 23 July 2013**

**12637/13**

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**Interinstitutional File:  
2013/0250 (NLE)**

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**JAI 654  
CDN 9  
DATAPROTECT 110  
AVIATION 114  
RELEX 692**

**PROPOSAL**

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from:	European Commission
dated:	19 July 2013
No Cion doc.:	COM(2013) 528 final
Subject:	Proposal for a Council decision on 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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Delegations will find attached a proposal from the Commission, submitted under a covering letter from Mr Jordi AYET PUIGARNAU, Director, to Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union.

Encl.: COM(2013) 528 final



EUROPEAN  
COMMISSION

Brussels, 18.7.2013  
COM(2013) 528 final

2013/0250 (NLE)

Proposal for a

**COUNCIL DECISION**

**on the conclusion of the Agreement between Canada and the European Union on the transfer and processing of Passenger Name Record data**

## EXPLANATORY MEMORANDUM

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 section 107.1 of the Customs Act, the Passenger Information (Customs) Regulations, paragraph 148(1)(d) of the Immigration and Refugee Protection Act and Regulation 269 of the Immigration and Refugee Protection Regulations.

This legislation 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. This will be achieved through the sharing of analytical information containing PNR data obtained by Canada with competent police and judicial authorities of Member States, as well as with Europol and Eurojust within their respective mandates.

PNR is a record of each passenger's travel requirements which contains all information necessary to enable reservations to be processed and controlled by air carriers.

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 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.

The European Union concluded an agreement<sup>1</sup> in 2005 with Canada on the processing of PNR data based on a set of commitments by the Canada Border Services Agency in relation to the application of its PNR programme. The commitments were annexed to a Commission Decision on the adequate protection of personal data contained in the Passenger Name Record of air passengers transferred to the Canada Border Services Agency.<sup>2</sup> Following the expiry of the Commission Decision in 2009, the Canada Border Services Agency unilaterally undertook to assure the EU that the commitments would continue in full force and effect until a new agreement applies.

Following the entry into force of the Lisbon Treaty, the European Parliament adopted a resolution<sup>3</sup> on 5 May 2010 in which it requested a renegotiation of the Agreement on the basis of certain criteria.

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

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<sup>1</sup> OJ L82/15, 21.3.2006.

<sup>2</sup> OJ L91/49, 29.3.2006.

<sup>3</sup> OJ C81E/70, 15.3.2011.

Canada for the transfer and use of PNR data to prevent and combat terrorism and other serious transnational crime.

On 11 November 2010, the European Parliament adopted a resolution<sup>4</sup> 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.

This Agreement takes into consideration and is consistent with the general criteria laid down in the Communication from the Commission on the Global Approach to the transfer of PNR data to third countries<sup>5</sup> and the negotiating directives given by the Council.

PNR has proven to be a very important tool in the fight against terrorism and serious crime. 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. The retention period of the PNR data is limited and the data will be depersonalised after a period of 30 days. 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. 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.

Article 218(6)(a) of the Treaty on the Functioning of the European Union states that the Council shall authorise the conclusion of international agreements.

The Commission therefore 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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<sup>4</sup> OJ C74E/8, 13.3.2012.

<sup>5</sup> COM(2010) 492 final, 21.9.2010.

Proposal for a

**COUNCIL DECISION**

**on the conclusion of the Agreement between Canada and the European Union on the transfer and processing of Passenger Name Record data**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 82(1)(d) and 87(2)(a), in conjunction with Article 218(6)(a) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament<sup>6</sup>,

After consulting the European Data Protection Supervisor,

Whereas:

- (1) 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.
- (2) In accordance with Council Decision 2013/XXX of []<sup>7</sup> the Agreement between Canada and the European Union on the transfer and processing of Passenger Name Record data was signed on ... 2013, subject to its conclusion at a later date.
- (3) The Agreement should be concluded.
- (4) This Agreement respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, notably the right to private and family life, recognised in Article 7 of the Charter, the right to the protection of personal data, recognised in Article 8 of the Charter and the right to effective remedy and fair trial recognised by Article 47 of the Charter. This Agreement should be applied in accordance with those rights and principles.
- (5) [In accordance with Article 3 of the Protocol 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, the United Kingdom and Ireland take part in the adoption of this Decision.]
- (6) In accordance with Articles 1 and 2 of the Protocol 22 on the Position of Denmark annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Decision and is not bound by the Agreement or subject to its application,

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<sup>6</sup> OJ ....

<sup>7</sup> OJ ....

HAS ADOPTED THIS DECISION:

*Article 1*

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 European Union.

The text of the Agreement to be concluded is attached to this Decision.

*Article 2*

The President of the Council shall designate the person empowered to proceed, on behalf of the European Union, to the exchange of the instruments of approval provided for in Article 30 of the Agreement, in order to express the consent of the European Union to be bound by the Agreement.

*Article 3*

This Decision shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels,

*For the Council*  
*The President*

## ANNEX

### AGREEMENT BETWEEN CANADA AND THE EUROPEAN UNION ON THE TRANSFER AND PROCESSING OF PASSENGER NAME RECORD DATA

CANADA

-and-

THE EUROPEAN UNION

(the “Parties”)

SEEKING to prevent, combat, repress, and eliminate terrorism and terrorist-related offences, as well as other serious transnational crime, as a means of protecting their respective democratic societies and common values to promote security and the rule of law;

RECOGNISING the importance of preventing, combating, repressing, and eliminating terrorism and terrorist-related offences, as well as other serious transnational crime, while preserving fundamental rights and freedoms, in particular rights to privacy and data protection;

SEEKING to enhance and encourage cooperation between the parties in the spirit of Canada-EU partnership;

RECOGNISING that information sharing is an essential component of the fight against terrorism and related crimes and other serious transnational crime, and that in this context, the use of Passenger Name Record data is a critically important instrument to pursue these goals;

RECOGNISING that, in order to safeguard public security and for law enforcement purposes, rules should be laid down to govern the transfer of PNR data by air carriers to Canada;

RECOGNISING that the Parties share common values with respect to data protection and privacy reflected in their respective law;

MINDFUL of the EU’s commitments pursuant to Article 6 of the Treaty on European Union on respect for fundamental rights, the right to privacy with regard to the processing of personal data as stipulated in Article 16 of the Treaty on the Functioning of the European Union, the principles of proportionality and necessity concerning the right to private and family life, the respect for privacy, and the protection of personal data under Article 8 of the European Convention on the Protection of Human Rights and Fundamental Freedoms, Council of Europe Convention No. 108 for the Protection of Individuals with regard to Automatic Processing of Personal Data and its additional Protocol 181, and Articles 7 and 8 of the Charter of Fundamental Rights of the European Union;

HAVING REGARD to the relevant provisions of the Canadian Charter of Rights and Freedoms and Canadian privacy legislation;

NOTING the European Union's commitment to ensuring that air carriers are not prevented from complying with Canadian law regarding the transfer of European Union-sourced PNR data to Canada pursuant to this Agreement;

ACKNOWLEDGING the successful 2008 joint review of the 2006 Agreement between the Parties on the transfer of PNR;

RECOGNISING that this Agreement is not intended to apply to Advance Passenger Information which is collected and transmitted by air carriers to Canada for the purpose of border control;

RECOGNISING also that this Agreement shall not prevent Canada from continuing to process information from air carriers in exceptional circumstances where necessary to mitigate any serious and immediate threat to air transportation or national security respecting the strict limitations laid down in Canadian law and in any case without exceeding the limitations provided for in this Agreement;

NOTING the interest of the parties, as well as EU Member States, in exchanging information regarding the method of transmission of PNR as well as the disclosure of PNR outside Canada as set forth in the relevant articles of this Agreement, and further noting the EU's interest in having this addressed in the context of the consultation and review mechanism set forth in this Agreement;

NOTING that the Parties may examine the necessity and feasibility of a similar Agreement for the processing of PNR data in the marine mode;

NOTING the commitment of Canada that the Canadian Competent Authority processes PNR data for the purpose of preventing, detecting, investigating and prosecuting terrorist offences and serious transnational crime in strict compliance with safeguards on privacy and the protection of personal data, as set out in this Agreement;

STRESSING the importance of sharing PNR and relevant and appropriate analytical information containing PNR obtained under this Agreement by Canada with competent police and judicial authorities of Member States of the European Union, and Europol and Eurojust as a means to foster international police and judicial cooperation;

AFFIRMING that this Agreement does not constitute a precedent for any future arrangements between Canada and the European Union, or between either of the Parties and any other Party, regarding the processing and transfer of PNR data or regarding data protection;

HAVING REGARD to the parties' mutual commitment to the application and further development of international standards for the processing of PNR data;

HAVE AGREED AS FOLLOWS:

## **General Provisions**

### *Article 1*

#### **Purpose of Agreement**

In this Agreement, the Parties set out the conditions for the transfer and use of Passenger Name Record (PNR) data to ensure the security and safety of the public and prescribe the means by which the data shall be protected.

### *Article 2*

#### **Definitions**

In this Agreement:

- (a) "air carrier" means a commercial transportation company using aircraft as its means of transport for passengers travelling between Canada and the EU;
- (b) "Passenger Name Record data" ("PNR data") means the records created by an air carrier for each journey booked by or on behalf of any passenger, necessary for the



processing and control of reservations. Specifically, as used in this Agreement, PNR data consists of the elements set forth in the Annex to this Agreement;

- (c) "processing" means any operation or set of operations performed on PNR data, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alteration, calling-up, retrieval, consultation, use, transfer, dissemination, disclosure or otherwise making available, alignment or combination, blocking, masking, erasure, or destruction;
- (d) "Canadian Competent Authority" shall mean the Canadian authority responsible for receiving and processing PNR data under this Agreement;
- (e) "sensitive data" is information that reveals racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, or information about a person's health or sex life.

### *Article 3*

#### **Use of PNR**

1. Canada shall ensure that the Canadian Competent Authority processes PNR data received pursuant to this Agreement strictly for the purpose of preventing, detecting, investigating or prosecuting terrorist offences or serious transnational crime.
2. For the purpose of this Agreement, "terrorist offence" includes:
  - (a) an act or omission that is committed for a political, religious or ideological purpose, objective or cause with the intention of intimidating the public with regard to its security, including its economic security, or with the intention of compelling a person, government or domestic or international organization to do or refrain from doing any act, and that intentionally
    - (i) causes death or serious bodily harm;
    - (ii) endangers an individual's life;
    - (iii) causes a serious risk to the health or safety of the public;
    - (iv) causes substantial property damage likely to result in the harm referred to in (i) to (iii); or
    - (v) causes serious interference with or serious disruption of an essential service, facility or system other than as a result of lawful or unlawful advocacy, protest, dissent or stoppage of work, such as a strike, that is not intended to result in the harm referred to in (i) to (iii); or
  - (b) activities constituting an offence within the scope and as defined in applicable international conventions and protocols relating to terrorism; or
  - (c) knowingly participating in or contributing to or instructing a person, a group, or an organisation to carry out any activity for the purpose of enhancing a terrorist entity's ability to facilitate or carry out an act or omission described in (a) or (b); or
  - (d) committing an indictable offence where the act or omission constituting the offence is committed for the benefit of, at the direction of, or in association with a terrorist entity; or

- (e) collecting property or inviting a person, a group, or an organisation to provide, providing or making available property or financial or other related services for the purpose of carrying out an act or omission described in (a) or (b) or using or possessing property for the purpose of carrying out an act or omission described in (a) or (b); or
  - (f) attempting or threatening to commit an act or omission described in (a) or (b), conspiring, facilitating, instructing or counselling in relation to an act or omission described in (a) or (b), or being an accessory after the fact, or harbouring or concealing for the purpose of enabling a terrorist entity to facilitate or carry out an act or omission described in (a) or (b).
  - (g) For the purpose of this Article, “terrorist entity” means:
    - (i) a person, a group, or an organization that has as one of its purposes or activities facilitating or carrying out an act or omission described in (a) or (b); or
    - (ii) a person, a group, or an organization that knowingly acts on behalf of, at the direction of or in association with such a person, group or organization in (i).
3. Serious transnational crime shall mean any offence punishable in Canada by a maximum deprivation of liberty of at least four years or a more serious penalty and as they are defined by the Canadian law, if the crime is transnational in nature.
- For the purpose of this Agreement, a crime is considered as transnational in nature if:
- (a) it is committed in more than one country;
  - (b) it is committed in one country but a substantial part of its preparation, planning, direction or control takes place in another country;
  - (c) it is committed in one country but involves an organised criminal group that engages in criminal activities in more than one country;
  - (d) it is committed in one country but has substantial effects in another country; or
  - (e) it is committed in one country and the offender is in or intends to travel to another country.
4. In exceptional cases, the Canadian Competent Authority may process PNR data where necessary to protect the vital interests of any individual, such as:
- (a) a risk of death or serious injury; or
  - (b) a significant public health risk, in particular as required by internationally recognised standards.
5. Canada may also process PNR data, on a case-by-case basis in order to:
- (a) ensure the oversight or accountability of the public administration; or
  - (b) comply with the subpoena or warrant issued, or an order made, by a court.

#### *Article 4*

#### **Ensuring PNR data is provided**

1. The EU shall ensure that air carriers are not prevented from transferring PNR data to the Canadian Competent Authority pursuant to this Agreement.

2. Canada shall not require an air carrier to provide elements of PNR data which are not already collected or held by the air carrier for reservation purposes.
3. Canada shall delete upon receipt any data transferred to it by an air carrier, pursuant to this Agreement, if that data element is not listed in the Annex.
4. The Parties shall ensure that air carriers may transfer PNR data to the Canadian Competent Authority through authorized agents, who act on behalf of and under the responsibility of the air carrier, for the purpose of and under the conditions laid down in this Agreement.

#### *Article 5*

#### **Adequacy**

Subject to compliance with this agreement, the Canadian Competent Authority is deemed to provide an adequate level of protection, within the meaning of relevant EU data protection law, for the processing and use of PNR data. An air carrier that provides PNR data to Canada under this Agreement is deemed to comply with EU legal requirements for data transfer from the EU to Canada.

#### *Article 6*

#### **Police and judicial cooperation**

1. Canada shall share, as soon as practicable, relevant and appropriate analytical information containing PNR data obtained under this Agreement with Europol, Eurojust, within the scope of their respective mandates, or the police or a judicial authority of a Member State. Canada shall ensure that this information is shared in accordance with agreements, and with due regard for arrangements, on law enforcement or information sharing between Canada and Europol, Eurojust, or that Member State.
2. Canada shall share, at the request of Europol, Eurojust, within the scope of their respective mandates, or the police or a judicial authority of a Member State, PNR data or analytical information containing PNR data obtained under this Agreement, in specific cases to prevent, detect, investigate, or prosecute within the European Union a terrorist offence or serious transnational crime. Canada shall make this information available in accordance with agreements, and with due regard for arrangements, on law enforcement, judicial cooperation or information sharing, between Canada and Europol, Eurojust or that Member State.

### **Safeguards Applicable to the Processing of PNR Data**

#### *Article 7*

#### **Non-Discrimination**

Canada shall ensure that the safeguards applicable to the processing of PNR data apply to all passengers on an equal basis without unlawful discrimination.

## *Article 8*

### **Use of sensitive data**

1. If the PNR data collected regarding a passenger includes sensitive data, Canada shall ensure that the Canadian Competent Authority masks sensitive data using automated systems. Canada shall ensure that the Canadian Competent Authority shall not further process such data except in accordance with paragraphs 3, 4 and 5.
2. Canada shall provide the European Commission with a list of codes and terms identifying sensitive data that Canada is required to mask. Canada shall provide this list within 90 days of the entry into force of the Agreement.
3. Canada may process sensitive data on a case-by-case basis in exceptional circumstances where such processing is indispensable because an individual's life is in peril or there is a risk of serious injury.
4. Canada shall ensure that sensitive data is processed in accordance with paragraph 3 exclusively under strict procedural measures, including the following:
  - (a) Processing of sensitive data is approved by the Head of the Canadian Competent Authority;
  - (b) Sensitive data is processed only by a specifically and individually authorized official; and
  - (c) Once unmasked, sensitive data is not processed using automated systems.
5. Canada shall delete sensitive data no later than 15 days from the date that Canada receives it unless Canada retains it in accordance with Article 16(5).
6. If, in accordance with paragraphs 3, 4 and 5, the Canadian Competent Authority processes sensitive data of an individual who is a citizen of a Member State, Canada shall ensure that the Canadian Competent Authority notifies the authorities of that Member State of the processing at the earliest appropriate opportunity. Canada shall issue this notification in accordance with agreements or with due regard for arrangements on law enforcement or information sharing between Canada and that Member State.

## *Article 9*

### **Data security and integrity**

1. Canada shall implement regulatory, procedural or technical measures to protect PNR data against accidental, unlawful or unauthorized access, processing or loss.
2. Canada shall ensure compliance verification and the protection, security, confidentiality, and integrity of the data. Canada shall:
  - (a) apply encryption, authorization, and documentation procedures to the PNR data;
  - (b) limit access to PNR data to authorized officials;
  - (c) hold PNR data in a secure physical environment that is protected with access controls; and
  - (d) establish a mechanism that ensures that PNR queries are conducted in a manner consistent with Article 3.

3. If an individual's PNR data is accessed or disclosed without authorization, Canada shall take measures to notify that individual, to mitigate the risk of harm, and to take remedial action.
4. Canada shall ensure that the Canadian Competent Authority promptly informs the European Commission of any significant incidents of accidental, unlawful or unauthorized access, processing or loss of PNR data.
5. Any breach of data security, in particular leading to accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, or any unlawful forms of processing shall be subject to effective and dissuasive corrective measures which might include sanctions.

#### *Article 10*

#### **Oversight**

1. The data protection safeguards for the processing of PNR data under this Agreement will be subject to oversight by an independent public authority, or by an authority created by administrative means that exercises its functions in an impartial manner and that has a proven record of autonomy. This authority shall have effective powers to investigate compliance with the rules related to the collection, use, disclosure, retention, or disposal of PNR data. It may conduct compliance reviews and investigations, may report findings and make recommendations to the Canadian Competent Authority. The overseeing authority has the power to refer violations of law related to this Agreement for prosecution or disciplinary action, when appropriate.
2. The relevant authority shall ensure that complaints relating to non-compliance with this Agreement are received, investigated, responded to, and appropriately redressed.

#### *Article 11*

#### **Transparency**

1. Canada shall ensure that the Canadian Competent Authority makes the following available on its website:
  - (a) a list of the legislation authorizing the collection of PNR data;
  - (b) the reason for the collection of PNR data;
  - (c) the manner of protecting the PNR data;
  - (d) the manner and extent to which the data may be disclosed;
  - (e) information regarding access, correction, notation and redress; and
  - (f) contact information for inquiries.
2. The Parties shall work with interested parties, such as the air travel industry, to promote transparency, preferably at the time of booking, by providing the following information to passengers:
  - (a) the reasons for PNR data collection;
  - (b) the use of PNR data;
  - (c) the procedure for requesting access to PNR data; and

- (d) the procedure for requesting the correction of PNR data.

### *Article 12*

#### **Access for individuals**

1. Canada shall ensure that any individual may access their PNR data.
2. Canada shall ensure that the Canadian Competent Authority, within a reasonable time shall:
  - (a) provide the individual with a copy of their PNR data if the individual makes a written request for their PNR data;
  - (b) reply in writing to any request;
  - (c) provide the individual with access to recorded information confirming that the individual's PNR data has been disclosed, if the individual requests that confirmation;
  - (d) set out the legal or factual reasons for any refusal to allow access to the individual's PNR data;
  - (e) inform the individual if the PNR data does not exist;
  - (f) inform the individual that they may make a complaint and of the complaint procedure.
3. Canada may make any disclosure of information subject to reasonable legal requirements and limitations, including any limitations necessary to prevent, detect, investigate, or prosecute criminal offences, or to protect public or national security, with due regard for the legitimate interest of the individual concerned.

### *Article 13*

#### **Correction or Notation for individuals**

1. Canada shall ensure that any individual may request the correction of their PNR data.
2. Canada shall ensure that the Canadian Competent Authority considers all written requests for correction and shall, within a reasonable time:
  - (a) correct the PNR data and notify the individual that the correction has been made; or
  - (b) refuse all or part of the correction and:
    - (i) attach a notation to the PNR data reflecting any correction requested that was refused;
    - (ii) notify the individual that:
      - i. the request for correction is refused, and set out the legal or factual reasons for the refusal;
      - ii. the notation under sub-paragraph (i) is attached to the PNR data; and
  - (c) inform the individual that they may make a complaint and of the complaint procedure.

*Article 14*

**Administrative and judicial redress**

1. Canada shall ensure that an independent public authority, or an authority created by administrative means that exercises its functions in an impartial manner and that has a proven record of autonomy, will receive, investigate and respond to complaints lodged by an individual concerning their request for access, correction or notation of their PNR data. Canada shall ensure that the relevant authority will notify the complainant of the means of seeking the judicial redress set out in paragraph 2.
2. Canada shall ensure that any individual who is of the view that their rights have been infringed by a decision or action in relation to their PNR data may seek effective judicial redress in accordance with Canadian law by way of judicial review, or such other remedy which may include compensation.

*Article 15*

**Decisions based on automated processing**

Canada shall not take any decisions significantly adversely affecting a passenger solely on the basis of automated processing of PNR data.

*Article 16*

**Retention of PNR data**

1. Canada shall not retain PNR data for more than five years from the date that it receives the PNR data.
2. Canada shall restrict access to a limited number of officials specifically authorized by Canada.
3. (a) Canada shall depersonalize through masking the names of all passengers 30 days after Canada receives the PNR data.  
(b) Two years after Canada receives the PNR data, Canada shall further depersonalize through masking the following:
  - (i) other names on PNR, including number of travellers on PNR;
  - (ii) all available contact information (including originator information);
  - (iii) general remarks including other supplementary information (OSI), special service information (SSI) and special service request (SSR) information, to the extent that it contains any information capable of identifying a natural person; and
  - (iv) any advance passenger information (API) data collected for reservation purposes to the extent that it contains any information capable of identifying a natural person.
4. Canada may unmask PNR data only if on the basis of available information, it is necessary to carry out investigations under the scope of Article 3, as follows:
  - (a) from 30 days to two years after initial receipt only by a limited number of specifically authorized officials; and

- (b) from two years to five years after initial receipt, only with prior permission by the Head of the Canadian Competent Authority, or a senior official specifically mandated by the Head.
5. Notwithstanding paragraph 1:
- (a) Canada may retain PNR data, required for any specific action, review, investigation, enforcement action, judicial proceeding, prosecution, or enforcement of penalties, until concluded;
  - (b) Canada shall retain the PNR data referred to in (a) for an additional two-year period only to ensure the accountability of or oversee public administration so that it may be disclosed to the passenger should the passenger request it.
6. Canada shall destroy the PNR data at the end of the PNR data retention period.

*Article 17*

**Logging and Documentation of PNR Data Processing**

Canada shall log all processing of PNR data. Canada shall only use logs or documentation:

- (a) to self-monitor and to verify the lawfulness of data processing;
- (b) to ensure proper data integrity;
- (c) to ensure the security of data processing; and
- (d) to ensure oversight and accountability of the public administration.

*Article 18*

**Disclosure within Canada**

1. Canada shall ensure that the Canadian Competent Authority shall disclose PNR data to other government authorities in Canada if:
- (a) the PNR data is disclosed to government authorities whose functions are directly related to the scope of Article 3;
  - (b) the PNR data is disclosed only on a case-by-case basis;
  - (c) under the particular circumstances the disclosure is necessary for the purposes stated in Article 3;
  - (d) only the minimum amount of PNR data necessary is disclosed;
  - (e) the receiving government authority affords protection equivalent to the safeguards described in this Agreement; and
  - (f) the receiving government authority does not disclose the PNR data to another entity unless the disclosure is authorized by the Canadian Competent Authority respecting the conditions laid down in this paragraph.
2. When transferring analytical information containing PNR data obtained under this Agreement, the safeguards applying to PNR data in this Article shall be respected.



## *Article 19*

### **Disclosure outside Canada**

1. Canada shall ensure that the Canadian Competent Authority may disclose PNR data to government authorities in countries other than the Member States of the European Union only if the following conditions are met:
  - (a) the PNR data is disclosed to government authorities whose functions are directly related to the scope of Article 3;
  - (b) the PNR data is disclosed only on a case-by-case basis;
  - (c) the PNR data is disclosed only if necessary for the purposes stated in Article 3;
  - (d) only the minimum PNR data necessary is disclosed;
  - (e) the Canadian Competent Authority is satisfied that:
    - (i) the foreign authority receiving the PNR data applies standards to protect the PNR data that are equivalent to those set out in this Agreement, in accordance with agreements and with due regard for arrangements that incorporate those standards; or
    - (ii) the foreign authority applies the standards to protect the PNR data that it has agreed with the EU.
2. If, in accordance with paragraph 1, the Canadian Competent Authority discloses PNR data of an individual who is a citizen of a Member State, Canada shall ensure that the Canadian Competent Authority notifies the authorities of that Member State of the disclosure at the earliest appropriate opportunity. Canada shall issue this notification in accordance with agreements or with due regard for arrangements on law enforcement or information sharing between Canada and that Member State.
3. When transferring analytical information containing PNR data obtained under this Agreement, the safeguards applying to PNR data in this Article shall be respected.

## *Article 20*

### **Method of transfer**

The Parties shall ensure that air carriers transfer PNR data to the Canadian Competent Authority exclusively on the basis of the push method and in accordance with the following procedures to be observed by air carriers:

- (a) transfer PNR data by electronic means in compliance with technical requirements of the Canadian Competent Authority or, in case of technical failure, by any other appropriate means ensuring an appropriate level of data security;
- (b) transfer PNR data using a mutually accepted messaging format;
- (c) transfer PNR data in a secure manner using common protocols required by the Canadian Competent Authority.

#### *Article 21*

### **Frequency of transfer**

1. Canada shall ensure that the Canadian Competent Authority requires an air carrier to transfer the PNR data:
  - (a) on a scheduled basis with the earliest point being up to 72 hours before scheduled departure; and,
  - (b) to a maximum of five times, for a particular flight.
2. Canada shall ensure that the Canadian Competent Authority informs air carriers of the specified times for the transfers.
3. In specific cases where there is an indication that additional access is necessary to respond to specific threat related to the scope as described in Article 3, the Canadian Competent Authority may require an air carrier to provide PNR data prior to, between or after the scheduled transfers. In exercising this discretion, Canada shall act judiciously and proportionately and use the method of transfer described in Article 20.

## **Implementing and Final Provisions**

#### *Article 22*

### **PNR data received prior to the entry into force of this Agreement**

Canada shall apply the terms of this Agreement to all PNR data which it holds at the time this Agreement enters into force.

#### *Article 23*

### **Reciprocity**

1. If the European Union adopts a PNR data processing regime for the European Union, the Parties shall consult to determine whether this Agreement should be amended to ensure full reciprocity.
2. Canada and EU authorities shall cooperate to pursue the coherence of their respective PNR data processing regimes in a manner that further enhances the security of citizens of Canada, the EU and elsewhere.

#### *Article 24*

### **Non-derogation**

This Agreement shall not be construed to derogate from any obligation between Canada and Member States of the EU or third countries to make or respond to an assistance request under a mutual assistance instrument.

## *Article 25*

### **Dispute resolution and suspension**

1. The Parties shall resolve any dispute arising from the interpretation, application or implementation of this Agreement through diplomatic channels with a view to reaching a mutually acceptable resolution, including providing an opportunity for either Party to comply within a reasonable time.
2. If the Parties are unable to resolve the dispute, either Party may suspend the application of this Agreement by notification in writing to the other Party, through diplomatic channels. The suspension comes into effect 120 days from the date of such notification, unless the parties jointly decide to do otherwise.
3. The Party that suspends the application of this Agreement shall cease the suspension as soon as the dispute is resolved to the satisfaction of both Parties. The suspending Party shall notify the other Party in writing of the date that the application of the Agreement will resume.
4. Canada shall continue to apply the terms of this Agreement to all PNR data obtained before the suspension of this Agreement.

## *Article 26*

### **Consultation, review and amendments**

1. The Parties shall advise each other of any measure that is to be enacted and that may affect this Agreement.
2. The Parties shall jointly review the implementation of this Agreement one year after its entry into force, and then at regular intervals thereafter and additionally if requested by either Party and jointly decided.
3. The Parties shall jointly evaluate this agreement four years after its entry into force.
4. The Parties shall decide in advance of its modalities and shall communicate to each other the composition of their respective teams. For the purpose of any review, the European Union shall be represented by the European Commission. The teams shall include relevant experts on data protection and law enforcement. Subject to applicable laws, any participants to a review shall be required to respect confidentiality of the discussions and have appropriate security clearances. For the purpose of any review, Canada shall ensure access to relevant documentation, systems and personnel.
5. Following the joint review, the European Commission shall present a report to the European Parliament and to the Council of the European Union. Canada shall be given an opportunity to provide written comments which shall be attached to the report.
6. A Party proposing an amendment to this Agreement shall do so in writing.

#### *Article 27*

#### **Termination**

1. A Party may terminate this Agreement at any time by giving notice to the other Party through diplomatic channels of its intention. This Agreement terminates 120 days after the receipt of the notification by the other Party.
2. Canada shall continue to apply the terms of this Agreement to all PNR data obtained before the termination of this Agreement.

#### *Article 28*

#### **Duration**

1. Subject to paragraph 2, this Agreement shall remain in force for a period of seven years from the date of entry into force.
2. At the end of every seven-year period, the Agreement automatically renews for an additional seven years, unless a Party advises the other Party that it does not intend to renew the Agreement. The Party must notify the other Party, in writing through diplomatic channels, at least six months before the expiry of the seven-year period.
3. Canada shall continue to apply the terms of this Agreement to all PNR data obtained before the termination of this Agreement.

#### *Article 29*

#### **Territorial application**

1. Subject to paragraphs 2 to 4, this Agreement shall apply to the territory in which the Treaty on European Union and the Treaty on the Functioning of the European Union are applicable and to the territory of Canada.
2. This agreement will only apply to the territory of Denmark, the United Kingdom, or Ireland if the European Union, through the European Commission, notifies Canada to that effect.
3. If the European Union, through the European Commission, notifies Canada before the entry into force of this Agreement that it will apply to the territory of Denmark, the United Kingdom or Ireland, this agreement shall apply to the territory of such state on the same day that the Agreement applies to the other European Union Member States.
4. If the European Union, through the European Commission, notifies Canada after the entry into force of this agreement, that it applies to the territory of Denmark, the United Kingdom, or Ireland, this agreement shall apply to the territory of such state five days following the date of the notification.

Article 30

**Final Provisions**

1. Each Party shall notify the other Party in writing when it has completed the procedures necessary for the entry into force of this Agreement. This Agreement shall enter into force on the date of the second of these notifications.
2. Canada will notify the European Commission before the entry into force of the Agreement through diplomatic channels of the identity of the following authorities:
  - (a) the Canadian Competent Authority referred to in Article 2(1)(d); and,
  - (b) the independent public authority and the authority created by administrative means as referred to in Article 10 and Article 14(1).Canada shall notify without delay any changes thereto.
3. The European Union shall publish information referred to in paragraph 2 in the Official Journal of the European Union.
4. This Agreement replaces any prior arrangements on the processing of API and PNR data including the Agreement between the Government of Canada and the European Community on the Processing of Advance Passenger Information and Passenger Name Record Data, 22 March 2006.

Done in duplicate at xyz, on xyz, in the English and French languages. This Agreement shall also be drawn up in the Bulgarian, Czech, Danish, Dutch, Estonian, Finnish, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages. Once approved by the Parties by exchange of notes, each version shall be considered equally authentic. In case of divergence between the language versions, the English and French versions shall prevail.

FOR CANADA

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FOR THE EUROPEAN UNION

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## **ANNEX**

### **Passenger Name Record data elements**

1. PNR locator code;
2. date of reservation/ issue of ticket;
3. date(s) of intended travel;
4. name(s);
5. available frequent flyer and benefit information (i.e., free tickets, upgrades, etc.);
6. other names on PNR, including number of travellers on PNR;
7. all available contact information (including originator information);
8. all available payment/billing information (not including other transaction details linked to a credit card or account and not connected to the travel transaction);
9. travel itinerary for specific PNR;
10. travel agency/travel agent;
11. code share information;
12. split/divided information;
13. travel status of passenger (including confirmations and check-in status);
14. ticketing information, including ticket number, one way tickets and Automated Ticket Fare Quote;
15. all baggage information;
16. seat information, including seat number;
17. general remarks including Other Supplementary Information (OSI), Special Service Information (SSI) and Special Service Request (SSR) information;
18. any Advance Passenger Information (API) data collected for reservation purposes;
19. all historical changes to the PNR data listed in numbers (1) to (18).