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EUROPEAN COMMISSION

Brussels, 17.12.2009
COM(2009)701 final

2009/0186 (NLE)

Proposal for a

COUNCIL DECISION

**on the conclusion of the Agreement between the European Union and Australia
on the processing and transfer of EU-sourced passenger name record (PNR) data
by air carriers to the Australian Customs Service**

EXPLANATORY MEMORANDUM

- 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.
- 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 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 Australia on the processing and transfer of European Union-sourced passenger name record data by air carriers to the Australian Customs Service 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 Australia on the processing and transfer of European Union-sourced passenger name record (PNR) data by air carriers to the Australian Customs Service.

Proposal for a

COUNCIL DECISION

of [xx.xx.2010]

on the conclusion of the 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 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 28 February 2008 the Council decided to authorise the Presidency, assisted by the Commission, to open negotiations for a long-term 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 Australia Customs Service.
- (2) In accordance with Council Decision 2008/651/CFSP/JHA of 30 June 2008², the 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 was signed on ..., subject to its conclusion at a later date.
- (3) In accordance with its Article 15(2) the provisions of the Agreement shall apply provisionally as of the date of 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.
- (5) The Agreement should be concluded.

¹ OJ C [...], [...], p. [...].

² OJ L 213, 8.8.2007, p. 47.

- (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 Australia on the processing and transfer of European Union-sourced passenger name record (PNR) data by air carriers to the Australian Customs Service³ 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 Article 15 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 213, 8.8.2007, p. 49.

ANNEX