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#### 'I/A' ITEM NOTE

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From: General Secretariat of the Council  
To: Permanent Representatives Committee/Council

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No. prev. doc.: 7376/2/21 REV 2

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Subject: Draft Council Conclusions on the transfer of Passenger Name Record (PNR) data to third countries, in particular Australia and the United States, for the purpose of combating terrorism and serious crime  
*- Approval*

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1. The Presidency suggested to display the Council's position on the issue of PNR data exchange with third countries by means of 'Council Conclusions on the transfer of PNR data to third countries, in particular Australia and the United States, for the purpose of combating terrorism and serious crime'.
2. The main message of the Council Conclusions is to stress the importance of both PNR data exchange and its compliance with fundamental rights as well as of a constructive dialogue between the European Union and its global partners in this respect.
3. The draft Council Conclusions (7376/21) were met with preliminary support following a first exchange of views in the VTC meeting of the Working Party on JHA Information Exchange (IXIM) on 21 April 2021, during which the members of the IXIM WP agreed on the Presidency suggestion that JHA counsellors finalize the draft.

4. In their VTC meeting on 7 May 2021, JHA Counsellors agreed on the draft Council Conclusions, subject to the addition set out in the first revised version. No observation was submitted to the General Secretariat within the given deadline (Monday, 10 May 2021, 13h00). Furthermore, no observations were submitted within the given deadline (Wednesday, 12 May 2021, 10h00) on the second revised version including a second addition.
  5. Since no delegation notified a reservation on the revised draft Council Conclusions, the draft is deemed agreed upon as set out in 7376/2/21 REV 2.
  6. *Coreper is invited to submit the draft Council Conclusions in annex to the Council and to suggest that it approves these Conclusions as an 'A' item on its agenda.*
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**Draft COUNCIL CONCLUSIONS**

**on the transfer of Passenger Name Record (PNR) data to third countries,**

**in particular Australia and the United States,**

**for the purpose of combating terrorism and serious crime**

THE COUNCIL OF THE EUROPEAN UNION,

1. HAVING IN MIND 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<sup>1</sup>, and the Agreement between the United States of America and the European Union on the use and transfer of passenger name records to the United States Department of Homeland Security<sup>2</sup> ('the Agreements'), which entered into force on 1 June 2012 and on 1 July 2012 respectively,
2. EMPHASISING that these Agreements aim to ensure security and to protect the life and safety of the public, and set forth the conditions under which EU sourced PNR data may be transferred, processed and used, and the manner in which those data shall be protected,
3. REMINDING that the conditions and safeguards for receiving and processing PNR data collected by airlines in third countries, including in the United States and Australia, on flights scheduled to land to or depart from the European Union Member States, are set out by Directive (EU) 2016/681 of the European Parliament and of the Council,

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<sup>1</sup> OJ L 186, 14.7.2012, p.4.

<sup>2</sup> OJ L 215, 11.8.2012, p. 5.

4. CONSIDERING that the Reports<sup>3</sup> on the joint review and the joint evaluation of the implementation of the PNR Agreement between the European Union and Australia, and on the joint evaluation of the PNR Agreement between the United States and the European Union, were submitted to the European Parliament and to the Council by the Commission on 12 January 2021, and preliminarily discussed on 3 February 2021 in the informal videoconference of the members of the Working Party on JHA Information Exchange (IXIM),
5. EMPHASISING that both joint evaluations demonstrated the added value and operational effectiveness of the PNR Agreements with both Australia and the United States in the fight against terrorism and serious transnational crime, namely to facilitate effective border controls, to prevent terrorist travel, to help identifying individuals associated to organised crime such as trafficking, and to investigate and prosecute terrorism and organised crime,
6. ACKNOWLEDGING the efforts made by Australia and the United States to comply with the requirements of the Agreements in both technical and organisational aspects, including as regards the protection of passengers' personal data,
7. RECOGNISING that despite the numerous safeguards contained in the Agreements several aspects therein are not fully in line with Opinion 1/15 of the Court of Justice of the EU, which was issued on 26 July 2017 after the entry into force of the Agreements and related to the envisaged PNR Agreement with Canada,

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<sup>3</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 (5288/21 + ADD 1).  
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 (5285/21 + ADD 1).  
Report from the Commission to the European Parliament and the Council on the joint evaluation of the Agreement between the United States of America and the European Union on the use and transfer of passenger name records to the United States Department of Homeland Security (5291/21 + ADD 1).

8. TAKING NOTE of the positions expressed by Australia and the United States, in particular as regards the importance and necessity to retain historical PNR data in order to effectively perform their law enforcement activities,
9. UNDERLINING that the Agreements' objectives are consistent with the international obligations to collect, process and exchange PNR data in line with the Resolutions of the United Nations Security Council<sup>4</sup>, requiring all States to develop the capability to collect and use PNR data, based on which Standards and Recommended Practices on PNR (SARPs) were adopted by the International Civil Aviation Organization (ICAO) in 2020 by means of Amendment 28 to Annex 9 of the Chicago Convention,
10. TAKING NOTE of the Union position established by Council Decision (EU) 2021/121<sup>5</sup> which welcomes the entry into operation of these SARPs and, by means of registering a difference, informs ICAO and its contracting States how the EU Member States intend to implement the Standards in line with the Charter of Fundamental Rights of the European Union as interpreted by Opinion 1/15 of the Court of Justice of the EU,
11. CALLING SPECIAL ATTENTION to the Charter of Fundamental Rights of the European Union as integral part of the Union's multi-layered fundamental rights protection system, and to the recently adopted Council Conclusions on strengthening the application of the Charter of Fundamental Rights in the European Union<sup>6</sup>,
12. EMPHASISING the Union's global cooperation agreements, in particular with the United States, in the fight against terrorism,
13. WELCOMES the adoption by the Commission of the Reports on the joint evaluation of the PNR Agreement with the United States, on the joint evaluation and on the joint review of the PNR Agreement with Australia,

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<sup>4</sup> Resolution 2396 (2017) - Adopted by the Security Council at its 8148th meeting, on 21 December 2017 and Resolution 2482 (2019) - Adopted by the Security Council at its 8582nd meeting, on 19 July 2019.

<sup>5</sup> OJ L 37, 3.2.2021, p. 6.

<sup>6</sup> 6795/21.

14. NOTES that PNR data received under these Agreements have clearly demonstrated to represent a unique dataset, which is critical to prevent the return of foreign terrorist fighters and to combat, in particular, drug crimes and child exploitation,
15. REITERATES that exchanges of PNR data with these partner countries remain key for ensuring our common public security,
16. APPRECIATES the continuation of the dialogue with both countries to work on the recommendations from the joint evaluations, without jeopardising the operational effectiveness of the Agreements,
17. ENCOURAGES the Commission to assess the necessary follow-up actions to the joint evaluations,
18. STRESSES the importance to ensure that PNR data are exchanged and processed in full respect of fundamental rights and EU data protection requirements,
19. NOTES that, while complying with Opinion 1/15 of the Court of Justice of the EU, in order to use PNR data to their full potential and in pursuit of the purposes of the international exchange of PNR data, their adequate retention is key,
20. CALLS ON the Commission to pursue a consistent and effective approach regarding the transfer of PNR data to third countries for the purpose of combating terrorism and serious crime, building on the ICAO SARPs, and in line with the relevant requirements established under Union law.