

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 2006 Nr. 221

A. TITEL

*Overeenkomst tussen de Europese Unie en de Verenigde Staten van Amerika inzake de verwerking en overdracht van persoonsgegevens van passagiers (PNR-gegevens) door luchtvaartmaatschappijen aan het Ministerie van Binnenlandse Veiligheid van de Verenigde Staten van Amerika;
Washington, 19 oktober 2006*

B. TEKST

Agreement between the European Union and the United States of America on the processing and transfer of passenger name record (PNR) data by air carriers to the United States Department of Homeland Security

The European Union and the United States of America,

Desiring to prevent and combat terrorism and transnational crime effectively as a means of protecting their respective democratic societies and common values,

Recognising that, in order to safeguard public security and for law enforcement purposes, rules should be laid down on the transfer of Passenger Name Record ("PNR") data by air carriers to the Department of Homeland Security (hereinafter "DHS"). For the purposes of this Agreement, DHS means the Bureau of Customs and Border Protection, US Immigration and Customs Enforcement and the Office of the Secretary and the entities that directly support it, but does not include other components of DHS such as the Citizenship and Immigration Services, Transportation Security Administration, United States Secret Service, the United States Coast Guard, and the Federal Emergency Management Agency,

Recognising the importance of preventing and combating terrorism and related crimes, and other serious crimes that are transnational in nature, including organised crime, while respecting fundamental rights and freedoms, notably privacy,

Having regard to US statutes and regulations requiring each air carrier operating passenger flights in foreign air transportation to or from the United States to provide DHS with electronic access to PNR data to the extent they are collected and contained in the air carrier's automated reservation/departure control systems (hereinafter "reservation systems"),

Having regard to Article 6(2) of the Treaty on European Union on respect for fundamental rights, and in particular to the related right to the protection of personal data,

Having regard to relevant provisions of the Aviation Transportation Security Act of 2001, the Homeland Security Act of 2002, the Intelligence Reform and Terrorism Prevention Act of 2004 and Executive Order 13388 regarding cooperation between agencies of the United States Government in combating terrorism,

Having regard to the Undertakings as published in the US Federal Register¹⁾ and implemented by DHS,

Noting that the European Union should ensure that air carriers with reservation systems located within the European Union arrange for transmission of PNR data to DHS as soon as this is technically feasible but that, until then, the US authorities should be allowed to access the data directly, in accordance with the provisions of this Agreement,

Affirming that this Agreement does not constitute a precedent for any future discussions or negotiations between the United States and the European Union, or between either of the Parties and any State regarding the processing and transfer of PNR or any other form of data,

Having regard to the commitment of both sides to work together to reach an appropriate and mutually satisfactory solution, without delay, on the processing of Advance Passenger Information (API) data from the European Union to the United States,

Noting that in reliance on this Agreement, the EU confirms that it will not hinder the transfer of PNR data between Canada and the United States and that the same principle will be applied in any similar agreement on the processing and transfer of PNR data,

Have agreed as follows:

1. In reliance upon DHS's continued implementation of the aforementioned Undertakings as interpreted in the light of subsequent events, the European Union shall ensure that air carriers operating passenger

¹⁾ Volume 69, No 131, p. 41543

flights in foreign air transportation to or from the United States of America process PNR data contained in their reservation systems as required by DHS.

2. Accordingly, DHS will electronically access the PNR data from air carriers' reservation systems located within the territory of the Member States of the European Union until there is a satisfactory system in place allowing for transmission of such data by the air carriers.

3. DHS shall process PNR data received and treat data subjects concerned by such processing in accordance with applicable US laws and constitutional requirements, without unlawful discrimination, in particular on the basis of nationality and country of residence.

4. The implementation of this Agreement shall be jointly and regularly reviewed.

5. In the event that an airline passenger information system is implemented in the European Union or in one or more of its Member States that requires air carriers to provide authorities with access to PNR data for persons whose travel itinerary includes a flight to or from the European Union, DHS shall, in so far as practicable and strictly on the basis of reciprocity, actively promote the cooperation of airlines within its jurisdiction.

6. For the purpose of applying this Agreement, DHS is deemed to ensure an adequate level of protection for PNR data transferred from the European Union concerning passenger flights in foreign air transportation to or from the United States.

7. This Agreement shall enter into force on the first day of the month after the date on which the Parties have exchanged notifications indicating that they have completed their internal procedures for this purpose. This Agreement shall apply provisionally as of the date of signature. Either Party may terminate or suspend this Agreement at any time by notification through diplomatic channels. Termination shall take effect thirty (30) days from the date of notification thereof to the other Party. This Agreement shall expire upon the date of application of any superseding agreement and in any event no later than 31 July 2007, unless extended by mutual written agreement.

This Agreement is not intended to derogate from or amend legislation of the United States of America or the European Union or its Member States. This Agreement does not create or confer any right or benefit on any other person or entity, private or public.

This Agreement is drawn up in duplicate in the English language. It shall also be drawn up in the Czech, Danish, Dutch, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Slovak, Slovenian, Spanish and Swedish languages, and the Parties shall approve these language versions. Once approved, the versions in these languages shall be equally authentic.

DONE at Luxembourg on 16 October 2006 and at Washington D.C. on 19 October 2006.

For the European Union

Erkki TUOMIOJA
Minister for Foreign Affairs
President of the Council of the European Union

For the United States of America

Secretary Michael CHERTOFF
Department of Homeland Security

De Raad van de Europese Unie heeft op 16 oktober 2006 te Luxemburg een besluit genomen tot ondertekening, namens de Europese Unie, van de Overeenkomst tussen de Europese Unie en de Verenigde Staten van Amerika inzake de verwerking en overdracht van persoonsgegevens van passagiers (PNR-gegevens) door luchtvaartmaatschappijen aan het Ministerie van Binnenlandse Veiligheid van de Verenigde Staten van Amerika. De Engelse tekst van dat Besluit luidt als volgt:

Council Decision 2006/729/CFSP/JHA of 16 October 2006 on the signing, on behalf of the European Union, of an Agreement between the European Union and the United States of America on the processing and transfer of passenger name record (PNR) data by air carriers to the United States Department of Homeland Security

The Council of the European Union,

Having regard to the Treaty European Union, and in particular Articles 24 and 38 thereof,

Whereas:

1. On 27 June 2006 the Council decided to authorise the Presidency, assisted by the Commission, to open negotiations for an Agreement with the United States of America on the processing and transfer of passenger name record (PNR) data by air carriers to the United States Department of Homeland Security (DHS).

2. In view of the Undertakings issued on 11 May 2004 bij DHS, Bureau of Customs and Border Protection¹⁾, the United States can be

¹⁾ OJ L 235 of 6.7.2004, p.15.

considered as ensuring an adequate level of protection for PNR data transferred from the European Union concerning passenger flights to or from the United States.

3. The competent authorities in Member States may exercise their existing powers to suspend data flows to DHS in order to protect individuals with regard to the processing of their personal data if they consider that the processing of PNR data is not in accordance with the standards of protection provided for in the Undertakings given by DHS, or where a competent United States authority has determined that DHS is in breach of those standards, until compliance with those standards is assured.

4. This Agreement should be signed, subject to its conclusion at a later date.

5. The provisions of the Agreement should be applied on a provisional basis pending its entry into force.

Has decided as follows:

Article 1

The signing of the Agreement between the European Union and the United States of America on the processing and transfer of Passenger Name Record (PNR) data by air carriers to the United States Department of Homeland Security, is hereby approved on behalf of the European Union, subject to the conclusion of the Said Agreement.

The text of the Agreement is attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Agreement on behalf of the European Union, subject to its conclusion.

Article 3

In accordance with point 7 of the Agreement, the provisions of the Agreement shall be applied on a provisional basis as of the date of its signature, pending its entry into force.

Article 4

1. Without prejudice to their powers to take action to ensure compliance with national provisions, the competent authorities in Member States may exercise their existing powers to suspend data flows to DHS in order to protect individuals with regard to the processing of their personal data in the following cases :

a. where a competent United States authority has determined that DHS is in breach of the applicable standards of protection; or

b. where there is a substantial likelihood that the applicable standards of protection are being infringed, there are reasonable grounds for believing that DHS is not taking or will not take adequate and timely steps to settle the case at issue, the continuing transfer would create an imminent risk of grave harm to data subjects, and the competent authorities in the Member States concerned have made reasonable efforts in the circumstances to provide DHS with notice and an opportunity to respond.

2. Suspension shall cease as soon as the standards of protection are assured and the competent authorities of the Member States concerned are notified thereof.

Article 5

1. Member States shall inform the Council and the Commission without delay when measures are adopted pursuant to Article 4.

2. The Member States and the Commission shall inform each other within the Council of any changes in the standards of protection and of cases where the action of bodies responsible for ensuring compliance with the applicable standards of protection by DHS fails to secure such compliance.

3. If the Council considers that the information collected pursuant to Article 4 and pursuant to paragraphs 1 and 2 of this Article provides evidence that the basic principles necessary for an adequate level of protection for natural persons are no longer being complied with, or that any body responsible for ensuring compliance with the applicable standards of protection by DHS is not effectively fulfilling its role, DHS shall be informed and the Council shall take the necessary action with a view to suspending or terminating the Agreement.

DONE at Luxembourg, 16 October 2006

For the Council

The President

E. TUOMIOJA

D. PARLEMENT

De Overeenkomst behoeft ingevolge artikel 7, onderdeel c, van de Rijkswet goedkeuring en bekendmaking verdragen niet de goedkeuring van de Staten-Generaal.

Het Koninkrijk der Nederlanden heeft tijdens de Raadsvergadering van 16 oktober 2006 te Brussel aangegeven dat de grondwettelijke procedures doorlopen moeten zijn, alvorens het Koninkrijk aan deze Overeenkomst gebonden kan zijn.

F. VOORLOPIGE TOEPASSING

De Overeenkomst wordt ingevolge zijn artikel 7 vanaf 19 oktober 2006 voorlopig toegepast.

Wat het Koninkrijk der Nederlanden betreft, geldt de voorlopige toepassing alleen voor Nederland.

G. INWERKINGTREDING

De bepalingen van de Overeenkomst zullen ingevolge zijn artikel 7 in werking treden op de eerste dag van de maand volgend op de datum waarop de laatste partij kennis geeft dat aan de interne procedures is voldaan. De bepalingen van de Overeenkomst zullen ingevolge hetzelfde artikel niet later dan 31 juli 2007 buiten werking treden, tenzij het met wederzijdse instemming wordt verlengd.

J. VERWIJZINGEN

De Overeenkomst dient ter vervanging van:

Titel	: Overeenkomst tussen de Europese Gemeenschap en de Verenigde Staten van Amerika inzake de verwerking en overdracht van PNR-gegevens door luchtvaartmaatschappijen aan het Bureau of Customs and Border Protection van het ministerie van binnenlandse veiligheid van de Verenigde Staten van Amerika; Washington, 28 mei 2004
Tekst	: <i>Pb.</i> 2004 L 183, blz. 84 e.v.

In overeenstemming met artikel 19, tweede lid, van de Rijkswet goedkeuring en bekendmaking verdragen heeft de Minister van Buitenlandse

Zaken bepaald dat de Overeenkomst zal zijn bekendgemaakt in Nederland op de dag na de datum van uitgifte van dit Tractatenblad.

Uitgegeven de *twintigste* oktober 2006.

De Minister van Buitenlandse Zaken,

B. R. BOT