

EU/Australia agreement: processing and transfer of EU-sourced passenger name record (PNR) data by air carriers to the Australian Customs Service

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PURPOSE: to conclude the Agreement between the EU and Australia on the processing and transfer of EU-sourced passenger name record (PNR) data by air carriers to the Australian Customs Service.

PROPOSED ACT: Council Decision.

BACKGROUND: the Justice and Home Affairs Council of 30 June 2008 authorised the Presidency of the Council of the European Union to sign an agreement between the European Union and Australia on the processing and transfer of European Union-sourced passenger name record (PNR) data by air carriers to the Australian Customs Service. The Agreement was signed by the Parties on 30 June 2008 and is applied provisionally as from that date. - Australian border protection legislation empowers Australian Customs to risk assess international airlines' PNR data prior to passenger arrival in Australia. This legislation aims at enhancing the security of the Australian border and territory and serves in particular to implement the Government's 2001 election programme to **increase national security**.

CONTENT: the main purpose of the Agreement is to ensure the exchange of European passenger information, known as Passenger Name Record or PNR data with Australian Customs pursuant to which this service assesses the risk a passenger may pose to Australian security.

Within this context, the agreement provides a legal basis for the exchange of law enforcement relevant information between the EU and Australia 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 EU in order to ensure respect for individuals' right to privacy and to avoid distortion of competition between airlines.

Respecting Fundamental Rights: the Agreement aims to prevent and combat terrorism while respecting fundamental rights, and notably the protection of personal data. It 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.

Territorial application: the UK and Ireland will take part in the adoption of the Decision. Denmark will not be bound by the Agreement.

It should be noted that in accordance with Article 218(6)(a) of the Treaty on the Functioning of the European Union, it is provided 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**.