

# Procedure file

Basic information		
NLE - Non-legislative enactments Decision	<a href="#">2011/0126(NLE)</a>	Procedure completed
EU/Australia agreement: processing and transfer of passenger name record (PNR) data by air carriers to the Australian Customs and Border Protection Service		
See also <a href="#">2011/0023(COD)</a>		
Subject		
1.20.09 Protection of privacy and data protection		
3.20.01 Air transport and air freight		
7.30 Police, judicial and customs cooperation in general		
Geographical area		
Australia		

Key players				
European Parliament	Committee responsible	Rapporteur	Appointed	
	<b>LIBE</b> Civil Liberties, Justice and Home Affairs		29/09/2011	
		ALDE <a href="#">IN 'T VELD Sophia</a>		
	Committee for opinion	Rapporteur for opinion	Appointed	
	<b>AFET</b> Foreign Affairs		21/06/2011	
		PPE <a href="#">MACOVEI Monica</a>		
	<b>TRAN</b> Transport and Tourism	The committee decided not to give an opinion.		
Council of the European Union	Council configuration	Meeting	Date	
	<a href="#">Justice and Home Affairs (JHA)</a>	<a href="#">3135</a>	13/12/2011	
	<a href="#">Justice and Home Affairs (JHA)</a>	<a href="#">3121</a>	27/10/2011	
	<a href="#">Justice and Home Affairs (JHA)</a>	<a href="#">3111</a>	22/09/2011	
European Commission	Commission DG	Commissioner		
	<a href="#">Migration and Home Affairs</a>	MALMSTRÖM Cecilia		

Key events			
19/05/2011	Preparatory document	<a href="#">COM(2011)0281</a>	Summary
13/09/2011	Legislative proposal published	<a href="#">09825/2011</a>	Summary
12/10/2011	Committee referral announced in Parliament		
17/10/2011	Vote in committee		Summary

18/10/2011	Committee report tabled for plenary, 1st reading/single reading	<a href="#">A7-0364/2011</a>	
26/10/2011	Debate in Parliament		
27/10/2011	Results of vote in Parliament		
27/10/2011	Decision by Parliament	<a href="#">T7-0470/2011</a>	Summary
13/12/2011	Act adopted by Council after consultation of Parliament		
13/12/2011	End of procedure in Parliament		
14/07/2012	Final act published in Official Journal		

### Technical information

Procedure reference	2011/0126(NLE)
Procedure type	NLE - Non-legislative enactments
Procedure subtype	Consent by Parliament
Legislative instrument	Decision
	See also <a href="#">2011/0023(COD)</a>
Legal basis	Treaty on the Functioning of the EU TFEU 218-p6a; Treaty on the Functioning of the EU TFEU 087-p2; Treaty on the Functioning of the EU TFEU 082-p1
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/7/06080

### Documentation gateway

Preparatory document		<a href="#">COM(2011)0281</a>	19/05/2011	EC	Summary
Document attached to the procedure		N7-0102/2011 <a href="#">OJ C 322 05.11.2011, p. 0001</a>	15/07/2011	EDPS	Summary
Legislative proposal		<a href="#">09825/2011</a>	13/09/2011	CSL	Summary
Document attached to the procedure		<a href="#">10093/2011</a>	13/09/2011	CSL	
Committee draft report		<a href="#">PE472.321</a>	10/10/2011	EP	
Committee opinion	<b>AFET</b>	<a href="#">PE472.193</a>	12/10/2011	EP	
Committee report tabled for plenary, 1st reading/single reading		<a href="#">A7-0364/2011</a>	18/10/2011	EP	
Text adopted by Parliament, 1st reading/single reading		<a href="#">T7-0470/2011</a>	27/10/2011	EP	Summary
Follow-up document		COM(2014)0458	10/07/2014	EC	Summary
Follow-up document		SWD(2014)0236	10/07/2014	EC	
Follow-up document		<a href="#">COM(2021)0017</a>	12/01/2021	EC	
Follow-up document		<a href="#">COM(2021)0019</a>	12/01/2021	EC	
Follow-up document		SWD(2021)0003	12/01/2021	EC	
Follow-up document		SWD(2021)0005	12/01/2021	EC	

<a href="#">Additional information</a>	
National parliaments	<a href="#">IPEX</a>
European Commission	<a href="#">EUR-Lex</a>
<a href="#">Final act</a>	
<a href="#">Decision 2012/381</a> <a href="#">OJ L 186 14.07.2012, p. 0003</a> Summary	

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

**PURPOSE:** to conclude an 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.

**PROPOSED ACT:** Council Decision.

**BACKGROUND:** Australian legislation empowers the Australian Customs Service to require each air carrier operating passenger flight to and from Australia to provide it with electronic access to Passenger Name Record (PNR) data prior to the passenger arriving or leaving Australia. The requirements of the Australian authorities are based on the Customs Act 1901, the Customs Administration Act 1985, the Migration Act 1958, the Crimes Act 1914, the Privacy Act 1988 and the Freedom of Information Act 1982. This legislation aims at obtaining PNR data electronically in advance of a flight's arrival and therefore significantly enhances the Australian Customs Service's ability to conduct efficient and effective advance risk assessment of passenger and to facilitate bona fide travel, thereby enhancing the security of Australia.

The European Union in cooperating with Australia in the fight against terrorism and other serious transnational crime views the transfer of data to Australia as fostering international police and judicial cooperation which will be achieved through the transfer of analytical information flowing from PNR data by Australia to the competent Member States authorities as well as Europol and Eurojust within their respective competences.

The European Union signed an agreement in 2008 with Australia on the transfer and processing of PNR data based on a set of commitments by the Australian Customs Service in relation to the application of its PNR programme.

Following the entry into force of the Lisbon Treaty and pending the conclusion of the agreement, the Council sent the 2008 Australia Agreement to the European Parliament for its consent for the conclusion. The European Parliament adopted a resolution in which it decided to postpone its vote on the requested consent and requesting a renegotiation of the Agreement on the basis of certain criteria (see [RSP/2010/2657](#)). Pending such renegotiation, the 2008 Agreement would remain provisionally applicable.

On 23 September 2010, the Council received three recommendations from the Commission to authorise the opening of negotiations for an Agreement between the European Union and Australia for the transfer and use of Passenger Name Record (PNR) data to prevent and combat terrorism and other serious transnational crime. On 11 November 2010, the European Parliament adopted a resolution on the Recommendation from the Commission to the Council to authorise the opening of the 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. It is now proposed to conclude the Agreement.

**IMPACT ASSESSMENT:** no impact assessment was undertaken.

**LEGAL BASIS:** Articles 82(1)(d) and 87(2)(a), in conjunction with Article 218 (6)(a) of the TFEU.

**CONTENT:** the proposal aims to conclude 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.

**PNR and basic principles of the Agreement:** to recall, 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 Australian Customs Service 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. However, the data protection laws of the EU do not allow European and other carriers operating flight 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. Accordingly, a solution is required that will provide the legal basis for the transfer of PNR data from the EU to Australia 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 avoiding legal uncertainty for air carriers. In addition, this solution should be applied homogeneously throughout the European Union in order to ensure a legal certainty for air carriers and respect of individuals' rights to the protection of personal data as well as their physical security.

**Safeguards:** the Agreement has secured several important safeguards for those 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. Individuals are provided with the right to access, correction, redress and information. The data will be transferred using exclusively the 'push' method and the use of sensitive data is prohibited.

**Retention period:** the retention period of the PNR data is limited and the data will be depersonalised after a certain period.

**Compliance:** compliance with these rules shall be subject to independent oversight by the Australian Information Commissioner.

Fundamental rights: the 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, the right to the protection of personal data, and the right to effective remedy and fair trial.

The United Kingdom and Ireland take part in the adoption of the Decision.

BUDGETARY IMPLICATIONS: the proposal has no implications for the EU budget.

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

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Opinion of the European Data Protection Supervisor on the proposal for a Council decision on the conclusion of an 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.

The EDPS notes that he has already been consulted informally in the course of May 2011 on this proposal. Considering that his comments remain valid with regard to the substance of the proposal, the EDPS has decided to make his observations more widely available in the form of a public opinion. He uses this occasion to raise some further issues and encourages Council and Parliament to take these views into account.

Necessity and proportionality: the EDPS states that the necessity and proportionality of PNR schemes have to be demonstrated. These two fundamental requirements are essential aspects of data protection law, under Articles 7 and 8 of the Charter of Fundamental Rights and Article 16 of the TFEU. The EU has to ensure that the requirements of EU data protection law are met, also in cases where data of European citizens are processed and transferred from the EU territory to a third country. In such cases, the necessity and proportionality have to be evaluated and established, before any agreement can be signed. In addition to elements supporting the necessity of the PNR scheme, proportionality requires an adequate balance between the purpose followed and the processing of massive amounts of data resulting in a serious intrusion in the private life of individuals.

As far as PNR schemes are concerned, the purpose is to fight terrorism and serious (transnational) crimes, using the collection of massive amounts of data relating to all passengers, in order to perform risk assessment on these passengers. Up to now, the EDPS has not seen any convincing elements in the justifications presented for existing PNR schemes or for those being envisaged, such as the EU PNR scheme which he analysed in detail in his opinion of March 2011.

Besides, even if necessity were established, the EDPS emphasises that the proportionality test still needs to be met. He questions the balance between the processing of personal data on a large scale and the purpose followed, especially in view of the variety of crimes included in the scope of application of the draft agreement. He takes into account that for the fight of terrorism and serious crime other effective instruments are available.

His remaining comments are without prejudice to this preliminary and fundamental observation. Whilst welcoming the safeguards provided in the proposal, particularly with regard to data security aspects, supervision and enforcement provisions, the EDPS has also identified a significant margin for improvement, especially with regard to the following:

Scope: the EDPS welcomes the exclusion of the processing of sensitive data from the scope of application, but notes that sensitive data may be processed. The agreement provides that these data may be sent in a first stage by the airlines, and then deleted by public authorities in a second stage. The sending by the airlines is an act of processing. The EDPS considers that airlines should be obliged to filter out sensitive data at the source of the processing.

Definitions: the EDPS regrets that the present definitions are wider than the definitions of the proposal for a directive on EU-PNR, which itself should still have been further narrowed down, especially with regard to minor offences.

While in the EU-PNR proposal definitions take into account the consequences of activities defined as terrorist, such as concrete damages to persons or governments (death, attacks upon the physical integrity, destruction to a transport system, an infrastructure facility, etc.), the proposal is less specific and more purpose-oriented when it refers to intimidating persons, governments, or seriously destabilising fundamental political or economic structures. The EDPS considers that more precision is needed in relation to the notions of intimidating, compelling and coercing, as well as the fundamental political, constitutional, economic, or (especially) social structures of a country or an international organisation. This would prevent the application of the PNR scheme in cases which it should in any event not target, such as legitimate activities (for instance peaceful demonstrations) in a social, cultural or political context

Inclusion of some exceptional purposes: the possibility of processing data in other exceptional cases raises additional questions, especially as it extends to threat to health. The EDPS considers that such an extension of purpose is disproportionate, especially as alternative and more specific procedures can be available to deal with important threats to health where needed on a case-by-case basis. Besides, PNR data is not the most appropriate tool to identify passengers: more reliable data do exist, in particular API data.

Retention period for PNR data: the EDPS considers the length of the data retention period as one of the major difficulties in the proposal. A period of retention of five and a half years, including three years without any masking of data, is clearly disproportionate, especially if this retention period is compared with the previous Australian PNR scheme, which did not provide for the storage of data except on a case-by-case basis. Extensive justification should be given to explain why such a long period of retention, which was not deemed necessary in the first Australian PNR scheme, is now needed. The EDPS considers that the complete (i.e. irreversible) anonymisation of all data should take place, if not immediately after analysis, after 30 days as a maximum.

Legal basis: the legal basis for the agreement should be reconsidered. Against the background of settled case law, and apart from Article 218(6)(a), the EDPS believes that the agreement should in any case primarily be based on Article 16 of the TFEU and not on Article 82(1)(d) and Article 87(2)(a) of the TFEU. This is completely in line with Declaration 21 to the Lisbon Treaty.

These observations should be read in the wider context of the legitimacy of any PNR scheme, seen as the systematic collection of passenger's data for risk assessment purposes. Only if the scheme respects the fundamental requirements of necessity and proportionality under Articles 7 and 8 of the Charter of Fundamental Rights and Article 16 of the TFEU, could a proposal satisfy the other requirements of the data protection framework.

The EDPS therefore also concludes that more attention should be given to these fundamental requirements in the final evaluations that will precede the conclusion of the agreement.

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

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**PURPOSE:** to conclude an 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.

**PROPOSED ACT:** Council Decision.

**BACKGROUND:** on 2 December 2010, the Council adopted a Decision authorising the Commission to open negotiations on behalf of the Union with Australia for the transfer and use of Passenger Name Record (PNR) data to prevent and combat terrorism and other serious transnational crime.

In accordance with a Council Decision, 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 has been signed, subject to its conclusion at a later date.

It is now necessary to conclude the Agreement on behalf of the EU.

**IMPACT ASSESSMENT:** no impact assessment was carried out.

**LEGAL BASIS:** Articles 82(1)(d) and 87(2)(a), in conjunction with Article 218 (6)(a) of the TFEU.

**CONTENT:** by this proposal, 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 is hereby approved on behalf of the Union.

The 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 respect for private and family life, the right to the protection of personal data, and the right to effective remedy and fair trial. The Agreement should be applied in accordance with those rights and principles.

The text of the Agreement is attached to this Decision. For further details as regards the content of the Agreement, please refer to the previous initial legislative document dated 19/05/2011.

**BUDGETARY IMPLICATION:** this proposal has no implications for the EU budget.

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

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The Committee on Civil Liberties, Justice and Home Affairs adopted the report drafted by Sophia in 't VELD (ADLE, NL) in which it recommends the European Parliament to give its consent to the conclusion 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.

The report recalls that third countries are sovereign states that determine the requirements for persons to enter their country. Therefore, the European Union cannot ban the collection, storage and use of PNR data by third countries. The EU only gets to decide whether the conditions for the transfer of those data are in line with EU data protection standards. It must be borne in mind that third countries are sovereign states that determine the requirements for persons to enter their country. Therefore, the European Union cannot ban the collection, storage and use of PNR data by third countries. The European Union only gets to decide whether the conditions for the transfer of those data are in line with EU data protection standards. In the absence of an agreement, third countries will continue to collect and store PNR data of European citizens.

On 5 May 2010 and 11 November 2010, the European Parliament set out its criteria for giving its consent to agreements with third countries on the transfer of PNR data.

These criteria were:

- the necessity for mass collection and storage of PNR data must be demonstrated, supported by factual evidence for each of the stated purposes;
- the proportionality (i.e. that the same end cannot be achieved with less intrusive means) must be demonstrated;
- the purpose must be limited clearly and strictly on the basis of clear legal definitions based on definitions in Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism and in Council Framework Decision 2002/584/JHA of 13 June 2002 on the European Arrest Warrant);
- the method of transfer must be only "push" (i.e., filtered data to be transmitted by airlines to the requesting authorities of third countries) instead of "pull" (whereby third countries have direct access to European databases);
- PNR data shall in no circumstances be used for data mining or profiling;
- the onward transfer of data by the recipient country to third countries must be in line with EU standards on data protection, to be established by a specific adequacy finding;
- results must be immediately shared with the relevant authorities of the EU and of the Member States (reciprocity).

Although most of these criteria have been included in the negotiating mandate adopted by the Council, Parliament notes that a number of criteria have not been met in full, and that a number of concerns remain:

- proportionality of the mass collection and storage of data: the European Commission has only partially and insufficiently demonstrated the necessity and proportionality of the mass collection and storage of data. No justification has been given for the long term storage of identifiable data of all travellers. The retention period of 5.5 years appears to be fairly random, and not based on specific evidence;
- legal basis for this Agreement: the appropriate legal basis for the Agreement should be, in any case primarily, Art 16 TFEU (on data

protection). However, it is not included in the legal base, but and only a general, non binding reference is included in the pre-amble. The purpose of the Agreement is to ensure that the transfer of data is in line with EU data protection standards. Therefore, the Agreement should not be based on Article 82(1)(d) and Article 87(2)(a), but on Article 16 TFEU. If the purpose were police-judicial cooperation, then the EU could theoretically decide against the collection of PNR data by Australia. But this is a sovereign decision by a third country. Therefore, it is not EU policy as it is not for the EU to decide. The chosen legal base is clearly not the correct one.

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

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The European Parliament adopted by 463 votes to 96, with 11 abstentions, a legislative resolution on the draft Council Decision on the conclusion 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.

The resolution states that procedure [NLE/2009/0186](#) has lapsed as a result of the 2008 PNR Agreement between the European Union and Australia having been replaced by the new PNR Agreement.

At the same time, Parliament gives its consent to the conclusion of the Agreement.

It should be noted that prior to the approval of the Agreement, the European Parliament rejected the [motion for a resolution](#) tabled on behalf of the GUE/NGL Group on seeking an opinion from the Court of Justice on the compatibility with the Treaties of the Agreement.

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

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**PURPOSE:** to conclude an 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.

**NON-LEGISLATIVE ACT:** Council Decision 2012/381/EU on the conclusion 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.

**BACKGROUND:** Australian legislation empowers the Australian Customs Service to require each air carrier operating passenger flight to and from Australia to provide it with electronic access to Passenger Name Record (PNR) data prior to the passenger arriving or leaving Australia. The requirements of the Australian authorities are based on the Customs Act 1901, the Customs Administration Act 1985, the Migration Act 1958, the Crimes Act 1914, the Privacy Act 1988 and the Freedom of Information Act 1982. This legislation aims at obtaining PNR data electronically in advance of a flight's arrival and therefore significantly enhances the Australian Customs Service's ability to conduct efficient and effective advance risk assessment of passenger and to facilitate bona fide travel, thereby enhancing the security of Australia.

The European Union in cooperating with Australia in the fight against terrorism and other serious transnational crime views the transfer of data to Australia as fostering international police and judicial cooperation which will be achieved through the transfer of analytical information flowing from PNR data by Australia to the competent Member States authorities as well as Europol and Eurojust within their respective competences.

The European Union signed an [agreement in 2008 with Australia](#) on the transfer and processing of PNR data based on a set of commitments by the Australian Customs Service in relation to the application of its PNR programme.

Following the entry into force of the Lisbon Treaty and pending the conclusion of the agreement, the Council sent the 2008 Australia Agreement to the European Parliament for its consent for the conclusion. The European Parliament adopted a resolution in which it decided to postpone its vote on the requested consent and requesting a renegotiation of the Agreement on the basis of certain criteria (see [RSP/2010/2657](#)). Pending such renegotiation, the 2008 Agreement would remain provisionally applicable.

On 23 September 2010, the Council received three recommendations from the Commission to authorise the opening of negotiations for an Agreement between the European Union and Australia for the transfer and use of Passenger Name Record (PNR) data to prevent and combat terrorism and other serious transnational crime.

On 2 December 2010, the Council adopted a Decision authorising the Commission to open negotiations on behalf of the Union with Australia for the transfer and use of Passenger Name Record (PNR) data to prevent and combat terrorism and other serious transnational crime.

In accordance with Council Decision 2012/380/EU, 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 has been signed, subject to its conclusion at a later date.

It is now necessary to conclude this Agreement on behalf of the European Union.

**CONTENT:** under this Decision, 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 is hereby approved on behalf of the Union.

**PNR and basic principles of the Agreement:** to recall, PNR is a record of each passenger' 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 Australian Customs Service 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. However, the data protection laws of the EU do not allow European and other carriers operating flight 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. Accordingly, a solution is required that will provide the legal basis for the transfer of PNR data from the EU to Australia 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 avoiding legal uncertainty for air carriers. In addition, this solution should be applied homogeneously throughout the European Union in order to ensure a legal certainty for air carriers and respect of individuals' rights to the protection of personal data as well as their physical security.

**Safeguards:** the Agreement has secured several important safeguards for those 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. Individuals are provided with the right to access, correction, redress and information. The data will be transferred using exclusively the 'push' method and the use of sensitive data is prohibited.

**Retention period:** the retention period of the PNR data is limited and the data will be depersonalised after a certain period.

**Compliance:** compliance with these rules shall be subject to independent oversight by the Australian Information Commissioner.

**Fundamental rights:** the 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, the right to the protection of personal data, and the right to effective remedy and fair trial.

**Territorial provisions:** the United Kingdom and Ireland take part in the adoption of the Decision. Denmark is not taking part in the adoption of this Decision and is not bound by the Agreement or subject to its application.

**ENTRY INTO FORCE:** the Decision shall enter into force on 15.07.2012. The Agreement shall enter into force on 01.06.2012.

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

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The report focuses 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.

The Agreement between the European Union (EU) and Australia on the processing and transfer of Passenger Name Record (PNR) data by air carriers to the Australian Customs and Border Protection Service (ACBPS) entered into force on 1 June 2012. It provides for a first joint review one year after its entry into force and regularly thereafter as jointly agreed.

This joint review was carried out in Canberra on 29 and 30 August 2013.

**Scope of the report:** the reports main focus was the implementation of the Agreement, with particular attention to the mechanism of masking out data as well as the transfers of EU citizens and residents PNR data to the authorities of third countries.

The joint review was based on the methodology applied in previous PNR joint reviews with the United States (2005, 2013) and Canada (2008). The first part of this methodology consisted of a questionnaire sent by the European Commission to Australian Customs and Border Protection Service (ACBPS) prior to the joint review.

The second part consisted of a visit to the ACBPS Passenger Analysis Unit by the EU team.

The third part consisted of a meeting between representatives of ACBPS, the Australian Department of Foreign Affairs and Trade, the Office of the Australian Information Commissioner, the Australian Privacy Commissioner and the EU team, discussing in detail the implementation of the Agreement.

**Main findings:** the EU team found that Australia has fully implemented the Agreement in line with the conditions set out therein. Australia respects its obligations as regards the data protection safeguards under the Agreement, and processes PNR data in compliance with the conditions set out in the Agreement. Australia does not process any sensitive data held in PNR data obtained under the Agreement, and it is actively seeking to further improve the automated identification and deletion of sensitive data. The very targeted way in which Australia assesses PNR data against risk indicators minimises the access to personal data. The processing of PNR data under the Agreement is subject to a high level of independent oversight by the Office of the Australian Information Commissioner.

In conclusion, Australia is to be commended for the way it applies the PNRGOV push method. Although outside the scope of the Agreement, it is welcomed that Australia extended the application of the "push" method to all airlines not covered by the Agreement. Moreover, Australia is a forerunner in the development and promotion of the PNRGOV standard messaging format worldwide, seeking to achieve global standardisation for the transmission of PNR data in its engagement with individual airlines and in the framework of the World Customs Organisation (WCO), the International Civil Aviation Organization (ICAO) and the International Air Transport Association (IATA).

The two sides envisage to combine the next joint review of the Agreement with the joint evaluation of the Agreement in mid-2016.

As regards issues to be further addressed, the report stresses that:

- law enforcement cooperation based on the sharing of analytical information obtained from PNR data requires more attention. Australia is requested to enhance its efforts to ensure reciprocity and pro-actively share analytical information obtained from PNR data with Member States and, where appropriate, with Europol and Eurojust;
- recipients of such information on the EU side should provide adequate feedback to ACBPS on the use of this information and the results achieved. Australia is also requested to set up a reporting mechanism that will enable Australia to inform Member States if PNR data received under the Agreement, or analytical information containing such data, is eventually shared with a third country. Moreover, Australia should continue to ensure that the safeguards set out in the Agreement are also extended to extracted PNR data that is shared with other areas of ACBPS or other Australian government authorities.

**Terrorism:** a preliminary assessment of the question of whether PNR serves the purpose of supporting the fight against terrorism and other serious crimes that are transnational in nature showed that the processing of PNR data provided the ACBPS with the possibility of carrying out effective pre-departure risk assessments of all passengers up to 72 hours before departure. The early identification of passengers who may pose a high risk enables ACBPS to prepare the necessary responses upon arrival and better target their interventions, while facilitating the travel of legitimate travellers due to minimal interventions.

The analysis of PNR data in conjunction with other information plays a critical role in the ability of ACBPS to identify, ahead of arrival, high risk travellers in the context of combating terrorism, drugs trafficking, identity fraud, trafficking in human beings and other serious transnational crimes.

The Joint Review Report accompanying this Report provides an overview of the background to the review and the purpose and procedural aspects of the exercise.