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Delegations will find attached document COM(2021) 17 final.

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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND  
THE COUNCIL**

**on the joint evaluation of Agreement between the European Union and Australia on the  
processing and transfer of Passenger Name Record (PNR) data by air carriers to the  
Australian Customs and Border Protection Service**

{SWD(2021) 3 final}

# **REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL**

## **On the joint evaluation of the Agreement between the European Union and Australia on the processing and transfer of Passenger Name Record (PNR) data by air carriers to the Australian Customs and Border Protection Service**

### Introduction

The Agreement between the European Union and Australia on the processing and transfer of passenger name record (PNR) data by air carriers to the Australian customs service entered into force on 1 June 2012<sup>1</sup>. The Agreement, under Article 24(4), states that both parties shall evaluate the Agreement, in particular its operational effectiveness, no later than four years after its entry into force.

The joint evaluation consists of a more thorough examination of the Agreement, by exploring the wider functioning and operationally added value and assessing its results, impacts, effectiveness, necessity and proportionality. It also offers an opportunity to take stock of any impact caused by the evolution of the relevant legal framework and case law of both parties. Hence, the joint evaluation takes a wider approach than the joint reviews, whereby both parties assess whether the Agreement is being implemented correctly.

### Preparation process for the joint evaluation and Report

- The Commission sent a questionnaire to the Department of Home Affairs (herein after “the Department”) of Australia on 28 June 2019 in advance of the joint evaluation. The Department provided written draft replies to the questionnaire prior to the joint evaluation and a final consolidated version thereafter.
- The EU team conducted the joint evaluation visit on 15 August 2019.
- At the request of the Department, all members of the EU team signed a copy of a non-disclosure agreement as a condition for their participation in this review exercise.
- The replies to the questionnaire were discussed in detail with the Department. The EU team also had the opportunity and the time to raise further questions with Department officials and address all the various aspects of the Agreement.

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<sup>1</sup> Agreement between the European Union and Australia on the processing and transfer of Passenger Name Record (PNR) data by air carriers to the Australian Customs and Border Protection Service, OJ L 186, 14.7.2012, p. 4.

- The findings of the EU team were laid down in the accompanying Staff Working Document which was shared with the Department, providing Australia with the opportunity to comment on inaccuracies and identify information which cannot be disclosed to public audiences.

The accompanying Staff Working Document provides more detailed information and a comprehensive analysis of the methodology of the joint evaluation and all matters covered by this report.

### Findings of the Joint Evaluation

The main findings of the joint evaluation can be summarised as follows:

The evaluation teams have discussed different ways in which PNR data are used for purposes of preventing, detecting, investigating, and prosecuting terrorist offenses and related crimes and certain other crimes that are transnational in nature. The joint evaluation confirmed that PNR data contains elements that are not available through other means, and in particular, the information contained within PNR data cannot be found in any other type of data collection.

The necessity of the collection of PNR data was also demonstrated by its ability to assist the relevant authorities in identifying high risk travellers who are not otherwise known to law enforcement agencies. Moreover, the usefulness of retained - so called historical - PNR data has been illustrated by numerous examples in which historical PNR data had been crucial in solving high-profile counterterrorism cases not only in Australia but also in the EU.

In addition, the joint evaluation also takes note of the growing interest in the use of PNR worldwide for anti-terrorism and law enforcement purposes and newly created international obligations. In this context, particular reference is made to the adoption of the EU PNR Directive<sup>2</sup> and, globally, to the new Standards and Recommended Practices (or SARPs) on the collection, use, processing and protection of PNR data by the International Civil Aviation Organisation (ICAO), as mandated by United Nations Security Council Resolution 2396 (2017)<sup>3</sup>.

Finally, the evaluation teams also discussed Court's Opinion 1/15 on the envisaged EU Canada PNR Agreement.<sup>4</sup>

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<sup>2</sup> Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime, OJ L 119, 4.5.2016, p. 132.

<sup>3</sup> Resolution 2396 (2017) - Adopted by the Security Council at its 8148th meeting, on 21 December 2017.

<sup>4</sup> Opinion 1/15 of the Court (Grand Chamber), ECLI:EU:C:2017:592.

## Conclusions

The joint evaluation has clearly demonstrated the added value and operational effectiveness of the Agreement in the fight against terrorism and serious transnational crime. Examples provided during the evaluation have shown that PNR, including historical PNR data, being a unique dataset, have been critical to prevent the return of foreign terrorist fighters and to combat in particular drug crimes and child exploitation. In addition, the Agreement's objectives are consistent with the international obligations to collect, process and analyse PNR data for effective border controls to prevent terrorist travel as well as to help making connections between individuals associated to organised crime, and prosecute terrorism and organised crime.

At the same time, the EU team noted that that despite the numerous safeguards contained therein, several aspects of the Agreement are not fully in line with Opinion 1/15 of the Court of Justice on the envisaged PNR Agreement with Canada, as the Australia Agreement was concluded before the Court delivered its Opinion. These concern the notifications to passengers, the retention of PNR data, onward transfers and the need for a prior independent review of the use of PNR data.

The Commission recognises the efforts made by Australia to comply with the requirements of the Agreement as proven by the joint review<sup>3</sup> and takes note of the importance Australia places regarding the necessity to retain historical PNR data.

Against this background, parties committed to continue their constructive dialogue on the implementation of the Agreement and to work on the recommendations from the Joint Review and this Evaluation in the light of the Court's Opinion on the envisaged EU Canada PNR Agreement. In this context, the Commission will assess the necessary follow-up action also taking into account the feedback received by the European Parliament and Council on this Evaluation.

Generally, the Commission will review the EU external strategy towards PNR transfers to third countries next year.

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<sup>5</sup> Report from the Commission to the European Parliament and the Council on the joint review of the implementation of the Agreement between the European Union and Australia on the processing and transfer of Passenger Name Record (PNR) data by air carriers to the Australian Customs and Border Protection Service, COM(2020)701final.