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EUROPEAN COMMISSION

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2009/0187 (NLE)

Proposal for a

COUNCIL DECISION

**on the conclusion of the Agreement between the European Union and the United States
of America
on 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)**

EXPLANATORY MEMORANDUM

- The Justice and Home Affairs Council of 23 July 2007 authorised the Presidency of the Council of the European Union to sign an agreement between the European Union and the United States of America on the processing and transfer of Passenger Name Record (PNR) data by air carriers to the United States Department of Homeland Security (DHS). The Agreement was signed by the European Union on 23 July 2007 and by the United States on 26 July 2007 and is applied provisionally as from 26 July 2007.
- The purpose of the Agreement is to ensure the exchange of European passenger information, known as Passenger Name Record or PNR data with the United States Department of Homeland Security pursuant to which its services assess the risk a passenger may pose to American security.
- The aim of the agreement is to provide a legal basis for the exchange of information relevant for law enforcement and judicial authorities between the EU and the United States for the fight against terrorism and related transnational crime, including organised crime, in this case PNR data, thereby providing legal certainty for airlines, passengers and data protection authorities, whilst ensuring the protection of citizens' privacy as well as their physical security. In addition an EU agreement enables to apply this approach homogeneously throughout the European Union in order to ensure respect for individuals' right to privacy and to avoid distortion of competition between airlines.

- The Agreement aims to prevent and combat terrorism while respecting fundamental rights, and notably the protection of personal data. The Agreement between the European Union and the United States of America on the processing and transfer of Passenger Name Record (PNR) data by air carriers to the United States Department of Homeland Security aims to ensure full respect for fundamental rights enshrined in Article 6 of the Treaty on European Union and for the principles of proportionality and necessity regarding the right to respect for private and family life and the protection of personal data as set out in Articles 7 and 8 of the Charter of Fundamental Rights of the European Union.
- Article 218(6)(a) of the Treaty on the Functioning of the European Union states that in the case of agreements covering fields to which the ordinary legislative procedure applies, the Council shall adopt a decision concluding the agreement, after obtaining the consent of the European Parliament.

- The Commission therefore recommends to the Council, after obtaining the consent of the European Parliament, to adopt a decision concluding the Agreement between the European Union and the United States of America on the processing and transfer of Passenger Name Record (PNR) data by air carriers to the United States Department of Homeland Security.

Proposal for a

COUNCIL DECISION

of [xx.xx.2010]

on the conclusion of the Agreement between the European Union and the United States of America on 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 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 Commission,

Having regard to the consent of the European Parliament¹,

Whereas:

- (1) On 22 February 2007 the Council decided to authorise the Presidency, assisted by the Commission, to open negotiations for a long-term agreement between the European Union and the United States of America on the processing and transfer of Passenger Name Record (PNR) data by air carriers to the United States Department of Homeland Security (DHS).
- (2) In accordance with Council Decision 2007/551/CFSP/JHA of 23 July 2007² the Agreement between the European Union and the United States of America on the processing and transfer of Passenger Name Record (PNR) data by air carriers to the United States Department of Homeland Security (DHS) was signed on ..., subject to its conclusion at a later date.
- (3) In accordance with its point 9) the provisions of the Agreement are applied on a provisional basis, as from the date of its signature.
- (4) The Agreement has not yet been concluded. With the entry into force of the Lisbon Treaty on 1 December 2009, the procedures to be followed to that end by the European Union are governed by Article 218 of the Treaty on the Functioning of the European Union.

¹ OJ C [...], [...], p. [...].

² OJ L 204, 4.8.2007, p. 16.

- (5) The Agreement should be concluded.
- (6) [In accordance with Article 3 of the Protocol 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.]
- (7) In accordance with Articles 1 and 2 of the Protocol 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,

HAS ADOPTED THIS DECISION:

Article 1

The Agreement between the European Union and the United States of America on the processing and transfer of Passenger Name Record (PNR) data by air carriers to the United States Department of Homeland Security (DHS)³, together with the accompanying letter from the DHS and the letter from the European Union in reply is hereby concluded.

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 point 9 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 of its adoption. It shall be published in the *Official Journal of the European Union*.

The date of entry into force of the Agreement shall be published in the *Official Journal of the European Union*.

Done at Brussels, [...]

For the Council
The President

[...]

³ OJ L 204, 4.8.2007, p. 18.

ANNEX